CITY OF AUBURN WASHINGTON

AGENDA BILL APPROVAL FORM

Agenda Subject: Ordinance No. 6307 for Final Plat Application No. PLT10-0002		**Date:** May 10, 2010
Department: Planning and Development	**Attachments:** (See Exhibit list below and Exhibits)	**Budget Impact:**
Administrative Recommendation:. City Council to introduce and adopt Ordinance No. 6307.		

Background Summary:
Doug Bennett of Springer Development, LLC has made application for the Final Plat of "Kersey 3, Division No. 1B". Division 1B includes the creation of 167 lots and landscape, open space, pedestrian access and private vehicle access tracts.

The property is located south of the intersection of Kersey Way SE and Evergreen Way SE in the 2500-2700 block. A rezone from R1, Single Family Residential, to PUD, Planned Unit Development and the PUD were approved under Ordinance No. 6026 (File No. REZ05-0001 and PUD05-0001) on May 11, 2006. The preliminary plat of Kersey 3, Division No. 1 received preliminary plat approval under Resolution No. 4021 (PLT05-0001) of this same date to subdivide the site into 167 single-family lots and create tracts as noted above. Tract Q, a 2.7-acre park was previously dedicated to the City with Kersey 3, Division 1A by Ordinance No. 6271 on October 5, 2009.

The plat has been developed in accordance with approved PUD, the planned unit development district as defined by ACC, Section 18.69 (subsequently repealed), Title 17, (Final Plats, ACC 17.06 subsequently amended) and the conditions of the preliminary plat and PUD.

A financial security in lieu of the completion of all of the plat infrastructure improvements has been provided to the City. The City Engineer has signed the Certificate of Improvements accepting the financial security.

L0517-1 O3.5 PLT10-0002 x PLT05-0001

Reviewed by Council & Committees:		Reviewed by Departments & Divisions:	
☐ Arts Commission	COUNCIL COMMITTEES:	☒ Building	☐ M&O
☐ Airport	☐ Finance	☐ Cemetery	☐ Mayor
☐ Hearing Examiner	☐ Municipal Serv.	☐ Finance	☒ Parks
☐ Human Services	☐ Planning & CD	☒ Fire	☒ Planning
☐ Park Board	☐ Public Works	☒ Legal	☐ Police
☐ Planning Comm.	☐ Other _____	☒ Public Works	☐ Human Resources
		☐ Information Services	

Action:
Committee Approval: ☐Yes ☐No
Council Approval: ☐Yes ☐No Call for Public Hearing ___/___/____
Referred to _____ Until ___/___/____
Tabled _____ Until ___/___/____

Councilmember: Norman	**Staff:** Snyder
Meeting Date: May 17, 2010	**Item Number:** VIII.A.2

Attached are the following Exhibits:

Exhibit 1 - Proposed Ordinance No. 6307 to approve the Final Plat of Kersey 3, Division 1B
Exhibit 2 - Resolution No. 4021, previously approving the Preliminary Plat of Kersey 3, Div. 1 (Includes Hearing Examiner Recommendation as Exhibit A)
Exhibit 3 - Ordinance No. 6026, previously approving the rezone to PUD, Planned Unit Development of Kersey 3, Div. 1
Exhibit 4 - The City Engineer's Certificate of Improvements
Exhibit 5 - Final Plat (Map, 8 pages)

ORDINANCE NO. 6307

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING THE FINAL PLAT OF KERSEY 3, DIVISION 1B

WHEREAS, the City of Auburn received a final plat application for the Plat of Kersey 3, Division 1B, Application No. PLT10-0002 the final approval of which is appropriate for City Council Action;

WHEREAS, based on the review given this Plat by the City, the City Council hereby makes and enters the following:

FINDINGS OF FACT

1. Doug Bennett of Springer Development, LLC, has made application for the Final Plat of "Kersey 3, Division 1B".

2. The preliminary plat was approved by the City Council under Resolution No. 4021 and signed by the Mayor on May 11, 2006. A previous final plat of the adjacent "Kersey 3, Division 1A" which created tracts and dedicated right-of-ways without the creation of lots was previously approved by Ordinance No. 6271 on October 5, 2009.

3. "Kersey 3, Division 1B" of the preliminary plat has been developed in accordance with the approved Planned Unit Development (PUD05-0001) and all applicable condition of the preliminary plat (PLT05-0001).

4. A Certificate of Improvements has been issued by the City Engineer, accepting a security bond in lieu of completion of all required plat improvements.

5. Tract Q, a 2.7–acre (118,870 square foot) tract of land was previously dedicated to the City of Auburn for a public park when the adjacent final plat of Kersey 3, Division 1A was recorded (Ordinance No. 6271). Additionally, the applicant proposes Tract I, (95,860 square feet) as open

space to be owned initially by the developer and eventually the home owner's organization.

CONCLUSIONS OF LAW

1. The Final Plat is in compliance and in conformity with applicable Zoning and Land Division Ordinances and other applicable land use controls.

2. The Plat is consistent with the Comprehensive Plan.

3. The Plat meets the requirements of Chapter 58.17 RCW.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Approval. Kersey 3, Division 1B, a subdivision involving property located within the City of Auburn, Washington, which plat is legally described on Sheet 2 of 8 of the Final Plat and set forth in Exhibit "A," attached hereto and incorporated herein by reference, is hereby approved, and deemed to conform to the requirements for Plat approval pursuant to State and local law and Chapter 58.17 of the Revised Code of Washington and Section 58.17.140 thereof.

Section 2. Constitutionality or Invalidity. If any section, subsection clause or phase of this Ordinance is for any reason held to be invalid or unconstitutional such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance, as it is being hereby expressly declared that this Ordinance and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, adopted and approved and ratified irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

Section 3. Recordation. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall

cause this Ordinance to be recorded in the office of the King County Records, Elections and Licensing Services Division.

Section 4. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 5. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

CITY OF AUBURN

_____

PETER B. LEWIS
MAYOR

ATTEST:

_____

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

_____

Daniel B. Heid,
City Attorney

Published: _____

EXHIBIT A

Legal Description:

TRACT ZZ OF KERSEY 3, DIVISION 1A, AS PER PLAT RECORDED IN VOLUME 253 OF PLATS, PAGES 1 THROUGH 8, INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON; SITUATE IN THE CITY OF AUBURN, COUNTY OF KING, STATE OF WASHINGTON

RESOLUTION NO. 4021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING A PRELIMINARY PLAT APPLICATION TO SUBDIVIDE 50.85 ACRES INTO 167 LOTS AND VARIOUS TRACTS FOR FUTURE SINGLE FAMILY RESIDENTIAL DEVELOPMENT, WITHIN THE CITY OF AUBURN, WASHINGTON

WHEREAS, Application No. PLT05-0001, dated April 8, 2005, has been submitted to the City of Auburn, Washington, by Wayne Jones, Lakeridge Development, requesting approval of a preliminary plat application to subdivide 50.85 acres into 167 lots for future single family residential development, open space, and street and utility tracts within the City of Auburn, Washington; and

WHEREAS, said application was made concurrently with applications for rezone and planned unit development approval for the same site (Application Nos. REZ05–0001 and PUD05–0001); and

WHEREAS, said applications were determined to be complete pursuant to Auburn City Code on June 8, 2005; and

WHEREAS, said request above was referred to the Hearing Examiner for study and public hearing thereon; and

WHEREAS, following staff review, the Hearing Examiner conducted a public hearing to consider said petition in the Council Chambers of the Auburn City Hall on August 9, 2005, of which the Hearing Examiner recommended approval of the preliminary plat subject to conditions on September 2, 2005; and

WHEREAS, at its regular meeting of September 19, 2005, the City Council voted to conduct a closed record hearing on the Hearing Examiner's recommendations; and

WHEREAS, a closed record hearing was held on October 3, 2005 and continued on October 17, 2005, at which time the City Council considered the Hearing Examiner's recommendations and the material presented to the Hearing Examiner and argument made to the City Council at said closed record hearing; and

WHEREAS, some of the arguments and comments received at the closed record hearing concerning matters related to the record drew into question significant portions of the Hearing Examiner's recommendations; and

WHEREAS, after the closed record hearing, the City Council asked the applicant if he would be willing to accept the additional time it would take if the requests were remanded back to the Hearing Examiner for further review and consideration of issues raised by the Council, and the applicant's representative declined the offer, the City Council voted to deny the applications; and

WHEREAS, on November 10, 2005, the applicants communicated to the City a willingness to waive the 120-day project review timetable otherwise applicable for processing the application and a willingness to have the application remanded to the Hearing Examiner; and

WHEREAS, at its regularly scheduled meeting of November 15, 2005, the City Council adopted Resolution No. 3947, remanded the application back to the

Hearing Examiner to re-open the record and consider how the development addressed or affected eight (8) defined issues; and

WHEREAS, following staff review, the Hearing Examiner conducted a public hearing to consider said petition in the Council Chambers of the Auburn City Hall on February 22, 2006, of which the Hearing Examiner recommended approval of the revised preliminary plat subject to conditions on March 21, 2006; and

WHEREAS, a closed record hearing was held on April 25, 2006, at which time the City Council considered the Hearing Examiner's recommendations, the material presented to the Hearing Examiner and argument made to the City Council at said closed record hearing and affirmed the Hearing Examiner's recommendation for preliminary plat based upon the Findings of Fact, Conclusions and Recommendation which is attached hereto as Exhibit "A", subject to additional conditions of approval.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Hearing Examiner's Findings, Conclusions and Recommendation attached hereto as Exhibit "A" are herewith approved and incorporated in this Resolution.

Section 2. The request for preliminary plat approval to subdivide 50.85 acres into 167 lots for future single family residential development, open space and street and utility tracts within the City of Auburn, legally described in Exhibit

"B" attached hereto and incorporated herein by this reference, is hereby approved subject to the following conditions:

1. Pursuant to RCW 36.70A.060, the following notice shall be placed on the final plat and on all building permits and deeds issued within the Kersey III development (Division I and Division II):

   > NOTICE: This property is near designated mineral resource lands on which a variety of commercial activities occur that may not be compatible with residential development, including, but not limited to, mining, extraction, washing, crushing, stockpiling, , transporting, concrete and asphalt production, recycling of materials, and their related and supporting activities.

2. Prior to the issuance of final plat approval for any phase containing an open space tract, the Applicants shall submit, or enter into an agreement to submit, a Declaration of Covenants, Conditions, and Restrictions that conforms to the requirements of ACC 19.69.200.

3. As part of the engineering/construction drawings submitted for the construction of interior improvements to the subdivision, Applicant shall also submit engineering/construction drawings for the construction of all park improvements as depicted on the drawings submitted (Exhibit 5). The park improvements shall be approved by the City of Auburn's Parks Director prior to the approval of the construction drawings for the plat. Any materials supplied and installed for the parks must meet current City Parks Department standards and be approved by the Parks Director prior to installation and final plat approval.

4. Proposed Conditions, Covenants, and Restrictions (CC&Rs) for the future Kersey III Homeowners' Association shall be submitted for review and approval by City Staff prior to final plat approval. This document shall include architectural design criteria for new homes and specify the financial means of maintenance of all common open spaces. The CC&Rs shall provide that the Homeowners Association (HOA) shall be responsible to maintain and replace as necessary all trees, trails, special features and landscaping within any street median strip, planting strips and all HOA parks. In addition, the HOA shall maintain those portions of the stormwater tract located outside the fenced pond boundary, or if no fence if provided, outside the 10-year storm water surface elevation, as determined by the City Engineer.

5. Home designs shall be consistent with the Kersey 3 Division I & II Conceptual Building Design Guidelines dated January 9, 2006 and the submitted conceptual drawings and photographs submitted with the application. The Architectural Design Guidelines shall be incorporated into the CC&Rs for the project. The final design guidelines shall include a color palette for proposed house exterior colors. In addition, the following conditions shall apply.

    a) Homes shall feature multiple roof pitches on their street-facing facades.
    b) Garages shall be set back a minimum of 20 feet from the front property line. At least, but no more than, a two-car garage door shall face the street; tandem parking is acceptable.
    c) Home designs shall be varied such that no more than two homes sharing the same floor plan are located adjacent to one another
    d) Lot coverage shall not exceed 45%.

6. Final landscaping design shall be generally consistent with the Preliminary Overall Landscaping Plan, dated March 7, 2005, which was included with the Applicants' resubmittal for rezone, PUD, and preliminary plat approval (Exhibit 5, Sheets 3-5). The Applicants shall maximize the use of native and/or drought-resistant plants throughout the plat, including park and landscaped open space areas. Emphasis should be on the use of native vegetation, thereby mitigating the loss of native vegetation.

7. All lots abutting low-density residential development (Division I Lot numbers 19-62 and Division II Lot numbers 17-49) shall have, at a minimum, one tree in the rear yard setback to buffer the adjacent development from the PUD.

8. Any entrance sign shall be a low monument style with accenting landscaping. The number, style, and placement of signs and associated landscaping shall be approved by the Planning Director.

9. Fencing along the boundary of the plat shall be of consistent material, style, and color. The Planning Director shall approve such fences, which shall be equivalent to a six foot high solid wood fence. Any fencing to be erected adjacent to any of the planned pedestrian pathways requires the approval of the Planning Director. All residential properties that border on a native/open space, park, or drainage tract (Tract A, B, C, D, and I) shall be separated from these areas by use of a two- rail wooden fence of approximately three to four feet in height. This fence shall delineate the property line and prevent encroachment by the property owner into the

native/open space, park, or drainage tract. The Homeowners' Association shall be responsible to maintain all fences required by this condition.

10. Applicants shall comply with all of the mitigation measures as noted on pages 9-19 of the Kersey III Preliminary Plat Final EIS (Exhibit 8 of the August 2005 Hearing), dated February 2005, and as otherwise noted throughout this recommendation.

11. Applicants shall construct a traffic signal at Evergreen Way SE and Kersey Way SE. This traffic signal must be constructed to the satisfaction of the City Engineer.

12. Applicants shall construct an active warning signal on southbound Kersey Way SE in advance of the intersection of Kersey Way SE and Evergreen Way SE. This active warning signal must be constructed to the satisfaction of the City Engineer.

13. Applicants shall provide auxiliary lanes at the intersection of Evergreen Way SE and Kersey Way SE. These auxiliary lanes must be constructed to the satisfaction of the City Engineer.

14. Applicants shall provide access acceptable to the City of Auburn for properties abutting the intersection of Kersey Way and 53rd St. SE.

15. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic controls to the satisfaction of the City Engineer at the intersection of Lakeland Hills Way and Evergreen Way SE. These traffic controls shall be designed and constructed as a round-about unless the City Engineer determines, based on design, that a round-about is not feasible. If the City Engineer determines that a round-about is not feasible, then the traffic controls shall be designed and construction as a traffic signal.

16. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic calming and pedestrian safety amenities on Evergreen Way SE, in the vicinity of the park area near Olive Avenue. These traffic calming and pedestrian safety amenities must be constructed to the satisfaction of the City Engineer.

17. The EIS states that there are unavoidable significant impacts on the environment, namely impacts on wildlife populations and their associated habitat. Two main impacts pertain to loss of native vegetation and fragmentation of habitat. Applicants shall endeavor to provide for preservation of a wildlife habitat by creating a corridor containing native vegetation, thereby mitigating these impacts.

18. Applicants shall engage in meaningful consultation with the Auburn School District. Communications should not merely seek to ensure that the school district can provide transportation, but that schools have the capacity to serve the students generated by the proposal without burdening or creating overcapacity at any school. Applicants shall be responsible for all school impact fees in a manner consistent with local and state law requirements.

19. Prior to issuance of clearing or grading permits, a grading plan for grading and clearing necessary for both the construction of infrastructure such as roads and utilities and for lot grading shall be submitted and approved by the City of Auburn. The purpose of the plan should be to accomplish the maximum amount of grading at one time to limit or avoid the need for subsequent grading and disturbance, including grading of individual lots during home construction. The plan shall identify the surveyed boundary of the crest slopes for the site's 40% or greater slopes. This plan shall show quantities and locations of excavations, and embankments, the design of temporary storm drainage detention system, and methods of preventing drainage, erosion and sedimentation from impacting adjacent properties, natural and public storm drainage systems and other near by sensitive areas. Temporary detention facilities shall be designed with a 1.5 safety factor applied to the post-developed calculated pond design volume for the 25-year, 24-hour post-developed storm event. All the measures shall be implemented prior to beginning phased on-site filling, grading or construction activities.

    The grading plans shall be prepared in conjunction with and reviewed by a licensed geotechnical engineer. The geotechnical engineer shall develop and submit, for the City's review, specific recommendations to mitigate grading activities, with particular attention to developing a plan to minimize the extent and time soils are exposed and address grading and related activities during wet weather periods (the period of greatest concern is October 1 through March 31). The plans shall show the type and the extent of geologic hazard area or any other critical areas as required in chapters 16 and 18 of the International Building Code (IBC) and/or the City's Critical Areas Ordinance.

    Upon completion of rough grading and excavation, the applicant shall have a geo-technical engineer re-analyze the site and determine if new or additional mitigation measures are necessary. A revised geo-technical report shall be submitted to the City of Auburn for review and approval by the City Engineer. Recommendations for areas where subsurface water is known or discovered shall be given particular attention by the

geotechnical engineer and coordinated with the project engineer responsible for the storm drainage system design.

20. Prior to final plat approval, a supplemental evaluation of stream channel conditions along Bowman Creek in vicinity of Stream Station 14+00 must be completed, including the off-site erosion feature observed at the outlet of the culvert under Kersey Way and near Bowman Creek. Appropriate mitigation shall be proposed to eliminate the observed erosion as well as any erosion determined be present from the supplemental evaluation of stream channel conditions along Bowman Creek.

21. Storm drainage facilities shall incorporate high standards of design to enhance the appearance of the site and serve as an amenity. The design of above ground storage and conveyance facilities shall address or incorporate landscaping utilizing native vegetation, minimal side slopes, safety, maintenance needs, and function.

    Prior to final plat approval, a landscaping plan with applicable cross-sections is required to demonstrate that storm drainage pond aesthetic requirements consistent with City standards can be accommodated on-site.

    Storm drainage facilities shall be provided consistent with the City of Auburn Design Standards. In order to achieve this, the following design elements must be incorporated into the final design:

    - Vehicle access for maintenance to all proposed storm drainage structures is required. To provide an adequate and safe storm pond access, an appropriately designed pull-off shall be provided from Kersey Way SE to serve the pond.
    - All storm drainage conveyance lines required to manage upstream bypass surface flows shall be routed through the project site and shall not be combined with the proposed on-site storm drainage system. Maintenance access shall be provided to all structures proposed to be in public ownership. The remaining portions of this system shall be placed within a tract dedicated to the Homeowners Association for maintenance and operation.

    Given the steep slopes found on the site, appropriately designed energy dissipation features are required at the end of long runs of pipe, at pipe intersections and at the outlet to the storm drainage pond.

    To enhance the water quality of the discharge leaving the site, appropriately designed aeration shall be provided within the storm pond.

Given the existing on-site drainage deficiencies in the vicinity of Kersey Way near 53rd Street SE, and subsequent flooding of the intersection, an appropriately designed storm drainage system shall be constructed to mitigate this condition.

22. The location and alignment of the force main and the proposed pump station shall be coordinated with adjacent property owners and the City to ensure it provides service to the desired basin. The public sanitary sewer pump station shall be located as directed by the City Engineer in order to allow room for large vehicle turnarounds so City vehicles do not have to back into public right-of-ways.

The applicant shall provide sanitary sewer stub to the south property line located between Lots 27 and 28 of Division 1.

The applicant shall provide an easement for possible future extension of the sanitary sewer system located at the SE corner of Tract D, Division 1.

23. All roads within the plat must be constructed to City standards (except where deviations are granted by the City Engineer) and shall be dedicated as public right of way.

24. The Applicants shall construct Evergreen Way to City standards for a residential collector arterial including a 10 foot landscaped center median/turn lane area through the plat boundaries.

25. The Applicants shall also construct median treatments to match the 10 foot center median/turn lane within the plat on the existing roadway west to Lakeland Hills Way, to the satisfaction of the city engineer.

26. The Applicants shall redesign pedestrian crossings at Road G and Evergreen Way and Road A and Evergreen Way to provide additional pedestrian refuge, to the satisfaction of the City Engineer.

27. The Applicants shall construct a minimum 10-foot wide shared multi-use path, separated by a five foot landscape strip from the road, on the west side of Kersey Way for the length of the site frontage along Kersey Way, to the satisfaction of the City Engineer.

28. The Applicants shall construct Kersey Way to a modified city standard for a minor arterial road, to include a 12 foot center turn lane, a 12 foot through northbound lane, a 12 foot through southbound lane, appropriate right turns lane(s) at the intersection with 53rd Street SE, a five foot landscape strip and a minimum 10-foot wide shared multi-use path on the west side. All other

features about the road such as vertical curb, storm drainage and lighting must meet city standards.

29. The Applicants shall create a 50-foot right of way stubbing to the south plat boundary, through the location of lots 27 and 28, Division 1, to align with 176th Avenue East.

30. A traffic impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

31. A fire impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

32. The Applicants shall comply with all conditions set forth in the Land Use Agreement entered into by the Applicants with the Bonneville Power Administration (Exhibit 8). The Land Use Agreement set forth 15 conditions, including, but not limited to landscaping, distance from transmission line towers, and a minimum path width of 16 feet.

Section 3. The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 4. This Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this 11th day of May, 2006.

CITY OF AUBURN

PETER B. LEWIS,
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,
City Attorney

EXHIBIT A

BEFORE THE HEARING EXAMINER
FOR THE CITY OF AUBURN

In the Matter of the Application of	)	NO. REZ05-0001, REZ05-0002
	)	PUD05-0001, PUD 05-0002
Lakeridge Development	)	PLT05-0001, PLT05-0002
by Wayne Jones	)	
and	)	
Landholdings LLC	)	FINDINGS, CONCLUSIONS,
by Daniel and Stormy Hayes	)	AND RECOMMENDATION
	)	
For a Rezone, a Planned Unit Development,	)	
a Preliminary Plat, and a Variance for	)	
Kersey III - Division I and Division II	)	

BACKGROUND

In 2005, Lakeridge Development, through Wayne Jones, and Landholdings LLC, through Joyce Bowles and Peter Bowles, (Applicants) requested approval of a rezone, a Planned Unit Development, and preliminary plat for Division I and Division II of Kersey III, a single-family residential subdivision, and a variance from certain design standards.

The Applicants requested a rezone of three separate tax parcels from R-1 Single Family Residential to Planned Unit Development. The Planned Unit Development and Preliminary Plat would have 169 lots in Division I and 204 lots in Division II. The requested variances would reduce front yard setback and lot coverage requirements. The subject property totals 89.31 acres and is located within the city limits of Auburn, on the west side of Kersey Way at 53rd Street SE, extending southward to the King-Pierce County line.

An open record hearing on the request was held before the Hearing Examiner for the City of Auburn on August 9, 2005. The Hearing Examiner allowed the record to remain open for the limited purpose of securing comments from the Auburn School District on impacts generated by the proposed residential development. The School District's comments were received and the record was officially closed on August 16, 2005. Following a review of the testimony and exhibits, and based on the criteria established by the Auburn City Council, on September 2, 2005 the Hearing Examiner issued a recommendation for approval of the rezone from R-1 Residential to Planned Unit Development, approval of the Planned Unit Development, and approval of the preliminary plat for Division I and Division II of Kersey III, subject to 18 conditions. The Hearing Examiner recommended that the Applicants' request for variances from the required front yard setback and total lot coverage design requirements be denied.

On October 3, 2005 and October 17, 2005, the Auburn City Council conducted a hearing to consider the Hearing Examiner's recommendations. At the close of the hearing, the City Council asked the Applicants if they were willing to accept the additional time it would take for the matter to be remanded to the Hearing Examiner for further review. The Applicants declined the

remand offer and the City Council denied all of the applications. On November 10, 2005, the Applicants rescinded its denial and asked that the applications be remanded to the Hearing Examiner.

