Ordinance No. 3874
(Amending or Repealing Ordinances)

CFN=1314 – Verdana PUD
Passed – 2/19/2008
Verdana PUD – Major Modifications
ORDINANCE NO. 3874

AN ORDINANCE of the City Council of the City of Kent, Washington, relating to land use and zoning, specifically denying a major modification of the Verdana Planned Unit Development located at 12200 SE 304th Street, Kent, Washington (PUD-2004-4(R)).

RECITALS

A. An application was filed on September 12, 2006, for a major modification to the Verdana Planned Unit Development (PUD), PUD-2004-4(R), which was originally approved by the hearing examiner on February 15, 2006. The modification proposed to construct a Neighborhood Convenience Commercial development within the Future Development Tract of the existing PUD.

B. The City’s SEPA responsible official issued a Revised Mitigated Determination of Nonsignificance (RMDNS) (#ENV 2006-70) for the proposed PUD modification on October 16, 2007.

C. An open record hearing on the PUD modification was held before the hearing examiner on November 7, 2007, and the hearing examiner issued findings, conclusions, and a recommendation revised January 17, 2008 (“Revised Recommendation”). The Revised
Recommendation, attached as Exhibit A and incorporated herein, analyzed the criteria for a residential PUD in Kent City Code 15.08.400(G)(2) and concluded that "[a]lthough the proposed senior care facility may have a beneficial effect which would not normally be achieved by traditional lot-by-lot development, the proposed commercial development as a whole would be detrimental to existing or potential surrounding land uses as defined by the comprehensive plan." The hearing examiner recommended denial without prejudice of the PUD modification.

D. On February 5, 2008, the city council voted to adopt the Revised Recommendation and to deny the proposed Verdana PUD major modification without prejudice.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Recitals Incorporated as Findings. The foregoing recitals, which are incorporated by this reference, constitute the council's findings and conclusions on this matter.

SECTION 2. - Denial. The major modification of the Verdana PUD filed September 12, 2006 (KIVA #RPP4-2064281) is denied without prejudice.

SECTION 3. - Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.
SECTION 4. – Effective Date. This ordinance shall take effect and be in force five (5) days from and after its publication as provided by law.

Suzette Cooke
Suzette Cooke, Mayor

ATTEST:

Brenda Jacober
Brenda Jacober, City Clerk

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 19 day of February, 2008.
APPROVED: 19 day of February, 2008.
PUBLISHED: 27 day of February, 2008.

I hereby certify that this is a true copy of Ordinance No. 3474 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Brenda Jacober
Brenda Jacober, City Clerk
(SEAL)
EXHIBIT "A"
FINDINGS, CONCLUSIONS AND RECOMMENDATION
REVISED JANUARY 17, 2008

FILE NO: VERDANA PUD
PUD-2004-4(R)
KIVA #RPP4-2064281
MAJOR MODIFICATION TO A
PLANNED UNIT DEVELOPMENT

APPLICANT: Kent 25 LLC
825 Fifth Avenue, Suite 202
Kirkland, WA 98033

REQUEST: The Applicant proposes construction of a Neighborhood Convenience Commercial development within the Future Development Tract of existing PUD-2004-4. The proposal is a major modification of a previous Planned Unit Development proposal, PUD-2004-4, approved by the Hearing Examiner with conditions on February 15, 2006.

LOCATION: The PUD is located at 12200 SE 304th Street, Kent, Washington. The Future Development Tract is located within the PUD at the northwest corner of 124th Avenue SE and SE 304th Street, in Kent, Washington.

APPLICATION FILED: September 12, 2006

REVISED MITIGATED DETERMINATION OF NONSIGNIFICANCE ISSUED: October 16, 2007

HEARING DATE: November 7, 2007

RECOMMENDATION ISSUED: November 27, 2007
RECOMMENDATION REVISED: January 18, 2008

Following issuance of a recommendation on November 27, 2007, the Hearing Examiner received a Request for Reconsideration from the Applicant. The Hearing Examiner issued a Response to the Request for Reconsideration on December 11, 2007, and requested that Parties of Record submit replies to the reconsideration request by December 19, 2007.

Following review of the Request of Reconsideration and the replies to it, the Hearing Examiner issued a Decision Following Reconsideration on January 17, 2008. This Revised Recommendation incorporates the changes to the initial Recommendation that are detailed in the Decision Following Reconsideration.

Changes are made only to Finding 12 and Conclusion A (new language is shown in italics, deleted language is shown by strikethrough). All other findings and conclusions are the same as those in the initial Recommendation.

RECOMMENDATION: DENIED, without prejudice

STAFF REPRESENTATIVE: Lydia Moorehead, City Planner

TESTIMONY: The following individuals presented testimony under oath at the open record hearing:

Lydia Moorehead, City Planner
Katherine Orni, Applicant Representative
Corey Forsberg
Tina Tenner
Ron Novak
Michael Pratum
Vonda Marsland
Kevin Jones, PE, Applicant Representative
Michael Huey, Project Manager, Yarrow Bay Group, Applicant Representative
Richard Wilson, Attorney at Law, represented the Applicant at the open record hearing.

EXHIBITS: 1

1 City Staff submitted exhibits for both the PUD application and a related conditional use permit application. The exhibits for the PUD application are identified by "A-" in this recommendation; the exhibits for the CUP application are identified by "B-" in the CUP decision, the exhibits admitted for both the PUD and CUP are identified by "C-" in both the recommendation and decision.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD - Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 2 of 36
A-1. PUD Major Modification Application, received September 12, 2006, including modification description, code compliance data, storm water drainage information, site distance and vehicle maneuvering drawings, variance request for use of underground detention facility, and site drawings


A-3. Community Meeting materials: Roster; Frequently Asked Questions list; Notice of Community Meeting, dated June 16, 2007; Affidavit of Publication, dated June 28, 2007; Mailing list

A-4. Project Correspondence:
   i. Letter from Beth Tan, City of Kent Environmental Engineer III, to William Stevens, Otak Inc. dated July 16, 2007
   ii. Letter from Lydia Moorehead, City of Kent Planner, to Chad Weiser, Otak Inc., dated June 22, 2007
   iii. Letter from Lydia Moorehead, City of Kent Planner, to City of Auburn Planning Director and Joe Welsh, City of Auburn Transportation Planner, dated June 21, 2007
   iv. Letter from Beth Tan, City of Kent Environmental Engineer III, to William Stevens, Otak Inc. dated May 24, 2007
   v. Letter from Lydia Moorehead, City of Kent Planner, to Yarrow Bay Group, C/o Katherine Orn1, dated March 1, 2007
   vi. Letter from Lydia Moorehead, City of Kent Planner, to Michael Davolio, City of Auburn Planning Director, dated February 6, 2007
   vii. Letter from Lydia Moorehead, City of Kent Planner, to Yarrow Bay Group, C/o Katherine Orn1, dated January 16, 2007
   viii. Letter from Lydia Moorehead, City of Kent Planner, to Yarrow Bay Group, C/o Katherine Orn1, dated November 8, 2006
   ix. Letter from Beth Tan, City of Kent Environmental Engineer III, to William Stevens, Otak Inc. dated November 1, 2006

A-5. City Department Comments

A-6. Agency Comments:
   i. City of Auburn Planning, Building and Community Department, with Utility Extension Agreement approving the extension between the City of Auburn and Kent 160 LLC, signed by the Peter B. Lewis, City of Auburn Mayor, dated May 16, 2005
   ii. Letter from Michael Davolio, Director, City of Auburn Planning, Building and Community Department, to Lydia Moorehead, City of Kent Planner, dated February 2, 2007
   iii. Letter from Dave Osaki, City of Auburn Interim Community Development Director, to Mary Roberts, dated July 16, 2007, with letter from Mary Roberts to Dave Osaki, received July 10, 2007

