

WHATCOM COUNTY
OFFICE OF THE HEARING EXAMINER

CITY OF BELLINGHAM, vs. WHATCOM COUNTY and CLN LLC, et al.	Appellant, Respondents.	No. APL 2009-0009 and APL 2010-0013 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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SUMMARY OF APPEAL AND DECISION

Appeal: On June 9, 2008, Whatcom County received a land disturbance permit application to construct a road roughly 10,300 feet in length to serve up to 26 existing 20-acre residential properties in the Rural Forestry zone. On January 8, 2009, Whatcom County issued a Mitigated Determination of Non Significance (MDNS) and solicited comments from agencies and the public. After reviewing agency and public comments, Whatcom County rescinded the MDNS on January 30, 2009. On March 6, 2009, Whatcom County issued a revised MDNS for the project. On March 30, 2009, the Appellant, City of Bellingham, filed an appeal of the SEPA threshold determination made by Planning and Development Services, dated March 6, 2009. The Appellant filed the appeal within 10 days of the date the determination was final. The appeal was timely. Also, on May 12, 2010, the City of Bellingham filed an Administrative Appeal of a Land Disturbance Permit, LDP2008-00089, issued by Whatcom County Planning and Development Services on April 29, 2010. The Appellant filed the appeal within 14 days of the decision. This appeal was also timely.

Decision: The Appellant has failed to establish that the Mitigated Determination of Non-significance issued by Whatcom County Planning and Development Services was clearly erroneous. After giving the required significant weight to the Threshold Determination made by the Responsible Official under SEPA, the City of Bellingham's Appeal of the Mitigated Determination of Non-significance is DENIED.

The Appellant has also failed to establish that the Land Disturbance Permit issued by Whatcom County failed to comply with the applicable standards for issuance of a Land Disturbance Permit and/or failed to comply with the Conditions of the Mitigated Determination of Non-significance, which attached to the Land

Disturbance Permit as Conditions of that Permit. The Appeals are DENIED and the Determinations reached by Whatcom County are UPHELD.

Findings of Fact

I.

Appellant: City of Bellingham

Respondents: Whatcom County
CLN LLC, Christopher and Nancy Secrist and Gordon and Carol Iverson

Applicant: Vineyard Development Group, LLC

Site Location: Ptn Sec 24, T38N, R3E, W.M. and Ptn Sec 13, T38N, R3E, W.M.

Assessor's Parcel Numbers:

- 380324 066302 0000 (#1) 380313 229052 0000 (PTN#14) 380313 481336 0000 (#26)
- 380324 066366 0000 (#2) 380313 319056 0000 (PTN#15) 380313 472289 0000 (#27)
- 380324 066432 0000 (#3) 380313 333111 0000 (PTN#16) 380313 277058 (PTN#14)
- 380324 200302 0000 (#4) 380313 333171 0000 (PTN#17) 380313 263100 (PTN#15)
- 380324 200366 0000 (#5) 380313 333231 0000 (#18) 380313 261121 0000 (PTN#16)
- 380324 200432 0000 (#6) 380313 295341 0000 (#19) 380313 261171 0000 (PTN#17)
- 380324 200495 0000 (#7) 380313 355328 0000 (#20)
- 380313 094020 0000 (#8) 380313 307476 0000 (#21)
- 380313 027119 0000 (#9) 380313 368452 0000 (#22)
- 380313 083119 0000 (#10) 380313 466495 0000 (#23)
- 380313 137128 0000 (#11) 380313 491440 0000 (#24)
- 380313 211152 0000 (#13) 380313 496386 0000 (#25)

Zoning Designation: Rural Forestry

Notice Requirements

Legal Notice, dated Legal Notice, dated May 7, 2009

Posting Notice, dated May 7, 2009

Legal Notice of Open Record Hearing, dated August 26, 2010

Certificate of Posting of Notice of Public Hearing, dated August 26, 2010

- Hearing Dates:
- 09.08.10
 - 10.08.10
 - 10.20.10
 - 10.27.10
 - 11.05.10

12.02.10

Authorizing Codes, Policies, Plans and Programs:

Whatcom County Comprehensive Plan
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,
Whatcom County Environmental Policy Administration Chapter 16.08
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code, Chapters 20.71; 20.80; 20.92; 20.84.240
Whatcom County Development Standards

Parties of Record

Gordon and Carol Iverson
398 Shallow Shores Road
Bellingham WA 98228

CLN, LLC
398 Shallow Shores Road
Bellingham WA 98228

Robert A. Carmichael
Simi Jain
Zender Thurston, P.S.
1700 D. Street
Bellingham, WA 98225

Chris and Nancy Secrist
1771 Academy Road
Bellingham WA 98226

Vineyard Development Group LLC
PO Box 29840
Bellingham WA 98228

Alan Marriner
City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Philip Buri
Buri Funston Mumford, PLLC
1601 F. Street
Bellingham, WA 98225

Royce Buckingham
Whatcom County Civil Deputy Prosecutor
Courthouse Suite 201
311 Grand Avenue
Bellingham, WA 98225

Tyler Schroeder
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097

Sandy Petersen and Mary White
Whatcom County Public Works, Engineering Division
5280 Northwest Drive
Bellingham, WA 98226-9098

Loretta Gowan
2945 Toad Lake Road
Bellingham, WA 98226

Art Hyatt
2318 Northshore Road
Bellingham, WA 98226

Virginia Watson
2729 Jensen Road
Bellingham, WA 98226

Wendy Steffensen
North Sound Baykeeper
Re-Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225

Exhibits

- 1 Appeal Application, dated March 30, 2009
 - 1-1 Receipt
 - 1-2 Letter dated March 30, 2009, from City of Bellingham, Office of the City Attorney re: Appeal of MDNS, SEPA 2008-00063
 - 1-3 Letter dated January 22, 2009, from City of Bellingham, Mayor's Office re: MDNS, dated January 8, 2009
 - 1-4 Lake Whatcom Water and Sewer District Water Service Feasibility Study, Vineyard Development Group, LLC Property Report, dated September 10, 2005
 - 1-5 Lake Whatcom Water and Sewer District Developer Extension Agreement, dated March 8, 2006

- 1-6 Lake Whatcom Water and Sewer District, Resolution No. 705, Approved November 23, 2005
- 1-7 Email correspondence, dated Feb 5, 2009 from Alan Marriner to Tyler Schroeder
Email correspondence, dated Jan 30, 2009 from Tim Stewart to Richard Grout and Grout to Stewart, dated Jan 29, 2009, and Kasey Ignac to Kyle Dodd
- 1-8 Letter dated March 19, 2009, from DOE, Steve Hood and Kasey Ignac, to Tyler Schroeder
- 1-9 Letter dated March 20, 2009 from City Mayor's Office to Schroeder
- 1-10 Map showing Iverson / CLN Property Holdings