On November 15, 2005, the Auburn City Council issued Resolution Number 3947, remanding the matter to the Hearing Examiner to re-open the record and consider how the development addressed or affected the following issues:

1. Open spaces and the protection of sensitive environmental features, such as steep slopes, mature trees, wetlands, and scenic views.
2. Use of traffic management and design techniques to reduce potential traffic congestion, particularly along Kersey Way, and promote alternative modes of travel. Consideration should be given to applying the Lakeland PUD traffic impact fee structure in responding to similar impacts areas located south of the White River.
3. The development of transitional areas between these projects and adjacent developments and environmentally sensitive areas.
4. The building and structural designs that complement surrounding land uses and their environment, reflecting quality site design, landscaping, and building architecture required under the Auburn PUD ordinance.
5. The parks and open spaces, and the adequacy of parks and open spaces located under Bonneville Power Administration power lines.
6. Incorporation of adequate notification to future lot owners of the adjacent surface mining operations.
7. Protection of waterways and the development's proposed stormwater system.
8. Application of the Lakeland Fire Impact Fee to aid the City in developing fire facilities to serve the area south of the White River.

On February 22, 2006, the Hearing Examiner for the City of Auburn held a public hearing on the matter as it was remanded from the City Council.

Testimony

At the February 22 hearing on remand, the following individuals presented testimony under oath:

1. Steve Pilcher, Planner, City of Auburn
2. Joseph Welsh, Transportation Engineer, City of Auburn
3. D. Scamporlina, Parks Department, City of Auburn
4. Dwayne Husky, Public Works, City of Auburn
5. Walt Wojeck, Development Review – Public Works, City of Auburn
6. Chris Ferko, Barghausen Consulting Engineers, Applicants' representative
7. Rob Armstrong, Civil Engineer
8. Art Sidel, Landscape Architect
9. Pat McBride, Building Architect
10. John Norris, Norris Homes
11. Michele Fassbind, neighboring property owner
12. John Chaffee, neighboring property owner
13. Darryl Thompson, neighboring property owner

14. Pat Davis, neighboring property owner
15. Dale Huston, neighboring property owner
16. Erin Galeno, neighboring property owner
17. Chuck Gould, neighboring property owner
18. Janet Koch, neighboring property owner
19. Katrina Price, neighboring property owner
20. Donald Bykonen, neighboring property owner
21. William Remick, neighboring property owner
22. Kristi Knott, neighboring property owner
23. Bruce Koch, neighboring property owner
24. Jonie Brooke, neighboring property owner
25. Bill Anderson, neighboring property owner

Exhibits

At the February 22 hearing on remand, the following exhibits were admitted as part of the official record:

1. Staff Report, dated February 16, 2006
2. Project Vicinity Map
3. Auburn City Council Resolution 3947
4. Re-submittal letter from Barghausen Engineers, dated January 11, 2006
5. *Revised* Preliminary Plat/PUD Site Plans – 12 sheets
6. Engineer's Responses to Auburn City Council Comments
7. Kersey III Divisions I and II Project Proposal, Architectural Design PowerPoint Presentation Slides and Architect Narrative
8. Land Use Agreement – Bonneville Power Administration and Lakeridge Development, dated August 30, 2005
9. Excerpts from Environmental Impact Statement pertaining to Geologic Hazards, Wildlife and Habitat, and Wetlands and Streams, with maps
10. Notice of Public Hearing
11. Affidavit of Mailing of Legal Notice
12. Affidavit of Posting of Legal Notice
13. E-mail confirmation from King County Journal, Publication of Legal Notice, dated February 7, 2006
14. Kersey III Divisions I and II Project Proposal, PowerPoint Presentation Slides
15. Preliminary Landscape Plan – 3 sheets
16. Correspondence from GMS Architectural Group, dated February 22, 2006

16A. Lot Coverage Drawings

17. Correspondence from Segale Properties, dated February 22, 2006
18. Statutory Warranty Deed - Tax Parcel 3221059039
19. Public Comment Letter: Perry and Trina Peters, dated February 22, 2006
20. Public Comment Letter: Pat and Gene Davis, dated October 15, 2005
21. Public Comment Letter: Pat and Gene Davis, dated February 21, 2006
22. Correspondence from Muckleshoot Indian Tribe, dated August 16, 2004
23. Public Comment Letter: Michelle Fassbind, dated February 22, 2006
24. Public Comment Letter: John Chaffee, dated February 22, 2006

25. Public Comment Letter: Erin and Paul Galeno, undated
26. Public Comment Letter: Erin Galeno, October 17, 2005
27. Public Comment Letter: Janet Koch, dated February 22, 2006
28. "Where's the smoke..." *Auburn Reporter*, dated February 15, 2006
29. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Will and Jean Julum, Rod and Judy Johannsen, Eric Padilla, John and Cindy Flinchbaugh, Larry and Cathy Hansen, and Mark and Catherine Neubauer, undated
30. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Mike Bykonen, Eric Padilla, John and Cindy Flinchbaugh, Will and Jean Julum, Rod and Judy Johannsen, undated
31. Public Comment Letter: Bruce Koch, dated February 22, 2006
32. Public Comment Letter: Bill Anderson, dated February 22, 2006
33. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Stan Purdin, Kirk Anderson, Mike and MariLee Bykonen, Gary and Margaret Staples, undated
34. Public Comment Letter: Gary and Margaret Staples, February 21, 2006
35. Tax Assessor's Vicinity Map
36. Applicant's Response to Public Hearing Comments, dated March 3, 2006

36A. Agency Comment Letter from Auburn School District, dated March 2, 2006

Upon consideration of the testimony and exhibits submitted at the open record hearing of August 9, 2005 and the February 22, 2006 Hearing on Remand, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS OF FACT

GENERAL FINDINGS

1. The Applicants requested approval of a rezone of three parcels of land totaling approximately 89.31 acres. The rezone would reclassify the property from R-1 Single Family Residential to Planned Unit Development (PUD). The Applicants also requested approval of a PUD and Preliminary Plat for Division I and Division II of Kersey III. The property is located on the west side of Kersey Way at 53rd Street SE, extending southward to the King-Pierce County line. All of the parcels are within the city limits of Auburn and the boundaries of King County. *General Finding of Fact No. 1, Sept. 2005 FCR; Exhibit 1, Staff Report, Page 3.*

2. To reach a determination on the City Council's Order of Remand, the Hearing Examiner reviewed all evidence, written and oral, submitted into the record of the Kersey III, Division I and Division II hearings conducted on August 9, 2005 and February 22, 2006. All Findings of Facts, both general and specific, provided for in the Hearing Examiner's September 2, 2005 Decision are incorporated into the present decision by reference. Findings from the August 2005 hearing are referenced as "*Findings ..., Sept. 2005 FCR.*" Findings from the February 2006 hearing are referenced as "*Findings ..., Feb. 2006 Remand Hearing.*"

3. In the original proposal heard by the Hearing Examiner in August 2005, the Applicants proposed a two phase development with Division I containing 169 single-family residential lots averaging 5,032 square feet, resulting in an average density of 3.34 dwelling units per acre (du/acre). Division II was to be developed with 205 single-family lots averaging 4,863 square feet, resulting in an average density of 5.35 du/acre. The overall project density is 4.17 du/acre for both divisions. At the February 2006 Hearing on Remand (Remand Hearing), the Applicants submitted a revised proposal. The Applicants are still proposing development of Kersey III in two phases, however, Division I would now contain 167 single-family residential lots averaging 4,900 square feet, and an average density of 3.28 du/acre. Division II would now contain 201 single-family residential lots averaging 4,990 square feet, and an average density of 5.23 du/acre. The overall project density is 4.12 du/acre. *General Finding of Fact No. 2, Sept. 2005 FCR; Exhibit 1, Staff Report, Page 3; Exhibit 1, Staff Report, Page 3; Exhibit 5, Revised Preliminary Plat/PUD plans; Exhibit 14, Applicant's PowerPoint; Testimony of Mr. Pilcher; Testimony of Mr. Ferko.*

4. Three parcels of land comprise the proposal and all three parcels are within the city limits of Auburn. Division I is includes two tax parcels - King County Parcel No. 322105-9015 and No. 322105-9017 which are owned by Wayne and Debra Jones (Lakeridge Development). Division II is comprised of one tax parcel - King County Parcel No. 322105-9039 and was owned by Joyce and Elwood "Pete" Bowles (Landholdings LLC). On December 14, 2005, the Bowles executed a Statutory Warranty Deed conveying Tax Parcel 3221050-9039 to Daniel and Stormy Hayes. The Hayes' have been substituted for the Bowles as Applicants in the matter. *General Finding of Fact No. 4, Sept. 2005 FCR; Exhibit 19, Statutory Warranty Deed; Testimony of Mr. Pilcher.*

5. Design standards for detached single-family residential development within a PUD include: minimum lot size of 3,600 square feet, minimum lot width of 40 feet, maximum lot coverage of 40%, maximum building height of 30 feet, and front, rear, and side yard setbacks of 15-20 feet, 20 feet, and 5 feet, respectively. The Applicants proposal conforms to these standards. *ACC 18.69.070(A); Exhibit 5, Revised Plat.*

6. At the August 2005 hearing, the Applicants requested a variance from certain design requirements set forth in Auburn City Code (ACC) 18.69.070(A). The proposal at that time was for the reduction in the front yard setback to 10 feet and an increase in the total allowable lot coverage to 50%. The Hearing Examiner recommended denial of this request. At the Remand Hearing, the Applicants revised the previous request, seeking an increase in the total allowable lot coverage of up to 45%. The Applicants argue that adherence to the 40% lot coverage maximum provided in ACC 18.69.070(A) would create hardship and that increased lot coverage is needed to provide the flexibility that the City's PUD guidelines require in order to prevent a 'cookie cutter' look. Approval of the variance, according to the Applicants, would create balance and diversity within the PUD. In addition, the Applicant argues that the use of smaller lots provides a substantially larger amount of open/recreational space than normally is required. It appears from the record that the Applicants have abandoned their request for a front yard setback variance. *Specific Finding of Fact No. 23, Recommendation, Sept. 2005 FCR;*

Exhibit 16, Correspondence from GMC Architectural; Exhibit 16A, Lot Coverage; Exhibit 36, Applicants' Response; Testimony of Mr. McBride; Testimony of Mr. Norris.

7. At the Remand Hearing, the Hearing Examiner left the record open for the Applicants to submit responses on all of the written and oral comments received into the record at the February 2006 Remand Hearing. Bob Johns of Johns Monroe Mitsunaga, attorney for the Applicants, submitted the required responses, along with comments from the Auburn School District, to the City of Auburn on March 3, 2006. A copy of this letter was not provided to the Hearing Examiner until March 14, 2006. On March 14, 2006, the Hearing Examiner entered an Order setting the date of the issuance of the recommendation to March 22, 2006.

8. Notice of the Remand Hearing was posted on the property and was mailed to all property owners located within 300 feet of the affected site on February 10, 2006. Notice was published in the *King County Journal* on February 10, 2006. *Exhibits 10, 11, 12, and 13.*

9. The Growth Management Act (GMA), RCW 36.70A, requires land within a city to be classified as urban and that it must be developed at urban densities. The Applicants submitted that this principle justifies the rezone request. The GMA itself does not assign a quantitative value to the term "urban density" but prior case law from the Central Puget Sound Growth Management Hearings Board, which has been applied, clarified, and evolved over the years, has stated that urban density is equivalent to four dwelling units per acre unless a reasonable exception applies (i.e. critical areas). (see *City of Bremerton et al v. Kitsap County,* CPSGMHB Case No. 95-3-0039c (1995), *Litowitz v. City of Federal Way,* CPSGMHB Case No. 96-3-0005 (1996)). The CPSGMHB's rule was recently called into question by the Washington State Supreme Court in *Viking v. Holm* when the court stated that the CPSGMHB did not have the authority to create such a 'bright line rule'. *Viking v. Holm,* 118 P.3d 322 (2005). Subsequent cases from the CPSGMHB have the CPSGMHB re-characterizing the four dwelling units per acre threshold as a 'safe harbor' rather than a 'bright line'. *Furhiman v. City of Bothell,* CPSGMHB Case No. 05-0025c (2005). The subject property was designated as Single Family Residential in 1995 and Auburn foresees the bulk of single-family residential communities developed at a density of four to six dwelling units per acre. *RCW 36.70A.110; Land Use Policy LU-14; Exhibit 36, Applicants' Response. (See also Finding of Fact Nos. 7-8, Sept. 2005 FCR* (noting factors to satisfy change in circumstances).

10. Auburn's Comprehensive Plan speaks to the development of residential housing at single-family densities that establish a balanced mix of housing types appropriate for a family-oriented community. When assigning the Comprehensive Plan's land use designation for the subject property, the City Council was to evaluate the ability to buffer the area by taking advantage of topographic variations, natural features, setbacks, and other means. The development of new neighborhoods is to be governed by flexible development standards that encourage compact urban development while protecting critical areas. These flexible development regulations are intended to provide a variety of housing types and site planning techniques so that a site can achieve its maximum

housing potential. *Chapter 3, Land Use Goal 7; Land Use Policy LU-14; Land Use Policy LU-17; Land Use Policy LU-20; Chapter 4, Housing Goal 7; Housing Objective 12.1; Housing Policy HO-34.*

11. As required by ACC 18.68, ACC 18.69, and ACC 17.06, analysis of the proposal's consistency with the Comprehensive Plan was provided for in the DEIS. The DEIS reviewed the goals and elements of the Comprehensive Plan pertaining to utilities, transportation, the environment, natural resources, natural and manmade hazards, and parks, recreation, and open space. The proposed PUD/plat was determined to be generally consistent with the Single Family Residential designation. The City of Auburn's Planning Director reviewed the rezone application for consistency with the Comprehensive Plan and determined that it was consistent. *Specific Findings of Fact Nos. 4-6, Sept. 2005 FCR; ACC 18.68.030(B)(1); ACC 18.69.150(B); ACC 17.06.070(B); Exhibit 1, Staff Report, Pages 8-10.*

12. As required by the State Environmental Policy Act (SEPA), RCW 43.21C, the City of Auburn acted as lead agency for identification and review of environmental impacts caused by the proposed PUD/plat. The Final Environmental Impact Statement (EIS) for the Kersey III project was issued on February 11, 2005. No appeals were filed. *Specific Findings of Fact No. 9, Sept. 2005 FCR.*

13. Public comment, both written and oral, was submitted in regards to the adequacy of the EIS at both the August 2005 hearing and the February 2006 Remand Hearing. Appeals of an EIS must be submitted to the Auburn City Clerk 14-21 days after issuance of the Final EIS. *ACC 16.06.230.* No appeal was filed and all challenges to the adequacy of the EIS are time-barred. As noted in the September 2005 FCR, although a challenge to the adequacy of the EIS can no longer be brought, the most important aspect of SEPA is the consideration of environmental values. The key purpose of an EIS is to ensure full disclosure and consideration of environmental information prior to the construction of a project. It is from the impacts disclosed in the EIS that the decision-maker can make an informed decision about the proposal. Public comment, both written and oral, submitted at the August 2005 hearing and the February 2006 Remand Hearing, provided further detail in this regard and therefore is permitted. *Specific Findings of Fact No. 10, Sept. 2005 FCR; Exhibit 22, Comments of Muckleshoot Tribe*[1]*; Exhibit 25, Comments of Galeno; Exhibit 29, Comments of Bykonen et al; Exhibit 30, Comments of Bykonen et al; Exhibit 33, Comments of Bykonen et al; Exhibit 36, Applicants' Response, Page 2.*

14. Agency and public comment, both written and oral, was submitted in regards to the impact of the proposed plat on the Auburn School District at both the August 2005 hearing and the February 2006 Remand Hearing. The anticipated increase in student population generated from the development was set at 0.59 students per dwelling unit, or 209 students. Submitted public comment stated that schools and the related

[1] Exhibit 22 is dated August 16, 2004 and were comments submitted during the DEIS review process. The Tribe's comments should have been taken into consideration when drafting the Final EIS. The Tribe's comments were not challenging the adequacy of the Final EIS.

transportation system were over capacity and that dangerous walking conditions were present along Kersey Way. The Auburn School District responded that the recent opening of Auburn Mountainview High School would provide capacity into the future to accommodate growth at the high school level. Two new elementary schools, including Lakeland Hills Elementary scheduled to open Fall 2006 and Elementary No. 14 (Lea Hill) scheduled to open Fall 2007, would provide additional capacity at the elementary level. The middle school level currently has capacity to accommodate growth but enrollment projections indicate that an additional middle school would be needed in the future and that the School District has begun planning for a new school. ACC 19.02 allows the City to collect school impact fees, approximately $4,500 per building permit, on behalf of the school district. Conditions of approval require the Applicants to pay this fee. *Specific Findings of Fact Nos. 14-15, Sept. 2005 FCR; Exhibit 19, Comments of Peters; Exhibit 24, Comments of Chaffee; Exhibit 27, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 34, Comments of Staples; Exhibit 36A, School District Comments; Testimony of Mr. Chaffee; Testimony of Ms. Koch; Testimony of Ms. Price; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong.*

15. Bus transportation would be provided for the plat with bus pick up/drop off areas along Evergreen Way. The Applicants would construct a 10-foot wide multi-use path along the site's frontage with Kersey Way. This path, along with sidewalks and crosswalks within the plat, would provide safe walking conditions for students to/from school. *Specific Findings of Fact Nos. 14-15, Sept. 2005 FCR; Exhibit 19, Comments of Peters; Exhibit 24, Comments of Chaffee; Exhibit 27, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 34, Comments of Staples; Exhibit 36A, School District Comments; Testimony of Mr. Chaffee; Testimony of Ms. Koch; Testimony of Ms. Price; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong.*

16. All lots are to be served with sanitary sewer service provided by the City of Auburn. Public comment was submitted in regards to the capacity of the system to accommodate additional sewage stemming from the proposed plat. Both the City and the Applicants are constructing improvements to the sewer system, including an interim pump station. A neighboring property owner asserted that the problem is not with the pump station but with the force mains that carry sewage away from the pump station. The neighbor argues that force mains at the Lakeland Hills pump station and the Ellingson pump station are not functioning properly and thereby have less capacity. City Public Works Staff testified that the sewer system is capable of handling the increased volume and, after replacement, the force mains are operating adequately. *Specific Findings of Fact No. 20, Sept 2005 FCR; Exhibit 1, Staff Report, Page 3; Exhibit 25, Comments of Galeno; Exhibit 36, Applicants' Response, page 5; Testimony of Ms. Galeno; Testimony of Mr. Husky.*

17. Public comments, both written and oral, were submitted in regards to the impacts on wildlife and their habitat. The EIS concluded that urbanization of the area would result in impacts to wildlife and habitat that were unavoidable including loss of vegetation,

fragmentation, and human encroachment. Public comments stated that several species of animals have been sighted on the subject property that were not accounted for in the EIS including Redheaded Woodpecker, Bald Eagle, Osprey, Pileated Woodpecker, and, historically, Salmon. Conditions of approval require that the Applicants install stormwater control technology that would eliminate/reduce sedimentation/erosion impacts in Bowman Creek and, subsequently, the White River. A Hydraulic Permit Approval (HPA) issued by Washington State Department of Fish & Wildlife would be required for construction near Bowman Creek and would address impacts to fishery resources. Open space and parkland would provide habitat and a corridor for wildlife species. Required fencing would delineate private property from open space/parkland and prevent encroachment. Disturbed areas would be re-vegetated with native species. *Specific Finding of Fact No. 19, Sept. 2005 FCR; Exhibit 1, Staff Report, Pages 7-9, 12; Exhibit 6, Applicants' Response Matrix, Page 4; Exhibit 15, Landscape Plan; Exhibit 19, Comments of Peters; Exhibit 20, Comments of Davis; Exhibit 22, Comments of Muckleshoot Tribe; Exhibit 29, Comments of Bykonen et al; Exhibit 30, Comments of Bykonen et al; Exhibit 33, Comments of Bykonen et al; Testimony of Mr. Chaffee; Testimony of Mr. Bykonen; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Husky; Testimony of Mr. Armstrong.*

SPECIFIC FINDINGS IN RESPONSE TO THE CITY COUNCIL'S ISSUES ON REMAND:
In Resolution 3947, the Auburn City Council set forth eight specific issues for the Hearing Examiner to review and to determine how the proposed development addressed or affected these issues. Findings of Facts Numbers 18, 19, 20, 21, 22, 23, 24, and 25 address the City Council's specific issues.

18. City Council Remand Issue Number 1: Open spaces and the protection of sensitive environmental features, such as steep slopes, mature trees, wetlands, and scenic views.

A. Steep Slopes The Applicants acknowledge that, as depicted in the DEIS (Figure 13), Division I contains identified Class I Known Landslide Hazard Areas (defined as slopes greater than 40%). However, the location of these areas on Figure 13 was based on a generalized map that is utilized as a first indicator source that ground reconnaissance and survey are done to further delineate the steep slopes. To supplement the slope information, the Applicants conducted a field survey in which the location of the slopes is more accurately shown (see Exhibit 5, Slope Exhibit Sheets 1 and 2). The slopes are primarily located with the open space tracts B, I, and Q and would be impacted by the construction of Evergreen Way, the main boulevard servicing the plat, and Kersey Way, the minor arterial from which access to the plat would be obtained. Construction of Evergreen Way would require cutting through a ridge and the construction of Kersey Way would require cutting of the slope to accommodate road widening. All impacts would be at 2:1 slope ratio. The maximum grade of Evergreen Way, in only two locations, would be 10%. Impacts to the steep slope areas are unavoidable, as these roadways are necessary for access to the plat.

B. Mature Trees On the subject property are four types of vegetative cover. Division I has a mature mixed-species forest and Division II has a young deciduous forest, mature coniferous forest, as well as a mature mixed-species forest. The BPA easement area is vegetated with shrubs and grasses. The loss of forest areas is an unavoidable impact of urbanization. The Applicants proposed the retention of native vegetation, including mature trees, in several tracts including B, G, H, and I of Division I, totaling approximately 3.7 acres, and tracts A and F of Division II, totaling approximately 1.4 acres. Some trees would need to be removed from Tracts B and I to accommodate road construction and from Tracts A for construction of the drainage facility. City construction standards require that no trees may project into the "clear zone" for roads or sidewalks. Impacted areas would be revegetated with appropriate tree species.

C. Wetlands There are no wetlands located within Division I and Division II. However, changes to existing surface and subsurface flows could affect the hydrology of off-site wetlands including several wetlands located in proposed Division 3 and two off-site streams, Bowman Creek and the White River, located North/Northwest of the plat. These impacts would be addressed and mitigated via stormwater drainage control design.

D. Scenic Views The residential portion of Kersey III is set back 200 to 600 feet from Kersey Way with a 35 foot building setback provided from properties to the east (zoned Rural Residential) and a 25 foot setback from properties to the south (zoned R-1 Residential). The topography of the site, along with both retained and new vegetation, would provide screening of the proposed PUD from existing low-density residential areas to the North/Northeast. Setbacks, along with a six-foot high solid wood fence constructed along the southern and eastern border of the plat, would provide buffering from adjacent lower density residential areas. No scenic views are anticipated to be obstructed.

E. Public Comments Public comments were received in regards to visual impacts (primarily due to headlights from traffic exiting the plat, loss of vegetation, and stormwater drainage design). Neighboring property owners asserted that the headlights of vehicles exiting the plat would shine directly into their homes and that construction of the Kersey Way/Evergreen Way intersection would result in removal of vegetation and erosion, impacting views.