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 3 of 36
A-7. Public Comment
   i. Letter from Mary Roberts to Lydia Moorehead, dated July 20, 2007
   ii. Letter to City of Kent Planning Services, dated July 23, 2007, unsigned
   iii. Letter from Michael J. Pratum to the City of Kent Planner, C/o Lydia Moorehead, dated July 20, 2007
   v. Email message from Ron Novak to City of Kent Planning Services, Attn: Lydia Moorehead, dated February 12, 2007
   vi. Letter from Anthony Courtney to City of Kent, Charlene Anderson, Planning Manager, dated February 7, 2007
   vii. Letter from LeRoy and Carol Bayer to Kent Planning Services, C/o Lydia Moorehead, Planner, dated January 30, 2007
   a. Letter from the City of Auburn to Lydia Moorehead, City of Kent, dated November 6, 2007
   b. Email message from Ron Novak to the Kent City Council, dated November 2, 2007
   c. Letter from residents of Crystal Meadows Homeowners Association to City of Kent Planning Services, dated November 1, 2007
A-10. Department Routing Sheet
A-12. SEPA Checklist for PUD Modification, ENV-2006-70, received May 7, 2007, including legal description of project
A-15. Site Plans: Trail Plan, Sheet L1.05; Preliminary Site Plan, Sheet S1.01A; Preliminary Landscape Plan, Sheet L1.02A; Preliminary Landscape Plant Legend, Sheet L1 01, Building Character Examples, Sheets A1.01 and A1.02

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 4 of 36
The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

**FINDINGS**

1. Kent 25 LLC (Applicant) requests approval of a major modification to a Planned Unit Development (PUD), PUD-2004-4, which was approved with conditions by the Hearing Examiner on February 15, 2006. The proposed major modification (PUD-2004-4(R)) differs from the previously approved application as the Applicant proposes development of the 13.3 acre Future Development Tract with a senior care facility and retail, commercial, and office uses. The PUD consists of 155 acres located at 12200 SE 304th Street, Kent, Washington, on the west side of 124th Avenue SE, south of SE 288th Street, north of SE 304th Street, and east of 118th Avenue.

---

2 The PUD-2004-4 application proposed development of a PUD containing 386 detached single-family lots, four sensitive area tracts, 11 recreation tracts, 22 landscape tracts, three stormwater tracts, one utility tract, one sewer lift station tract, nine access tracts, and a future development tract. The Hearing Examiner approved PUD-2004-4 with conditions on February 15, 2006. Conditions of approval limited the proposed development to 379 single-family residential lots and one future development tract. *Exhibit C-1.*

3 At the time of application for PUD-2004-4, the Applicant did not propose a specific use of the Future Development Tract as part of PUD-2004-4. *Exhibit A-20, Staff Report, page 2.*

*Findings, Conclusions and Recommendation*

Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 5 of 36
SE. The Future Development Tract is located within the PUD at the northwest corner of 124th Avenue SE and SE 304th Street in Kent, Washington 4 Exhibit A-1; Exhibit A-15; Exhibit A-20, Staff Report, page 2; Exhibit C-1.

Notice

2. The City of Kent (City) routed the PUD-2004-4(R) application to City departments on September 13, 2006. The City determined that the PUD-2004-4(R) application was complete on October 9, 2006. The City gave notice of the application for major modification on January 27, 2007, and then gave a revised notice of application on July 7, 2007, based on a revised application.5 The City posted the revised notice of application on the subject property on July 6, 2007, and published notice on July 7, 2007 in the Kent Reporter. The City also mailed notice to nearby property owners and interested agencies. Lydia Moorehead, City Planner, testified that the City gave notice of the application in accord with City ordinances by posting, publication, and mailing. Exhibit A-8; Exhibit A-9; Exhibit A-10; Testimony of Ms. Moorehead.

3. The City held a community meeting on the application on June 26, 2007, and held a public hearing on the application on November 7, 2007. The City posted notice of the hearing on the subject property on October 12, 2007 and October 24, 2007. The City mailed notice of the hearing to owners of property within 300 feet of the property, parties of record, City agencies, and City departments on October 19, 2007. The City mailed notice to two additional parties of record on October 23, 2007. The City published notice of the hearing in the Kent Reporter on October 24, 2007. Ms. Moorehead testified that the City gave notice of the hearing in accordance with City ordinances by posting, publishing, and mailing notice. Exhibit A-3; Exhibit A-4

The property that would contain the modified PUD is identified by King County Parcel Numbers 0421059016 and 7867000046. Exhibit A-1; Exhibit A-20, Staff Report, page 2. The legal description of the property that would contain the modified PUD is attached as Exhibit A to a Memorandum of Utility Extension Agreement for the Verdana Property, executed June 6, 2005 Exhibit A-2.

5 The first notice of application for PUD-2004-4(R) included 66,899 square feet of retail space within several one-story buildings and a 74,298 square foot two-story senior care building, with landscaping, parking, and associated utility improvements. The revised notice of application for PUD-2004-4(R) includes 80,800 square feet in the proposed senior care building and also includes a request for up to two retail drive-throughs associated with a retail use. The Applicant submitted an application for a Conditional Use Permit (CE-2007-1) for the senior care facility and two drive-through lanes in conjunction with the PUD-2004-4(R) application. Kent City Code (KCC) 15.08.400 B.4 allows uses permitted in the neighborhood convenience commercial district in residential PUDs of 100 acres or more Exhibit A-20, Staff Report, page 1.
SEPA Determination

4. The City acted as lead agency to analyze the environmental impacts of the PUD modification proposal as required by the State Environmental Policy Act (SEPA). The City determined that with conditions, the proposal would not have a probable significant adverse environmental impact, and issued a Mitigated Determination of Nonsignificance (MDNS) with four conditions on September 19, 2007. The four conditions addressed payment of an environmental mitigation fee for the City's South 272nd Street - South 277th Street Corridor Project; payment of a pro-rata share of the cost of resolving the High Accident Location (HAL) at the State Route (SR) 18 - SE 304th Street (west ramps) interchange; modification of the 124th Avenue SE frontage improvements to provide a southbound right-turn pocket at the south entrance to the proposed commercial development; and minimization of site grading. The MDNS condition related to payment of an environmental mitigation fee stated that the fee shall be equivalent to 63 percent of actual trip generation, based upon the expectation that 63 percent of site-generated traffic would pass through the Kent city limits and that the project would generate 176 or 240 vehicle trips. Exhibit A-11.

5. The City issued a revised MDNS with four conditions on October 16, 2007. The City revised the MDNS to change the MDNS condition related to environmental mitigation fee payment. The revised MDNS states that the environmental mitigation fee shall be equivalent to 30 percent of actual trip generation, based upon the expectation that 30 percent of site-generated traffic would pass through the Kent city limits and the project would generate 242 vehicle trips. Exhibit A-11.

City Comprehensive Plan Designation

6. The proposed PUD is located within an area designated an Urban Growth Area under the Washington State Growth Management Act (GMA). Exhibit A-20, Staff Report, page 3. Urban growth areas are designated as areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period. Revised Code of Washington (RCW) 36.70A.110(2). Each urban growth area must...
accommodate urban densities and must include greenbelt and open space areas. RCW 36.70A.110(2). The GMA requires that growth be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development; second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources; and third in the remaining portions of the urban growth areas. RCW 36.70A.110(3).

7. The City Comprehensive Land Use Plan Map designates the northern 63.22 acres of the proposed PUD site as SF-3 Single Family Residential, and the southern 92.26 acres of the site as Urban Separator. Land adjacent to the north of the PUD is designated Single-Family 3 units per acre by the City Land Use Map. The Land Use Map depicts the PUD site and adjacent property to the north as annexed into the City of Kent through City Ordinance No. 2743. The PUD Future Development Tract is located entirely on property designated Urban Separator. The SF-3 comprehensive plan designation is equivalent to an SR-3 zoning classification. The Urban Separator designation is equivalent to the SR-1 zoning classification. City Comprehensive Plan, Land Use Element (revised May 4, 2006), page 4-9; City Comprehensive Plan, Land Use Map, Figure 4.7, page 4-53 (revised May 4, 2006); Exhibit A-20, Staff Report, pages 3-4.