- 2 Re-issued and Revised MDNS, SEPA 2008-00063, dated March 6, 2009
 - 2-1 Distribution List
 - 2-2 Letter dated March 19, 2009 from DOE, Hood and Ignac, to Schroeder
 - 2-3 Letter dated May 21, 1998 from DOE, Rodney Sakrison, to PDS, Sue Blake
 - 2-4 Equivalency Table for Whatcom County Development Regulations, Chapter 2-Stormwater Standards
 - 2-5 Large Development/Clearing Minimum Requirements
 - 2-6 BMP detail comments
 - 2-7 Letter dated Jan 20, 2009 from Art Hyatt to Schroeder
 - 2-8 Email memo, dated March 20, 2009 from Virginia Watson to Schroeder

- 3 Withdrawn MDNS, SEPA 2008-00063, dated January 30, 2009
 - 3-1 Distribution List
 - 3-2 MDNS, SEP2008-00063, dated January 8, 2009
 - 3-3 Mitigating Conditions
 - 3-4 Letter dated January 14, 2009, from DOE, Kurt Baumgarten and Mark Kaufman, to Schroeder
 - 3-5 Letter dated January 21, 2009, from Wendy Steffensen to Bobbink and Schroeder
 - 3-6 Letter dated January 22, 2009, from Larry Helm to Schroeder
 - 3-7 Email dated January 22, 2009 from Kristi Slette to Schroeder
 - 3-8 Email dated January 22, 2009 from Virginia Watson to Schroeder
 - 3-9 Letter dated January 22, 2009, from Art Hyatt to Schroeder
 - 3-10 Letter dated January 26, 2009 from Daniel Warner to Schroeder
 - 3-11 Environmental Checklist, submitted June 30, 2008
 - 3-12 DOE Focus on Lake Whatcom TMDL, Water Quality, August 2008, Publication No. 08-10-068, and February 2008, Publication No. 08-06-008

- 4 Site Maps

- 5 Plat Map

- 6 Notice of Appearance, Robert Carmichael, dated April 20, 2009, with Declaration of Service attached
- 7 Notice of Substitution, Philip Buri, dated May 7, 2009, with Declaration of Service attached
- 8 Legal Notice, dated May 7, 2009
- 9 Posting Notice, dated May 7, 2009
- 10 Staff Email Correspondence, dated May 12, 2009 [Buckingham to Marriner, Carmichael, Magner, Stalheim, Reich; and Magner, dated May 12, 2009 to Stalheim, Buckingham, Schroeder, Marriner, Carmichael, Reich, Jain; and Marriner, dated May 12, 2009 to Magner]
- 11 Respondents CLN, LLC, ET AL, Pre-Hearing Memorandum, dated May 18, 2009, with Cover Letter, dated May 18, 2009 from Robert Carmichael to Michael Bobbink, and attachment documents
 - 11-1 Wetland/Fish and Wildlife Study Whatcom County, Washington, May 2008
 - 11-2 Stormwater Site Plan, June 2008
 - 11-3 Traffic Impact: Trip Generation, Trip Distribution and Analysis, June 6, 2008
 - 11-4 Squalicum Ridge Drive, Drainage Report Addendum Culvert Calculations, Freeland & Assoc., October 14, 2008
 - 11-5 Geo-hazard Assessment, GeoEngineers, October 9, 2008
 - 11-6 Whatcom County Preliminary Stormwater Proposal for Vineyard Development Group, Bill Sygitowicz, prepared by Tony Freeland & Assoc., June 2008, no vicinity map attached
 - 11-7 Letter to Hearing Examiner, from Morrow, Pacific Surveying & Engineering, May 18, 2009
 - 11-8 Revised Wetland, Fish and Wildlife Study, ATSI, June 2008
 - 11-9 SEPA Checklist, June 2008
 - 11-10 Bellingham Herald Legal Notice of MDNS, January 8, 2009
 - 11-11 Email to Tyler Schroeder, from Bill Sygitowicz, individual parcel numbers to be served by road, Vineyard Development, March 4, 2009
 - 11-12 Letter dated February 9, 2009 from Sygitowicz to Schroeder, re: MDNS, response to road comments
 - 11-13 Legal Notice to be published in Herald, dated Jan 8, 2009, re: SEP2008-00063
 - 11-14 Letter, dated June 6, 2008 from Adam Morrow, PSE to PDS re: Wetland 'B' Impact Analysis, with Map attached [#11-14(a)]
 - 11-15 Road Name Proposal, June 3, 2008
 - 11-16 Tax Parcel Ownership Information (for 15 parcels LDP required – over which road will be built)
 - 11-17 Revised Engineering Drawings per County Redline Comments, Freeland & Assoc., September 15, 2008 [11-17(a) Cover Sheet (Sheets C1 thru EC3); 11-17(b) (Sheets EC4 thru RD4); 11-17(c) (Sheets RD5 thru RD8); 11-17(d) (Sheets RD9 thru ISD1)]

- 12 Pre-Hearing Memorandum for the City of Bellingham, dated May 18, 2009 [Notebook] with attachments
 - 12-1 SEPA 2008-00063, dated January 8, 2009
 - 12-2 Withdrawn SEPA 2008-00063, dated January 30, 2009
 - 12-3 Reissued and Revised, SEPA 2008-00063, dated March 6, 2009
 - 12-4 Land Disturbance Application, Permit No. LDP2008-00089
 - 12-5 Letter, dated June 3, 2008, from PSE, re: Road Construction Land Disturbance Application Academy Road
 - 12-6 Environmental Checklist, dated June 3, 2008
 - 12-7 Case Law: King Co. v WA State Boundary Review Board for King Co et al and Florida Wildlife Federation et al v US Army Corps of Engineers et al
 - 12-8 CD copy of three large PDF files: 2005 DOE Stormwater Management Manual; November 2008 DOE TMDL Study; Whatcom County Development Standards, Section 2 (Stormwater Management and Section 5 (Road Standards)

- 13 Staff Report, dated May 12, 2009, with attached Staff Memoranda
 - 13-1 Memo, dated Feb 3, 2009, from Lyn Morgan-Hill (Critical Areas Review) to Technical Administrator
 - 13-2 Email dated Jan 29, 2009 from Doug Goldthorp (Geologist) to Tyler Schroeder and Tyler to All, dated Jan 28, 2009
 - 13-3 Email dated Feb 3, 2009 from Tyler Schroeder to Doug Goldthorp re: Field Inspection
 - 13-4 Memo, dated Feb 4, 2009 from Michael Kershner (Watershed Planner) to Tyler Schroeder re: Revised SEPA Comments
 - 13-5 County Public Works clarification of comments re: Squalicum Ridge Drive, undated

- 14 Memorandum, dated May 19, 2009, from David Stalheim to Michael Bobbink, re: File No. SEPA2008-0063/APL2009-0009, Supplemental Staff Report