Facts presented in Findings of Facts Numbers 18(A), 18(B), 18(C), 18(D), and 18(E) relied on the following evidence: *Exhibit 1, Staff Report, Page 7; Exhibit 6, Applicants' Response Matrix; Exhibit 9, Excerpts from DEIS; Exhibit 14, Applicants' Power Point; Exhibit 15, Landscape Plan; Exhibit 23, Comments of Fassbind; Testimony of Mr. Welsh; Testimony of Mr. Armstrong; Testimony of Mr. Siedel; Testimony of Mr. Pilcher; Testimony of Mr. Ferko; Testimony of Ms. Fassbind.*

19. City Council Remand Issue Number 2: Use of traffic management and design techniques to reduce potential traffic congestion, particularly along Kersey Way, and promote alternative modes of travel. Consideration should be given to applying the Lakeland PUD traffic impact fee structure in responding to similar impacts areas located south of the White River.

A. Traffic Management and Design Techniques Traffic Impacts (volume and safety) were the most frequently cited issues of public comment and testimony received at both the August 2005 and the February 2006 hearings. The Applicants prepared a transportation impact analysis (TIA) in March 2004 and amended this document in January 2005. The TIA Addendum concluded that all corridors affected by the development are expected to meet or exceed the LOS minimum threshold set by the City of Auburn, which is LOS-D with the proposed signalization in place.

The TIA and the EIS set forth several traffic mitigation measures, both on-site and off-site. The mitigation measures included: payment of impact fee; construction of half-street frontage improvements along Kersey Way; re-alignment of 53rd Street SE and Kersey Way; three-lane channelization (center turn lane) on Kersey Way; exclusive center left turn lanes on all legs of the re-aligned Kersey Way/53rd Street SE/Evergreen Way intersection; deceleration lane along Kersey Way at Evergreen Way; traffic signal and pedestrian crossings at re-aligned intersection of Kersey Way/53rd Street/Evergreen Way; active traffic signal warning signage for southbound Kersey Way; pedestrian treatments at the existing intersection crosswalk of Evergreen Way/Olive Way; traffic controls (round-about) at the intersection of Lakeland Hills Way and Evergreen Way; and the construction of Evergreen way from Lakeland Hills to Kersey Way.

B. Road Safety and Aesthetics The revised plat added several additional amenities to improve road safety and aesthetics. The additions included: safe pedestrian crossings (pavement markings and advance warning signage) at three locations on Evergreen Way; three-lane channelization on Evergreen Way including exclusive left-turn lanes at three locations; and center median landscaped planter islands along Evergreen Way to improve aesthetics and calm/slow. Conditions of approval would require that the Applicants extend the boulevard design throughout the plat, continuing west to Lakeland Hills.

C. Traffic Impact Fees Pursuant to ACC 19.04, the City of Auburn may collect impact fees for transportation facilities impacted by proposed development. In conjunction with the revised plat, City Planning Staff recommended that the Applicants pay the $940.36 Lakeland PUD Traffic Impact Fee in lieu of the City's standard traffic impact fee of $677.71. The Applicants submitted that they were not averse to paying the fee but requested that the City identify what the fee pays for. The Applicants asserted that, as required by RCW 82.02.020[2], prior to assessing the higher impact fee the City must demonstrate that the condition is necessary to mitigate an adverse impact of the project (a "nexus") and the extent of mitigation is proportional. (*Nollan v. California Coastal Commission*, 483 US 825 (1987); *Dolan v City of Tigard*, 512 US 374 (1994)).

The Lakeland PUD Traffic Impact Fee was established through an agreement between the developers of Lakeland Hills PUD and the Auburn City Council. The fee was assessed to address the unique transportation impacts that would be generated by the PUD. The proposed PUD/Plat is within the same geographic area as Lakeland Hills and the additional impact fee

[2] RCW 82.02.020 authorizes local governments to impose permit conditions on development if the conditions are reasonably related to the new development.

would allow for the construction of road improvements to serve the area, thereby promoting greater public safety and increased traffic flow.

D. Public Comments Public comments received on traffic impacts generated by the proposal included: the inadequacy of infrastructure to handle the increase in traffic volumes, noise and air pollution (exhaust emissions); safe walking/bicycling; evacuation route; and the impact of traffic controls (stop lights). Neighboring property owners argued that the proposed bike path along Kersey Way was a "path to nowhere," that the proposed traffic signal at Kersey Way/Evergreen Way/53rd Street would create backups during peak traffic times, and that Applicants did not mitigate noise and air impacts. Neighboring property owners stated that the existing neighborhood would be adversely impacted during construction of the proposed improvements to Kersey Way and during construction of the plat itself. Neighboring property owners asserted that Kersey Way is the main traffic corridor for the area, serving commuters, school buses, and trucks from the gravel pit, and that limiting improvements to the plat's frontage would create a funnel effect with negative impacts on traffic.

E. Applicants' Response to Public Comments In response to public concerns regarding traffic, The Applicants submitted testimony on measures being taken as part of the development to mitigate traffic impacts. The Applicants stated that the TIA concluded that the Kersey Way/53rd Street/Evergreen Way intersection would operate at LOS B at full build-out of Kersey III, well within an acceptable LOS range for the City. In addition, the TIA determined that an appropriate mitigation for unacceptable levels of service is signalization. Evergreen Way would provide an alternative route available to area residences during emergency situations. Conditions of approval require the Applicants to construct a 10-foot wide walkway along the subject property's frontage with Kersey Way. Although the walkway does not fully extend northward to the site of an existing sidewalk, the Applicants assert that they are paying their "fair share" of the development and that subsequent developments that are currently "in the pipeline' would be responsible for additional segments.

F. Fassbind Driveway Neighboring property owner Ms. Fassbind stated that she was uniquely affected by the proposed re-alignment of Kersey Way and 53rd Street due to the location of her driveway at this intersection and has not been contacted by the Applicants in this regard. Ms. Fassbind asserts that the proposed alignment would create an extremely dangerous situation for her and her family entering and exiting their property especially with a truck/trailer combination. The Applicants stated that the current re-alignment proposal for Kersey Way/53rd Street is tentative and that they would be in contact with Ms. Fassbind to discuss the final engineering design of the intersection and of the driveway, including alternative solutions such as the use of two driveways.

Facts presented in Findings of Facts Numbers 19(A), 19(B), 19(C), 19(D), 19(E), and 19(F) relied on the following evidence: *Specific Findings of Fact Nos. 5, 16-17, Sept. 2005 FCR; Exhibit 1, Staff Report, Pages 7, 21-25, 29; Exhibit 5, Preliminary Plat Map, Sheet 10; Exhibit 6, Applicants' Response Matrix, Pages 2-3; Exhibit 14, Applicants' PowerPoint/ Exhibit 19, Comments by Peters; Exhibit 20, Comments by Davis; Exhibit 21, Comments by Davis; Exhibit 23, Comments by Fassbind; Exhibit 24, Comments by Chaffee; Exhibit 32, Comments by Anderson; Exhibit 34, Comments by Staples; ; Exhibit 36, Applicants' Responses, Pages 3-4;*

Testimony of Ms. Fassbind; Testimony of Mr. Armstrong; Testimony of Mr. Pilcher; Testimony of Mr. Welsh; Testimony of Mr. Ferko.

20. City Council Remand Issue Number 3: The development of transitional areas between these projects and adjacent developments and environmentally sensitive areas.

A. Zoning Surrounding land uses consist of residential development and vacant land. Residential development is comprised of low (zoned R1 - 1 du/acre) and semi-rural (1 du/2.5 - 5 acres) densities to the east and south, with the possibility of higher density PUD development on the vacant parcel to the west (Kersey III, Division III). Parcels west of the proposed Kersey III, Division III site are comprised of Lakeland Hills, a high density PUD development. Parcels to the north are a mixture of vacant land (zoned R1) and natural (mineral) resource lands. The subject property has been zoned R-1 Single Family Residential (R1) since 1987 and was designated as Single Family Residential under the City's Comprehensive Plan in 1995. The Comprehensive Plan contemplates the bulk of single-family residential communities developed at a density of four to six dwelling units per acre. The Applicants proposed development at an overall density of 4.12 du/acre with lot sizes ranging from 4,000 to 8,354 square feet and averaging 4,990 square feet. The proposed density is consistent with City standards.

B. Comprehensive Plan Designation The Comprehensive Plan for the City of Auburn addresses the issue of transition in the context of incompatible land uses and densities. Policies of the Comprehensive Plan state the site design should utilize and preserve features, including topography, open spaces, and vegetation, to separate densities and that landscaped buffers or other measures should be utilized to separate uses.

C. Setbacks ACC 18.69.080(B) requires setbacks from the perimeter of the PUD that correspond to the requirements of the adjoining zoning districts. ACC 18.08.040(E)(4) requires a 35-foot rear yard building setback line (BSBL) within the RR zoning district and ACC 18.12.040(E)(4) requires a 25-foot rear BSBL within the R1 zoning district. Pierce County Code (PCC), Table 18A.17.030(B)(2)(1), requires a 10-foot rear yard setback within the MSF zoning district. The Applicants proposed a 35-foot BSBL on the eastern border of the site and a 25-foot BSBL on the subject property's southern border with Pierce County. Proposed residential development within the northern portion of the PUD/plat is set back 200 to 600 feet from Kersey Way and is further screened by vegetation and topography. The Applicant intends to construct a six-foot high solid wood fence along the southern and eastern borders to provide additional screening.

D. Public Comment Public comments were received on the issue of transition. Comments submitted stated that the transition from the dense Lakeland Hills PUD to the neighboring rural communities was to abrupt; that Kersey III should be a buffer zone between two extremes - the higher density development of Lakeland Hills and the existing lower density development to the east and south; and that the higher density would not blend with the existing rural neighborhood. Neighboring property owners argued that Kersey III provides no transition between low density (one acre lot), the proposed density (4,000 to 8,354 square feet), and the Lakeland Hills density

(7,200 to 10,000 square feet). Neighboring property owners also asserted that a 25-35 foot BSBL and/or a six foot high fence does not provide adequate buffering and/or screening of uses.

E. Environmental Sensitive Areas Environmentally sensitive areas are primarily contained within open space tracts. Recommended conditions of approval require a three to four foot high two-rail fence to separate all residential properties that border on an open space, park, or stormwater drainage area. The purpose of the fence is to delineate private property from common areas and to prevent encroachment by the property owner into the common areas. Maintenance of this fence shall be the responsibility of the Homeowners' Association.

Facts presented in Findings of Facts Numbers 20(A), 20(B), 20(C), 20(D), and 20 (E) relied on the following evidence: *General Findings of Fact No. 5, Sept. 2005 FCR; Specific Finding of Fact Nos. 2, 4, and 5; Sept. 2005 FCR; Chapter 3, Land Use Policies LU-26, LU-27, LU-28; Exhibit 1, Staff Report, Pages 7-9, 12; Exhibit 5, Preliminary Plat Cover Sheet; Exhibit 6, Applicants' Response Matrix, Page 4; Exhibit 19, Comments by Peters; Exhibit 20, Comments by Davis; Exhibit 27, Comments by Koch; Exhibit 36, Applicants' Response, Pages 5-6; Testimony of Mr. Gould; Testimony of Mr. Bykonen.*

21. City Council Remand Issue Number 4: The building and structural designs that complement surrounding land uses and their environment, reflecting quality site design, landscaping, and building architecture required under the Auburn PUD ordinance.

A. Design Standards ACC 18.69.080(D) provides design standards requirements for PUDs including building orientation, varied facades, continuity and compatibility of structures, colors, screening, lighting, and landscaping. The Applicants' architect, Patrick McBride, stated that the architectural intent behind Kersey III was to ensure consistent, compatible, and attractive residences which portray a sense of architectural integrity, quality, durability, residential character, and innovative design. Residences are to be designed on a pedestrian scale with sensitivity to the site. Site design elements proposed for the development include variations in footprint and/or orientation on the lot; front setbacks; driveway locations and materials; accent materials such as natural stone, columns, and shutters; front porches that promote pedestrian connectivity; decks and other architectural features; de-emphasis of garages by blending garage doors with the character of the residence; differing roof types and window designs; and spacing of homes with identical elevations. The Applicant submitted a Preliminary Overall Landscape Plan that depicts areas to maintained with native vegetation, park amenities, and street tree landscaping.

B. Lot Coverage The Applicants assert that in order to meet (ACC 18.69) PUD standards for quality site design and building architecture the lot coverage variance must be granted. The Applicants stated that the five- percent increase in allowable lot coverage is to allow flexibility in home design that would satisfy the PUD guidelines and prevent a "cookie cutter" look with all homes sharing a similar footprint.

C. Public Comments Public comments were received on the issue of design. Neighboring property owners stated that the Applicants' revised proposal reduces the total number of residences by six and modifies the average lot sizes from 3,800 square feet to 8,400 square feet to 4,000 square feet to 8,400 square feet with only 10 lots greater than 7,000 square feet. Neighboring property owners argued that the proposed design does not create compatibility with Lakeland Hills which has lots ranging from 7,200 square feet to 10,000 square feet nor does it have the look and feel of sub-communities similar to Lakeland Hills. Neighboring property owners assert that the proposed PUD/plat does not provide the quality of design required by ACC 18.69.

Facts presented in Findings of Facts Numbers 21(A), 21(B), and 21(C) relied on the following evidence: *Exhibit 1, Staff Report, Pages 5 and 7; Exhibit 6, Applicants' Response Matrix, Pages 4-5; Exhibit 7, Applicant's PowerPoint and Architect Narrative; Exhibit 15, Landscape Plan; Exhibit 26, Comments by Galeno; Exhibit 36, Applicants' Response, Page 6; Testimony of Mr. McBride; Testimony of Mr. Ferko; Testimony of Mr. Norris; Testimony of Mr. Galeno.*

22. City Council Remand Issue Number 5: The parks and open spaces, and the adequacy of parks and open spaces located under Bonneville Power Administration power lines.

A. Parks and Open Space Requirement ACC 18.69.080(A)(1) requires each PUD to set aside 20% of the gross area of the PUD as open space, which amounts to 17.86 acres for the Kersey III, Division I and II. Non-buildable areas (areas of greater than 25% slope, wetlands, or floodways (ACC 18.6.030(G)) may be used to meet no more than 50 percent of the open space area requirement. ACC 18.69.080(A)(2) provides that each PUD must meet the City's Park Plan standards for park dedication. Current standards are 6.03 acres of unimproved park land for every 1000 population of the plat. The City permits the required open space to meet all or a portion of the required parkland. The Applicants proposed 368 single-family residences, or approximately 920 people (based on 2.5 persons per residence), for a total requirement of 5.55 acres of park land.

As part of the Applicants' original proposal, all of the park space and a large percentage of open space were being provided within Division I. In the proposal for open space and parks, land encumbered by the Bonneville Power Administration (BPA) easement is the only site for active and passive recreation opportunities. Open space summary for the first proposal included 28.94 acres of open space (stormwater drainage, open space, parkland, entry signage, pedestrian pathways) with 15.82 acres in areas of less than 25%. Of the 15.82 acres, a total of 6.11 acres was designated as park land. In the revised proposal, the Applicants increased both the amount of open space and parkland, providing four new parks with two parks for active recreation and two for passive recreation. Open space now includes 29.64 acres (33.19% of gross area) with 18.12 acres in areas of less than 25%. A total of 9.17 acres has been designated as parkland (includes open space, parks, and pedestrian pathways but not acreage within the BPA easement) with the parks dispersed throughout both Division I and Division II as opposed to centrally located. The total park space is in excess of the amount required by the City's Park Plan. All of the proposed park facilities would be built by the Applicants concurrently with the plat.

B. BPA Easement The western 300 feet of Parcels 322105-9015 and 322105-9017 (Division I) are encumbered by an easement held by the BPA for a high-voltage power transmission lines. The BPA easement encompasses approximately 12.51 acres. In both the original and the revised proposals, the Applicants would utilize this area to satisfy both open space and park requirements for the development. On August 30, 2005, the Applicants entered into a Land Use Agreement with BPA allowing for the construction/installation of roads, utilities, trails, landscaping, a park, and park appurtenances within the easement. BPA has entered into similar relationships with other developers within the Puget Sound Area as it provides an efficient use of land and assures maintenance of the BPA easement. The Land Use Agreement contained 15 conditions including the location of structures in relationship to BPA transmission line towers, landscaping, and a minimum path width of 16 feet.

C. Revised Parks and Open Space Plan The revised proposal would retain the BPA easement area in open space and provide a walking trail. The Applicants' drawings note the path width as 12 feet as opposed to the 16 feet width required under the Land Use Agreement. Walking trails would also be provided in Tract B (Division I) and Tract F (Division II). The walking trail in Tract B would provide a par-course (exercise stations). A playground area would be provided in Tract Q (Division I) and Tract P (Division II). Tract P would also have a half-court sports court. Tract Q would have a sports field, including baseball diamond, a full basketball court, open lawn area, and walking trail. All park areas would have picnic tables and benches. On-street parking would be provided in the vicinity of the active recreations areas (ballfield and playgrounds) including along Roads A, E, G, and K. Pedestrian pathways throughout the plat allow for safe walking to and from park areas.

D. Vegetation All parks would retain existing vegetation when possible. Tree removal would be required in Tract B and Tract I to accommodate road construction and in other open space/park tracts to allow for the construction of recreational amenities (ballfields, playgrounds, walking trails) and stormwater drainage.

E. City Review The City of Auburn Park's Department and City Parks and Recreation Board reviewed the Applicants' proposal. Although the City did not grant full credit for the use of land encumbered by the BPA easement, it determined that the Applicant's proposal conforms to City standards.

Facts presented in Findings of Facts Numbers 22 (A), 22(B), 22(C), 22(D), and 22(E) relied on the following evidence: *Specific Findings of Fact No. 21, Sept. 2005 FCR; Specific Findings of Fact No. 22, Sept. 2005 FCR. Exhibit 1, Staff Report, Pages 4, 5, and 7; Exhibit 5, Preliminary Plat, Sheets 3-5; Exhibit 6, Applicants' Response Matrix, Page 7-8; Exhibit 8, BPA Land Use Agreement; Exhibit 15, Preliminary Plat/PUD Plans; Exhibit 15, Landscaping Plan; Testimony of Mr. Pilcher; Testimony of Mr. Scamporlina; Testimony of Mr. Ferko; Testimony of Mr. Siedel.*

23. City Council Remand Issue Number 6: Incorporation of adequate notification to future lot owners of the adjacent surface mining operations.

A. Surface Mining At the August 2005 hearing, public comments were received with regards to the impact on neighboring natural resource lands, a 664-acre gravel mining operation owned by Segale Properties/ICON Materials lying north of the site. Segale/ICON expressed concern that a dense residential development would have the potential for generating homeowner complaints pertaining to air, noise, light, traffic, and safety. Furthermore, Segale/ICON submitted the construction of Kersey III would generate traffic congestion and other safety situations, impacting the mine's operation. Conditions of approval require that a notice be placed on the final plat, all building permits, and all individual lot deeds as required by RCW 36.70A.060.

B. Modified Condition of Approval For the February 2006 Remand Hearing, Segale/ICON Properties submitted additional comments, seeking to modify a condition to make it more clear to potential buyers that mining activities are currently on-going at the site. This condition would protect the mining activities as well as the interests of the City and the developers. The wording proposed by Segale/ICON is acceptable to the Applicants and the City.

Facts presented in Findings of Facts Numbers 23(A) and 23(B) relied on the following evidence: *Specific Findings of Fact Nos. 11, 12, and 13, Condition No. 1, Sept. 2005 FCR; Exhibit 6, Applicants' Response Matrix, Page 7; Exhibit 17, Correspondence from Segale; Testimony of Mr. Pilcher.*

24. City Council Remand Issue Number 7: Protection of waterways and the development's proposed stormwater system.

A. Water Supply Water would be supplied by the City of Auburn - Valley Water System. Existing water supplies are sufficient to serve the needs of the development. The Applicants would be required to construct a booster pump station at the corner of Oravetz Road and Kersey Way SE and extend a water line along Kersey Way and Evergreen Way, connecting to the existing lines in the Lakeland Hills development. Although the PUD/Plat would be served by City water, adjacent properties are served by private wells. Documentation was not submitted as part of the record in regards to impacts on the sanitary control areas (SCA) for the private wells.

B. Private Wells Neighboring property owners stated that wells in the area have gone dry and the City has been forced to request supplemental water from the City of Bonney Lake. In addition, the neighbors asserted that the City has given no assurance as to what impact the PUD/Plat, or the recent sale of water rights, would have on the water level in Lake Tapps and, subsequently, the City's aquifers.

C. Protection of Waterways Bowman Creek lies north of the subject property and is a tributary to the White River. The creek was a fish-bearing creek, supporting spawning grounds for salmon and bull trout populations. As noted in the DEIS, the creation of impervious surface within the project site would cause an increase in stormwater flow volumes that could cause downstream channel and bank erosion. The Applicants proposed to collect and convey stormwater to a standard two-cell wet/detention pond via catch basins and underground storm

drainage pipes prior to discharge into Bowman Creek. The drainage facilities, designed to the City's standards, are located on Tract A of both Division I and Division II and would operate as a single unit. An energy dissipater would be installed to reduce erosion and the admission of sediment into the creek system. The revised PUD/Plat contains modifications to the drainage facilities which increase both pond volume and wetpond surface area. Recommended conditions of approval incorporate high standards of design (100-year flood event) and enhanced erosion control features. The drainage facilities would be landscaped to screen from adjacent residential development.

D. Public Comments Public comments were received into the record pertaining to storm water and water quality with many of the comments pertaining to impacts on Bowman Creek. Testimony voiced concern for both sediment and pollutant run-off that could impact Bowman Creek's water quality and fish and bird habitat. The Applicants asserted that while the development of the Kersey III PUD would not be the cause of the salmon's departure, development should not prevent restoration of water quality and the return of salmon. The Applicants stated that the design of the stormwater system should not prevent restoration.

Facts presented in Findings of Facts Numbers 24(A), 24(B), 24(C), and 24(D) relied on the following evidence: *Exhibit 1, Staff Report, Page 7; Exhibit 5, Preliminary Plat Map, Sheets 7, 9; Exhibit 6, Applicants' Response Matrix, Pages 7-8; Exhibit 14, Applicants' PowerPoint; Exhibit 15, Landscape Plan; Exhibit 22, Comments of Muckleshoot Tribe; Exhibit 23, Comments of Fassbind; Exhibit 27, Comments of Koch; Exhibit 31, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 36, Applicant's Response, Page 5; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong; Testimony of Mr. Chaffee; Testimony of Mr. Bykonen; Testimony of Ms. Koch; Testimony of Ms. Brooke.*

25. City Council Remand Issue Number 8: Application of the Lakeland Fire Impact Fee to aid the City in developing fire facilities to serve the area south of the White River.

A. Impact Fees Comments from the Auburn Fire Department were not submitted into the record for the August 2005 public hearing nor for the February 2006 Remand Hearing. Impacts on the fire services were considered during environmental review (*Exhibit 7, DEIS, Pages 117-119, Sept. 2005 FCR*). To mitigate these impacts, City Planning Staff recommended that the Applicants pay a $470.16 Lakeland Fire Impact Fee in lieu of the City's standard fire impact fee of $290.13.

The Applicants are not averse to paying the fire impact fee but requested that the City identify what is the reason for the fee. The Applicants asserted that, as required by RCW 82.02.020[3], prior to assessing the higher impact fee the City must demonstrate that the condition is necessary as mitigation for an adverse impact of the project (a "nexus") and the extent of mitigation is

[3] RCW 82.02.020 authorizes local governments to impose permit conditions on development if the conditions are reasonably related to the new development.

proportional. (*Nollan v. California Coastal Commission,* 483 US 825 (1987); *Dolan v City of Tigard,* 512 US 374 (1994)).