8. The City Comprehensive Plan contains Land Use Element goals and policies relevant to the PUD major modification application. Policy LU-9.4 calls for locating housing opportunities with a variety of densities within close proximity to employment, shopping, transit, and where possible, near human and community services. Policy LU-10.6 allows cluster housing in all multi-family and single-family land use areas to protect environmentally-sensitive areas, and when open space retention is desirable. Goal LU-14 addresses the size, function, and mix of uses in the City's commercial districts based on regional, community, and neighborhood needs. Policy LU-14.2 provides opportunities for residential development within existing business districts. Policy LU-14.7 promotes redevelopment of existing commercial properties by limiting conversion of residential land uses to commercial land uses. Policy LU-14.8 ensures that commercial and mixed-use developments adjacent to single-family residential areas are compatible in height and scale. Goal LU-24 and Policy LU-24.1 encourage land use that reduces automobile dependency, including mixed use developments incorporating bike, pedestrian, and transit amenities. Goal LU-31 establishes Urban Separator designations to protect environmentally sensitive areas and to create open space corridors. Policy LU-31.3 and Policy LU-31.7 require subdivisions within or adjacent to Urban Separators to provide open space linkages within or to the Urban Separator and to encourage well-designed land use patterns.
to protect and enhance urban separators.  *City Comprehensive Plan, Land Use (revised May 4, 2006), pages 4-32 - 4-33, 4-35 - 4-36, 4-47, 4-51 - 4-52; Exhibit A-20, Staff Report, pages 9 - 10.

9. The City Comprehensive Plan also contains community design, housing, transportation, and economic development goals and policies relevant to the PUD modification application. Goals CD-4, CD-5, and CD-6 encourage designing new commercial projects to accommodate pedestrians, bicyclists, transit, and automobiles; development of mixed use areas that are vital and attractive focal points of community activity; and ensuring that the scale, layout, and character of commercial and mixed use development is complimentary to the surrounding neighborhood. Housing Policy H-2.2 supports housing with appropriate amenities for individuals, families, and children. Transportation Policies TR-5.4, TR-7.2, and TR-7.3 encourage pedestrian and bicycle connections and trails to connect neighborhoods when roads are not practical. Economic Development Policy ED-2.4 encourages a connective land use pattern that integrates housing with natural amenities, employment, shopping, and recreation. Policy ED-3.4 promotes alternative transit opportunities between commercial and residential areas. Policy ED-3.6 promotes walking opportunities. Policy ED-3.1 allows for small-scale commercial establishments in neighborhood areas to provide services for residents. *City Comprehensive Plan, Community Design Element, pages 11, 13 - 14; City Comprehensive Plan, Housing Element, page 11; City Comprehensive Plan, Transportation Element, pages 35 - 36; City Comprehensive Plan, Economic Development Element, pages 5 - 6; Exhibit A-20, Staff Report, pages 10 - 12.

Zone Classification and Land Use

10. The PUD Future Development Tract is located within the City’s SR-1 Residential Agricultural zoning district. *Exhibit A-20, Staff Report*, page 3. The purpose of the Residential Agricultural zoning district is to provide for areas allowing low density single-family residential development. According to the City zoning code, SR-1 zoning shall be applied to those areas identified in the comprehensive plan for low density development, because of environmental constraints or lack of urban services. *KCC 15.03 010.* The SR-1 zoning district permits one dwelling unit per acre, with a 34,700 square foot minimum lot area *KCC 15.04.170.* Overall, 92.26 acres in the southern portion of the proposed PUD are located within the City’s SR-1 zoning district, and 63.22 acres in the southern portion of the proposed PUD are located within the City’s SR-3 Single-Family Residential zoning district. The purpose of the Single-Family Residential District is to stabilize and preserve single-family residential neighborhoods, as designated in the comprehensive plan, and to provide a range of densities and minimum lot sizes to promote diversity and recognize a variety of residential environments. *KCC 15.03 010.*

*Findings, Conclusions and Recommendation*  
*Hearing Examiner for the City of Kent*  
*Verdana PUD – Major Modification*  
*PUD-2004-4(R), KIVA RPP4-2064281*

*Page 9 of 36*
11. The PUD future development tract is located in the southeast corner of the PUD. The future development tract is currently vacant and used for material stockpiling related to construction of the residential portion of the PUD. Surrounding land uses are primarily residential, with lower-density residential development and large unplatted parcels zoned SR-1 to the north and northwest of the PUD, and higher-density subdivisions zoned SR-4 to the east and southwest of the PUD. Property to the south contains large undeveloped lots zoned SR-6. A new Auburn School District high school is east of the subject property on 124th Avenue SE. A future public park site is west of the subject property on 118th Avenue SE. Hazelwood Elementary School is south of the subject property on SE 304th Street. Exhibit A-20, page 3; Exhibit C-1, page 6.

12. The PUD site is within the City limits but fully surrounded by unincorporated King County. The PUD site is located within the City of Auburn potential annexation area. On August 21, 2007, voters within the Lea Hill area surrounding the PUD site approved a resolution to become part of the City of Auburn through annexation. On January 17, 2007, the City of Auburn filed a Notice of Intent to Annex with the King County Boundary Review Board for Washington State for the annexation of the City of Auburn's Lea Hill Potential Annexation Area (PAA). The annexation is expected to be effective on January 1, 2008. The City of Auburn Comprehensive Land Use Plan (printed July 24, 2007) designates adjacent land to the north, south, east, and west of the PUD as Single-Family Residential. City of Auburn Comprehensive Land Use Map 14.1 (printed July 24, 2007); Exhibit A-6; Exhibit A-20, page 2.

---

7 According to the Staff Report, the future development tract was originally to be used as a stock pile for top soil and mineral dirt from the Verdana residential development. The site currently contains approximately 40,000 cubic yards of dirt, which would be used for the balance of fill needed to construct the proposed commercial development. The Applicant is currently spreading the topsoil present in the dirt over the lots, tracts, and parks within PUD residential development. Approximately 95 percent of the PUD's residential development area has been graded to final grade. Exhibit A-20, Staff Report, page 5.

8 According to the Staff Report, the City purchased several parcels near 124th Avenue SE and SE 304th Street in 1983 for a municipal water impoundment reservoir. On September 16, 1985, the City Council voted to annex these parcels for municipal purposes (Ordinance No. 2743, effective September 9, 1987). On October 21, 2005, the Council declared the property surplus (Resolution No. 1657). The Council subsequently sold the property. The Council reaffirmed Comprehensive Land Use Map designations and zoning classifications for the property through Ordinance No. 3769, adopted November 15, 2005. According to the Staff Report, the purchase of additional water rights from the Tacoma P5 pipeline project resolved supply concerns underlying the reservoir project. Exhibit A-20, Staff Report, page 4.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD - Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 10 of 36
PUD Standards

13. The intent of planned unit development is to promote diversity and creativity in site design, protect and enhance natural and community features, and encourage unique developments which may combine a mixture of residential, commercial, and industrial uses. The PUD process permits departures from the conventional siting, setback, and density requirements of a particular zoning district to achieve superior site development, create open space, and encourage imaginative design by permitting design flexibility. KCC 15.08.400. PUDs are permitted in all zoning districts except the A-10 Agricultural zone, provided that PUDs in SR zones are only allowed if the site is at least 100 acres in size, with some exceptions. KCC 15.08.400.A; KCC 15.08.400.C.