- 15 Administrative Appeal Application, APL2010-0013/LDP2008-0089, filed by City of Bellingham, dated May 12, 2010, with Appeal Statement and Customer Receipt attached
 - 15-1 Letter, January 22, 2009 from Mayor Dan Pike re: MDNS Squalicum Ridge Road
 - 15-2 Letter dated May 11, 2010 from Larry Helm, Kurt Russo, Daniel Warner, Larry Watson, Virigina Watson, and Kristi Slette re: Appeal Squalicum Ridge Drive, LDP2008-0089
 - 15-3 Letter dated April 29, 2010 from PDS Michael Kershner to Art Hyatt re: Case No. LDP2008-0089, with a copy of permit and Appellants' Motion to Stay Appeal and Consolidated with Permit Decision attached
 - 15-4 Legal Notice of Open Record Hearing dated August 26, 2010

- 16 Land Disturbance Permit Application No. LDP2008-0089, Bill Sygitowicz, Applicant, with attachments:
 - 16-1 Land Disturbance Permit, LDP2008-0089, issued April 29, 2010
 - 16-2 SEPA Distribution List, SEP2008-0089, w/ SEPA MDNS Re-issued and

Revised, dated March 6, 2009 attached

- 16-3 Email from Virginia Watson to Wayne Fitch, dated May 27, 2009 request notice
 - 16-4 SEPA Distribution List and MDNS [same as 16-2] "Tyler Markup" copy
 - 16-5 Re-Planting Plan, February 12, 2010, PSE, Inc.
 - 16-6 Letter dated April 29, 2010 from PDS re: Permit Processing Fees, receipt attached
 - 16-7 Letter dated January 22, 2009 from Mayor Dan Pike [Exhibit #15-1]
 - 16-8 SEPA Comment Letter dated January 22, 2009 from Larry Helm
 - 16-9 SEPA Comment Letter, dated January 22, 2009 from Kristi Slette
 - 16-10 SEPA Comment Letter, dated January 26, 2009 from Daniel Warner
 - 16-11 SEPA Comment Letter, dated January 22, 2009 from Art Hyatt
 - 16-12 SEPA Comment Letter, dated January 21, 2009 from Wendy Steffensen
 - 16-13 SEPA Comment Letter, dated January 14, 2009 from WA State DOE
 - 16-14 SEPA Comment Email, dated January 22, 2009 from Virginia Watson
 - 16-15 Letter dated March 26, 2010 from Freeland & Assoc re: Tree Removal Plan & Analysis with Tree Removal & Retention Plan – 2 Sheets attached
 - 16-16 PDS Notice of Additional Requirements, dated July 14, 2009
 - 16-17 Letter, January 16, 2009 from Lyn Morgan Hill re: Critical Areas Requirements
 - 16-18 PDS LDP Application Questionnaire, Receipt and Tax Parcel Ownership Info
 - 16-19 Letter dated June 3, 2008 from PSE re: Road Construction LDP Application
 - 16-20 Wetland: Study and Project Areas with Data Plots, PSE, June 5, 2008 (7 sheets)
 - 16-21 Zoning Map
 - 16-22 Aerial Map
 - 16-23 Site Soil Maps
 - 16-24 MDNS, dated February 2, 2009, with SEPA Checklist attached
 - 16-25 Memo, July 10, 2008, D. Goldthorp to Andrew Wargo re: Geohazards Review
 - 16-26 Critical Areas Memo, dated July 7, 2008 re: CAO Review
 - 16-27 Watersheds Request Additional Info, July 2, 2008 from Kershner to Wargo
 - 16-28 Memo June 13, 2008 from Andrew Wargo to Interdisciplinary Team re: meeting
 - 16-29 Clearing Limits for Proposed Roads
 - 16-30 Letter, June 3, 2008, Bill Sygitowicz requesting withdrawal of LDP2007-00181
 - 16-31 Letter, June 6, 2008 from TSI re: Trip Generation, Trip Distribution and Analysis
 - 16-32 Letter, July 2, 2008 from Mary White re: additional info for Stormwater Report
 - 16-33 Memo, May 14, 2008, Mary White to Schroeder re: Engineering minimum requirements, with green highlighting
 - 16-34 Road Name Proposal
- 17 Memo dated June 13, 2008 from Andrew Wargo to Interdisciplinary Team re: Materials to be reviewed for Review Meeting [blue sticky note "PRE2008-00045"], and attachments:
- 17-1 Lake Whatcom Reservoir Regulatory Chapter (2), City of Bellingham, April 2009, with Attachment D, "Draft Stormwater Management Chapter" and Draft Ordinance Amending BMC Chapters 15.42, Related to Stormwater Management
 - 17-2 Hours by Permit/Case Number LDP2008-00089, Wayne Fitch
 - 17-3 Stormwater Review Additional Requirements
 - 17-4 Forest Practices Application/Notification, WA State DNR, #2810689
 - 17-5 Vicinity Map

- 17-6 Email from Wayne Fitch to Lyn Morgan Hill, dated June 4, 2009
 - 17-7 Lake Whatcom Reservoir Regulatory Chapter (1) showing cross-out and underlined page 1 of Ordinance
 - 17-8 Vicinity Map with hand-written note "Listed in SEPA for Squalicum"
 - 17-9 Geologically Hazardous Area Assessment, October 9, 2008, GeoEngineers
 - 17-10 Agency Comments
 - 17-11 Case Activities Log, 10/22/2008 thru 11/07/2008
 - 17-12 Letter of Transmittal, dated 10-14-2008, to Schroeder from Adam Morrow, PSE
 - 17-13 Hand-written Notes, May 14, 2008 "Squalicum Mountain Road"
 - 17-14 Land Disturbance Application, with Letter dated May 7, 2008, from PSE attached
 - 17-15 PDS Land Use Pre-Application Checklist, PRE2008-00045, Squalicum Ridge Dr
 - 17-16 Preliminary Traffic Information
 - 17-17 Preliminary Stormwater Proposal
 - 17-18 Letter dated March 10, 2010 from Michael Kershner to Bill Sygitowicz
 - 17-19 Letter of Transmittal from PSE dated February 12, 2010 with Letter, Feb 11, 2010 re: Road Abandonment Planting Plan Memorandum attached
 - 17-20 Chapter 222-34 WAC Reforestation
- 18 Maps and Deeds [blue sticky note "EXE2006-223"]:
- 18-1 Vicinity Map re: EXE2006-00223, PDS Pre-Approval dated October 2, 2006
 - 18-2 Certificate of Exemption stamp dated October 15, 2007
 - 18-3 Customer Receipt, dated October 15, 2007, "Per Lot Exemption Stamp," SEPA Checklist attached
- 19 Cover Letter dated September 7, 2010 from Robert Carmichael, with Attachments
- 19-1 Supplemental Prehearing Memorandum, dated September 7, 2010
 - 19-2 GeoEngineers letter to Vineyard Development Group, 5-19-09
 - 19-3 Letter from Freeland to Vineyard Development Group, re Appeal of MDNS, 5-19-09
 - 19-4 Email correspondence between parties and Hearing Examiner re stay of hearing, 5-19-09 & 5-20-09
 - 19-5 Morrow, PSE letter to Michael Kershner, 9-28-09
 - 19-6 Stormwater Site Plan (prepared by Freeland & Assoc.), December 2009
 - 19-7 Letter from Cool and Gordon, GeoEngineers, to Sygitowicz, re *Geotechnical Issues related to Roadway Alignment*, 1-21-10
 - 19-8 Letter from Freeland to Bill Sygitowicz, 1-25-10
 - 19-9 Letter from Kershner to Adam Morrow, 1-29-10
 - 19-10 Stormwater Maintenance Plan for Private Road, 2-10-10
 - 19-11 Letter from Robert A. Carmichael, accompanying Tree Removal Plan & Analysis (*Plan submitted separately as Hearing Examiner Exhibit No. 16-15*), 4-1-10
 - 19-12 Covenants Conditions and Restrictions for Squalicum Ridge property (recorded version only), 4-28-10
 - 19-13 Memo from Jason Porter, City PW, 5-25-10
 - 19-14 Series of emails between Freeland and Ecology, 5-28 & 6-8-10
 - 19-15 Stormwater Site Plan (prepared by Freeland & Assoc.), 7-1-10