The Lakeland Fire Impact Fee was established through an agreement between the developers of Lakeland Hills PUD and the Auburn City Council. The fee was assessed to address fire department service in the remote location of the PUD and the lack of a fire station within close proximity to the PUD. The proposed PUD/Plat is within the same geographic area as Lakeland Hills and the additional impact fee would allow for the construction of additional facilities to serve the area, thereby promoting greater public safety.

B. Public Comment Public comments were received on the issue. Neighboring property owners stated that the City of Auburn is currently experiencing explosive growth that is putting a strain on emergency services providers, such as police and fire. According to the neighbors, the nearest fire station is by the SuperMall, some 12 minutes away from the plat.

Facts presented in Findings of Facts Numbers 25(A) and 25(B) relied on the following evidence: *Exhibit 1, Staff Report, Pages 7 and 15; Exhibit 6, Applicant's Response Matrix, Page 8; Exhibit 28, "Sound the Alarm..."; Exhibit 36, Applicants' Response; Testimony of Mr. Pilcher; Testimony of Mr. Ferko.*

CONCLUSIONS

Jurisdiction:

Pursuant to Auburn City Code (ACC) 18.66, the Hearings Examiner is granted jurisdiction to hear and make recommendations to the City Council. Jurisdiction for the Hearings Examiner to make recommendations for an application for rezone is pursuant to ACC 14.03.040(D) and 18.68.030, for approval of an application for a PUD is pursuant to ACC 18.69.140, and for approval of a preliminary plat is pursuant to ACC 14.03.040(A) and 17.06.050.

Criteria for Review:

Along with the requirements set forth by the Washington State Supreme Court (rezones must be based on a change in neighborhood conditions and bear a substantial relationship to the public health, safety, and general welfare - *Parkridge v. Seattle,* 89 Wn.2d 454 (1978), in order to APPROVE A REZONE, the Hearings Examiner must find that the following criteria, as set forth in ACC 18.68, are satisfied:

1. The rezone shall be consistent with the Comprehensive Plan.
2. The rezone was initiated by a party, other than the City, in order for the Hearing Examiner to hold a public hearing and consider the request.
3. Any change or modification to the rezone request made by the Hearing Examiner or the City Council shall not result in a more intense zone than the one requested.

In order to APPROVE A PUD, the Applicant must satisfactorily demonstrate that the proposed PUD achieves, or is consistent with, in whole or in part, desired public benefits and expectations. Pursuant to ACC 18.69.150, the proposal must demonstrate sufficient findings of facts to support the following:

1. The proposal contains adequate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, or sites for schools.
2. The proposal is in accordance with the goals, policies, and objectives of the comprehensive plan.
3. The proposal is consistent with the purpose of ACC 18.69, provides for the public benefits required of the development of PUDs by providing an improvement in the quality, character, architectural and site design, housing choice and/or open space protection over what would otherwise be attained through a development using the existing zoning and subdivision standards.
4. The proposal conforms to the general purposes of other applicable policies or plans which have been adopted by the City Council.
5. The approval of the PUD will have no more of an adverse impact upon the surrounding area than any other project would have if developed using the existing zoning standards of the zoning district the PUD is located in.
6. The PUD must be consistent with the existing and planned character of the neighborhood, including existing zoning and comprehensive plan map designations, and the design guidelines set forth in ACC 18.69.080(D).

In order to APPROVE A PRELIMINARY PLAT, pursuant to ACC 17.06.070, the Applicants must have provided support for the following:

1. Adequate provisions are made for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, and sites for schools and school grounds.
2. Conformance to the general purposes of the City of Auburn's Comprehensive Plan, to the general purpose of Title 17.02, and to the general purposes of any other applicable policies or plan which have been adopted by the City Council.
3. Conformance to the City of Auburn's zoning ordinance and any other applicable planning or engineering standard and specifications.
4. Potential environmental impacts of the proposal have been mitigated such that the proposal will not have an unacceptable adverse effect upon the quality of the environment.
5. Adequate provisions have been made so that the preliminary plat will prevent or abate public nuisances.

In order TO APPROVE A VARIANCE, pursuant to ACC 18.70.010, the Hearing Examiner must find facts in support of the following:

1. Unique physical conditions or exceptional topographical or other physical conditions peculiar to and inherent in the property which create practical difficulties or unnecessary hardship.
2. Strict conformity with Title 18 would not allow a reasonable and harmonious use of the property.
3. Variance would not alter the character of the neighborhood or be detrimental to surrounding properties.
4. Circumstances justifying variance are not a result of the Applicants.
5. Literal interpretation of Title 18 would deprive Applicants of rights commonly enjoyed by other properties in the same zoning district.
6. Approval of the variance is consistent with the purpose of Title 18, the Comprehensive Plan, and the zoning district in which property is located.
7. Variance would not allow for increased density.

Conclusions Based on Findings:

1. **The rezone, PUD, and Preliminary Plat are consistent with the Comprehensive Plan, other applicable goals and policies of the City Council, and the ACC.**

The Director of Planning correctly determined the proposal was consistent with the Comprehensive Plan. Conclusions in the EIS concurred with this result, finding several goals and policies of the Comprehensive Plan satisfied by the development, including improving the City's transportation network; creating and maintaining park land and open space; developing diversity of architectural design; providing for adequate urban density; improvement to the City's public utility (water/sewer) system; and protecting streams and natural areas. The goals and policies of the City Council are embodied in the City's Comprehensive Plan and ACC. The Applicants' proposal is consistent with the City's Park Plan and Non-Motorized Plan. Proposed design standards comply with the purpose and intent of ACC 18.69. *General Findings of Fact Nos. 2 and 5, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, 4, 6, 7, and 8, Sept 2005, FCR; Findings of Fact Nos. 2, 3, 5, 9, 10, 11, and 12, Feb 2006 Remand Hearing.*

Rezone Criteria

2. **The rezone was initiated by the Applicant-Property Owner and not the City.**

Pursuant to ACC 18.68.030(B)(1), in order for the Hearing Examiner to consider a rezone request, the City may not initiate the rezone. The Applicants are the owners of the property subject to the rezone. *Finding of Fact Nos. 1 and 3, Feb 2006 Remand Hearing.*

3. **Conditions in the area have substantially changed and the rezone bears a substantial relationship to the public health, safety, morals, or general welfare.**

The Applicant has the burden of proof in demonstrating that conditions have substantially changed since the original zoning and that the rezone bears a substantial relationship to the public health, safety, morals, or general welfare. *Parkridge v. Seattle,* 89 Wn.2d 454

(1978). A variety of factors may satisfy a change in circumstances, including changes in public opinion, local land use patterns, and on the property itself. *Bjarnson v. Kitsap County,* 78 Wn. App. 840, 846 (Div. 1, 1995). The City and the Applicants stated that the area where the subject property is located has experienced significant development as a result of the Lakeland Hills PUD; population growth within the City of Auburn; overall market conditions in Puget Sound which are creating a demand for smaller lots; topography making the land more suitable for the flexibility of a PUD zoning district; compliance with the urban density requirement of the GMA; and compatibility with the existing PUD community. Development of the site would provide new homes for the growing community and improvements to infrastructure. Changes in both land use patterns and public opinion, along with the requirements of the GMA and the Comprehensive Plan designation, provide justification for the rezone. *General Findings of Fact Nos. 2 and 5, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, 4, 6, 7, and 8, Sept 2005 FCR; Findings of Fact Nos. 2, 9, and 10, Feb 2006 Remand Hearing.*

4. **The Hearing Examiner is not recommending any change or modification to the rezone request that will result in a more intense zone than the one requested by the Applicant.**

Planned Unit Development/Preliminary Plat Criteria

5. **The PUD/plat proposal contains adequate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets, alleys, water supplies, sanitary wastes, parks, playgrounds, or schools.**

The Applicants have made provisions for internal streets with sidewalks for pedestrian safety, these include safe walking for school children and pedestrian passage ways for park and open space access. The EIS mitigation measures and conditions of approval would provide for traffic improvements and traffic control/calming devices to ensure safety within and to the community. The development would be served by City water and sanitary sewer. Storm water facilities would collect and convey run-off, utilizing an energy dissipater to reduce sedimentation output. Applicants have provided for a total of 29.64 acres of open space, of which 9.17 acres are to be developed for both active and passive recreation with an additional 12.51 acres of open/park space provided within the BPA easement. The open/park space is generally provided in a contiguous block so as to provide corridors for wildlife. The PUD would be served by City of Auburn water and sanitary sewer, both of which have adequate capacity to serve the needs of the community. School impact fees would mitigate the increase in student population. Development of over 350 homes at varied price levels serves the general welfare and growing housing needs of the community. *Specific Findings of Fact Nos. 14, 15, 16, 18, 20, 21, and 22, Sept 2005 FCR; Findings of Fact Nos. 14, 15, 16, 17, and 18(B)-(C), 19(A)-(F), 21(A)-(C), 22(A)-(E), and 24(A)-(D), Feb 2006 Remand Hearing.*

6. **The proposal is consistent with the purpose of ACC 18.69, and provides for the public benefits required of the development of PUDs such as preservation of natural amenities, creation of pedestrian-oriented communities, efficient use of land, development of transitional areas, innovative/aesthetic building and**

structural design, creation of parks and open spaces, provision for affordable housing.

A PUD must provide certain public benefits. The Applicants proposed to preserve natural amenities and sensitive areas through the use of open spaces and parkland. The preliminary plat and its associated conceptual design demonstrate a pedestrian-oriented community with sidewalks, pedestrian passageways, and parks for both active and passive recreation that are dispersed throughout the development. The plat is structured to utilize the property efficiently by layout, house design, and open space. Homes would not be facing the residential collector, Evergreen Way SE, and would be separated from the arterial collector, Kersey Way SE, by 200 to 600 feet of open space. Setbacks and privacy fencing would separate the development from adjoining low-density residential areas. The Applicants proposed a variety of architectural styles, providing a varied streetscape, and have submitted landscape plans. The Applicants proposed over nine acres of active and passive recreation parklands with additional acreage provided by the BPA easement. Affordable housing is a concern within the entire Puget Sound area and the PUD/plat would provide homes ranging in price from $400,000 to $700,000, providing a range of options for potential buyers. *Specific Findings of Fact Nos. 4, 5, 14, 15, 16, 18, 19, 20, 21, 22, and 23, Sept 2005 FCR; Findings of Fact Nos. 5, 6, 18(A)-(D), 21(A)-(C), 22(A)-(E), Feb 2006 Remand Hearing.*

7. **The approval of the PUD will have no more of an adverse impact upon the surrounding area than any other project would have if developed using the existing zoning standards.**

The property is currently zoned R-1, which could allow for development of up to 89 dwelling units on site. However, probably only 60-65 dwelling units would be allowed to be constructed due to the presence of non-buildable areas (steep slopes, BPA easement), infrastructure, and park requirements. Applicants seek to develop 368 dwelling units. Development of over 350 dwelling units would undoubtedly have more impact than the existing zoning standard but the PUD is providing a significant amount of open space, park land, and infrastructure improvements to the community. Connection to City water and sewer would have less impact on groundwater quality and quantity then installation of private wells and/or on-site septic systems. Location and design of open space would provide a contiguous corridor for wildlife and scenic views. Development of the site with homes on one acre lots would result in substantially more fragmentation, creating greater impacts on wildlife and associated habitat along with scenic view corridors. *Specific Findings of Fact Nos. 2, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, and 23, Sept. 2005 FCR; Findings of Fact Nos. 1, 9, 10, 13, 14, 16, 17, 18(D), 20(A), 20(E), and 22, Feb 2006 Remand Hearing.*

8. **The PUD is consistent with the existing and planned character of the neighborhood.**

Surrounding land use consists of natural resource land (gravel pit), low-density residential development, and the Lakeland Hills PUD. The Comprehensive Plan

designation for the area is Single-Family Residential which endeavors to develop land with this designation at a density of four to six dwelling units per acre. Development would be consistent with the character of the neighboring Lakeland Hills community and with the Comprehensive Plan designation. The PUD would be screened from low-density development in the north/northwest by the site's topography and the retention/enhancement of vegetation. The Applicants would provide 25 to 35 foot rear yard setbacks and privacy fencing to buffer low-density development to the east and south. Conditions of approval would require a minimum of one tree per rear yard to further buffer between adjacent uses. *General Findings of Fact No. 2, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, and 8, Sept 2005 FCR; Findings of Fact Nos. 3, 4, 10, 11, 18(B), 20(A)-(E), 21(A), 21(C), Feb 2006 Remand Hearing.*

9. **The PUD and Preliminary Plat conforms to the City of Auburn's zoning ordinance and any other applicable planning or engineering standards and specifications and to other applicable policies or plans adopted by the City Council.**

With conditions, the Applicants' proposal for the PUD complies with all related City codes and standards. *Specific Findings of Fact No. 23, Sept 2005 FCR; Findings of Fact Nos. 11, Feb 2005 Remand Hearing.*

10. **Potential environmental impacts of the proposal have been mitigated such that the proposal will not have an unacceptable adverse effect on the quality of the environment.**

According to the EIS, wildlife and their associated habitat would be directly affected and no mitigation measures were available to ameliorate this impact. Wildlife would suffer from loss of native vegetation, fragmentation of habitat, reduction in native populations, and disturbance in retained habitat due to human encroachment. While these impacts can not be adequately mitigated, none of the impacted species is listed as endangered, threatened, or sensitive pursuant to the Endangered Species Act. The design of open/park space does provide habitat for wildlife in a contiguous, as opposed to fragmented manner, and retention of native vegetation would assist in preserving habitat. In addition to wildlife impacts, off-site streams would be effected by the increase in impervious surface that would affect the hydrology of the area due to a change in recharge patterns. The Applicant would be required to provide technology to control sediment/erosion thereby lessening impacts to water resources and fisheries habitat. Public Services - Police, Fire, Schools - would all be impacted by the increased population generated by the development. Conditions of approval require the Applicants to pay impacts fees to mitigate these public service impacts, including fire and traffic impacts fees higher than those that are mandated under the ACC. *Specific Findings of Fact Nos. 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, and 22, Sept 2005 FCR; Findings of Fact Nos. 12, 13, 14, 15, 16, 17, 18(A)-(E), 19(A)-(F), 20(E), 22(A)-(E), 23(A), 24(A)-(D), and 25(A)-(B).*

11. Adequate provisions have been made so that the preliminary plat will prevent or abate public nuisances.

Public Nuisances are addressed generally throughout the ACC and are addressed directly in ACC 8.12. A public nuisance affects public health and property values by creating visual blight, harboring rodents and/or pests, or creating unsafe pedestrian and traffic situations. Compliance with City design standards for road safety (width, sidewalks, and visibility) would ensure safe pedestrian and traffic access within the development. As conditioned the development of a Homeowners' Association and the associated Covenants, Conditions, and Restrictions would ensure that visual blights and dangers to public health are reduced/eliminated, thereby promoting both general public welfare and property values. *Specific Findings of Fact Nos. 16, Sept 2005 FCR*

Variance Criteria

12. The subject property does not possess physical conditions or exceptional topographic features that warrant deviating from the applicable design requirements nor does strict conformity with ACC Title 18 fail to allow reasonable and harmonious use of the property which would justify a variance. *Findings of Fact Nos. 6, 21(A)-(C), Feb 2006 FCR.*

RECOMMENDATION

Based on the Findings of Facts and Conclusion of law, the Hearing Examiner recommends to the Auburn City Council that the request for a variance from the required lot coverage be **DENIED.**

Based upon the preceding Findings of Fact and Conclusions, the Hearing Examiner **RECOMMENDS APPROVAL** of the request for a rezone of 89.31 acres from R-1 Single Family Residential to PUD, approval of the PUD, and approval of the Preliminary Plat, subject to the following conditions:

1. Pursuant to RCW 36.70A.060, the following notice shall be placed on the final plat and on all building permits and deeds issued within the Kersey III development (Division I and Division II):

> NOTICE: This property is near designated mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development. The owner of the mineral resource lands may, at any time, apply to the City for a permit for mining-related activities including, but not limited to, mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

2. Prior to the issuance of final plat approval for any phase containing an open space tract, the Applicants shall submit, or enter into an agreement to submit, a Declaration of Covenants, Conditions, and Restrictions that conforms to the requirements of ACC 19.69.200.

3. As part of the engineering/construction drawings submitted for the construction of interior improvements to the subdivision, Applicant shall also submit engineering/construction drawings for the construction of all park improvements as depicted on the drawings submitted (Exhibit 5). The park improvements shall be approved by the City of Auburn's Parks Director prior to the approval of the construction drawings for the plat. Any materials supplied and installed for the parks must meet current City Parks Department standards and be approved by the Parks Director prior to installation and final plat approval.

4. Proposed Conditions, Covenants, and Restrictions (CC&Rs) for the future Kersey III Homeowners' Association shall be submitted for review and approval by City Staff prior to final plat approval. This document shall include architectural design criteria for new homes and specify the financial means of maintenance of all common open spaces.

5. Home designs shall be consistent with the Kersey 3 Division I & II Conceptual Building Design Guidelines dated January 9, 2006 and the submitted conceptual drawings and photographs submitted with the application. The Architectural Design Guidelines shall be incorporated into the CC&Rs for the project. The final design guidelines shall include a color palette for proposed house exterior colors. In addition, the following conditions shall apply.

    a) Homes shall feature multiple roof pitches on their street-facing facades.
    b) Garages shall be set back a minimum of 20 feet from the front property line. No more than a two-car garage shall be used; tandem parking is acceptable.
    c) Home designs shall be varied such that no more than two homes sharing the same floor plan are located adjacent to one another

6. Final landscaping design shall be generally consistent with the Preliminary Overall Landscaping Plan, dated March 7, 2005, which was included with the Applicants' resubmittal for rezone, PUD, and preliminary plat approval. (Exhibit 5, Sheets 3-5). The Applicants shall maximize the use of native and/or drought-resistant plants throughout the plat, including park and landscaped open space areas. Emphasis should be on the use of native vegetation, thereby mitigating the loss of native vegetation.

7. All lots abutting low-density residential development (Division I Lot numbers 19-62 and Division II Lot numbers 17-49) shall have, at a minimum, one tree in the rear yard setback to buffer the adjacent development from the PUD.

8. Any entrance sign shall be a low monument style with accenting landscaping. The number, style, and placement of signs and associated landscaping shall be approved by the Planning Director.

9. Fencing along the boundary of the plat shall be of consistent material, style, and color. The Planning Director shall approve such fences, which shall be equivalent to a six foot high solid wood fence. Any fencing to be erected adjacent to any of the planned pedestrian

pathways requires the approval of the Planning Director. All residential properties that border on a native/open space, park, or drainage tract (Tract A, B, C, D, and I) shall be separated from these areas by use of a two- rail wooden fence of approximately three to four feet in height. This fence shall delineate the property line and prevent encroachment by the property owner into the native/open space, park, or drainage tract.

10. Approval of the rezone and PUD are valid only upon approval and execution of the associated preliminary plat.

11. Applicants shall comply with all of the mitigation measures as noted on pages 9-19 of the Kersey III Preliminary Plat Final EIS (Exhibit 8 of the August 2005 Hearing), dated February 2005, and as otherwise noted throughout this recommendation.

12. Applicants shall construct a traffic signal at Evergreen Way SE and Kersey Way SE. This traffic signal must be constructed to the satisfaction of the City Engineer.

13. Applicants shall construct an active warning signal on southbound Kersey Way SE in advance of the intersection of Kersey Way SE and Evergreen Way SE. This active warning signal must be constructed to the satisfaction of the City Engineer.

14. Applicants shall provide auxiliary lanes at the intersection of Evergreen Way SE and Kersey Way SE. These auxiliary lanes must be constructed to the satisfaction of the City Engineer.

15. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic controls to the satisfaction of the City Engineer at the intersection of Lakeland Hills Way and Evergreen Way SE. These traffic controls shall be designed and constructed as a round-about unless the City Engineer determines, based on design, that a round-about is not feasible. If the City Engineer determines that a round-about is not feasible, then the traffic controls shall be designed and construction as a traffic signal.

16. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic calming and pedestrian safety amenities on Evergreen Way SE, in the vicinity of the park area near Olive Avenue. These traffic calming and pedestrian safety amenities must be constructed to the satisfaction of the City Engineer.

17. The EIS states that there are unavoidable significant impacts on the environment, namely impacts on wildlife populations and their associated habitat. Two main impacts pertain to loss of native vegetation and fragmentation of habitat. Applicants shall endeavor to provide for preservation of a wildlife habitat by creating a corridor containing native vegetation, thereby mitigating these impacts.

18. Applicants shall engage in meaningful consultation with the Auburn School District. Communications should not merely seek to ensure that the school district can provide transportation, but that schools have the capacity to serve the students generated by the proposal without burdening or creating overcapacity at any school. Applicants shall be

responsible for all school impact fees in a manner consistent with local and state law requirements.

19. Prior to issuance of clearing or grading permits, a grading plan for grading and clearing necessary for both the construction of infrastructure such as roads and utilities and for lot grading shall be submitted and approved by the City of Auburn. The purpose of the plan should be to accomplish the maximum amount of grading at one time to limit or avoid the need for subsequent grading and disturbance, including grading of individual lots during home construction. The plan shall identify the surveyed boundary of the crest slopes for the site's 40% or greater slopes. This plan shall show quantities and locations of excavations, and embankments, the design of temporary storm drainage detention system, and methods of preventing drainage, erosion and sedimentation from impacting adjacent properties, natural and public storm drainage systems and other near by sensitive areas. Temporary detention facilities shall be designed with a 1.5 safety factor applied to the post-developed calculated pond design volume for the 25-year, 24-hour post–developed storm event. All the measures shall be implemented prior to beginning phased on-site filling, grading or construction activities.

The grading plans shall be prepared in conjunction with and reviewed by a licensed geotechnical engineer. The geotechnical engineer shall develop and submit, for the City's review, specific recommendations to mitigate grading activities, with particular attention to developing a plan to minimize the extent and time soils are exposed and address grading and related activities during wet weather periods (the period of greatest concern is October 1 through March 31). The plans shall show the type and the extent of geologic hazard area or any other critical areas as required in chapters 16 and 18 of the International Building Code (IBC) and/or the City's Critical Areas Ordinance.

Upon completion of rough grading and excavation, the applicant shall have a geo-technical engineer re-analyze the site and determine if new or additional mitigation measures are necessary. A revised geo-technical report shall be submitted to the City of Auburn for review and approval by the City Engineer. Recommendations for areas where subsurface water is known or discovered shall be given particular attention by the geotechnical engineer and coordinated with the project engineer responsible for the storm drainage system design.

19. Prior to final plat approval, a supplemental evaluation of stream channel conditions along Bowman Creek in vicinity of Stream Station 14+00 must be completed, including the off-site erosion feature observed at the outlet of the culvert under Kersey Way and near Bowman Creek. Appropriate mitigation shall be proposed to eliminate the observed erosion as well as any erosion determined be present from the supplemental evaluation of stream channel conditions along Bowman Creek.

20. Storm drainage facilities shall incorporate high standards of design to enhance the appearance of the site and serve as an amenity. The design of above ground storage and conveyance facilities shall address or incorporate landscaping utilizing native vegetation, minimal side slopes, safety, maintenance needs, and function.

Prior to final plat approval, a landscaping plan with applicable cross-sections is required to demonstrate that storm drainage pond aesthetic requirements consistent with City standards can be accommodated on-site.

Storm drainage facilities shall be provided consistent with the City of Auburn Design Standards. In order to achieve this, the following design elements must be incorporated into the final design:

- Vehicle access for maintenance to all proposed storm drainage structures is required. To provide an adequate and safe storm pond access, an appropriately designed pull-off shall be provided from Kersey Way SE to serve the pond.
- All storm drainage conveyance lines required to manage upstream bypass surface flows shall be routed through the project site and shall not be combined with the proposed on-site storm drainage system. Maintenance access shall be provided to all structures proposed to be in public ownership. The remaining portions of this system shall be placed within a tract dedicated to the Homeowners Association for maintenance and operation.