14. The uses principally permitted within the PUD are those that are permitted in the underlying zoning classification for the property, except for uses permitted by KCC 15.08.400.B.4. KCC 15.08.400.A. Commercial uses may be permitted in residential PUDs of 100 acres or more, but “shall be limited to those uses permitted in the neighborhood convenience commercial (NCC) zoning district.” KCC 15.08.400.B.4. The uses permitted in the NCC district are Class I-A, I-B, and I-C Group Homes; rebuild/accessory uses for existing dwellings; food and convenience stores (retail); eating and drinking establishments (but not a drive-through); miscellaneous retail stores; liquor stores; finance, insurance, and real estate services; personal services; home day-care; day care centers; professional services; and municipal uses and buildings. KCC 15.04.020; KCC 15.04.070; KCC 15.04.090. Drive-through/drive-up commercial/retail businesses other than eating or drinking establishments are permitted within the NCC zone with a conditional use permit. KCC 15.04.070. Michael Huey, Yarrow Bay Group Project Manager, testified that City approval of commercial uses within residential PUDs of 100 acres or more is discretionary. Testimony of Mr. Huey.

Preliminary Site Plan

15. The PUD major modification proposal includes 66,889 square feet of retail and office space within several one-story buildings and an 80,800 square-foot two-story senior care building, landscaping, parking, and associated utility improvements within the 13.3 acre future development tract. The preliminary site plan submitted with the modification application depicts two 12,000 square-foot one-story office buildings adjacent to the east of the residential development. A pedestrian path would extend north from SE 304th Street along the west edge of the proposed office buildings, connecting

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 11 of 36
to a residential neighborhood to the northwest. A parking lot with 86 stalls would surround the east side of the office buildings, with an entrance/exit onto SE 304th Street. The residential development and office buildings would lie adjacent to the north of SE 304th Street. A 17,000 square foot retail space would be located at the corner of SE 304th Street and 124th Avenue SE, east of the proposed office buildings. A wetland corridor with a stream, 50-foot wide wetland buffer, and 40-foot wide stream buffer would be located between the office buildings and retail space. Development with 4 retail spaces, ranging in size from 5,000 to 15,000 square feet, and 276 parking stalls would be located adjacent to the north of the 17,000 square foot retail space. A double driveway along 124th Avenue SE would provide access to the retail and parking. An 80,800 square-foot two-story senior care facility with 84 parking stalls would be located adjacent to the north of the retail and parking development. A detention pond would lie between the retail development and the senior care facility development. An access road extending north between the retail development and care facility would bisect the pond, forming a bridge over the pond. The senior care facility main entrance would be located north across the parking lot from the bridge over the pond. Acquisition of a 30-foot wide ingress/egress easement extending west from 124th Avenue SE to the senior care facility parking and entrance would provide for access to the senior care facility and parking. Exhibit A-15.

Commercial PUD Criteria

16. KCC 15.08.400.I states "the criteria for approval of a request for a major modification shall be those criteria covering original approval of the permit which is the subject of the proposed modification."

17. At the public hearing on the PUD modification, Applicant Attorney Richard Wilson argued that both sets of PUD review criteria found in the Kent City Code – KCC 15.08.400.G.1 (Residential planned unit development criteria) and KCC 15.08.400.G.2 (Nonresidential planned unit development criteria) – are appropriate for reviewing the Applicant's PUD modification proposal, but that review should utilize KCC 15.08.400.G.2 criteria due to the proposed commercial use.10 Attorney Wilson stated that the proposed senior care

---

10 KCC 15 08.400.G.1 differs from KCC 15.08.400.G.2 by including the following criterion: "The proposed PUD project shall be compatible with the existing land use or property that abuts or is directly across the street from the subject property. The term compatibility includes but is not limited to apparent size, scale, mass, and architectural design." KCC 15 08 400.G.1. KCC 15.08.400.G.2 differs from KCC 15 08.400.G.1 by stating the "proposed project shall have a beneficial effect which would not normally be achieved by traditional lot-by-lot development", as opposed to "proposed PUD project shall have a beneficial effect upon the community and users of the development which would not normally be achieved by traditional lot-by-lot development." KCC 15.08.400.G.1.; KCC 15 08 400.G.2.
facility is a commercial use. Attorney Wilson argued that if a proposal meets KCC 15.08 400 G 2 criteria, then the proposal should be approved. The Staff Report accompanying the PUD major modification request recommended that the request be reviewed under KCC 15.08.400.G.2 criteria. Exhibit A-20, Staff Report, page 13; Statement and Argument of Attorney Wilson.

18. The Staff Report accompanying the PUD modification proposal includes a proposed condition of modification approval that “Drive through lanes shall include type II landscaping in order to buffer visual and auditory impacts to surrounding areas.” However, Kathy Orni, Applicant Representative, testified that the proposed commercial development would include no drive-through eating or drinking establishments. Ms. Orni proposed a condition of PUD modification approval that the proposed commercial development would not contain any drive-through facilities for eating or drinking establishments. The Staff Report states that gasoline stations would also be prohibited within the proposed commercial development. Exhibit A-20, Staff Report, pages 19 and 21 – 22; Testimony of Ms. Orni.

Wetlands

19. A pedestrian path would extend to the south through a Native Growth Protection Area (NGPA) adjacent to the future development tract, skirt the east, north, and west border of the proposed senior care facility, and then extend south, where it would cross the wetland/stream corridor at the site of the proposed office buildings. The path would then extend west, through the proposed office building parking lot, to connect with a pedestrian path extending north from SE 304th Street. Exhibit A-15.

20. The NGPA adjacent to the north and west of the future development tract contains wetlands. Raedeke Associates, Inc. delineated six wetlands upon the PUD property covering approximately 50 acres and reported their results in a September 20, 2004 Wetland Assessment. Raedeke determined that two of the wetlands (Wetlands 1 and 2) satisfy the City criteria for a Category 2 wetland, and that four of the wetlands (Wetlands 3, 4, 5, and 6) satisfy the City’s criteria for a Category 3 wetland.11 Wetland 1, the largest wetland, is located adjacent to the future development tract. Exhibit A-15; Exhibit A-18; Exhibit C-1, page 14.

21. The City’s wetland consultant reviewed the Raedeke delineation as part of the initial review of the PUD application. The City’s consultant requested that Raedeke perform additional hydrologic monitoring. Based on hydrologic monitoring results, Raedeke revised the wetland delineation to incorporate additional area into Wetland 1. The City approved the revised delineation on

---

11 Raedeke delineated wetlands according to the City of Kent (1993) code. The City’s critical areas code was amended in 2006, following the City’s receipt of a complete PUD application on October 13, 2004. Exhibit A-18; Exhibit C-1, page 6.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 13 of 36
July 7, 2005. After reviewing the record, the Hearing Examiner concluded that "the wetland boundaries were determined after a stringent review process that involved the expertise of multiple wetland professionals," and that "environmentally sensitive areas would be protected in accordance with the regulations in place at the time of complete application." Exhibit C-1, pages 15, 22, and 24.

22. The western arm of Wetland 1 contains Olson Creek, which flows north through a culvert beneath SE 304th Street into the western portion of the wetland. Olson Creek then flows off-site to the northwest into the Green River. According to the Raedeke Wetland Assessment, Olson Creek is classified as a Class 2 stream without salmonids under the City critical areas code. The Staff Report characterizes the on-site portion of the stream as non-salmonid. Exhibit A-18; Exhibit A-20, Staff Report, page 5; Exhibit C-1, page 14.

23. The proposed senior care facility within the future development tract would lie adjacent to Wetland 1, but would be separated from the wetland by buffers set forth in the Applicant's May 4, 2007 conceptual wetland buffer averaging plan, approved by the City on July 11, 2007. A wetland buffer would also separate the wetland and Olson Creek from adjacent retail and office building development. According to the preliminary Wetland Buffer Averaging Plan map, all enlarged buffer areas under the conceptual averaging plan (buffer 'give' areas) will be enhanced with native wetland transitional plantings in the plant list on the preliminary landscape plant legend, Sheet L1.01. According to the City's approval of the conceptual averaging plan, no permits will be issued until the final wetland buffer averaging plan has been approved by the City and a three-year bond equal to 125% of the estimated cost of construction and maintenance of the wetland buffer areas has been received by the City. Exhibit A-15, Exhibit A-19.