- 19-16 Freeland letter, response to Jason Porter (City), 7-26-10
 - 19-17 One page summary of revisions, comparing February 2010 drawings to July 2010 drawings
 - 19-18 Letter from Jim Wiggins to Vineyard Development 8-25-10
 - 19-19 Excerpts from Western WA Stormwater Maintenance Manual (*complete manual as Hearing Examiner Exhibit No. 18-8*)
 - 19-20 Freeland & Assoc. Engineers Civil Drawings, 2-12-10
 - 19-21 Freeland & Assoc. Engineers Civil Drawings, 7-28-10
- 20 Memorandum, dated September 3, 2010 from Tyler Schroeder to Michael Bobbink re: Addendum to Staff Report
- 21 Email dated September 7, 2010 from Philip Buri re: Additional Exhibits attached
- 21-1 Squalicum Ridge Development Comments: Review of 8/03 Document Submittal, William Reilly, City of Bellingham Public Works, August 23, 2010
 - 21-2 Whatcom County Critical Areas Map
 - 21-3 Wellhead Protection Areas Map
 - 21-4 Critical Areas Map showing Squalicum Development highlighted
 - 21-5 Iverson / CLN Property Holdings Map [supplement to Exhibit 1-10]
- 22 Affidavit of Publication, Notice of Open Record Hearing, dated August 26, 2010
- 23 Supplemental Materials, submitted via email on September 13, 2010, by Mr. Carmichael:
- 23-1 Letter dated September 7, 2010 by GeoEngineers re: Review of Stormwater Dispersion Plan
 - 23-2 Email correspondence from Tony Freeland to Bob Carmichael, dated September 8, 2010 re: Flow Dispersion
 - 23-3 Email correspondence from Tony Freeland to Bob Carmichael, dated September 8, 2010, re: Addition to Squalicum Ridge Conditions
- 24 Certificate of Posting of Notice of Public Hearing, dated August 26, 2010
- 25 Cover letter, dated October 7, 2010, from Robert Carmichael re: additional materials
- 25-1 Curriculum Vitae, Tony Freeland, P.E., Freeland & Associates
 - 25-2 Report: Offsite Analysis - Squalicum Ridge Development, Tony Freeland, Freeland & Associates, September 2010
 - 25-3 9-8-10 email correspondence between Doug Howie, DOE and Tony Freeland, Freeland Engineering, re vegetated cut/fill slopes, impervious surfaces
 - 25-4 9-14-10 (2:17 pm) email from Tony Freeland, Freeland Engineering, correspondence with Doug Howie, DOE, re design criteria
 - 25-5 9-15-10 (10:41 am) email from Tony Freeland, Freeland Engineering, correspondence with Doug Howie, DOE, re design criteria
 - 25-6 9-15-10 (11:28 am) email from Tony Freeland, Freeland Engineering, correspondence with Doug Howie, DOE, re trench alignment, "parallel to road"
 - 25-7 9-15-10 (11:28 am) email from Tony Freeland, Freeland Engineering, correspondence with Doug Howie, DOE, re trench to be along the road

- 25-8 9-15-10 (12:10 pm) email from Tony Freeland, Freeland Engineering, correspondence with Doug Howie, DOE, re dispersion full length of the road
- 25-9 9-16-10 email from Sandy Peterson, Whatcom County, to Tony Freeland, Freeland Engineering, re DOE Stormwater Manual
- 26 Memorandum, dated October 7, 2010, from Bob Carmichael to Whatcom County Hearing Examiner Michael Bobbink re: Additional conditions and Revised CCRs
- 27 Color Map Geohazard Overall Exhibit [same as Exhibit 11-5 map]
- 28 Chapter 5 – On-Site Stormwater Management, Volume 5 – Runoff Treatment BMPs, February 2005
- 29 Pages C-6 thru C-10 from Appendix C Volume III-Hydrologic Analysis and Flow Control BMPs, February 2005 re: Limitations and Dispersion [same as Exh #12-8 (CD)]
- 30 Gary R. Minton, Environmental Engineer Vitae
- 31 Stormwater Site Plan Addendum, dated October 20, 2010, prepared by Freeland Associates
- 32 Revised Stormwater Civil Plans
- 33 Letter dated October 20, 2010, from GeoEngineers re: Supplemental Geotechnical Review of Revised Stormwater Dispersion Plan
- 34 Additional Conditions and Revised CCRs – 1st Revised, dated October 20, 2010, Memorandum prepared by Bob Carmichael
- 35 Aerial Map showing color-coded stormwater drainage route on Academy Road
- 36 Hearing Examiner Authority to Supplement MDNS conditions, Memorandum dated October 19, 2010, from Robert Carmichael
- 37 Obligations for Maintenance of Stormwater Facilities
- 38 DOE-prepared GPS Aerial Site Map, dated June 3, 2009
- 39 Volume I-Minimum Technical Requirements, Chapter 1-Introduction, dated February 2005
- 40 Volume III-Hydrologic Analysis and Flow Control BMPs, Chapter 1-Introduction, Feb 2005
- 41 WA DOE Low Impact Development Design and Flow Modeling Guidance, Chapter 7
- 42 Email from Mr. Hood to Mr. Howie, dated September 15, 2010 re: Mr. Reilly, Stormwater Manager for City of Bellingham