Given the steep slopes found on the site, appropriately designed energy dissipation features are required at the end of long runs of pipe, at pipe intersections and at the outlet to the storm drainage pond.

To enhance the water quality of the discharge leaving the site, appropriately designed aeration shall be provided within the storm pond.

Given the existing on-site drainage deficiencies in the vicinity of Kersey Way near 53rd Street SE, and subsequent flooding of the intersection, an appropriately designed storm drainage system shall be constructed to mitigate this condition.

21. The location and alignment of the force main and the proposed pump station shall be coordinated with adjacent property owners and the City to ensure it provides service to the desired basin. The public sanitary sewer pump station shall be located as directed by the City Engineer in order to allow room for large vehicle turnarounds so City vehicles do not have to back into public right-of-ways.

The applicant shall provide sanitary sewer stub to the south property line located between Lots 27 and 28 of Division 1.

The applicant shall provide an easement for possible future extension of the sanitary sewer system located at the SE corner of Tract D, Division 1.

22. All roads within the plat must be constructed to City standards (except where deviations are granted by the City Engineer) and shall be dedicated as public right of way.

23. The Applicants shall construct Evergreen Way to City standards for a residential collector arterial including a 10 foot landscaped center median/turn lane area through the plat boundaries.

24. The Applicants shall also construct median treatments to match the 10 foot center median/turn lane within the plat on the existing roadway west to Lakeland Hills Way, to the satisfaction of the city engineer.

25. The Applicants shall redesign pedestrian crossings at Road G and Evergreen Way and Road A and Evergreen Way to provide additional pedestrian refuge, to the satisfaction of the City Engineer.

26. The Applicants shall construct a minimum 10-foot wide shared multi-use path, separated by a five foot landscape strip from the road, on the west side of Kersey Way for the length of the site frontage along Kersey Way, to the satisfaction of the City Engineer.

27. The Applicants shall construct Kersey Way to a modified city standard for a minor arterial road, to include a 12 foot center turn lane, a 12 foot through northbound lane, a 12 foot through southbound lane, appropriate right turns lane(s) at the intersection with 53rd Street SE, a five foot landscape strip and a minimum 10-foot wide shared multi-use path on the west side. All other features about the road such as vertical curb, storm drainage and lighting must meet city standards.

28. The Applicants shall create a 50-foot right of way stubbing to the south plat boundary, through the location of lots 27 and 28, Division 1, to align with 176th Avenue East.

29. A traffic impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

30. A fire impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

31. The Applicants shall comply with all conditions set forth in the Land Use Agreement entered into by the Applicants with the Bonneville Power Administration (Exhibit 8). The Land Use Agreement set forth 15 conditions, including, but not limited to landscaping, distance from transmission line towers, and a minimum path width of 16 feet.

Decided this 21 day of March, 2006.

James Driscoll
Hearings Examiner for the City of Auburn

LEGAL DESCRIPTION OF PROPERTY

The southwest quarter of the southeast quarter and that portion of the northwest quarter of the southeast quarter lying southerly of the H.B. Carter County Road; All in Section 32, Township 21 North, Range 5 East, W.M., in King County, Washington;
EXCEPT that portion thereof conveyed to King County for Stuck Road and by Deed recorded under Recording Number 5407388;
AND EXCEPT that portion thereof conveyed by King County for Lake Tapps Access Road, by deed recorded under Recording Number 5801756.

FEE PAYMENT: _____ $1,038.00 and $53.00 per lot plus $727.00 for Environmental Checklist

T.R. #: _____

DATE RECEIVED: _____

CASHIER'S INITIALS: _____

PLT 05-0001 LOT 1

Return Address:
Auburn City Clerk
City of Auburn
25 West Main St.
Auburn, WA 98001

20060928002405
PACIFIC NW TIT ORD 75.00
PAGE001 OF 044
09/28/2006 16:13
KING COUNTY, WA

RECORDER'S COVER SHEET

Document Title(s) (or transactions contained therein):

1. Rezone (Ordinance 6026) PNWT-W5083-12 (44) 75

Reference Number(s) of Documents assigned or released:

☐ Additional reference #'s on page ___ of document

Grantor(s) (Last name first, then first name and initials)

1. Auburn, City of

Grantee: (Last name first)

1. Jones, Wayne
2. Lakeridge Development

Said document(s) were filed for record by Pacific Northwest Title as accommodation only. It has not been examined as to proper execution or as to its affect upon title.

Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)

The SW Quarter of the SE Quarter and that portion of the NW Quarter of the SE Quarter lying southerly of HP Carter County Road; all in Section 32, Township 21 North, Range 5 East

☒ Additional legal is on page 44 of the document.

Assessor's Property Tax Parcel/Account Number:

3221059015, 3221059017

☐ Assessor Tax # not yet assigned

ORDINANCE NO. 6 0 2 6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING A REQUEST TO REZONE APPROXIMATELY 50.85 ACRES FROM SINGLE FAMILY RESIDENTIAL (R1) TO PLANNED UNIT DEVELOPMENT (PUD) AND APPROVING THE REQUEST FOR A PLANNED UNIT DEVELOPMENT

WHEREAS, Applications Nos. REZ05-0001 and PUD05-0001, dated April 8, 2005, were submitted to the City of Auburn, Washington by Wayne Jones, Lakeridge Development, requesting approval of a rezone and approval of a planned unit development to subdivide 50.85 acres into 167 lots for future single family residential development, open space, and street and utility tracts within the City of Auburn, Washington; and

WHEREAS, said application was made concurrently with an application for preliminary plat approval for the same site (Application No. PLT05–0001); and

WHEREAS, said applications were determined to be complete pursuant to Auburn City Code on June 8, 2005; and

WHEREAS, said requests referred to above were referred to the Hearing Examiner for study and public hearing thereon; and

WHEREAS, following staff review, the Hearing Examiner conducted a public hearing to consider said petition in the Council Chambers of the Auburn City Hall on August 9, 2005, of which the Hearing Examiner recommended approval of the preliminary plat subject to conditions on September 2, 2005; and

WHEREAS, at its regular meeting of September 19, 2005, the City Council voted to conduct a closed record hearing on the Hearing Examiner's recommendations; and

WHEREAS, a closed record hearing was held on October 3, 2005 and continued on October 17, 2005, at which time the City Council considered the Hearing Examiner's recommendations and the material presented to the Hearing Examiner and argument made to the City Council at said closed record hearing; and

WHEREAS, some of the arguments and comments received at the closed record hearing concerning matters related to the record drew into question significant portions of the Hearing Examiner's recommendations; and

WHEREAS, after the closed record hearing, the City Council asked the applicant if he would be willing to accept the additional time it would take if the requests were remanded back to the Hearing Examiner for further review and consideration of issues raised by the Council, and the applicant's representative declined the offer, the City Council voted to deny the applications; and

WHEREAS, on November 10, 2005, the applicants communicated to the City a willingness to waive the 120-day project review timetable otherwise applicable for processing the application and a willingness to have the application remanded to the Hearing Examiner; and

WHEREAS, at its regularly scheduled meeting of November 15, 2005, the City Council adopted Resolution No. 3947, remanded the application back to the Hearing Examiner to re-open the record and consider how the development addressed or affected eight (8) defined issues; and

WHEREAS, following staff review, the Hearing Examiner conducted a public hearing to consider said petition in the Council Chambers of the Auburn City Hall on February 22, 2006, of which the Hearing Examiner recommended approval of the revised preliminary plat subject to conditions on March 21, 2006; and

WHEREAS, a closed record hearing was held on April 25, 2006, at which time the City Council considered the Hearing Examiner's recommendations, the material presented to the Hearing Examiner and argument made to the City Council at said closed record hearing and affirmed the Hearing Examiner's recommendation for preliminary plat based upon the Findings of Fact, Conclusions and Recommendation which is attached hereto as Exhibit "A", subject to additional conditions of approval.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. APPROVAL OF FINDINGS, CONCLUSIONS AND RECOMMENDATION. The Hearing Examiner's Findings, Conclusions and

Recommendation attached hereto as Exhibit "A" are herewith approved and incorporated herein.

Section 2. APPROVAL AND CONDITIONS. The request for rezone and planned unit development approval to allow a preliminary plat to subdivide 50.85 acres into 167 lots for future single family residential development, open space and street and utility tracts within the City of Auburn, legally described in Exhibit "B" attached hereto and incorporated herein by this reference, is hereby approved subject to the following conditions:

1. Pursuant to RCW 36.70A.060, the following notice shall be placed on the final plat and on all building permits and deeds issued within the Kersey III development (Division I and Division II):

   > NOTICE: This property is near designated mineral resource lands on which a variety of commercial activities occur that may not be compatible with residential development, including, but not limited to, mining, extraction, washing, crushing, stockpiling, , transporting, concrete and asphalt production, recycling of materials, and their related and supporting activities.

2. Prior to the issuance of final plat approval for any phase containing an open space tract, the Applicants shall submit, or enter into an agreement to submit, a Declaration of Covenants, Conditions, and Restrictions that conforms to the requirements of ACC 19.69.200.

3. As part of the engineering/construction drawings submitted for the construction of interior improvements to the subdivision, Applicant shall also submit engineering/construction drawings for the construction of all park improvements as depicted on the drawings submitted (Exhibit 5). The park improvements shall be approved by the City of Auburn's Parks Director prior to the approval of the construction drawings for the plat. Any materials supplied and installed for the parks must meet current City Parks

Department standards and be approved by the Parks Director prior to installation and final plat approval.

4. Proposed Conditions, Covenants, and Restrictions (CC&Rs) for the future Kersey III Homeowners' Association shall be submitted for review and approval by City Staff prior to final plat approval. This document shall include architectural design criteria for new homes and specify the financial means of maintenance of all common open spaces. The CC&Rs shall provide that the Homeowners Association (HOA) shall be responsible to maintain and replace as necessary all trees, trails, special features and landscaping within any street median strip, planting strips and all HOA parks. In addition, the HOA shall maintain those portions of the stormwater tract located outside the fenced pond boundary, or if no fence if provided, outside the 10-year storm water surface elevation, as determined by the City Engineer.

5. Home designs shall be consistent with the Kersey 3 Division I & II Conceptual Building Design Guidelines dated January 9, 2006 and the submitted conceptual drawings and photographs submitted with the application. The Architectural Design Guidelines shall be incorporated into the CC&Rs for the project. The final design guidelines shall include a color palette for proposed house exterior colors. In addition, the following conditions shall apply.

    a) Homes shall feature multiple roof pitches on their street-facing facades.
    b) Garages shall be set back a minimum of 20 feet from the front property line. At least, but no more than, a two-car garage door shall face the street; tandem parking is acceptable.
    c) Home designs shall be varied such that no more than two homes sharing the same floor plan are located adjacent to one another
    d) Lot coverage shall not exceed 45%.

6. Final landscaping design shall be generally consistent with the Preliminary Overall Landscaping Plan, dated March 7, 2005, which was included with the Applicants' resubmittal for rezone, PUD, and preliminary plat approval (Exhibit 5, Sheets 3-5). The Applicants shall maximize the use of native and/or drought-resistant plants throughout the plat, including park and landscaped open space areas. Emphasis should be on the use of native vegetation, thereby mitigating the loss of native vegetation.

7. All lots abutting low-density residential development (Division I Lot numbers 19-62 and Division II Lot numbers 17-49) shall have, at a minimum, one tree in the rear yard setback to buffer the adjacent development from the PUD.

8. Any entrance sign shall be a low monument style with accenting landscaping. The number, style, and placement of signs and associated landscaping shall be approved by the Planning Director.

9. Fencing along the boundary of the plat shall be of consistent material, style, and color. The Planning Director shall approve such fences, which shall be equivalent to a six foot high solid wood fence. Any fencing to be erected adjacent to any of the planned pedestrian pathways requires the approval of the Planning Director. All residential properties that border on a native/open space, park, or drainage tract (Tract A, B, C, D, and I) shall be separated from these areas by use of a two- rail wooden fence of approximately three to four feet in height. This fence shall delineate the property line and prevent encroachment by the property owner into the native/open space, park, or drainage tract. The Homeowners' Association shall be responsible to maintain all fences required by this condition.

10. Applicants shall comply with all of the mitigation measures as noted on pages 9-19 of the Kersey III Preliminary Plat Final EIS (Exhibit 8 of the August 2005 Hearing), dated February 2005, and as otherwise noted throughout this recommendation.

11. Applicants shall construct a traffic signal at Evergreen Way SE and Kersey Way SE. This traffic signal must be constructed to the satisfaction of the City Engineer.

12. Applicants shall construct an active warning signal on southbound Kersey Way SE in advance of the intersection of Kersey Way SE and Evergreen Way SE. This active warning signal must be constructed to the satisfaction of the City Engineer.

13. Applicants shall provide auxiliary lanes at the intersection of Evergreen Way SE and Kersey Way SE. These auxiliary lanes must be constructed to the satisfaction of the City Engineer.

14. Applicants shall provide access acceptable to the City of Auburn for properties abutting the intersection of Kersey Way and 53rd St. SE.

15. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic controls to the satisfaction of the City Engineer at the intersection of Lakeland Hills Way and Evergreen Way SE. These traffic controls shall be designed and constructed as a round-about unless the City Engineer determines, based on design, that a round-about is not feasible. If the City Engineer determines that a round-about is not feasible, then the traffic controls shall be designed and construction as a traffic signal.

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properties, natural and public storm drainage systems and other near by sensitive areas. Temporary detention facilities shall be designed with a 1.5 safety factor applied to the post-developed calculated pond design volume for the 25-year, 24-hour post–developed storm event. All the measures shall be implemented prior to beginning phased on-site filling, grading or construction activities.

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To enhance the water quality of the discharge leaving the site, appropriately designed aeration shall be provided within the storm pond.

Given the existing on-site drainage deficiencies in the vicinity of Kersey Way near 53rd Street SE, and subsequent flooding of the intersection, an appropriately designed storm drainage system shall be constructed to mitigate this condition.

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The applicant shall provide sanitary sewer stub to the south property line located between Lots 27 and 28 of Division 1.

The applicant shall provide an easement for possible future extension of the sanitary sewer system located at the SE corner of Tract D, Division 1.

23. All roads within the plat must be constructed to City standards (except where deviations are granted by the City Engineer) and shall be dedicated as public right of way.

24. The Applicants shall construct Evergreen Way to City standards for a residential collector arterial including a 10 foot landscaped center median/turn lane area through the plat boundaries.

25. The Applicants shall also construct median treatments to match the 10 foot center median/turn lane within the plat on the existing roadway west to Lakeland Hills Way, to the satisfaction of the city engineer.

26. The Applicants shall redesign pedestrian crossings at Road G and Evergreen Way and Road A and Evergreen Way to provide additional pedestrian refuge, to the satisfaction of the City Engineer.

27. The Applicants shall construct a minimum 10-foot wide shared multi-use path, separated by a five foot landscape strip from the road, on the west side of Kersey Way for the length of the site frontage along Kersey Way, to the satisfaction of the City Engineer.

28. The Applicants shall construct Kersey Way to a modified city standard for a minor arterial road, to include a 12 foot center turn lane, a 12 foot through northbound lane, a 12 foot through southbound lane, appropriate right turns lane(s) at the intersection with 53rd Street SE, a five foot landscape strip and a minimum 10-foot wide shared multi-use path on the west side. All other features about the road such as vertical curb, storm drainage and lighting must meet city standards.

29. The Applicants shall create a 50-foot right of way stubbing to the south plat boundary, through the location of lots 27 and 28, Division 1, to align with 176th Avenue East.

30. A traffic impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

31. A fire impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

32. The Applicants shall comply with all conditions set forth in the Land Use Agreement entered into by the Applicants with the Bonneville Power Administration, a copy of which is attached hereto, marked as Exhibit C and incorporated herein by this reference. The Land Use Agreement set forth 15 conditions, including, but not limited to landscaping, distance from transmission line towers, and a minimum path width of 16 feet.

Section 3. CONSTITUTIONALITY OR INVALIDITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. IMPLEMENTATION. The Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect five (5) days after publication as required by law.

Dated and Signed this 11th day of May, 2006.

INTRODUCED: MAY 1 1 2006

PASSED: MAY 1 1 2006

APPROVED: MAY 1 1 2006

CITY OF AUBURN

PETER B. LEWIS,
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:

Daniel B. Heid,
City Attorney

PUBLISHED: 05-16-06

EXHIBIT A

BEFORE THE HEARING EXAMINER
FOR THE CITY OF AUBURN

In the Matter of the Application of	)	NO. REZ05-0001, REZ05-0002
	)	PUD05-0001, PUD 05-0002
Lakeridge Development	)	PLT05-0001, PLT05-0002
by Wayne Jones	)	
and	)	
Landholdings LLC	)	FINDINGS, CONCLUSIONS,
by Daniel and Stormy Hayes	)	AND RECOMMENDATION
	)	
For a Rezone, a Planned Unit Development,	)	
a Preliminary Plat, and a Variance for	)	
Kersey III - Division I and Division II	)	

BACKGROUND

In 2005, Lakeridge Development, through Wayne Jones, and Landholdings LLC, through Joyce Bowles and Peter Bowles, (Applicants) requested approval of a rezone, a Planned Unit Development, and preliminary plat for Division I and Division II of Kersey III, a single-family residential subdivision, and a variance from certain design standards.

The Applicants requested a rezone of three separate tax parcels from R-1 Single Family Residential to Planned Unit Development. The Planned Unit Development and Preliminary Plat would have 169 lots in Division I and 204 lots in Division II. The requested variances would reduce front yard setback and lot coverage requirements. The subject property totals 89.31 acres and is located within the city limits of Auburn, on the west side of Kersey Way at 53rd Street SE, extending southward to the King-Pierce County line.

An open record hearing on the request was held before the Hearing Examiner for the City of Auburn on August 9, 2005. The Hearing Examiner allowed the record to remain open for the limited purpose of securing comments from the Auburn School District on impacts generated by the proposed residential development. The School District's comments were received and the record was officially closed on August 16, 2005. Following a review of the testimony and exhibits, and based on the criteria established by the Auburn City Council, on September 2, 2005 the Hearing Examiner issued a recommendation for approval of the rezone from R-1 Residential to Planned Unit Development, approval of the Planned Unit Development, and approval of the preliminary plat for Division I and Division II of Kersey III, subject to 18 conditions. The Hearing Examiner recommended that the Applicants' request for variances from the required front yard setback and total lot coverage design requirements be denied.

On October 3, 2005 and October 17, 2005, the Auburn City Council conducted a hearing to consider the Hearing Examiner's recommendations. At the close of the hearing, the City Council asked the Applicants if they were willing to accept the additional time it would take for the matter to be remanded to the Hearing Examiner for further review. The Applicants declined the

remand offer and the City Council denied all of the applications. On November 10, 2005, the Applicants rescinded its denial and asked that the applications be remanded to the Hearing Examiner.

On November 15, 2005, the Auburn City Council issued Resolution Number 3947, remanding the matter to the Hearing Examiner to re-open the record and consider how the development addressed or affected the following issues:

1. Open spaces and the protection of sensitive environmental features, such as steep slopes, mature trees, wetlands, and scenic views.
2. Use of traffic management and design techniques to reduce potential traffic congestion, particularly along Kersey Way, and promote alternative modes of travel. Consideration should be given to applying the Lakeland PUD traffic impact fee structure in responding to similar impacts areas located south of the White River.
3. The development of transitional areas between these projects and adjacent developments and environmentally sensitive areas.
4. The building and structural designs that complement surrounding land uses and their environment, reflecting quality site design, landscaping, and building architecture required under the Auburn PUD ordinance.
5. The parks and open spaces, and the adequacy of parks and open spaces located under Bonneville Power Administration power lines.
6. Incorporation of adequate notification to future lot owners of the adjacent surface mining operations.
7. Protection of waterways and the development's proposed stormwater system.
8. Application of the Lakeland Fire Impact Fee to aid the City in developing fire facilities to serve the area south of the White River.

On February 22, 2006, the Hearing Examiner for the City of Auburn held a public hearing on the matter as it was remanded from the City Council.

Testimony

At the February 22 hearing on remand, the following individuals presented testimony under oath:

1. Steve Pilcher, Planner, City of Auburn
2. Joseph Welsh, Transportation Engineer, City of Auburn
3. D. Scamporlina, Parks Department, City of Auburn
4. Dwayne Husky, Public Works, City of Auburn
5. Walt Wojeck, Development Review – Public Works, City of Auburn
6. Chris Ferko, Barghausen Consulting Engineers, Applicants' representative
7. Rob Armstrong, Civil Engineer
8. Art Sidel, Landscape Architect
9. Pat McBride, Building Architect
10. John Norris, Norris Homes
11. Michele Fassbind, neighboring property owner
12. John Chaffee, neighboring property owner
13. Darryl Thompson, neighboring property owner

14. Pat Davis, neighboring property owner
15. Dale Huston, neighboring property owner
16. Erin Galeno, neighboring property owner
17. Chuck Gould, neighboring property owner
18. Janet Koch, neighboring property owner
19. Katrina Price, neighboring property owner
20. Donald Bykonen, neighboring property owner
21. William Remick, neighboring property owner
22. Kristi Knott, neighboring property owner
23. Bruce Koch, neighboring property owner
24. Jonie Brooke, neighboring property owner
25. Bill Anderson, neighboring property owner

Exhibits

At the February 22 hearing on remand, the following exhibits were admitted as part of the official record:

1. Staff Report, dated February 16, 2006
2. Project Vicinity Map
3. Auburn City Council Resolution 3947
4. Re-submittal letter from Barghausen Engineers, dated January 11, 2006
5. *Revised* Preliminary Plat/PUD Site Plans – 12 sheets
6. Engineer's Responses to Auburn City Council Comments
7. Kersey III Divisions I and II Project Proposal, Architectural Design PowerPoint Presentation Slides and Architect Narrative
8. Land Use Agreement – Bonneville Power Administration and Lakeridge Development, dated August 30, 2005
9. Excerpts from Environmental Impact Statement pertaining to Geologic Hazards, Wildlife and Habitat, and Wetlands and Streams, with maps
10. Notice of Public Hearing
11. Affidavit of Mailing of Legal Notice
12. Affidavit of Posting of Legal Notice
13. E-mail confirmation from King County Journal, Publication of Legal Notice, dated February 7, 2006
14. Kersey III Divisions I and II Project Proposal, PowerPoint Presentation Slides
15. Preliminary Landscape Plan – 3 sheets
16. Correspondence from GMS Architectural Group, dated February 22, 2006

16A. Lot Coverage Drawings

17. Correspondence from Segale Properties, dated February 22, 2006
18. Statutory Warranty Deed - Tax Parcel 3221059039
19. Public Comment Letter: Perry and Trina Peters, dated February 22, 2006
20. Public Comment Letter: Pat and Gene Davis, dated October 15, 2005
21. Public Comment Letter: Pat and Gene Davis, dated February 21, 2006
22. Correspondence from Muckleshoot Indian Tribe, dated August 16, 2004
23. Public Comment Letter: Michelle Fassbind, dated February 22, 2006
24. Public Comment Letter: John Chaffee, dated February 22, 2006

25. Public Comment Letter: Erin and Paul Galeno, undated
26. Public Comment Letter: Erin Galeno, October 17, 2005
27. Public Comment Letter: Janet Koch, dated February 22, 2006
28. "Where's the smoke..." *Auburn Reporter*, dated February 15, 2006
29. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Will and Jean Julum, Rod and Judy Johannsen, Eric Padilla, John and Cindy Flinchbaugh, Larry and Cathy Hansen, and Mark and Catherine Neubauer, undated
30. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Mike Bykonen, Eric Padilla, John and Cindy Flinchbaugh, Will and Jean Julum, Rod and Judy Johannsen, undated
31. Public Comment Letter: Bruce Koch, dated February 22, 2006
32. Public Comment Letter: Bill Anderson, dated February 22, 2006
33. Public Comment Letter with excerpts from Draft Environmental Impact Statement: Stan Purdin, Kirk Anderson, Mike and MariLee Bykonen, Gary and Margaret Staples, undated
34. Public Comment Letter: Gary and Margaret Staples, February 21, 2006
35. Tax Assessor's Vicinity Map
36. Applicant's Response to Public Hearing Comments, dated March 3, 2006