**Stormwater Facilities**

24. There is a hydrologic connection between Wetland 1 and Wetland 2. A previous Verdana MDNS determination related to the initial application requires the Applicant to design stormwater control facilities to maintain the

---

12 Raedeke delineated streams according to the City of Kent (1996) code. The City's critical areas code was amended in 2006, following the City's receipt of a complete PUD application on October 13, 2004. Exhibit A-18; Exhibit C-1, page 6.

13 The proposed commercial development would impact 0.44 acre of wetland buffer, requiring buffer averaging according to KCC Chapter 11.06. In addition, the Applicant is responsible for obtaining all other applicable permits from state and federal agencies, including but not limited to the Washington State Department of Ecology and the United States Army Corps of Engineers. Exhibit A-20, Staff Report, page 6.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD - Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 14 of 36
In its Amendment to the Technical Information Report (TIR) for the Verdana Commercial Site, dated May 3, 2007, Otak Inc. reported that stormwater would be managed at Level 2 Flow Control throughout the proposed commercial development. Level 2 Flow Control would be achieved in the area of the commercial development west of Olson Creek (Basin A) through an underground vault and treatment train prior to discharge in Olson Creek. A wet pond at the bottom of the detention vault would trap sediment, then a leaf compost filter would remove metals prior to discharge, in accordance with the 1998 King County Storm Water Drainage Manual and 2002 City of Kent Storm Water Drainage Manual. The remainder of the commercial development (Basin B) would achieve Level 2 Flow Control through a detention pond. A wet pond at the bottom of the detention pond would trap sediment, then a leaf compost filter would remove metals prior to discharge into Olson Creek. According to the TIR, the wetlands would be recharged with controlled release flows from all storm water facilities. The City would require final detailed drainage plans prior to civil construction permit issuance. *Exhibit A-17; Exhibit A-20, Staff Report, pages 6 - 7.*

25. The City approved the Applicant’s request for use of an underground detention vault in lieu of an open pond for Basin A, with one condition. The City stated it would approve the request contingent on installation and use of a water quality best management practice (BMP), similar to a Stormceptor, upstream of the proposed detention / water quality vault. The underground detention vault is depicted in the May 2007 Amendment to the TIR. *Exhibit A-4.i.*

**Topography**

26. The Staff Report cites a Golder Associates, Inc. geotechnical report issued December 24, 2003 to describe topographical conditions on the proposed commercial development site. According to the report, the southwest portion of the site contains a 30 to 55 foot-high slope ranging from 13 to 33 percent grade, with the toe of the slope located in Wetland 1. The east-central portion of the site contains a slope as high as 44 feet, ranging from 20 to 33 percent grade. The top of the slope lies along 124th Avenue SE; the toe of the slope lies in Wetland 1. The north portion of the site slopes to Wetland 1 at approximately 12 percent grade. The report noted erosion potential on the east and west sides of the site and recommended further investigation if development is planned on an area with a risk of liquefaction generally adjacent to Wetland 1. According to the staff report, the City and Applicant will address liquefaction and erosion issues during development review. *Exhibit A-20, Staff Report, pages 4 – 5.*

**Urban Separator Development**

27. Residential development within the PUD would be located to the northwest and north of the PUD future development tract. Pedestrian trails would

*Findings, Conclusions and Recommendation*

Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 15 of 36
extend between the areas of the PUD to connect residential neighborhoods. In addition to the future development tract, the proposed site design for the portion of the PUD designated Urban Separator would contain eight eight-lot clusters, one seven-lot cluster, and one four-lot cluster of residential development. Exhibit 15; Exhibit C-1, page 9.

28. For areas within urban separators, 50 percent of the unconstrained area must be retained in perpetuity as common open space. KCC 12.04.778.C.8. The Hearing Examiner’s February 15, 2006 decision stated that of the 30.6 acres of unconstrained area within the urban separator, 16.14 acres would be set aside as common open space. According to the Staff Report submitted with the commercial development proposal, the PUD still satisfies the open space requirement for areas designated Urban Separator, even with the addition of the proposed commercial development. Approximately 16.21 acres or 50 percent of unconstrained urban separator area would be set aside as common open space. The proposed commercial development itself would contain no open space. Exhibit A-4; Exhibit A-15; Exhibit A-20, Staff Report, pages 7 - 8; Exhibit C-1, page 9.

**Access and Traffic**

29. The driveway to access the proposed office buildings and parking within the future development tract would be located approximately 415 feet west of the SE 304th Street/124th Avenue SE intersection. The driveway to access the retail development and parking would be located approximately 535 feet north of the SE 304th Street/124th Avenue SE intersection, aligned with a public street to be constructed as part of the Alicia Glenn residential subdivision. The ingress/egress easement to access the senior care facility would be located approximately 390 north of the retail and parking driveway. The commercial development would be open seven days a week, with hours of operation varying from tenant to tenant. The senior care facility would be a 24-hour care facility with permanent in-house living units. Specific tenants for the proposed commercial development have not been identified. Exhibit A-15; Exhibit A-16; Exhibit A-17; Exhibit A-20, Staff Report, page 13.

30. On February 12, 2007, the City of Auburn submitted a letter containing comments on the traffic impact of the proposed commercial development. According to the City of Auburn, the SE 304th Street/124th Avenue SE intersection is heavily influenced by the traffic of one middle school, two grade schools, a high school, and a regional community college. The City of Auburn expressed concern that the Applicant’s traffic study did not identify the AM peak hour impacts of the project, in spite of the heavy influence of AM peak hour trips at the location due to school traffic, and that the report underestimated the traffic volume likely to occur on the project frontage by conducting analysis during August, the lowest month of the year for school traffic. Exhibit A-6.
31. The City of Auburn also commented that the traffic study’s use of “Specialty Retail” as a basis for Institute of Transportation Engineers (ITE) Trip Generation manual analysis underestimated traffic impacts of the retail development because ITE statistics on the Specialty Retail are limited and the land use type does not fully encompass the proposed commercial use. According to the City of Auburn, typical suburban shopping areas such as the proposed commercial development often feature a Starbucks-type business, a fast food restaurant, and a bank. The City of Auburn commissioned studies that concluded a typical Starbucks can generate up to 200 AM peak hour trips and over 70 PM peak hour trips. A drive through bank generates approximately 46 PM peak hour trips per 1,000 square feet. A high-turnover restaurant generates up to 11 PM peak hour trips per 1,000 square feet. Exhibit A-6.

32. The Applicant submitted a Revised Traffic Impact Analysis (TIA), prepared by the Transpo Group in May 2007, to reflect an updated site plan and to respond to comments by King County, the City of Auburn, and the City of Kent. The study analyzed existing traffic volumes for the following intersections: SE 284th Street/124th Avenue SE; SE 293rd Way/124th Avenue SE; SE 296th Way/124th Avenue SE; and SE 304th Street/124th Avenue SE. According to the Transpo Group, King County will replace the existing traffic signal at the SE 304th/124th Avenue SE intersection with a roundabout, with construction scheduled for 2007. Due to ongoing construction, the Transpo Group did not collect existing traffic volumes at the SE 304th/124th Avenue SE and SE 284th/124th Avenue SE intersections. Instead, the Transpo Group estimated peak hour traffic volumes at the SE 304th/124th Avenue SE intersection by increasing May 2004 volumes by five percent per year for three years. The Transpo Group estimated existing AM peak hour traffic volumes at the SE 284th/124th Avenue SE intersection by increasing August 2004 volumes by five percent per year for three years, then increasing August 2004 volumes by a factor of 20 percent to reflect non-summer conditions. The Transpo Group estimated existing PM peak hour traffic volume at the SE 304th/124th Avenue SE intersection by increasing August 2006 volumes by 10 percent, because schools generally generate fewer trips during the weekday PM peak hour than the AM peak hour. Exhibit A-16.