- 43 Proposed On-Site Stormwater Dispersal Area Exhibit
- 44 Memorandum dated October 27, 2010, from Bob Carmichael to Bobbink re: Additional Conditions and Revised CCRs [2nd Revised- intended to be comprehensive]
- 45 Letter dated October 27, 2010, from Tony Freeland to Bob Carmichael re: Dispersion Areas
- 46 Aerial Photos, 2 pages in color
- 47 Proposed Conditions submitted by the City of Bellingham
- 48 County Development Standards, Chapter 2-Stormwater Management, August 1996: highlighted sections: * B. Maintenance Bonding Securities; * Section 219-Technical Requirements; * Section 220-Maintenance of Stormwater Facilities
- 49 PSE Topographic Survey
- 50 Memorandum, dated November 4, 2010, from Bob Carmichael re: Additional Conditions and Revised CCRs – 3rd Revised
43-A Revised Exhibit 43 Proposed On-Site Stormwater Dispersal Area
- 51 Memorandum, dated November 4, 2010 from Robert Carmichael and Simi Jain re: Conditions of MDNS and LDP
- 52 Memorandum, dated November 4, 2010, from Tyler Schroeder re: County's comments on proposed conditions submitted by the City of Bellingham and the additional conditions and revised CCRs proposed by Bob Carmichael
- 53 Tony Freeland comments re: City's proposed conditions, dated November 4, 2010
- 54 Tony Freeland email dated October 28, 2010 re: mapped observation
- 55 Sean Cool Vitae
- 56 Adam Morrow Vitae
- 57 Colored Map showing dispersion areas
- 58 Colored Map showing close up of dispersion areas
- 59 Memorandum, November 5, 2010 from Bob Carmichael re: Proposed Condition No. 4
- 60 Additional Conditions and Revised CCRs FINAL, Nov 23, 2010 from Bob Carmichael
- 61 Undated Draft Findings of Fact, Conclusions of Law, and Decision, prepared by Bob Carmichael
- 62 Letter dated December 1, 2010, from Philip Buri re: Objections to Proposed Orders

- 63 Email from Sandy Petersen, dated December 2, 2010 re: postponing Hearing Examiner final action for consideration of Engineering comments
- 64 Sandy Petersen’s response to Exhibit 60 [Additional Conditions, Nov 23, 2010-Carmichael], Exhibit 61 [Undated Draft Findings, Conclusions, & Decision, Carmichael], and Exhibit 62 [Letter of Objects to Proposed Orders, Dec 1, 2010, Buri] 64-1December 2010 email communications between Sandy Petersen and Bill Reilly
- 65 Hearing Examiner memorandum, dated December 13, 2010 re: Draft Decision
- 66 Email, dated December 16, 2010 from Sandy Petersen re: Comments to Hearing Examiner Draft Decision
- 67 Email, dated December 22, 2010, from Sandy Petersen re: Comments to Hearing Examiner
- 68 Memorandum from CLN, LLC et al. to Hearing Examiner, dated December 28, 2010 re: Response to other Parties’ comments to Hearing Examiner Draft Decision
- 69 Email, Memorandum, dated January 10, 2011 from Sandy Petersen to Bob Carmichael re: Zender Thurston December 28 response
- 70 Letter dated December 20, 2010, from Philip Buri to Michael Bobbink re: Objections to Proposed Orders

II.

- 2.1 On June 9, 2008, Bill Sygitowicz, Vineyard Development, filed an application with Whatcom County for a Land Disturbance Permit that would authorize construction of a proposed private road (“Road”) on property owned by CLN LLC, Christopher and Nancy Secrist and Gordon and Carol Iverson (“CLN Property”).
- 2.2 The proposed Road will be approximately 10,300 feet in length, 22 feet surface width, and will serve up to 26 pre-existing 20 acre parcels.
- 2.3 Approximately ninety percent (90%) of the Road is over the course of an existing logging road on the CLN Property.
- 2.4 The CLN Property is located in the Rural Forestry zone approximately 2 miles east of the intersection of Academy Road and Northshore Drive on Squaticum Mountain. A portion of the CLN Property is within the Lake Whatcom watershed.
- 2.5 The CLN Property lots, within the Lake Whatcom watershed boundary, are all within the Agate Bay Sub-Watershed except for a portion of two lots which are in the Academy Sub-Watershed. (Ex. 57-58).

2.6 Whatcom County issued a Mitigated Determination of Non-Significance (“MDNS”) for the Land Disturbance Permit Application for the Road on January 8, 2009. After receiving additional comments from the Appellant, City of Bellingham (“City”) and others, Respondent, Whatcom County “County,” entered a “Re-issued and Revised Mitigated Determination of Non-Significance,” on March 6, 2009 (“Revised MDNS”), which contains 14 mitigation conditions.

2.7 On March 30, 2009, the City filed a SEPA Appeal [SEPA 2008-0063/APL2009-0009] of the Revised MDNS issued by the Whatcom County SEPA Official on March 6, 2009, on the proposed construction of the Road.

2.8 The County issued a Land Disturbance Permit, LDP2008-00089, (“LDP”), authorizing construction of the Road on April 29, 2010. All conditions from the Revised MDNS, dated March 6, 2009, issued for the Road are conditions of the LDP pursuant WCC 16.08.100.G.

2.9 On May 12, 2010, the City of Bellingham filed an Administrative Appeal of a Land Disturbance Permit, LDP2008-00089, issued by Whatcom County Planning and Development Services on April 29, 2010, to Bill Sygitowicz for clearing and grading for the Road.

2.10 The City’s appeals of the Revised MDNS and issuance of the LDP for the Road were joined for purposes of the Hearing Examiner hearing and review. An open record hearing for both appeals (APL2009-0009 and APL 2010-0013) began on September 8 and continued to October 8, October 20, October 27, November 5, and December 2, 2010.

2.11 The Revised MDNS includes mitigation conditions which adequately address impacts from the Road and potential cumulative impacts, including those from construction of single-family residences on 26 existing 20 acre parcels which will be served by the Road. However issues have been raised about the adequacy of the submitted Stormwater Management Plan and its consistency with the DOE 2005 Stormwater Manual.

2.12 The City has failed to produce sufficient evidence supporting the City’s claim that the Road and the cumulative impacts from the proposed future single-family residential uses, as mitigated by the Revised MDNS, will likely result in a probable significant adverse environmental impact. Engineers representing Whatcom County, the Washington State Department of Ecology, and the Applicants, opined that the proposed road and associated single-family residential development of the 26 existing 20-acre parcels can be developed and used without adding phosphorus to Lake Whatcom.

2.13 The City expressed concern about phosphorus loading in Lake Whatcom as a result of the Road and its cumulative impacts. The evidence establishes that Lake Whatcom is already impaired by phosphorus overloading, most of which is a result of residential development in the watershed. Lake Whatcom is the source of drinking water for some 80,000 residents of Whatcom County. New development that added additional phosphorus to the lake would exacerbate an already serious existing problem, resulting in cumulative impacts that would amount to a significant adverse environmental impact. In this case, the City has failed to produce clear and convincing evidence that additional phosphorous loading of Lake Whatcom is likely, as a result of the Road and future cumulative impacts associated with future development of the properties served by the Road, after application of the MDNS Mitigation Conditions, Conditions of the LDP, and Whatcom County Regulations.