36A. Agency Comment Letter from Auburn School District, dated March 2, 2006

Upon consideration of the testimony and exhibits submitted at the open record hearing of August 9, 2005 and the February 22, 2006 Hearing on Remand, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS OF FACT

GENERAL FINDINGS

1. The Applicants requested approval of a rezone of three parcels of land totaling approximately 89.31 acres. The rezone would reclassify the property from R-1 Single Family Residential to Planned Unit Development (PUD). The Applicants also requested approval of a PUD and Preliminary Plat for Division I and Division II of Kersey III. The property is located on the west side of Kersey Way at 53rd Street SE, extending southward to the King-Pierce County line. All of the parcels are within the city limits of Auburn and the boundaries of King County. *General Finding of Fact No. 1, Sept. 2005 FCR; Exhibit 1, Staff Report, Page 3.*

2. To reach a determination on the City Council's Order of Remand, the Hearing Examiner reviewed all evidence, written and oral, submitted into the record of the Kersey III, Division I and Division II hearings conducted on August 9, 2005 and February 22, 2006. All Findings of Facts, both general and specific, provided for in the Hearing Examiner's September 2, 2005 Decision are incorporated into the present decision by reference. Findings from the August 2005 hearing are referenced as "*Findings ..., Sept. 2005 FCR.*" Findings from the February 2006 hearing are referenced as "*Findings ..., Feb. 2006 Remand Hearing.*"

3. In the original proposal heard by the Hearing Examiner in August 2005, the Applicants proposed a two phase development with Division I containing 169 single-family residential lots averaging 5,032 square feet, resulting in an average density of 3.34 dwelling units per acre (du/acre). Division II was to be developed with 205 single-family lots averaging 4,863 square feet, resulting in an average density of 5.35 du/acre. The overall project density is 4.17 du/acre for both divisions. At the February 2006 Hearing on Remand (Remand Hearing), the Applicants submitted a revised proposal. The Applicants are still proposing development of Kersey III in two phases, however, Division I would now contain 167 single-family residential lots averaging 4,900 square feet, and an average density of 3.28 du/acre. Division II would now contain 201 single-family residential lots averaging 4,990 square feet, and an average density of 5.23 du/acre. The overall project density is 4.12 du/acre. *General Finding of Fact No. 2, Sept. 2005 FCR; Exhibit 1, Staff Report, Page 3; Exhibit 1, Staff Report, Page 3; Exhibit 5, Revised Preliminary Plat/PUD plans; Exhibit 14, Applicant's PowerPoint; Testimony of Mr. Pilcher; Testimony of Mr. Ferko.*

4. Three parcels of land comprise the proposal and all three parcels are within the city limits of Auburn. Division I is includes two tax parcels - King County Parcel No. 322105-9015 and No. 322105-9017 which are owned by Wayne and Debra Jones (Lakeridge Development). Division II is comprised of one tax parcel - King County Parcel No. 322105-9039 and was owned by Joyce and Elwood "Pete" Bowles (Landholdings LLC). On December 14, 2005, the Bowles executed a Statutory Warranty Deed conveying Tax Parcel 3221050-9039 to Daniel and Stormy Hayes. The Hayes' have been substituted for the Bowles as Applicants in the matter. *General Finding of Fact No. 4, Sept. 2005 FCR; Exhibit 19, Statutory Warranty Deed; Testimony of Mr. Pilcher.*

5. Design standards for detached single-family residential development within a PUD include: minimum lot size of 3,600 square feet, minimum lot width of 40 feet, maximum lot coverage of 40%, maximum building height of 30 feet, and front, rear, and side yard setbacks of 15-20 feet, 20 feet, and 5 feet, respectively. The Applicants proposal conforms to these standards. *ACC 18.69.070(A); Exhibit 5, Revised Plat.*

6. At the August 2005 hearing, the Applicants requested a variance from certain design requirements set forth in Auburn City Code (ACC) 18.69.070(A). The proposal at that time was for the reduction in the front yard setback to 10 feet and an increase in the total allowable lot coverage to 50%. The Hearing Examiner recommended denial of this request. At the Remand Hearing, the Applicants revised the previous request, seeking an increase in the total allowable lot coverage of up to 45%. The Applicants argue that adherence to the 40% lot coverage maximum provided in ACC 18.69.070(A) would create hardship and that increased lot coverage is needed to provide the flexibility that the City's PUD guidelines require in order to prevent a 'cookie cutter' look. Approval of the variance, according to the Applicants, would create balance and diversity within the PUD. In addition, the Applicant argues that the use of smaller lots provides a substantially larger amount of open/recreational space than normally is required. It appears from the record that the Applicants have abandoned their request for a front yard setback variance. *Specific Finding of Fact No. 23, Recommendation, Sept. 2005 FCR;*

Exhibit 16, Correspondence from GMC Architectural; Exhibit 16A, Lot Coverage; Exhibit 36, Applicants' Response; Testimony of Mr. McBride; Testimony of Mr. Norris.

7. At the Remand Hearing, the Hearing Examiner left the record open for the Applicants to submit responses on all of the written and oral comments received into the record at the February 2006 Remand Hearing. Bob Johns of Johns Monroe Mitsunaga, attorney for the Applicants, submitted the required responses, along with comments from the Auburn School District, to the City of Auburn on March 3, 2006. A copy of this letter was not provided to the Hearing Examiner until March 14, 2006. On March 14, 2006, the Hearing Examiner entered an Order setting the date of the issuance of the recommendation to March 22, 2006.

8. Notice of the Remand Hearing was posted on the property and was mailed to all property owners located within 300 feet of the affected site on February 10, 2006. Notice was published in the *King County Journal* on February 10, 2006. *Exhibits 10, 11, 12, and 13.*

9. The Growth Management Act (GMA), RCW 36.70A, requires land within a city to be classified as urban and that it must be developed at urban densities. The Applicants submitted that this principle justifies the rezone request. The GMA itself does not assign a quantitative value to the term "urban density" but prior case law from the Central Puget Sound Growth Management Hearings Board, which has been applied, clarified, and evolved over the years, has stated that urban density is equivalent to four dwelling units per acre unless a reasonable exception applies (i.e. critical areas). (see *City of Bremerton et al v. Kitsap County,* CPSGMHB Case No. 95-3-0039c (1995), *Litowitz v. City of Federal Way,* CPSGMHB Case No. 96-3-0005 (1996)). The CPSGMHB's rule was recently called into question by the Washington State Supreme Court in *Viking v. Holm* when the court stated that the CPSGMHB did not have the authority to create such a 'bright line rule'. *Viking v. Holm,* 118 P.3d 322 (2005). Subsequent cases from the CPSGMHB have the CPSGMHB re-characterizing the four dwelling units per acre threshold as a 'safe harbor' rather than a 'bright line'. *Furhiman v. City of Bothell,* CPSGMHB Case No. 05-0025c (2005). The subject property was designated as Single Family Residential in 1995 and Auburn foresees the bulk of single-family residential communities developed at a density of four to six dwelling units per acre. *RCW 36.70A.110; Land Use Policy LU-14; Exhibit 36, Applicants' Response. (See also Finding of Fact Nos. 7-8, Sept. 2005 FCR* (noting factors to satisfy change in circumstances).

10. Auburn's Comprehensive Plan speaks to the development of residential housing at single-family densities that establish a balanced mix of housing types appropriate for a family-oriented community. When assigning the Comprehensive Plan's land use designation for the subject property, the City Council was to evaluate the ability to buffer the area by taking advantage of topographic variations, natural features, setbacks, and other means. The development of new neighborhoods is to be governed by flexible development standards that encourage compact urban development while protecting critical areas. These flexible development regulations are intended to provide a variety of housing types and site planning techniques so that a site can achieve its maximum

housing potential. *Chapter 3, Land Use Goal 7; Land Use Policy LU-14; Land Use Policy LU-17; Land Use Policy LU-20; Chapter 4, Housing Goal 7; Housing Objective 12.1; Housing Policy HO-34.*

11. As required by ACC 18.68, ACC 18.69, and ACC 17.06, analysis of the proposal's consistency with the Comprehensive Plan was provided for in the DEIS. The DEIS reviewed the goals and elements of the Comprehensive Plan pertaining to utilities, transportation, the environment, natural resources, natural and manmade hazards, and parks, recreation, and open space. The proposed PUD/plat was determined to be generally consistent with the Single Family Residential designation. The City of Auburn's Planning Director reviewed the rezone application for consistency with the Comprehensive Plan and determined that it was consistent. *Specific Findings of Fact Nos. 4-6, Sept. 2005 FCR; ACC 18.68.030(B)(1); ACC 18.69.150(B); ACC 17.06.070(B); Exhibit 1, Staff Report, Pages 8-10.*

12. As required by the State Environmental Policy Act (SEPA), RCW 43.21C, the City of Auburn acted as lead agency for identification and review of environmental impacts caused by the proposed PUD/plat. The Final Environmental Impact Statement (EIS) for the Kersey III project was issued on February 11, 2005. No appeals were filed. *Specific Findings of Fact No. 9, Sept. 2005 FCR.*

13. Public comment, both written and oral, was submitted in regards to the adequacy of the EIS at both the August 2005 hearing and the February 2006 Remand Hearing. Appeals of an EIS must be submitted to the Auburn City Clerk 14-21 days after issuance of the Final EIS. *ACC 16.06.230.* No appeal was filed and all challenges to the adequacy of the EIS are time-barred. As noted in the September 2005 FCR, although a challenge to the adequacy of the EIS can no longer be brought, the most important aspect of SEPA is the consideration of environmental values. The key purpose of an EIS is to ensure full disclosure and consideration of environmental information prior to the construction of a project. It is from the impacts disclosed in the EIS that the decision-maker can make an informed decision about the proposal. Public comment, both written and oral, submitted at the August 2005 hearing and the February 2006 Remand Hearing, provided further detail in this regard and therefore is permitted. *Specific Findings of Fact No. 10, Sept. 2005 FCR; Exhibit 22, Comments of Muckleshoot Tribe*[1]*; Exhibit 25, Comments of Galeno; Exhibit 29, Comments of Bykonen et al; Exhibit 30, Comments of Bykonen et al; Exhibit 33, Comments of Bykonen et al; Exhibit 36, Applicants' Response, Page 2.*

14. Agency and public comment, both written and oral, was submitted in regards to the impact of the proposed plat on the Auburn School District at both the August 2005 hearing and the February 2006 Remand Hearing. The anticipated increase in student population generated from the development was set at 0.59 students per dwelling unit, or 209 students. Submitted public comment stated that schools and the related

[1] Exhibit 22 is dated August 16, 2004 and were comments submitted during the DEIS review process. The Tribe's comments should have been taken into consideration when drafting the Final EIS. The Tribe's comments were not challenging the adequacy of the Final EIS.

transportation system were over capacity and that dangerous walking conditions were present along Kersey Way. The Auburn School District responded that the recent opening of Auburn Mountainview High School would provide capacity into the future to accommodate growth at the high school level. Two new elementary schools, including Lakeland Hills Elementary scheduled to open Fall 2006 and Elementary No. 14 (Lea Hill) scheduled to open Fall 2007, would provide additional capacity at the elementary level. The middle school level currently has capacity to accommodate growth but enrollment projections indicate that an additional middle school would be needed in the future and that the School District has begun planning for a new school. ACC 19.02 allows the City to collect school impact fees, approximately $4,500 per building permit, on behalf of the school district. Conditions of approval require the Applicants to pay this fee. *Specific Findings of Fact Nos. 14-15, Sept. 2005 FCR; Exhibit 19, Comments of Peters; Exhibit 24, Comments of Chaffee; Exhibit 27, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 34, Comments of Staples; Exhibit 36A, School District Comments; Testimony of Mr. Chaffee; Testimony of Ms. Koch; Testimony of Ms. Price; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong.*

15. Bus transportation would be provided for the plat with bus pick up/drop off areas along Evergreen Way. The Applicants would construct a 10-foot wide multi-use path along the site's frontage with Kersey Way. This path, along with sidewalks and crosswalks within the plat, would provide safe walking conditions for students to/from school. *Specific Findings of Fact Nos. 14-15, Sept. 2005 FCR; Exhibit 19, Comments of Peters; Exhibit 24, Comments of Chaffee; Exhibit 27, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 34, Comments of Staples; Exhibit 36A, School District Comments; Testimony of Mr. Chaffee; Testimony of Ms. Koch; Testimony of Ms. Price; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong.*

16. All lots are to be served with sanitary sewer service provided by the City of Auburn. Public comment was submitted in regards to the capacity of the system to accommodate additional sewage stemming from the proposed plat. Both the City and the Applicants are constructing improvements to the sewer system, including an interim pump station. A neighboring property owner asserted that the problem is not with the pump station but with the force mains that carry sewage away from the pump station. The neighbor argues that force mains at the Lakeland Hills pump station and the Ellingson pump station are not functioning properly and thereby have less capacity. City Public Works Staff testified that the sewer system is capable of handling the increased volume and, after replacement, the force mains are operating adequately. *Specific Findings of Fact No. 20, Sept 2005 FCR; Exhibit 1, Staff Report, Page 3; Exhibit 25, Comments of Galeno; Exhibit 36, Applicants' Response, page 5; Testimony of Ms. Galeno; Testimony of Mr. Husky.*

17. Public comments, both written and oral, were submitted in regards to the impacts on wildlife and their habitat. The EIS concluded that urbanization of the area would result in impacts to wildlife and habitat that were unavoidable including loss of vegetation,

fragmentation, and human encroachment. Public comments stated that several species of animals have been sighted on the subject property that were not accounted for in the EIS including Redheaded Woodpecker, Bald Eagle, Osprey, Pileated Woodpecker, and, historically, Salmon. Conditions of approval require that the Applicants install stormwater control technology that would eliminate/reduce sedimentation/erosion impacts in Bowman Creek and, subsequently, the White River. A Hydraulic Permit Approval (HPA) issued by Washington State Department of Fish & Wildlife would be required for construction near Bowman Creek and would address impacts to fishery resources. Open space and parkland would provide habitat and a corridor for wildlife species. Required fencing would delineate private property from open space/parkland and prevent encroachment. Disturbed areas would be re-vegetated with native species. *Specific Finding of Fact No. 19, Sept. 2005 FCR; Exhibit 1, Staff Report, Pages 7-9, 12; Exhibit 6, Applicants' Response Matrix, Page 4; Exhibit 15, Landscape Plan; Exhibit 19, Comments of Peters; Exhibit 20, Comments of Davis; Exhibit 22, Comments of Muckleshoot Tribe; Exhibit 29, Comments of Bykonen et al; Exhibit 30, Comments of Bykonen et al; Exhibit 33, Comments of Bykonen et al; Testimony of Mr. Chaffee; Testimony of Mr. Bykonen; Testimony of Ms. Knott; Testimony of Ms. Brooke; Testimony of Mr. Husky; Testimony of Mr. Armstrong.*

SPECIFIC FINDINGS IN RESPONSE TO THE CITY COUNCIL'S ISSUES ON REMAND:
In Resolution 3947, the Auburn City Council set forth eight specific issues for the Hearing Examiner to review and to determine how the proposed development addressed or affected these issues. Findings of Facts Numbers 18, 19, 20, 21, 22, 23, 24, and 25 address the City Council's specific issues.

18. City Council Remand Issue Number 1: Open spaces and the protection of sensitive environmental features, such as steep slopes, mature trees, wetlands, and scenic views.

A. Steep Slopes . The Applicants acknowledge that, as depicted in the DEIS (Figure 13), Division I contains identified Class I Known Landslide Hazard Areas (defined as slopes greater than 40%). However, the location of these areas on Figure 13 was based on a generalized map that is utilized as a first indicator source that ground reconnaissance and survey are done to further delineate the steep slopes. To supplement the slope information, the Applicants conducted a field survey in which the location of the slopes is more accurately shown (see Exhibit 5, Slope Exhibit Sheets 1 and 2). The slopes are primarily located with the open space tracts B, I, and Q and would be impacted by the construction of Evergreen Way, the main boulevard servicing the plat, and Kersey Way, the minor arterial from which access to the plat would be obtained. Construction of Evergreen Way would require cutting through a ridge and the construction of Kersey Way would require cutting of the slope to accommodate road widening. All impacts would be at 2:1 slope ratio. The maximum grade of Evergreen Way, in only two locations, would be 10%. Impacts to the steep slope areas are unavoidable, as these roadways are necessary for access to the plat.

B. Mature Trees On the subject property are four types of vegetative cover. Division I has a mature mixed-species forest and Division II has a young deciduous forest, mature coniferous forest, as well as a mature mixed-species forest. The BPA easement area is vegetated with shrubs and grasses. The loss of forest areas is an unavoidable impact of urbanization. The Applicants proposed the retention of native vegetation, including mature trees, in several tracts including B, G, H, and I of Division I, totaling approximately 3.7 acres, and tracts A and F of Division II, totaling approximately 1.4 acres. Some trees would need to be removed from Tracts B and I to accommodate road construction and from Tracts A for construction of the drainage facility. City construction standards require that no trees may project into the "clear zone" for roads or sidewalks. Impacted areas would be revegetated with appropriate tree species.

C. Wetlands There are no wetlands located within Division I and Division II. However, changes to existing surface and subsurface flows could affect the hydrology of off-site wetlands including several wetlands located in proposed Division 3 and two off-site streams, Bowman Creek and the White River, located North/Northwest of the plat. These impacts would be addressed and mitigated via stormwater drainage control design.

D. Scenic Views The residential portion of Kersey III is set back 200 to 600 feet from Kersey Way with a 35 foot building setback provided from properties to the east (zoned Rural Residential) and a 25 foot setback from properties to the south (zoned R-1 Residential). The topography of the site, along with both retained and new vegetation, would provide screening of the proposed PUD from existing low-density residential areas to the North/Northeast. Setbacks, along with a six-foot high solid wood fence constructed along the southern and eastern border of the plat, would provide buffering from adjacent lower density residential areas. No scenic views are anticipated to be obstructed.

E. Public Comments Public comments were received in regards to visual impacts (primarily due to headlights from traffic exiting the plat, loss of vegetation, and stormwater drainage design). Neighboring property owners asserted that the headlights of vehicles exiting the plat would shine directly into their homes and that construction of the Kersey Way/Evergreen Way intersection would result in removal of vegetation and erosion, impacting views.

Facts presented in Findings of Facts Numbers 18(A), 18(B), 18(C), 18(D), and 18(E) relied on the following evidence: *Exhibit 1, Staff Report, Page 7; Exhibit 6, Applicants' Response Matrix; Exhibit 9, Excerpts from DEIS; Exhibit 14, Applicants' Power Point; Exhibit 15, Landscape Plan; Exhibit 23, Comments of Fassbind; Testimony of Mr. Welsh; Testimony of Mr. Armstrong; Testimony of Mr. Siedel; Testimony of Mr. Pilcher; Testimony of Mr. Ferko; Testimony of Ms. Fassbind.*

19. City Council Remand Issue Number 2: Use of traffic management and design techniques to reduce potential traffic congestion, particularly along Kersey Way, and promote alternative modes of travel. Consideration should be given to applying the Lakeland PUD traffic impact fee structure in responding to similar impacts areas located south of the White River.

A. Traffic Management and Design Techniques Traffic Impacts (volume and safety) were the most frequently cited issues of public comment and testimony received at both the August 2005 and the February 2006 hearings. The Applicants prepared a transportation impact analysis (TIA) in March 2004 and amended this document in January 2005. The TIA Addendum concluded that all corridors affected by the development are expected to meet or exceed the LOS minimum threshold set by the City of Auburn, which is LOS-D with the proposed signalization in place.

The TIA and the EIS set forth several traffic mitigation measures, both on-site and off-site. The mitigation measures included: payment of impact fee; construction of half-street frontage improvements along Kersey Way; re-alignment of 53rd Street SE and Kersey Way; three-lane channelization (center turn lane) on Kersey Way; exclusive center left turn lanes on all legs of the re-aligned Kersey Way/53rd Street SE/Evergreen Way intersection; deceleration lane along Kersey Way at Evergreen Way; traffic signal and pedestrian crossings at re-aligned intersection of Kersey Way/53rd Street/Evergreen Way; active traffic signal warning signage for southbound Kersey Way; pedestrian treatments at the existing intersection crosswalk of Evergreen Way/Olive Way; traffic controls (round-about) at the intersection of Lakeland Hills Way and Evergreen Way; and the construction of Evergreen way from Lakeland Hills to Kersey Way.

B. Road Safety and Aesthetics The revised plat added several additional amenities to improve road safety and aesthetics. The additions included: safe pedestrian crossings (pavement markings and advance warning signage) at three locations on Evergreen Way; three-lane channelization on Evergreen Way including exclusive left-turn lanes at three locations; and center median landscaped planter islands along Evergreen Way to improve aesthetics and calm/slow. Conditions of approval would require that the Applicants extend the boulevard design throughout the plat, continuing west to Lakeland Hills.

C. Traffic Impact Fees Pursuant to ACC 19.04, the City of Auburn may collect impact fees for transportation facilities impacted by proposed development. In conjunction with the revised plat, City Planning Staff recommended that the Applicants pay the $940.36 Lakeland PUD Traffic Impact Fee in lieu of the City's standard traffic impact fee of $677.71. The Applicants submitted that they were not averse to paying the fee but requested that the City identify what the fee pays for. The Applicants asserted that, as required by RCW 82.02.020[2], prior to assessing the higher impact fee the City must demonstrate that the condition is necessary to mitigate an adverse impact of the project (a "nexus") and the extent of mitigation is proportional. (*Nollan v. California Coastal Commission,* 483 US 825 (1987); *Dolan v City of Tigard*, 512 US 374 (1994)).

The Lakeland PUD Traffic Impact Fee was established through an agreement between the developers of Lakeland Hills PUD and the Auburn City Council. The fee was assessed to address the unique transportation impacts that would be generated by the PUD. The proposed PUD/Plat is within the same geographic area as Lakeland Hills and the additional impact fee

[2] RCW 82.02.020 authorizes local governments to impose permit conditions on development if the conditions are reasonably related to the new development.

would allow for the construction of road improvements to serve the area, thereby promoting greater public safety and increased traffic flow.

D. Public Comments Public comments received on traffic impacts generated by the proposal included: the inadequacy of infrastructure to handle the increase in traffic volumes, noise and air pollution (exhaust emissions); safe walking/bicycling; evacuation route; and the impact of traffic controls (stop lights). Neighboring property owners argued that the proposed bike path along Kersey Way was a "path to nowhere," that the proposed traffic signal at Kersey Way/Evergreen Way/53rd Street would create backups during peak traffic times, and that Applicants did not mitigate noise and air impacts. Neighboring property owners stated that the existing neighborhood would be adversely impacted during construction of the proposed improvements to Kersey Way and during construction of the plat itself. Neighboring property owners asserted that Kersey Way is the main traffic corridor for the area, serving commuters, school buses, and trucks from the gravel pit, and that limiting improvements to the plat's frontage would create a funnel effect with negative impacts on traffic.

E. Applicants' Response to Public Comments In response to public concerns regarding traffic, The Applicants submitted testimony on measures being taken as part of the development to mitigate traffic impacts. The Applicants stated that the TIA concluded that the Kersey Way/53rd Street/Evergreen Way intersection would operate at LOS B at full build-out of Kersey III, well within an acceptable LOS range for the City. In addition, the TIA determined that an appropriate mitigation for unacceptable levels of service is signalization. Evergreen Way would provide an alternative route available to area residences during emergency situations. Conditions of approval require the Applicants to construct a 10-foot wide walkway along the subject property's frontage with Kersey Way. Although the walkway does not fully extend northward to the site of an existing sidewalk, the Applicants assert that they are paying their "fair share" of the development and that subsequent developments that are currently "in the pipeline' would be responsible for additional segments.