33. The Transpo Group estimated potential traffic impacts of the proposed commercial development based on the average trip rates for the “Shopping Center,” “Assisted Living,” and “Medical/Dental Office” ITE Land Use Codes.\textsuperscript{15}

\textsuperscript{14} The Transpo Group did not report whether 2007 roundabout construction had been completed. Exhibit A-16.

\textsuperscript{15} The Transpo Group used average trip rates published in the ITE Trip Generation manual, 7th Edition (2003). The Transpo Group estimated the traffic impact of the proposed

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 17 of 36
However, the Transpo Group stated that actual project trips generated would be less than the trips associated with the ITE Land Use Codes, as the Transpo Group assumed lesser linked trips between the different uses within the commercial development than assumed under the ITE Codes. The Transpo Group concluded that the proposed commercial development would generate approximately 122 new weekday AM peak hour trips and 262 new weekday PM peak hour trips.\textsuperscript{16} The Transpo Group also divided total trips per intersection. In the AM peak hour, the Transpo Group concluded the proposed development would contribute 36 vehicle trips to the SE 284\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection, 36 trips to the SE 293\textsuperscript{rd}/124\textsuperscript{th} Avenue SE intersection, 42 trips to the SE 296\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection, and 64 trips to the SE 304\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection. In the PM peak hour, the Transpo Group concluded the proposed development would contribute 80 vehicle trips to the SE 284\textsuperscript{th}/124\textsuperscript{th} Avenue SE, 80 trips to the SE 293\textsuperscript{rd}/124\textsuperscript{th} Avenue SE intersection, 93 trips to the SE 296\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection, and 127 trips to the SE 304\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection. Exh1b1t A-16.

34. The Transpo Group determined that existing traffic at the SE 304\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection currently experience Level of Service (LOS) B in the AM peak hour and LOS A in the PM peak hour. Traffic at the SE 284\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection currently experiences LOS B in the AM and PM peak hour. Without the proposed commercial development, the Transpo Group estimated that traffic at the SE 304\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection in 2009 would experience LOS A in the AM and PM peak hour. Traffic at the SE 284\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection in 2009 would experience a LOS B in the AM peak hour and LOS C in the PM peak hour. With the proposed development, the Transpo Group estimated that traffic at the SE 304\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection in 2009 would experience LOS A in the AM and PM peak hour. With the proposed development, traffic at the SE 284\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersection in 2009 would experience a LOS B in the AM peak hour and a LOS D in the PM peak hour. Traffic at the SE 293\textsuperscript{rd}/124\textsuperscript{th} Avenue SE and SE 296\textsuperscript{th}/124\textsuperscript{th} Avenue SE intersections in 2009 would experience LOS

\textsuperscript{16} The Transpo Group assumed that the retail portion of the proposed commercial development would attract some "by-pass trips", or trips already en route to another destination. Based on the average by-pass rate for a shopping center published in the ITE Trip Generation Handbook (2\textsuperscript{nd} Edition, 2001), the Transpo Group approximately 34 percent of all retail trips would be by-passing the proposed commercial development. Thus, of 57 total new trips generated by the Shopping Center land use code, Transpo Group concluded only 39 new trips would actually be generated by the proposed commercial development. Exhibit A-16.

---

\textsc{Findings, Conclusions and Recommendation}

Hearing Examiner for the City of Kent
Verdana PUD – Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 18 of 36
D with or without the proposed development. Based on King County intersection standards, LOS E or better is considered acceptable intersection operation. Exhibit A-16.

35. The Transpo Group determined that traffic at the proposed northern driveway to access the proposed development along 124th Avenue SE would experience a LOS “C” in the AM and PM peak hours. Traffic at the proposed southern driveway to access the proposed development along 124th Avenue SE would experience a LOS “D” in the AM peak hour and a LOS “E” in the PM peak hour. Traffic at the proposed driveway to access the proposed development along SE 304th Street would experience a LOS “C” in the AM and PM peak hour. Exhibit A-16

36. The City of Auburn commented in a letter to the City that a LOS “E” at the proposed southern driveway along 124th Avenue SE “is generally not considered acceptable and potentially leads to driver impatience and poor decisions which can create collisions.” The City commented that significant traffic would use the northern proposed driveway along 124th Avenue SE to attempt to avoid the traffic volume at the southern proposed driveway. The City determined that this traffic would travel past the front of the proposed senior care facility, based on the City’s review of the development site plan. The City proposed rearranging the connection to the northern driveway within the proposed development to better separate traffic flows and better protect the senior care facility. The City recommended connecting the commercial parking lot to the driveway at a point further east. Kevin Jones, Applicant Transportation Engineer, testified that in his opinion, motorists would not prefer to access the proposed development by the proposed northern driveway along 124th Avenue SE, near the senior care facility. Exhibit A-9.a; Testimony of Mr. Jones.

37. The Transpo Group reported that there was one reported vehicle accident at the SE 284th/124th Avenue SE intersection between 2000 and 2004, and 15 reported accidents at the SE 304th/124th Avenue SE intersection between 2000 and 2004, including one fatality in 2000. According to the Transpo Group, an intersection is classified as a high accident location (HAL) if the intersection experiences an average of 1.5 or more accidents per one million entering vehicles (MEV). The Transpo Group reported that the SR-18 Westbound Ramps/SE 304th Street intersection located just east of the proposed commercial development is classified as a HAL. Based on accidents reported between 2000 and 2004, the Transpo Group determined that the SE 284th/124th Avenue SE intersection experiences 0.10 accidents per MEV, and the SE 304th/124th Avenue SE intersection experiences 0.92 accidents per MEV. Michael Pratum, an owner of property across the street from the proposed commercial development on 122nd Pl SE, stated in a letter to the City dated February 12, 2007 that there have been “at least three very
serious multiple car accidents in the last 90 days" at the SE 304th/124th Avenue SE intersection. Mr. Pratum estimated that some vehicles travel 50-60 mph approaching the intersection. *Exhibit A-16.*

**Traffic Impact Mitigation**

38. The Transpo Group recommended measures to mitigate impacts of the proposed commercial development. Recommended mitigation measures include payment of approximately $158,100 in environmental mitigation fees (EMFs) to the City of Kent and payment of $29,250 to WSDOT as a pro-rata share for the proposed development’s impact on the SR-18 westbound ramps/SE 304th Street intersection. The Transpo Group also recommended construction of a northbound left-turn lane and southbound right-turn lane at the south entrance to the proposed development. The Transpo Group did not recommend dedicated turn lanes at the proposed development’s north entrance along 124th Avenue SE or at the proposed development’s SE 304th Street entrance. *Exhibit A-16.*

39. City Staff also recommended measures to mitigate impacts of the proposed PUD modification. The Staff Report accompanying the PUD major modification proposal states that MDNS conditions require road improvements and corridor mitigation fees, and that the Hearing Examiner’s February 15, 2006 decision contains conditions of PUD approval that would mitigate traffic impacts. The MDNS conditions require payment of an EMF to the City of Kent for the City’s South 272nd Street/ South 277th Street corridor project, payment of a pro-rata share of the cost of WSDOT’s SR-18/SE 304th Street project, and require construction of a southbound right-turn pocket along 124th Avenue SE at the south entrance to the proposed development. The Staff Report accompanying the proposal also contains a proposed condition of approval to mitigate traffic impact of the proposed development. Proposed Condition B.1 within the Staff Report states “Construct the improvements as required by the Hearing Examiner conditions and SEPA determination for the original PUD approval, and the Revised MDNS issued October 16, 2007, and/or pay the respective fees-in-lieu-of construction including any mitigation (EMA or EMF) charges.” *Exhibit A-20, Staff Report, pages 6 and 22.*

40. City Staff proposed a revision to proposed condition B.1 within the Staff Report. The City would revise condition B.1 to read (added language highlighted in bold, removed language indicated by strikethrough):

B. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT COMMERCIAL CERTIFICATE OF OCCUPANCY, THE APPLICANT SHALL:

1. Construct road and utility improvements adjacent to or serving the commercial development within the future development tract in addition to those improvements required by as required through the improvements as required by the Hearing Examiner conditions and

*Findings, Conclusions and Recommendation*

*Hearing Examiner for the City of Kent*

*Verdana PUD - Major Modification*

*PUD-2004-4(R), KIVA RPP4-2064281*

*Page 20 of 36*
SEPA determination for the original PUD approval, and the February 15, 2006 Verdana PUD approval and the Revised MDNS issued October 16, 2007, and/or pay the respective fees in lieu of construction including any mitigation (EMA or EMF) charges.