2.14 The record, consisting of the testimony and written evidence, establishes that construction and use of the Road, together with the cumulative impacts resulting from the construction and associated development of up to 26 homes served by the Road, as conditioned in the Revised MDNS, is unlikely to increase phosphorous loading in Lake Whatcom.

2.15 Testimony from Mr. Steve Hood, on behalf of the Washington State Department of Ecology, indicated that the CLN Property can accommodate the Road and ultimately 26 residences without increasing phosphorous loading in Lake Whatcom. His opinion is consistent with the conclusions from other expert witnesses that the project, as mitigated in the Revised MDNS, is phosphorous neutral and will not result in a significant adverse environmental impact.

2.16 The Applicant's Stormwater Site Plan, dated December 2009 and July 1, 2010 (Ex. 19-15), associated civil drawings, dated February 12, 2010 (Ex. 19-20), **as revised** July 28, 2010 (Ex. 19-21), **and revised again** October 19, 2010 (Ex. 32), the Stormwater Maintenance Plan for Private Road Stormwater Facilities, dated February 10, 2010 (Ex. 19-10), along with the Stormwater Site Plan Addendum, dated October 20, 2010 (Ex. 31), provide for stormwater management consistent with the *2005 DOE Stormwater Manual* and the Whatcom County development standards; satisfy the conditions of the Revised MDNS; and are designed for the 100 year storm event.

2.17 The full dispersion method authorized by the *2005 DOE Stormwater Manual* requires that sixty-five percent (65%) of the site be protected and retained for forestry uses. *DOE 2005 Stormwater Manual, BMP T5.30*. Since each parcel contains a development limitation of twenty percent (20%) and since eighty percent (80%) must remain in forestry use (*CC&Rs Article 5 and 6, HE Ex. 19-12*), development of each parcel should easily meet full dispersion requirements of the 2005 Manual. Allowing approved timber harvesting and logging roads within the sixty-five percent (65%) area set aside for dispersion is consistent with the *2005 Stormwater Management Manual*.

2.18 *Volume III* of the *2005 DOE Stormwater Manual* primarily covers hydrologic analysis and BMPs to control flow volumes from developed sites, while *Volume V* primarily presents BMPs to treat runoff (water quality) that may contain sediment or other pollutants from developed sites. The two Volumes are not exclusive and are intended to reinforce each other.

2.19 In using the *2005 Manual*, requirements stated as "shall" are mandatory, but where "should" is used it is a suggestion only and allows for the use of functional equivalents to meet the requirement that full dispersion result in runoff from the site consistent with a pre-development forested condition. There is a high probability the current stormwater plans (see 2.16 above), properly constructed and maintained, will meet this requirement.

2.20 The requisite dispersion area or flow path needed for the Road is 143 feet, based on the ratio of 6.5 feet width for every one-foot of impervious surface draining to it (per *Volume III* of the *2005 DOE Stormwater Manual*). The requisite dispersion area is not located within wetlands. The average slope for this 143 foot dispersion area cannot exceed 15% (per *Volume V* of the *2005 DOE Stormwater Manual*). The average slope in the 143 foot dispersion areas designed for the Road does not exceed 15% and therefore the proposed 143 foot dispersion areas meet this standard.

2.21 According to the Department of Ecology (“DOE” or “Ecology”), areas set aside for dispersion beyond the 143 foot dispersion area may exceed the average 15% slope, however the stormwater must remain “dispersed” as established by a professional engineer. The evidence from professional engineers in the record is sufficient to establish that the stormwater runoff beyond the 143 foot dispersion area will remain dispersed. Based on this evidence, the latest proposed stormwater plans meet this standard.

2.22 Stormwater from the CLN property is transported by the Academy Road drainage ditches for approximately 300 feet. Stormwater leaves the CLN property through a road side ditch at Academy Road, and runs westerly for about 300-feet along Academy Road, and then crosses under the road, through a culvert, and runs to the south through existing stream channels and natural drainage swales, for approximately one-half mile, before entering Lake Whatcom. This all occurs within the Agate Bay Basin.

2.23 The SEPA Responsible Official for Whatcom County Planning and Development Services Department concluded that mitigation conditions were necessary in order to insure that the development did not add to the total amount of phosphorus entering Lake Whatcom. As testified to by Dr. Gary Minton, the development, as proposed, will be phosphorus neutral. Also, Sandy Petersen, Whatcom County Public Works Department, testified the Stormwater Plan approved in February 2010 will result in no additional phosphorus entering Lake Whatcom. Finally, Steve Hood of DOE confirmed that if the MDNS Conditions are followed, the proposal will not result in additional phosphorus loading in Lake Whatcom.

2.24 The proposed development, subject to the Conditions of the MDNS and the Conditions of required permits, including the additional Agreed Conditions developed during the hearings on these Appeals, will not significantly impact geologically hazardous areas on the site or on adjacent properties. Full dispersion of stormwater on this site is feasible and can be done without negative impacts to the site or to downstream slope stability.

2.25 The Mitigation Conditions of the MDNS, the Conditions of the Land Disturbance Permit, the additional Conditions (agreed) added by the Hearing Examiner, address and mitigate all probable significant adverse environmental impacts on the wetlands and critical areas of the subject property.

2.26 The Appellant has raised concerns about the availability of water for the proposed residential development. A Water Master from DOE testified that it was her opinion that the 26 parcels would only have the right to withdraw a total of 5,000 gallons of water a day. Whatcom County Public Works staff testified that proof of water availability is and will be required before issuance of a building permit and also noted that 5,000 gallons per day would only serve five to six homes.

2.27 The Hearing Examiner concludes that water rights issues associated with the future residential development of the existing 26 parcels are not within the jurisdiction of the Hearing Examiner when hearing this Appeal of the SEPA Threshold Determination and/or the Appeal of a the Land Disturbance Permit issued for the proposed development of the Road. Water rights determinations, regarding exempt wells for existing parcels, and decisions on applications for

new groundwater rights, are strictly in the purview of the Department of Ecology, subject to Administrative Appeal to the Pollution Control Hearings Board and Superior Court. This SEPA Threshold Determination Appeal, and/or LDP Appeal are not a proper forum for determining whether the existing lots qualify for a water right exemption. MDNS Condition No. 13 is reasonable and adequate.

2.28 The Applicants have agreed to a number of additional conditions that were not in the County's Revised MDNS. The Applicants have agreed to protections for larger dispersion areas [beyond the 143 foot dispersion areas required by the BMP T5.30 and Volume III, Appendix C, Section 7.2.4(2)(b) of the *2005 DOE Stormwater Manual*], totaling 36.84 acres of the subject properties. (Ex. 43A). According to Mr. Hood, the addition of large dispersion areas on the order of what is proposed by CLN, as shown in Exhibit 43A, meets the "gold" standard for dispersion area size. These additional conditions, the larger dispersion areas, and other changes agreed to by the Applicant, provide significant additional environmental enhancement and protection, beyond those required in the Revised MDNS, and further solidify a finding that the proposed Road and single-family residential development served by the Road will not result in significant adverse environmental impacts and, more specifically, additional phosphorus loading of Lake Whatcom.