F. Fassbind Driveway Neighboring property owner Ms. Fassbind stated that she was uniquely affected by the proposed re-alignment of Kersey Way and 53rd Street due to the location of her driveway at this intersection and has not been contacted by the Applicants in this regard. Ms. Fassbind asserts that the proposed alignment would create an extremely dangerous situation for her and her family entering and exiting their property especially with a truck/trailer combination. The Applicants stated that the current re-alignment proposal for Kersey Way/53rd Street is tentative and that they would be in contact with Ms. Fassbind to discuss the final engineering design of the intersection and of the driveway, including alternative solutions such as the use of two driveways.

Facts presented in Findings of Facts Numbers 19(A), 19(B), 19(C), 19(D), 19(E), and 19(F) relied on the following evidence: *Specific Findings of Fact Nos. 5, 16-17, Sept. 2005 FCR; Exhibit 1, Staff Report, Pages 7, 21-25, 29; Exhibit 5, Preliminary Plat Map, Sheet 10; Exhibit 6, Applicants' Response Matrix, Pages 2-3; Exhibit 14, Applicants' PowerPoint/ Exhibit 19, Comments by Peters; Exhibit 20, Comments by Davis; Exhibit 21, Comments by Davis; Exhibit 23, Comments by Fassbind; Exhibit 24, Comments by Chaffee; Exhibit 32, Comments by Anderson; Exhibit 34, Comments by Staples; ; Exhibit 36, Applicants' Responses, Pages 3-4;*

Testimony of Ms. Fassbind; Testimony of Mr. Armstrong; Testimony of Mr. Pilcher; Testimony of Mr. Welsh; Testimony of Mr. Ferko.

20. City Council Remand Issue Number 3: The development of transitional areas between these projects and adjacent developments and environmentally sensitive areas.

A. Zoning Surrounding land uses consist of residential development and vacant land. Residential development is comprised of low (zoned R1 - 1 du/acre) and semi-rural (1 du/2.5 - 5 acres) densities to the east and south, with the possibility of higher density PUD development on the vacant parcel to the west (Kersey III, Division III). Parcels west of the proposed Kersey III, Division III site are comprised of Lakeland Hills, a high density PUD development. Parcels to the north are a mixture of vacant land (zoned R1) and natural (mineral) resource lands. The subject property has been zoned R-1 Single Family Residential (R1) since 1987 and was designated as Single Family Residential under the City's Comprehensive Plan in 1995. The Comprehensive Plan contemplates the bulk of single-family residential communities developed at a density of four to six dwelling units per acre. The Applicants proposed development at an overall density of 4.12 du/acre with lot sizes ranging from 4,000 to 8,354 square feet and averaging 4,990 square feet. The proposed density is consistent with City standards.

B. Comprehensive Plan Designation The Comprehensive Plan for the City of Auburn addresses the issue of transition in the context of incompatible land uses and densities. Policies of the Comprehensive Plan state the site design should utilize and preserve features, including topography, open spaces, and vegetation, to separate densities and that landscaped buffers or other measures should be utilized to separate uses.

C. Setbacks ACC 18.69.080(B) requires setbacks from the perimeter of the PUD that correspond to the requirements of the adjoining zoning districts. ACC 18.08.040(E)(4) requires a 35-foot rear yard building setback line (BSBL) within the RR zoning district and ACC 18.12.040(E)(4) requires a 25-foot rear BSBL within the R1 zoning district. Pierce County Code (PCC), Table 18A.17.030(B)(2)(1), requires a 10-foot rear yard setback within the MSF zoning district. The Applicants proposed a 35-foot BSBL on the eastern border of the site and a 25-foot BSBL on the subject property's southern border with Pierce County. Proposed residential development within the northern portion of the PUD/plat is set back 200 to 600 feet from Kersey Way and is further screened by vegetation and topography. The Applicant intends to construct a six-foot high solid wood fence along the southern and eastern borders to provide additional screening.

D. Public Comment Public comments were received on the issue of transition. Comments submitted stated that the transition from the dense Lakeland Hills PUD to the neighboring rural communities was to abrupt; that Kersey III should be a buffer zone between two extremes - the higher density development of Lakeland Hills and the existing lower density development to the east and south; and that the higher density would not blend with the existing rural neighborhood. Neighboring property owners argued that Kersey III provides no transition between low density (one acre lot), the proposed density (4,000 to 8,354 square feet), and the Lakeland Hills density

(7,200 to 10,000 square feet). Neighboring property owners also asserted that a 25-35 foot BSBL and/or a six foot high fence does not provide adequate buffering and/or screening of uses.

E. Environmental Sensitive Areas Environmentally sensitive areas are primarily contained within open space tracts. Recommended conditions of approval require a three to four foot high two-rail fence to separate all residential properties that border on an open space, park, or stormwater drainage area. The purpose of the fence is to delineate private property from common areas and to prevent encroachment by the property owner into the common areas. Maintenance of this fence shall be the responsibility of the Homeowners' Association.

Facts presented in Findings of Facts Numbers 20(A), 20(B), 20(C), 20(D), and 20 (E) relied on the following evidence: *General Findings of Fact No. 5, Sept. 2005 FCR; Specific Finding of Fact Nos. 2, 4, and 5; Sept. 2005 FCR; Chapter 3, Land Use Policies LU-26, LU-27, LU-28; Exhibit 1, Staff Report, Pages 7-9, 12; Exhibit 5, Preliminary Plat Cover Sheet; Exhibit 6, Applicants' Response Matrix, Page 4; Exhibit 19, Comments by Peters; Exhibit 20, Comments by Davis; Exhibit 27, Comments by Koch; Exhibit 36, Applicants' Response, Pages 5-6; Testimony of Mr. Gould; Testimony of Mr. Bykonen.*

21. City Council Remand Issue Number 4: The building and structural designs that complement surrounding land uses and their environment, reflecting quality site design, landscaping, and building architecture required under the Auburn PUD ordinance.

A. Design Standards ACC 18.69.080(D) provides design standards requirements for PUDs including building orientation, varied facades, continuity and compatibility of structures, colors, screening, lighting, and landscaping. The Applicants' architect, Patrick McBride, stated that the architectural intent behind Kersey III was to ensure consistent, compatible, and attractive residences which portray a sense of architectural integrity, quality, durability, residential character, and innovative design. Residences are to be designed on a pedestrian scale with sensitivity to the site. Site design elements proposed for the development include variations in footprint and/or orientation on the lot; front setbacks; driveway locations and materials; accent materials such as natural stone, columns, and shutters; front porches that promote pedestrian connectivity; decks and other architectural features; de-emphasis of garages by blending garage doors with the character of the residence; differing roof types and window designs; and spacing of homes with identical elevations. The Applicant submitted a Preliminary Overall Landscape Plan that depicts areas to maintained with native vegetation, park amenities, and street tree landscaping.

B. Lot Coverage The Applicants assert that in order to meet (ACC 18.69) PUD standards for quality site design and building architecture the lot coverage variance must be granted. The Applicants stated that the five- percent increase in allowable lot coverage is to allow flexibility in home design that would satisfy the PUD guidelines and prevent a "cookie cutter" look with all homes sharing a similar footprint.

C. Public Comments Public comments were received on the issue of design. Neighboring property owners stated that the Applicants' revised proposal reduces the total number of residences by six and modifies the average lot sizes from 3,800 square feet to 8,400 square feet to 4,000 square feet to 8,400 square feet with only 10 lots greater than 7,000 square feet. Neighboring property owners argued that the proposed design does not create compatibility with Lakeland Hills which has lots ranging from 7,200 square feet to 10,000 square feet nor does it have the look and feel of sub-communities similar to Lakeland Hills. Neighboring property owners assert that the proposed PUD/plat does not provide the quality of design required by ACC 18.69.

Facts presented in Findings of Facts Numbers 21(A), 21(B), and 21(C) relied on the following evidence: *Exhibit 1, Staff Report, Pages 5 and 7; Exhibit 6, Applicants' Response Matrix, Pages 4-5; Exhibit 7, Applicant's PowerPoint and Architect Narrative; Exhibit 15, Landscape Plan; Exhibit 26, Comments by Galeno; Exhibit 36, Applicants' Response, Page 6; Testimony of Mr. McBride; Testimony of Mr. Ferko; Testimony of Mr. Norris; Testimony of Mr. Galeno.*

22. City Council Remand Issue Number 5: The parks and open spaces, and the adequacy of parks and open spaces located under Bonneville Power Administration power lines.

A. Parks and Open Space Requirement ACC 18.69.080(A)(1) requires each PUD to set aside 20% of the gross area of the PUD as open space, which amounts to 17.86 acres for the Kersey III, Division I and II. Non-buildable areas (areas of greater than 25% slope, wetlands, or floodways (ACC 18.6.030(G)) may be used to meet no more than 50 percent of the open space area requirement. ACC 18.69.080(A)(2) provides that each PUD must meet the City's Park Plan standards for park dedication. Current standards are 6.03 acres of unimproved park land for every 1000 population of the plat. The City permits the required open space to meet all or a portion of the required parkland. The Applicants proposed 368 single-family residences, or approximately 920 people (based on 2.5 persons per residence), for a total requirement of 5.55 acres of park land.

As part of the Applicants' original proposal, all of the park space and a large percentage of open space were being provided within Division I. In the proposal for open space and parks, land encumbered by the Bonneville Power Administration (BPA) easement is the only site for active and passive recreation opportunities. Open space summary for the first proposal included 28.94 acres of open space (stormwater drainage, open space, parkland, entry signage, pedestrian pathways) with 15.82 acres in areas of less than 25%. Of the 15.82 acres, a total of 6.11 acres was designated as park land. In the revised proposal, the Applicants increased both the amount of open space and parkland, providing four new parks with two parks for active recreation and two for passive recreation. Open space now includes 29.64 acres (33.19% of gross area) with 18.12 acres in areas of less than 25%. A total of 9.17 acres has been designated as parkland (includes open space, parks, and pedestrian pathways but not acreage within the BPA easement) with the parks dispersed throughout both Division I and Division II as opposed to centrally located. The total park space is in excess of the amount required by the City's Park Plan. All of the proposed park facilities would be built by the Applicants concurrently with the plat.

B. BPA Easement The western 300 feet of Parcels 322105-9015 and 322105-9017 (Division I) are encumbered by an easement held by the BPA for a high-voltage power transmission lines. The BPA easement encompasses approximately 12.51 acres. In both the original and the revised proposals, the Applicants would utilize this area to satisfy both open space and park requirements for the development. On August 30, 2005, the Applicants entered into a Land Use Agreement with BPA allowing for the construction/installation of roads, utilities, trails, landscaping, a park, and park appurtenances within the easement. BPA has entered into similar relationships with other developers within the Puget Sound Area as it provides an efficient use of land and assures maintenance of the BPA easement. The Land Use Agreement contained 15 conditions including the location of structures in relationship to BPA transmission line towers, landscaping, and a minimum path width of 16 feet.

C. Revised Parks and Open Space Plan The revised proposal would retain the BPA easement area in open space and provide a walking trail. The Applicants' drawings note the path width as 12 feet as opposed to the 16 feet width required under the Land Use Agreement. Walking trails would also be provided in Tract B (Division I) and Tract F (Division II). The walking trail in Tract B would provide a par-course (exercise stations). A playground area would be provided in Tract Q (Division I) and Tract P (Division II). Tract P would also have a half-court sports court. Tract Q would have a sports field, including baseball diamond, a full basketball court, open lawn area, and walking trail. All park areas would have picnic tables and benches. On-street parking would be provided in the vicinity of the active recreations areas (ballfield and playgrounds) including along Roads A, E, G, and K. Pedestrian pathways throughout the plat allow for safe walking to and from park areas.

D. Vegetation All parks would retain existing vegetation when possible. Tree removal would be required in Tract B and Tract I to accommodate road construction and in other open space/park tracts to allow for the construction of recreational amenities (ballfields, playgrounds, walking trails) and stormwater drainage.

E. City Review The City of Auburn Park's Department and City Parks and Recreation Board reviewed the Applicants' proposal. Although the City did not grant full credit for the use of land encumbered by the BPA easement, it determined that the Applicant's proposal conforms to City standards.

Facts presented in Findings of Facts Numbers 22 (A), 22(B), 22(C), 22(D), and 22(E) relied on the following evidence: *Specific Findings of Fact No. 21, Sept. 2005 FCR; Specific Findings of Fact No. 22, Sept. 2005 FCR. Exhibit 1, Staff Report, Pages 4, 5, and 7; Exhibit 5, Preliminary Plat, Sheets 3-5; Exhibit 6, Applicants' Response Matrix, Page 7-8; Exhibit 8, BPA Land Use Agreement; Exhibit 15, Preliminary Plat/PUD Plans; Exhibit 15, Landscaping Plan; Testimony of Mr. Pilcher; Testimony of Mr. Scamporlina; Testimony of Mr. Ferko; Testimony of Mr. Siedel.*

23. City Council Remand Issue Number 6: Incorporation of adequate notification to future lot owners of the adjacent surface mining operations.

A. Surface Mining At the August 2005 hearing, public comments were received with regards to the impact on neighboring natural resource lands, a 664-acre gravel mining operation owned by Segale Properties/ICON Materials lying north of the site. Segale/ICON expressed concern that a dense residential development would have the potential for generating homeowner complaints pertaining to air, noise, light, traffic, and safety. Furthermore, Segale/ICON submitted the construction of Kersey III would generate traffic congestion and other safety situations, impacting the mine's operation. Conditions of approval require that a notice be placed on the final plat, all building permits, and all individual lot deeds as required by RCW 36.70A.060.

B. Modified Condition of Approval For the February 2006 Remand Hearing, Segale/ICON Properties submitted additional comments, seeking to modify a condition to make it more clear to potential buyers that mining activities are currently on-going at the site. This condition would protect the mining activities as well as the interests of the City and the developers. The wording proposed by Segale/ICON is acceptable to the Applicants and the City.

Facts presented in Findings of Facts Numbers 23(A) and 23(B) relied on the following evidence: *Specific Findings of Fact Nos. 11; 12, and 13, Condition No. 1, Sept. 2005 FCR; Exhibit 6, Applicants' Response Matrix, Page 7; Exhibit 17, Correspondence from Segale; Testimony of Mr. Pilcher.*

24. City Council Remand Issue Number 7: Protection of waterways and the development's proposed stormwater system.

A. Water Supply Water would be supplied by the City of Auburn - Valley Water System. Existing water supplies are sufficient to serve the needs of the development. The Applicants would be required to construct a booster pump station at the corner of Oravetz Road and Kersey Way SE and extend a water line along Kersey Way and Evergreen Way, connecting to the existing lines in the Lakeland Hills development. Although the PUD/Plat would be served by City water, adjacent properties are served by private wells. Documentation was not submitted as part of the record in regards to impacts on the sanitary control areas (SCA) for the private wells.

B. Private Wells Neighboring property owners stated that wells in the area have gone dry and the City has been forced to request supplemental water from the City of Bonney Lake. In addition, the neighbors asserted that the City has given no assurance as to what impact the PUD/Plat, or the recent sale of water rights, would have on the water level in Lake Tapps and, subsequently, the City's aquifers.

C. Protection of Waterways Bowman Creek lies north of the subject property and is a tributary to the White River. The creek was a fish-bearing creek, supporting spawning grounds for salmon and bull trout populations. As noted in the DEIS, the creation of impervious surface within the project site would cause an increase in stormwater flow volumes that could cause downstream channel and bank erosion. The Applicants proposed to collect and convey stormwater to a standard two-cell wet/detention pond via catch basins and underground storm

drainage pipes prior to discharge into Bowman Creek. The drainage facilities, designed to the City's standards, are located on Tract A of both Division I and Division II and would operate as a single unit. An energy dissipater would be installed to reduce erosion and the admission of sediment into the creek system. The revised PUD/Plat contains modifications to the drainage facilities which increase both pond volume and wetpond surface area. Recommended conditions of approval incorporate high standards of design (100-year flood event) and enhanced erosion control features. The drainage facilities would be landscaped to screen from adjacent residential development.

D. Public Comments Public comments were received into the record pertaining to storm water and water quality with many of the comments pertaining to impacts on Bowman Creek. Testimony voiced concern for both sediment and pollutant run-off that could impact Bowman Creek's water quality and fish and bird habitat. The Applicants asserted that while the development of the Kersey III PUD would not be the cause of the salmon's departure, development should not prevent restoration of water quality and the return of salmon. The Applicants stated that the design of the stormwater system should not prevent restoration.

Facts presented in Findings of Facts Numbers 24(A), 24(B), 24(C), and 24(D) relied on the following evidence: *Exhibit 1, Staff Report, Page 7; Exhibit 5, Preliminary Plat Map, Sheets 7, 9; Exhibit 6, Applicants' Response Matrix, Pages 7-8; Exhibit 14, Applicants' PowerPoint; Exhibit 15, Landscape Plan; Exhibit 22, Comments of Muckleshoot Tribe; Exhibit 23, Comments of Fassbind; Exhibit 27, Comments of Koch; Exhibit 31, Comments of Koch; Exhibit 32, Comments of Anderson; Exhibit 36, Applicant's Response, Page 5; Testimony of Mr. Pilcher; Testimony of Mr. Armstrong; Testimony of Mr. Chaffee; Testimony of Mr. Bykonen; Testimony of Ms. Koch; Testimony of Ms. Brooke.*

25. City Council Remand Issue Number 8: Application of the Lakeland Fire Impact Fee to aid the City in developing fire facilities to serve the area south of the White River.

A. Impact Fees Comments from the Auburn Fire Department were not submitted into the record for the August 2005 public hearing nor for the February 2006 Remand Hearing. Impacts on the fire services were considered during environmental review (*Exhibit 7, DEIS, Pages 117-119, Sept. 2005 FCR*). To mitigate these impacts, City Planning Staff recommended that the Applicants pay a $470.16 Lakeland Fire Impact Fee in lieu of the City's standard fire impact fee of $290.13.

The Applicants are not averse to paying the fire impact fee but requested that the City identify what is the reason for the fee. The Applicants asserted that, as required by RCW 82.02.020[3], prior to assessing the higher impact fee the City must demonstrate that the condition is necessary as mitigation for an adverse impact of the project (a "nexus") and the extent of mitigation is

[3] RCW 82.02.020 authorizes local governments to impose permit conditions on development if the conditions are reasonably related to the new development.

proportional. (*Nollan v. California Coastal Commission*, 483 US 825 (1987); *Dolan v City of Tigard*, 512 US 374 (1994)).

The Lakeland Fire Impact Fee was established through an agreement between the developers of Lakeland Hills PUD and the Auburn City Council. The fee was assessed to address fire department service in the remote location of the PUD and the lack of a fire station within close proximity to the PUD. The proposed PUD/Plat is within the same geographic area as Lakeland Hills and the additional impact fee would allow for the construction of additional facilities to serve the area, thereby promoting greater public safety.

B. Public Comment Public comments were received on the issue. Neighboring property owners stated that the City of Auburn is currently experiencing explosive growth that is putting a strain on emergency services providers, such as police and fire. According to the neighbors, the nearest fire station is by the SuperMall, some 12 minutes away from the plat.

Facts presented in Findings of Facts Numbers 25(A) and 25(B) relied on the following evidence: *Exhibit 1, Staff Report, Pages 7 and 15; Exhibit 6, Applicant's Response Matrix, Page 8; Exhibit 28, "Sound the Alarm..."; Exhibit 36, Applicants' Response; Testimony of Mr. Pilcher; Testimony of Mr. Ferko.*

CONCLUSIONS

Jurisdiction:

Pursuant to Auburn City Code (ACC) 18.66, the Hearings Examiner is granted jurisdiction to hear and make recommendations to the City Council. Jurisdiction for the Hearings Examiner to make recommendations for an application for rezone is pursuant to ACC 14.03.040(D) and 18.68.030, for approval of an application for a PUD is pursuant to ACC 18.69.140, and for approval of a preliminary plat is pursuant to ACC 14.03.040(A) and 17.06.050.

Criteria for Review:

Along with the requirements set forth by the Washington State Supreme Court (rezones must be based on a change in neighborhood conditions and bear a substantial relationship to the public health, safety, and general welfare - *Parkridge v. Seattle*, 89 Wn.2d 454 (1978), in order to APPROVE A REZONE, the Hearings Examiner must find that the following criteria, as set forth in ACC 18.68, are satisfied:

1. The rezone shall be consistent with the Comprehensive Plan.
2. The rezone was initiated by a party, other than the City, in order for the Hearing Examiner to hold a public hearing and consider the request.
3. Any change or modification to the rezone request made by the Hearing Examiner or the City Council shall not result in a more intense zone than the one requested.

In order to APPROVE A PUD, the Applicant must satisfactorily demonstrate that the proposed PUD achieves, or is consistent with, in whole or in part, desired public benefits and expectations. Pursuant to ACC 18.69.150, the proposal must demonstrate sufficient findings of facts to support the following:

1. The proposal contains adequate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, or sites for schools.
2. The proposal is in accordance with the goals, policies, and objectives of the comprehensive plan.
3. The proposal is consistent with the purpose of ACC 18.69, provides for the public benefits required of the development of PUDs by providing an improvement in the quality, character, architectural and site design, housing choice and/or open space protection over what would otherwise be attained through a development using the existing zoning and subdivision standards.
4. The proposal conforms to the general purposes of other applicable policies or plans which have been adopted by the City Council.
5. The approval of the PUD will have no more of an adverse impact upon the surrounding area than any other project would have if developed using the existing zoning standards of the zoning district the PUD is located in.
6. The PUD must be consistent with the existing and planned character of the neighborhood, including existing zoning and comprehensive plan map designations, and the design guidelines set forth in ACC 18.69.080(D).

In order to APPROVE A PRELIMINARY PLAT, pursuant to ACC 17.06.070, the Applicants must have provided support for the following:

1. Adequate provisions are made for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, and sites for schools and school grounds.
2. Conformance to the general purposes of the City of Auburn's Comprehensive Plan, to the general purpose of Title 17.02, and to the general purposes of any other applicable policies or plan which have been adopted by the City Council.
3. Conformance to the City of Auburn's zoning ordinance and any other applicable planning or engineering standard and specifications.
4. Potential environmental impacts of the proposal have been mitigated such that the proposal will not have an unacceptable adverse effect upon the quality of the environment.
5. Adequate provisions have been made so that the preliminary plat will prevent or abate public nuisances.

In order TO APPROVE A VARIANCE, pursuant to ACC 18.70.010, the Hearing Examiner must find facts in support of the following:

1. Unique physical conditions or exceptional topographical or other physical conditions peculiar to and inherent in the property which create practical difficulties or unnecessary hardship.
2. Strict conformity with Title 18 would not allow a reasonable and harmonious use of the property.
3. Variance would not alter the character of the neighborhood or be detrimental to surrounding properties.
4. Circumstances justifying variance are not a result of the Applicants.
5. Literal interpretation of Title 18 would deprive Applicants of rights commonly enjoyed by other properties in the same zoning district.
6. Approval of the variance is consistent with the purpose of Title 18, the Comprehensive Plan, and the zoning district in which property is located.
7. Variance would not allow for increased density.

Conclusions Based on Findings:

1. The rezone, PUD, and Preliminary Plat are consistent with the Comprehensive Plan, other applicable goals and policies of the City Council, and the ACC.