Exhibit A-20, Staff Report, page 22; Exhibit C-2; Exhibit C-3.

41. Kevin Jones testified that there will be an increase in traffic resulting from construction of the proposed commercial development, but not significant enough to warrant mitigation measures beyond those already proposed. Testimony of Mr. Jones.

42. Michael Pratum, a landowner who lives on 122nd Pl SE across the street from the proposed development, testified that a left-turn lane should also be required for the entrance to the proposed development along SE 304th Street, so that he can access his driveway when traffic backs up. Mr. Pratum stated that traffic backs up from the SE 304th Street/124th Avenue SE intersection to the point of the proposed driveway along SE 304th about 3 or 4 times each week during the PM peak hour. Mr. Jones responded that construction of the proposed roundabout at the SE 304th Street/124th Avenue SE intersection would cure existing traffic backups to the west along SE 304th Street. Mr. Jones added that traffic along SE 304th Street would not reach the threshold for requiring a left turn lane. Mr. Jones proposed a condition of PUD modification approval that the King County roundabout must be completed and in operation prior to occupancy permit issuance for the proposed commercial development. Exhibit A-7 iii; Exhibit A-7 iv; Testimony of Mr. Pratum; Testimony of Mr. Jones.

43. Mr. Pratum submitted a letter to the City, in which he stated that the proposed driveway on SE 304th Street would violate engineering standards for sight distance and would endanger pedestrians. Mr. Pratum cited the four to five percent grade of SE 304th Street, an assumed speed of 35 mph for vehicles traveling on the road, and the vertical curve in the roadway to the west of the proposed driveway to propose a minimum 275-foot sight distance corridor for a vehicle located within the proposed driveway. Mr. Pratum noted that a six foot-high cedar fence to the west of the driveway would limit views from the proposed driveway to approximately 100 feet. Mr. Pratum stated that school buses drive along SE 304th Street and pedestrians walk within the shoulders of SE 304th Street. Mr. Pratum also expressed concern that there would be insufficient sight distance between the planned roundabout at the SE 304th Street/124th Avenue SE intersection and the proposed driveway along SE 304th Street, given the changing directions of traffic negotiating the roundabout, vegetation in the center and borders of the roundabout, and median separators on each street entering the roundabout. Exhibit A-7 iii; Exhibit A-7 iv; Testimony of Mr. Pratum.
44. Mr. Jones testified that the points of access for the proposed commercial
development were chosen based on sight distance, options for left-turn
lanes, and options for acceleration lanes. Sight distance diagrams submitted
with the major modification application depict sight distance triangles 440
feet long to the west and 342 feet long to the east of the proposed driveway
along SE 304th Street. They also depict sight distance triangles 440 feet long
to the south and 530 feet long to the north of the proposed south driveway
along 124th Avenue SE. Sight distance triangles depicted for the proposed
north driveway along 124th Avenue SE are 440 feet long to the south and 530
feet long to the north. Exhibit A-1; Testimony of Mr. Jones.

Street Improvements

45. Mr. Pratum testified that there are currently no sidewalks in the area of the
proposed development, making the proposed development inaccessible to
pedestrians. Mr. Jones responded that the TIA for the proposed commercial
development assumed no pedestrian or bicycle traffic to access the
development, so the TIA would generate the most conservative vehicle
numbers for traffic mitigation. Testimony of Mr. Pratum; Testimony of Mr.
Jones.

46. Condition B.3.g of the Hearing Examiner's February 15, 2006 decision
requires street improvements for all off-site public streets abutting the PUD,
including five foot-wide concrete sidewalks along the west side of 124th
Avenue SE and along the north side of SE 304th Street. The improvements
shall meet the full street requirements of the 1993 King County Road
Standards except for the pavement sections, which shall meet City of Kent
standards.17 All new and improved intersections shall meet entering sight
distance requirements per King County, Auburn and Kent Road Standards.
The 124th Avenue SE improvements shall also accommodate necessary sight
lines around METRO bus stops.18 Conditions B.3.g(1) and B.3.g(2)(a) of the
Hearing Examiner's decision permit the Owner/Subdivider to pay King County
a fee in lieu of the SE 304th Street/124th Avenue SE intersection
improvements, if approved by King County and the Cities of Auburn and
Kent, which shall be applied to the capital project solely for the intended
intersection improvements. Associated right-of-way and slope easement

17 King County classifies 124th Avenue SE as an Urban Minor Arterial Street with bike lanes,
and classifies SE 304th Street as an Urban Collector Arterial with bike lanes Exhibit A-20,
Staff Report, page 6.

18 Attorney Wilson stated for the Applicant that the conditions of PUD approval set forth in
the Hearing Examiner's February 15, 2006 decision were supported by the record
accompanying the Hearing Examiner's decision, and that the Applicant does not request
dedications shall be granted to King County to accommodate the planned intersection improvements. According to Condition B.3 g(1), the 124th Avenue SE improvements shall accommodate entry turn lanes as required by King County and as indicated as mitigation measures in the March 2005 Revised Transportation Impact Analysis submitted for the PUD. Unless otherwise determined by King County with consensus from the Kent and Auburn Public Works Departments, the improvements along SE 304th Street improvements must provide for pavement widening for an eastbound left-turn lane. Pavement widening must include at least 36 feet of pavement at the intersection of SE 304th Street and 124th Avenue SE for a minimum eastbound left-turn pocket length of at least 200 feet, plus opening and transition areas for the left turn pocket and pavement tapers. *Exhibit C-1, pages 29 - 30.*

**Public Comment**

47. Corey Forsberg, a property owner in the area near the proposed commercial development, testified to his concern about an increase in crime and noise in the area upon completion of the proposed development. Tina Tenner, a resident whose backyard opens onto 124th Avenue SE, testified that proposed commercial development would be an eyesore, noisy, subject to heavy truck traffic, subject to crime, and subject to loitering. Ms. Tenner testified that she did not believe the proposed commercial development site would be developed upon purchasing her home in 2003. Ms. Moorehead responded for the City that commercial uses are permitted within a PUD greater than 100 acres in size even when the underlying zoning is residential. *Testimony of Mr. Forsberg; Testimony of Ms. Tenner; Testimony of Ms. Moorehead.*

48. Ms. Tenner testified that the Lea Hill neighborhood is located on slopes surrounding the proposed development site, such that the Lea Hill neighborhood is located above the proposed development site. For that reason, Ms. Tenner testified, landscaping would not provide a buffer between the Lea Hill area and noise or views generated by the proposed development. Ms. Tenner testified that there are other locations within the Lea Hill neighborhood more suitable for commercial development than the proposed site. Mr. Pratum noted in a letter to the City that a more logical location for commercial development within the City would be along SE 272nd Street. *Exhibit A-7.iv; Testimony of Ms. Tenner.*

49. Ms. Tenner testified that the government and residents of the City of Auburn should decide the future disposition of the proposed commercial development site, as the property will eventually be annexed into the City of Auburn.