2.29 Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such. Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

III Conclusions of Law

3.1 The County's Revised MDNS and the subsequent LDP approval should be affirmed subject to certain conditions and modifications.

3.2 The SEPA Threshold Determination of the Responsible Official is entitled to significant weight, WAC 197-11-680(3)D.viii. The City, as Appellant, has the burden of proof, and must establish by clear, cogent, and convincing evidence, that the SEPA Threshold Determination made by the SEPA Official was erroneous. The City has not met this burden. Instead, there is clear, cogent and convincing evidence that the development of the Road and any associated future residential development associated with the Road [subject to the Conditions in the MDNS, the requirements in the CC&Rs, the Conditions of Approval attached to the LDP, and the Conditions set forth below] can be accomplished without significant adverse environmental impacts.

3.3 The City has the burden of proof to demonstrate that the County's Administrative Decision to issue the Land Disturbance Permit was erroneous. There is some question as to whether the Stormwater Management Plan, submitted to the County prior to the Appeal of the LDP, met the MDNS requirement that it be consistent with the *2005 DOE Stormwater Manual*. The additional conditions and good faith concessions agreed to by the Applicants make these issues moot. The current modified Stormwater Plan agreed to by the Applicants is consistent with the *2005 DOE Stormwater Manual*.

3.4 The Conditions of the Revised MDNS are sufficient to mitigate all probable significant adverse environmental impacts from the construction and use of the Road, including cumulative impacts from future residential development of the parcels served by the Road. The additional agreed Conditions established at the hearing, including the modifications to the Applicant's proposed recorded Covenants, Conditions and Restrictions (CC&Rs), provide additional environmental enhancements and protection and further assurance that the Stormwater Plan approved is consistent with the MDNS Conditions; will result in post development stormwater controls consistent with the *2005 Manual*; will result in development which meets the requirement that post development stormwater conditions mirror those of an undisturbed forested site; and result in no additional phosphorous loading in Lake Whatcom.

3.5 The County's decision to issue an MDNS was based on information sufficient to evaluate the proposal's environmental impact.

3.6 The mitigation measures in the Revised MDNS are reasonable and capable of being accomplished and provide adequate mitigation to eliminate any probable significant adverse environmental impact from the Road.

3.7 The Revised MDNS properly addresses and mitigates cumulative impacts from both the Road and future residential construction that will be served by the Road. There is no evidence presented that future action will result in additional significant impacts that have not been studied.

3.8 The County's reliance on compliance with other Federal, State and local regulations in the Revised MDNS properly serves to mitigate some of the potential probable significant environmental impacts.

3.9 *The 2005 Department of Ecology Stormwater Manual* is not a regulation and does not have independent regulatory authority. However the Conditions in the MDNS require the Applicant's Stormwater Plan for the Road to be consistent with *The 2005 Department of Ecology Stormwater Manual*, and the Whatcom County Development Standards Chapter 2, Section 219, paragraph 1, authorizes ["may be selected"] use of BMP's from the Stormwater Management Manual for the Puget Sound Basin Washington State Department of Ecology for source control of pollution and requires [shall] use of the BMPs in the Manual [paragraph 2] for runoff treatment.

3.10 The Applicants submitted sufficient information for effective environmental review of the possible impacts from a single-family residence constructed on each Lot. There is no evidence that additional information pertaining to the precise location of each single-family residence would demonstrate an unmitigated probable significant adverse environmental impact.

3.11 The additional Conditions and larger dispersion areas, as agreed to by CLN, are reasonable enhancements which further insure fulfillment of the Conditions in the Revised MDNS, and further increase the strong likelihood that the project will not have adverse environmental impacts. Since they are agreed to by the Parties, they should be incorporated as additional Conditions of the Land Disturbance Permit.

3.12 The City's Appeals should be denied and the County's Revised MDNS and LDP Approval should be affirmed, subject to certain Conditions and modifications, set forth below.

DECISION

The Appellant has failed to establish that the Mitigated Determination of Non-significance issued by Whatcom County Planning and Development Services Department was clearly erroneous. After giving the required significant weight to the Threshold Determination made by the Responsible Official under SEPA, the City of Bellingham's Appeal of the Mitigated Determination of Non-significance is DENIED.

The Appellant has also failed to establish that the Land Disturbance Permit issued by Whatcom County failed to comply with the applicable standards for issuance of a Land Disturbance Permit and/or failed to comply with the Conditions of the Mitigated Determination of Non-significance, attached to the Land Disturbance Permit as Conditions of that Permit. The Appeals are DENIED and the Determinations reached by Whatcom County are UPHeld.

The Whatcom County Hearing Examiner hereby denies the City of Bellingham's Appeals, APL2009-0009 and APL 2010-0013. The following additional conditions, agreed to by the Project Proponent, are adopted as Conditions of the Land Disturbance Permit:

1. *All development onsite shall comply with the Conditions of the Revised MDNS, dated March 6, 2009, except as amended herein.*
2. *The proponent shall, as a prerequisite to County issuance of the first building permit for any one of the 26 lots that the new private road will serve, install large woody debris across the entrances to all dirt roads and motorized recreational vehicles trails that exist within the boundaries of the 26 lots that the new private road will serve in such a fashion to exclude continued use by off road recreational vehicles.*
3. *Any conflict between conditions in the Revised MDNS and the additional conditions in this Decision should be resolved in favor of the more protective requirement.*
4. *Each lot, at the time of permit application for access road (driveway) construction, land clearing, and home construction shall adhere to the current Whatcom County standards, or more strict standards that have been adopted by Whatcom County, by preparing a wetland, stream, wildlife habitat assessment to avoid, minimize and compensate for any regulated wetland or fish and wildlife habitat impacts which are related to the proposed construction or clearing on the particular lot.*
5. *Each new single-family residence building permit application package site plan shall employ On-site Stormwater Management BMPs from the then-current version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible without causing flooding or erosion impacts. Therefore, to reduce the hydrologic disruption from developed sites, said site plans shall include BMPs, functionally equivalent to those described in the then-current version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington,*

Volume III, Chapter 3 and Appendix C, along with Dispersion and Soil Quality BMPs, functionally equivalent to those described in the then-current version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, Volume V, Chapter 5. On-site Stormwater Management BMPs within the building permit application shall be prepared by a licensed engineer. This Condition supplements Revised and Reissued MDNS Condition No 3.