The Director of Planning correctly determined the proposal was consistent with the Comprehensive Plan. Conclusions in the EIS concurred with this result, finding several goals and policies of the Comprehensive Plan satisfied by the development, including improving the City's transportation network; creating and maintaining park land and open space; developing diversity of architectural design; providing for adequate urban density; improvement to the City's public utility (water/sewer) system; and protecting streams and natural areas. The goals and policies of the City Council are embodied in the City's Comprehensive Plan and ACC. The Applicants' proposal is consistent with the City's Park Plan and Non-Motorized Plan. Proposed design standards comply with the purpose and intent of ACC 18.69. *General Findings of Fact Nos. 2 and 5, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, 4, 6, 7, and 8, Sept 2005, FCR; Findings of Fact Nos. 2, 3, 5, 9, 10, 11, and 12, Feb 2006 Remand Hearing.*

Rezone Criteria

2. The rezone was initiated by the Applicant-Property Owner and not the City.

Pursuant to ACC 18.68.030(B)(1), in order for the Hearing Examiner to consider a rezone request, the City may not initiate the rezone. The Applicants are the owners of the property subject to the rezone. *Finding of Fact Nos. 1 and 3, Feb 2006 Remand Hearing.*

3. Conditions in the area have substantially changed and the rezone bears a substantial relationship to the public health, safety, morals, or general welfare.

The Applicant has the burden of proof in demonstrating that conditions have substantially changed since the original zoning and that the rezone bears a substantial relationship to the public health, safety, morals, or general welfare. *Parkridge v. Seattle,* 89 Wn.2d 454

(1978). A variety of factors may satisfy a change in circumstances, including changes in public opinion, local land use patterns, and on the property itself. *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. 1, 1995). The City and the Applicants stated that the area where the subject property is located has experienced significant development as a result of the Lakeland Hills PUD; population growth within the City of Auburn; overall market conditions in Puget Sound which are creating a demand for smaller lots; topography making the land more suitable for the flexibility of a PUD zoning district; compliance with the urban density requirement of the GMA; and compatibility with the existing PUD community. Development of the site would provide new homes for the growing community and improvements to infrastructure. Changes in both land use patterns and public opinion, along with the requirements of the GMA and the Comprehensive Plan designation, provide justification for the rezone. *General Findings of Fact Nos. 2 and 5, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, 4, 6, 7, and 8, Sept 2005 FCR; Findings of Fact Nos. 2, 9, and 10, Feb 2006 Remand Hearing.*

4. **The Hearing Examiner is not recommending any change or modification to the rezone request that will result in a more intense zone than the one requested by the Applicant.**

Planned Unit Development/Preliminary Plat Criteria

5. **The PUD/plat proposal contains adequate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets, alleys, water supplies, sanitary wastes, parks, playgrounds, or schools.**

The Applicants have made provisions for internal streets with sidewalks for pedestrian safety, these include safe walking for school children and pedestrian passage ways for park and open space access. The EIS mitigation measures and conditions of approval would provide for traffic improvements and traffic control/calming devices to ensure safety within and to the community. The development would be served by City water and sanitary sewer. Storm water facilities would collect and convey run-off, utilizing an energy dissipater to reduce sedimentation output. Applicants have provided for a total of 29.64 acres of open space, of which 9.17 acres are to be developed for both active and passive recreation with an additional 12.51 acres of open/park space provided within the BPA easement. The open/park space is generally provided in a contiguous block so as to provide corridors for wildlife. The PUD would be served by City of Auburn water and sanitary sewer, both of which have adequate capacity to serve the needs of the community. School impact fees would mitigate the increase in student population. Development of over 350 homes at varied price levels serves the general welfare and growing housing needs of the community. *Specific Findings of Fact Nos. 14, 15, 16, 18, 20, 21, and 22, Sept 2005 FCR; Findings of Fact Nos. 14, 15, 16, 17, and 18(B)-(C), 19(A)-(F), 21(A)-(C), 22(A)-(E), and 24(A)-(D), Feb 2006 Remand Hearing.*

6. **The proposal is consistent with the purpose of ACC 18.69, and provides for the public benefits required of the development of PUDs such as preservation of natural amenities, creation of pedestrian-oriented communities, efficient use of land, development of transitional areas, innovative/aesthetic building and**

structural design, creation of parks and open spaces, provision for affordable housing.

A PUD must provide certain public benefits. The Applicants proposed to preserve natural amenities and sensitive areas through the use of open spaces and parkland. The preliminary plat and its associated conceptual design demonstrate a pedestrian-oriented community with sidewalks, pedestrian passageways, and parks for both active and passive recreation that are dispersed throughout the development. The plat is structured to utilize the property efficiently by layout, house design, and open space. Homes would not be facing the residential collector, Evergreen Way SE, and would be separated from the arterial collector, Kersey Way SE, by 200 to 600 feet of open space. Setbacks and privacy fencing would separate the development from adjoining low-density residential areas. The Applicants proposed a variety of architectural styles, providing a varied streetscape, and have submitted landscape plans. The Applicants proposed over nine acres of active and passive recreation parklands with additional acreage provided by the BPA easement. Affordable housing is a concern within the entire Puget Sound area and the PUD/plat would provide homes ranging in price from $400,000 to $700,000, providing a range of options for potential buyers. *Specific Findings of Fact Nos. 4, 5, 14, 15, 16, 18, 19, 20, 21, 22, and 23, Sept 2005 FCR; Findings of Fact Nos. 5, 6, 18(A)-(D), 21(A)-(C), 22(A)-(E), Feb 2006 Remand Hearing.*

7. The approval of the PUD will have no more of an adverse impact upon the surrounding area than any other project would have if developed using the existing zoning standards.

The property is currently zoned R-1, which could allow for development of up to 89 dwelling units on site. However, probably only 60-65 dwelling units would be allowed to be constructed due to the presence of non-buildable areas (steep slopes, BPA easement), infrastructure, and park requirements. Applicants seek to develop 368 dwelling units. Development of over 350 dwelling units would undoubtedly have more impact than the existing zoning standard but the PUD is providing a significant amount of open space, park land, and infrastructure improvements to the community. Connection to City water and sewer would have less impact on groundwater quality and quantity then installation of private wells and/or on-site septic systems. Location and design of open space would provide a contiguous corridor for wildlife and scenic views. Development of the site with homes on one acre lots would result in substantially more fragmentation, creating greater impacts on wildlife and associated habitat along with scenic view corridors. *Specific Findings of Fact Nos. 2, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, and 23, Sept. 2005 FCR; Findings of Fact Nos. 1, 9, 10, 13, 14, 16, 17, 18(D), 20(A), 20(E), and 22, Feb 2006 Remand Hearing.*

8. The PUD is consistent with the existing and planned character of the neighborhood.

Surrounding land use consists of natural resource land (gravel pit), low-density residential development, and the Lakeland Hills PUD. The Comprehensive Plan

designation for the area is Single-Family Residential which endeavors to develop land with this designation at a density of four to six dwelling units per acre. Development would be consistent with the character of the neighboring Lakeland Hills community and with the Comprehensive Plan designation. The PUD would be screened from low-density development in the north/northwest by the site's topography and the retention/enhancement of vegetation. The Applicants would provide 25 to 35 foot rear yard setbacks and privacy fencing to buffer low-density development to the east and south. Conditions of approval would require a minimum of one tree per rear yard to further buffer between adjacent uses. *General Findings of Fact No. 2, Sept 2005 FCR; Specific Findings of Fact Nos. 2, 3, and 8, Sept 2005 FCR; Findings of Fact Nos. 3, 4, 10, 11, 18(B), 20(A)-(E), 21(A), 21(C), Feb 2006 Remand Hearing.*

9. The PUD and Preliminary Plat conforms to the City of Auburn's zoning ordinance and any other applicable planning or engineering standards and specifications and to other applicable policies or plans adopted by the City Council.

With conditions, the Applicants' proposal for the PUD complies with all related City codes and standards. *Specific Findings of Fact No. 23, Sept 2005 FCR; Findings of Fact Nos. 11, Feb 2005 Remand Hearing.*

10. Potential environmental impacts of the proposal have been mitigated such that the proposal will not have an unacceptable adverse effect on the quality of the environment.

According to the EIS, wildlife and their associated habitat would be directly affected and no mitigation measures were available to ameliorate this impact. Wildlife would suffer from loss of native vegetation, fragmentation of habitat, reduction in native populations, and disturbance in retained habitat due to human encroachment. While these impacts can not be adequately mitigated, none of the impacted species is listed as endangered, threatened, or sensitive pursuant to the Endangered Species Act. The design of open/park space does provide habitat for wildlife in a contiguous, as opposed to fragmented manner, and retention of native vegetation would assist in preserving habitat. In addition to wildlife impacts, off-site streams would be effected by the increase in impervious surface that would affect the hydrology of the area due to a change in recharge patterns. The Applicant would be required to provide technology to control sediment/erosion thereby lessening impacts to water resources and fisheries habitat. Public Services - Police, Fire, Schools - would all be impacted by the increased population generated by the development. Conditions of approval require the Applicants to pay impacts fees to mitigate these public service impacts, including fire and traffic impacts fees higher than those that are mandated under the ACC. *Specific Findings of Fact Nos. 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, and 22, Sept 2005 FCR; Findings of Fact Nos. 12, 13, 14, 15, 16, 17, 18(A)-(E), 19(A)-(F), 20(E), 22(A)-(E), 23(A), 24(A)-(D), and 25(A)-(B).*

11. **Adequate provisions have been made so that the preliminary plat will prevent or abate public nuisances.**

Public Nuisances are addressed generally throughout the ACC and are addressed directly in ACC 8.12. A public nuisance affects public health and property values by creating visual blight, harboring rodents and/or pests, or creating unsafe pedestrian and traffic situations. Compliance with City design standards for road safety (width, sidewalks, and visibility) would ensure safe pedestrian and traffic access within the development. As conditioned the development of a Homeowners' Association and the associated Covenants, Conditions, and Restrictions would ensure that visual blights and dangers to public health are reduced/eliminated, thereby promoting both general public welfare and property values. *Specific Findings of Fact Nos. 16, Sept 2005 FCR*

Variance Criteria

12. **The subject property does not possess physical conditions or exceptional topographic features that warrant deviating from the applicable design requirements nor does strict conformity with ACC Title 18 fail to allow reasonable and harmonious use of the property which would justify a variance.** *Findings of Fact Nos. 6, 21(A)-(C), Feb 2006 FCR.*

RECOMMENDATION

Based on the Findings of Facts and Conclusion of law, the Hearing Examiner recommends to the Auburn City Council that the request for a variance from the required lot coverage be **DENIED.**

Based upon the preceding Findings of Fact and Conclusions, the Hearing Examiner **RECOMMENDS APPROVAL** of the request for a rezone of 89.31 acres from R-1 Single Family Residential to PUD, approval of the PUD, and approval of the Preliminary Plat, subject to the following conditions:

1. Pursuant to RCW 36.70A.060, the following notice shall be placed on the final plat and on all building permits and deeds issued within the Kersey III development (Division I and Division II):

> NOTICE: This property is near designated mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development. The owner of the mineral resource lands may, at any time, apply to the City for a permit for mining-related activities including, but not limited to, mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

2. Prior to the issuance of final plat approval for any phase containing an open space tract, the Applicants shall submit, or enter into an agreement to submit, a Declaration of Covenants, Conditions, and Restrictions that conforms to the requirements of ACC 19.69.200.

3. As part of the engineering/construction drawings submitted for the construction of interior improvements to the subdivision, Applicant shall also submit engineering/construction drawings for the construction of all park improvements as depicted on the drawings submitted (Exhibit 5). The park improvements shall be approved by the City of Auburn's Parks Director prior to the approval of the construction drawings for the plat. Any materials supplied and installed for the parks must meet current City Parks Department standards and be approved by the Parks Director prior to installation and final plat approval.

4. Proposed Conditions, Covenants, and Restrictions (CC&Rs) for the future Kersey III Homeowners' Association shall be submitted for review and approval by City Staff prior to final plat approval. This document shall include architectural design criteria for new homes and specify the financial means of maintenance of all common open spaces.

5. Home designs shall be consistent with the Kersey 3 Division I & II Conceptual Building Design Guidelines dated January 9, 2006 and the submitted conceptual drawings and photographs submitted with the application. The Architectural Design Guidelines shall be incorporated into the CC&Rs for the project. The final design guidelines shall include a color palette for proposed house exterior colors. In addition, the following conditions shall apply.

    a) Homes shall feature multiple roof pitches on their street-facing facades.
    b) Garages shall be set back a minimum of 20 feet from the front property line. No more than a two-car garage shall be used; tandem parking is acceptable.
    c) Home designs shall be varied such that no more than two homes sharing the same floor plan are located adjacent to one another

6. Final landscaping design shall be generally consistent with the Preliminary Overall Landscaping Plan, dated March 7, 2005, which was included with the Applicants' resubmittal for rezone, PUD, and preliminary plat approval (Exhibit 5, Sheets 3-5). The Applicants shall maximize the use of native and/or drought-resistant plants throughout the plat, including park and landscaped open space areas. Emphasis should be on the use of native vegetation, thereby mitigating the loss of native vegetation.

7. All lots abutting low-density residential development (Division I Lot numbers 19-62 and Division II Lot numbers 17-49) shall have, at a minimum, one tree in the rear yard setback to buffer the adjacent development from the PUD.

8. Any entrance sign shall be a low monument style with accenting landscaping. The number, style, and placement of signs and associated landscaping shall be approved by the Planning Director.

9. Fencing along the boundary of the plat shall be of consistent material, style, and color. The Planning Director shall approve such fences, which shall be equivalent to a six foot high solid wood fence. Any fencing to be erected adjacent to any of the planned pedestrian

pathways requires the approval of the Planning Director. All residential properties that border on a native/open space, park, or drainage tract (Tract A, B, C, D, and I) shall be separated from these areas by use of a two- rail wooden fence of approximately three to four feet in height. This fence shall delineate the property line and prevent encroachment by the property owner into the native/open space, park, or drainage tract.

10. Approval of the rezone and PUD are valid only upon approval and execution of the associated preliminary plat.

11. Applicants shall comply with all of the mitigation measures as noted on pages 9-19 of the Kersey III Preliminary Plat Final EIS (Exhibit 8 of the August 2005 Hearing), dated February 2005, and as otherwise noted throughout this recommendation.

12. Applicants shall construct a traffic signal at Evergreen Way SE and Kersey Way SE. This traffic signal must be constructed to the satisfaction of the City Engineer.

13. Applicants shall construct an active warning signal on southbound Kersey Way SE in advance of the intersection of Kersey Way SE and Evergreen Way SE. This active warning signal must be constructed to the satisfaction of the City Engineer.

14. Applicants shall provide auxiliary lanes at the intersection of Evergreen Way SE and Kersey Way SE. These auxiliary lanes must be constructed to the satisfaction of the City Engineer.

15. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic controls to the satisfaction of the City Engineer at the intersection of Lakeland Hills Way and Evergreen Way SE. These traffic controls shall be designed and constructed as a round-about unless the City Engineer determines, based on design, that a round-about is not feasible. If the City Engineer determines that a round-about is not feasible, then the traffic controls shall be designed and construction as a traffic signal.

16. Prior to any final plat approvals, Applicants shall construct or post financial security for traffic calming and pedestrian safety amenities on Evergreen Way SE, in the vicinity of the park area near Olive Avenue. These traffic calming and pedestrian safety amenities must be constructed to the satisfaction of the City Engineer.

17. The EIS states that there are unavoidable significant impacts on the environment, namely impacts on wildlife populations and their associated habitat. Two main impacts pertain to loss of native vegetation and fragmentation of habitat. Applicants shall endeavor to provide for preservation of a wildlife habitat by creating a corridor containing native vegetation, thereby mitigating these impacts.

18. Applicants shall engage in meaningful consultation with the Auburn School District. Communications should not merely seek to ensure that the school district can provide transportation, but that schools have the capacity to serve the students generated by the proposal without burdening or creating overcapacity at any school. Applicants shall be

responsible for all school impact fees in a manner consistent with local and state law requirements.

19. Prior to issuance of clearing or grading permits, a grading plan for grading and clearing necessary for both the construction of infrastructure such as roads and utilities and for lot grading shall be submitted and approved by the City of Auburn. The purpose of the plan should be to accomplish the maximum amount of grading at one time to limit or avoid the need for subsequent grading and disturbance, including grading of individual lots during home construction. The plan shall identify the surveyed boundary of the crest slopes for the site's 40% or greater slopes. This plan shall show quantities and locations of excavations, and embankments, the design of temporary storm drainage detention system, and methods of preventing drainage, erosion and sedimentation from impacting adjacent properties, natural and public storm drainage systems and other near by sensitive areas. Temporary detention facilities shall be designed with a 1.5 safety factor applied to the post-developed calculated pond design volume for the 25-year, 24-hour post–developed storm event. All the measures shall be implemented prior to beginning phased on-site filling, grading or construction activities.

The grading plans shall be prepared in conjunction with and reviewed by a licensed geotechnical engineer. The geotechnical engineer shall develop and submit, for the City's review, specific recommendations to mitigate grading activities, with particular attention to developing a plan to minimize the extent and time soils are exposed and address grading and related activities during wet weather periods (the period of greatest concern is October 1 through March 31). The plans shall show the type and the extent of geologic hazard area or any other critical areas as required in chapters 16 and 18 of the International Building Code (IBC) and/or the City's Critical Areas Ordinance.

Upon completion of rough grading and excavation, the applicant shall have a geo-technical engineer re-analyze the site and determine if new or additional mitigation measures are necessary. A revised geo-technical report shall be submitted to the City of Auburn for review and approval by the City Engineer. Recommendations for areas where subsurface water is known or discovered shall be given particular attention by the geotechnical engineer and coordinated with the project engineer responsible for the storm drainage system design.

19. Prior to final plat approval, a supplemental evaluation of stream channel conditions along Bowman Creek in vicinity of Stream Station 14+00 must be completed, including the off-site erosion feature observed at the outlet of the culvert under Kersey Way and near Bowman Creek. Appropriate mitigation shall be proposed to eliminate the observed erosion as well as any erosion determined be present from the supplemental evaluation of stream channel conditions along Bowman Creek.

20. Storm drainage facilities shall incorporate high standards of design to enhance the appearance of the site and serve as an amenity. The design of above ground storage and conveyance facilities shall address or incorporate landscaping utilizing native vegetation, minimal side slopes, safety, maintenance needs, and function.

Prior to final plat approval, a landscaping plan with applicable cross-sections is required to demonstrate that storm drainage pond aesthetic requirements consistent with City standards can be accommodated on-site.

Storm drainage facilities shall be provided consistent with the City of Auburn Design Standards. In order to achieve this, the following design elements must be incorporated into the final design:

- Vehicle access for maintenance to all proposed storm drainage structures is required. To provide an adequate and safe storm pond access, an appropriately designed pull-off shall be provided from Kersey Way SE to serve the pond.
- All storm drainage conveyance lines required to manage upstream bypass surface flows shall be routed through the project site and shall not be combined with the proposed on-site storm drainage system. Maintenance access shall be provided to all structures proposed to be in public ownership. The remaining portions of this system shall be placed within a tract dedicated to the Homeowners Association for maintenance and operation.

Given the steep slopes found on the site, appropriately designed energy dissipation features are required at the end of long runs of pipe, at pipe intersections and at the outlet to the storm drainage pond.

To enhance the water quality of the discharge leaving the site, appropriately designed aeration shall be provided within the storm pond.

Given the existing on-site drainage deficiencies in the vicinity of Kersey Way near 53rd Street SE, and subsequent flooding of the intersection, an appropriately designed storm drainage system shall be constructed to mitigate this condition.

21. The location and alignment of the force main and the proposed pump station shall be coordinated with adjacent property owners and the City to ensure it provides service to the desired basin. The public sanitary sewer pump station shall be located as directed by the City Engineer in order to allow room for large vehicle turnarounds so City vehicles do not have to back into public right-of-ways.

The applicant shall provide sanitary sewer stub to the south property line located between Lots 27 and 28 of Division 1.

The applicant shall provide an easement for possible future extension of the sanitary sewer system located at the SE corner of Tract D, Division 1.

22. All roads within the plat must be constructed to City standards (except where deviations are granted by the City Engineer) and shall be dedicated as public right of way.

23. The Applicants shall construct Evergreen Way to City standards for a residential collector arterial including a 10 foot landscaped center median/turn lane area through the plat boundaries.

24. The Applicants shall also construct median treatments to match the 10 foot center median/turn lane within the plat on the existing roadway west to Lakeland Hills Way, to the satisfaction of the city engineer.

25. The Applicants shall redesign pedestrian crossings at Road G and Evergreen Way and Road A and Evergreen Way to provide additional pedestrian refuge, to the satisfaction of the City Engineer.

26. The Applicants shall construct a minimum 10-foot wide shared multi-use path, separated by a five foot landscape strip from the road, on the west side of Kersey Way for the length of the site frontage along Kersey Way, to the satisfaction of the City Engineer.

27. The Applicants shall construct Kersey Way to a modified city standard for a minor arterial road, to include a 12 foot center turn lane, a 12 foot through northbound lane, a 12 foot through southbound lane, appropriate right turns lane(s) at the intersection with 53rd Street SE, a five foot landscape strip and a minimum 10-foot wide shared multi-use path on the west side. All other features about the road such as vertical curb, storm drainage and lighting must meet city standards.

28. The Applicants shall create a 50-foot right of way stubbing to the south plat boundary, through the location of lots 27 and 28, Division 1, to align with 176th Avenue East.

29. A traffic impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

30. A fire impact fee equivalent to the fee being collected for the Lakeland Hills South PUD shall be paid at the time of building permits for individual homes.

31. The Applicants shall comply with all conditions set forth in the Land Use Agreement entered into by the Applicants with the Bonneville Power Administration (Exhibit 8). The Land Use Agreement set forth 15 conditions, including, but not limited to landscaping, distance from transmission line towers, and a minimum path width of 16 feet.

Decided this 21 day of March, 2006.

James Driscoll
Hearings Examiner for the City of Auburn

LEGAL DESCRIPTION OF PROPERTY

The southwest quarter of the southeast quarter and that portion of the northwest quarter of the southeast quarter lying southerly of the H.B. Carter County Road; All in Section 32, Township 21 North, Range 5 East, W.M., in King County, Washington;
EXCEPT that portion thereof conveyed to King County for Stuck Road and by Deed recorded under Recording Number 5407388;
AND EXCEPT that portion thereof conveyed by King County for Lake Tapps Access Road, by deed recorded under Recording Number 5801756.

FEE PAYMENT: _____ $1,038.00 and $53.00 per lot plus $727.00 for Environmental Checklist

T.R. #: _____

DATE RECEIVED: _____

CASHIER'S INITIALS: _____

PLT05-0001 Div 1

CITY OF AUBURN WASHINGTON

CERTIFICATE OF IMPROVEMENTS

FINAL PLAT APPLICATION
FAC07-0002

COMPLETION OF IMPROVEMENTS

The required improvements for the Final Plat of _____ have been completed in accordance with the Land Division Ordinance and the City of Auburn's standards and specifications.

_____ City Engineer

_____ Date

****

SECURITY IN LIEU OF COMPLETION

In lieu of the required public improvements for the Final Plat of **Kersey 3 Division 1,** an approved **Assignment of Funds** for **$504,983.25** (150% of the estimated costs of improvements) has been submitted and approved by the City Engineer.

Dennis Sdl
City Engineer

2/18/10
Date

1. The developer has provided references and demonstrated a minimum of 3 years successful, non-defaulted plat development experience in the Puget Sound region.

2. The bond/security is based on the following costs:

Phase 1 $68,922.75
Hydro-seed remaining lots areas and disturbed area in BPA Easement, temporary catch basin protection, interceptor trench, rockery and gravel road on lot 37 & As-Built the Mylars

Phase 2 #25,884.00
Mail Boxes

Phase 3 $241,980.00
Final Lift of Asphalt, monuments, raise manholes and water valves to finish grade

Phase 4 $168,196.50
Landscaping

Routing Copies:
1 - Development Admin Specialist
2 - Planning Director
1 - Developer