6. *For single-family residential construction, stormwater discharges shall match developed discharge durations to pre-development durations (assuming forest land cover) for the range of pre-developed discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow. This standard is not required for sites that infiltrate all the runoff from impervious surfaces and converted pervious surfaces or that use a downspout dispersion system to fully disperse per BMP T5.30 all the runoff from impervious surfaces and converted pervious surfaces, all in compliance with the then current edition of the Department of Ecology Stormwater Manual. Full dispersion is only to be used if infiltration is not feasible, as certified by a licensed Engineer and approved by Whatcom County Public Works.*
7. *The private road stormwater management system shall adhere to (a) the Stormwater Site Plan prepared by Freeland & Associates dated July, 2010; (b) the addendum thereto prepared 10.20.10; and (c) the accompanying Freeland & Associates Civil Drawings dated 10.19.10. The Applicant shall provide Whatcom County and the City of Bellingham with as-built drawings upon completion of the project. If the as-built drawings show that the site work deviates from approved plans, the County may impose additional mitigation measures. The design will be adjusted, if required, in accordance with the 2005 DOE Stormwater Manual and subject to approval of Whatcom County.*
8. *All contractors and sub-contractors working on the road project shall be provided with a full copy of all approved plans. An on-site meeting shall occur prior to commencement of any land disturbance with all contractors and subcontractors present, including the project manager and project wetland biologist and a designated member of Whatcom County Public Works Department. The purpose of the meeting is to ensure everyone working on the road project understands the conditions under which the road project was approved.*
9. *The legal descriptions and depictions of easements for Stormwater Control Facilities in the CC&Rs for the Property at Exhibit D-1 and D-2 thereof shall be revised and re-recorded to conform with the revised dispersion areas depicted in Exhibit No. 43. These dispersion areas include the 143 foot dispersion area described in the updated Stormwater Site Plan, addendum thereto, and Civil Drawings dated 10.19.10 developed and maintained as a native vegetation area in accordance with Volume 5 of the Stormwater Manual BMP T5.30. In addition to said 143 ft. dispersion areas depicted on the Civil Drawings dated 10.19.10, the above-referenced easements for Stormwater Control Facilities shall include forestry dispersion areas as shown in Exhibit No. 43A. Said easements shall be placed over that portion of the Property shown on Exhibit 43A, which shall prohibit construction of buildings or other impervious surfaces, except for roads and driveways, and shall prohibit use of said easement areas for stormwater*

management credits or dispersion for other impervious surfaces associated with construction of homes. Driveways or roads within the dispersion areas shown on Exhibit 43A must not consolidate the runoff into a single channel but must allow the runoff to continue to disperse across the ground in sheet flow. No driveways or roads are allowed within the 143 foot dispersion areas. A licensed engineer shall establish that the function of a dispersion area has not been compromised by such road or driveway.

10. *Scarification of the old roadway requires stabilization using hog fuel or other Whatcom County approved ground cover in accordance with the Road Abandonment and Planting Plan. This requirement would also apply to the “scarification only” area shown on Road Abandonment and Planting Plan exhibit page 1, where no planting is proposed due to sight distance concerns.*
11. *Where planting is noted on the Road Abandonment and Planting Plan, existing roadbeds shall be scarified to a depth equivalent to existing top of subgrade (12” or as necessary to reach subgrade or native material).*
12. *Exposed soils resulting from road abandonment shall be covered with a minimum of 6” of “hog fuel” or Whatcom County approved equivalent prior to planting.*
13. *Ground preparation shall occur only during seasonal permitted land disturbance limitations if within the Lake Whatcom watershed.*
14. *The Stormwater Maintenance Plan for Private Road Stormwater Facilities shall be updated in the section entitled, Maintenance Contacts, to require that the HOA hire a licensed engineer to write an annual inspection and maintenance report. This report shall be sent to Whatcom County, with a copy to the City of Bellingham, and be included within the Owner’s Manual for the Squalicum Ridge Homeowner’s Association. The HOA shall promptly implement any recommended maintenance identified in the report.*
15. *The CC&Rs proposed shall be modified as follows:*

CCRs:

*1.29 “Stormwater Plan” shall mean that certain stormwater plan prepared in connection with Land Disturbance Permit (“LDP”) No. 2008-2009 for Road Improvements on the Property proposed by Developer and approved by Whatcom County, dated February 19, 2010, and any updates or addendums thereto. **The “Stormwater Plan” shall also mean that certain Stormwater Maintenance Plan for Private Road Stormwater Facilities dated February 2010, approved by Whatcom County on February 19, 2010.***

*7.3 Development. No Owner shall be permitted to develop a Lot in a manner which will overload or damage any part of the Stormwater Facilities; nor shall the design, construction or maintenance of private roads, driveways or other impervious surfaces on any Lot adversely impact the “Road” Stormwater Control Facilities. **No development***

activity on any Lot shall cause stormwater discharge or runoff to exceed pre-development forested conditions. No Owner shall collect, concentrate and disburse stormwater in such a way as to alter its natural flow onto an adjacent Lot. Conformance with the provisions herein shall be reviewed and verified by a licensed engineer prior to issuance of a building permit. All Stormwater Control Facilities located on a Lot shall be maintained by the Owner of the Lot in conformance with the Stormwater Plan.

*7.5 Stormwater from Non-Road and Non-Driveway Easements. Stormwater (beyond that from all Road Easements and Driveway Easements), from impervious surfaces that result from residential construction-related activities on the Lake Whatcom Watershed Lots, shall infiltrate using infiltration trenches or infiltration drywells in accordance with the current edition of the Washington Department of Ecology Stormwater Management Manual for Western Washington, Volume III, Section 3 “Flow Control Design”, paragraph no. 3.1.1. “Downspout Infiltration Systems,” unless Whatcom County determines that infiltration is not feasible per the then current edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, Volume III, “Procedure for Evaluating Feasibility.” If infiltration proves infeasible, Whatcom County may allow use of a “Downspout Dispersion System” in accordance with the then current edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, Volume III, Section 3, paragraph 3.1.2, **or other acceptable design options. Whatever stormwater system is approved, it must mimic forested, pre-development stormwater runoff conditions.***

7.6 Development Techniques on Lake Whatcom Watershed Lots. Lake Whatcom Watershed Lots shall implement development and construction techniques consistent with the then current Washington State Department of Ecology Stormwater Management Manual for Western Washington and the then current Low Impact Development Manual as developed by Puget Sound Partnerships and said techniques shall be designed by a professional engineer.

14.22 Phosphorous-Free Fertilizer Required on Lake Whatcom Lots. No person shall apply any fertilizer, mulch, or soil amendment to properties that drain to Basin One or Basin Two of the Lake Whatcom Watershed that is labeled as containing more than 0% phosphorous or other compounds containing phosphorus, such as phosphate. No fertilizer of any type, mulch, or soil amendment, shall be applied when the ground is frozen. No person shall apply, spill, or otherwise deposit fertilizer, mulch, or soil amendments on impervious surfaces. Any fertilizer, mulch, or soil amendment applied, spilled, or deposited, either intentionally or accidentally, on impervious surfaces shall be immediately and completely removed.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 19th day of January 2011.

Michael Bobbink, Hearing Examiner