---

19 The Hearing Examiner’s February 15, 2006 decision approving the Verdana PUD/preliminary plat application with conditions predates the Transpo Group’s Revised Transportation Impact Analysis for the proposed Verdana Commercial development, dated May 2007 *Exhibit A-16; Exhibit C-1*
Anthony Courtney submitted a letter to the City that proposed a committee of City of Auburn, City of Kent, King County, and general public representatives to study the effects of the proposed development on the Lea Hill neighborhood. Ms. Moorehead testified for the City that the City will eventually de-annex area including the PUD development site and the City of Auburn will annex the property. Attorney Wilson argued that approval of the PUD modification proposal could not wait until after annexation because annexation is still uncertain. Exhibit A-7.vi; Testimony of Ms. Tenner; Testimony of Ms. Moorehead; Argument of Attorney Wilson.

50. Ms. Tenner submitted a letter at the hearing signed by 37 individuals expressing concerns about the proposed development. Those signing the letter favor traveling to Kent-Kangley, Covington, or Auburn for conveniences rather than the proposed commercial development and are opposed to the potential additional traffic, noise, crime, and loitering in the area. A letter submitted by Ron Novak states that there is ongoing commercial development approximately one-half mile south of the proposed commercial development site. Mr. Pratum testified that there is a development with a Safeway grocery store and a Walgreens drug store at 132nd and Kent-Kangley Road, and a commercial area at the SE 312th/124th Avenue SE intersection. Exhibit C-4; Exhibit C-5; Testimony of Mr. Pratum.

51. Ron Novak, a resident of land adjacent to the proposed development site, testified that the provisions of the City Comprehensive Plan should govern the PUD modification application, such that proposed commercial use should be denied. Letters submitted by Mr. Novak (Exhibit A-9.b and Exhibit C-5) detailed his concerns. According to the letters, the Urban Separator designation of the property under the City Comprehensive Plan is not compatible with development permitted within the NCC zoning district. Mr. Novak cited KCC 15.03.010 in support of his argument, which contains the phrase "NCC districts shall be located in areas designated for neighborhood services in the comprehensive plan." Mr. Novak's letter states: "When the Verdana Proposed PUD was vested (September 2004) no part of the Impoundment Reservoir Site was designated for neighborhood services in the comprehensive plan." According to Mr. Novak, the City of Auburn's pre-annexation agreement with King County for the Lea Hill area includes a provision requiring the City of Auburn to maintain established Urban Separator areas within the Lea Hill Annexation area, which will encompass the proposed commercial development site when the area is de-annexed by the City of Kent. Exhibit A-9.b; Exhibit C-5; Testimony of Mr. Novak.

52. Attorney Wilson argued for the Applicant that the more detailed and specific SR zoning classification of the proposed commercial development site and the City PUD ordinance govern rather than the more general City comprehensive plan designations. Argument of Attorney Wilson.
53. Mr. Novak's letters also comments that the proposed commercial development should be denied based on the text of City of Kent Ordinance No. 3685. According to the letter, the ordinance reads, in relevant part:

"During the April 6, 2004 City Council meeting Council adopted comprehensive plan designations of Urban Separator (US) for approximately the south 91 acres and Single Family Residential, three units per acre (SF-3), for approximately the north 65 acres of the Annexation Area. At the same time, Council adopted the zoning designations of Single Family Residential, one unit per acre (SR-1), for approximately the south 91 acres and Single Family Residential, three units per acre (SR-3), for approximately the north 65 acres of the Annexation Area. Council adopted the above comprehensive plan and zoning designations due to the environmentally sensitive systems that exist within the Annexed Area. There is a large highly classed wetland that drains into salmonid habitat and forms the headwaters of Olson Creek. The Urban Separator designation creates open space corridors within and between urban areas which provide environmental, visual, recreational, and wildlife benefits."

*Exhibit A-9.b; Exhibit C-5.*

54. Vonda Marsland testified for Crested Meadows neighborhood homeowners in opposition to the proposed commercial development. Ms. Marsland questioned why the initial PUD/preliminary plat application made no mention of commercial development. In a letter submitted to the City, Le Roy and Carol Bayer, property owners along 124th Avenue SE, also questioned why a PUD major modification was proposed so soon after approval of the initial PUD/preliminary plat application. Mr. Pratum testified that one would need to know the type of tenants that would lease space in the proposed commercial development in order to determine the specific impacts of the proposed development on the neighborhood. *Exhibit A-7.vii; Testimony of Ms. Marsland; Testimony of Mr. Pratum.*

55. Mr. Novak commented in letters to the City that the Applicant's development density bonus within the residential portion of the PUD should be retracted, if area dedicated to open space under the initial PUD/preliminary plat application would now be dedicated to commercial development. The Hearing Examiner's decision conditioned approval of 379 single-family residential lots and one future development tract on the Applicant's provision of 15.55 acres of active recreation space within the PUD, to qualify for a 4 percent density bonus from the baseline allowable density of 321 dwelling units.20 The decision stated "The future development tract may be used for

---

20 The Applicant agreed to reduce the number of lots to 379 during the pre-hearing review process. *Exhibit C-1, page 5, footnote 2.*

*Findings, Conclusions and Recommendation*

*Hearing Examiner for the City of Kent*

*Verdana PUD - Major Modification*

*PUD-2004-4(R), KIVA RPP4-2064281*

*Page 25 of 36*
open space at a minimum or for other allowable uses that are not density based. Approval of uses other than open space on the tract is neither guaranteed nor implied by approval of the subdivision and PUD.” Exhibit A-9.b; Exhibit C-1, pages 7 and 25; Exhibit C-5.

56. Residents of the Crystal Meadows residential neighborhood located adjacent to the northwest corner of SE 304th Street and 124th Avenue SE in Auburn, Washington, submitted a letter to City Planning Services stating that the proposed retail, commercial, and office development would be placed too close to Crystal Meadows homes. Should the development go forward, residents requested addition of a “landscaping barrier” between proposed office buildings within the development and Crystal Meadows homes. According to residents, the barrier would buffer visual and noise impacts of the proposed development. The residents included a sketch of a proposed barrier with the letter. The sketch depicts closely-spaced trees along the west side of the office building development, adjacent to the west side of the proposed pedestrian path. Exhibit A-9.c.

Design Review

57. City Planning Services reviewed the PUD modification proposal under the City’s mixed use design review process for mixed use development with a residential component. The Applicant has not yet developed specific building plans for the commercial development. A photo collage submitted with the application depicts specific design concepts for the proposed retail, office, and senior care buildings. The senior care facility would incorporate an obvious front door with a trellis or canopy, a circular driveway, two interior courtyards, residential-scale architectural elements, and a variety of exterior building materials and colors. Design concepts for retail buildings include windows and architectural elements of interest fronting streets, common colors and materials among buildings, and buildings incorporating a neighborhood scale. City Planning Services determined that the parking areas serving the office and senior care facility would not dominate the site, as site development would include landscaping within the parking areas, views to adjacent natural areas, landscape planters adjacent to the buildings, an inner courtyard between the two proposed office buildings, and additional landscaping to the north of the office buildings. Exhibit A-13.

58. City Planning Services determined that the Applicant has identified no specific strategy to create an integrated development pattern for each type of use, whether office, retail, or senior care. The proposal does not currently provide for lighting of pedestrian paths and outdoor areas. City Planning Services determined that the main commercial parking lot dominates the retail portion of the site, such that the PUD criteria calling for development with a beneficial effect not achieved by traditional development and PUD standards calling for clustering of buildings, well-designed landscaping, and
open space to break up building and pavement may not be met. The Planning Manager for the City Community Development Department issued a Mixed Use Design Review Decision on October 9, 2007, approving the mixed design review for the PUD modification with 16 conditions of approval. Conditions call for creating strong pedestrian connections between buildings within the development, separating the retail parking area into smaller sections, expressing common design elements throughout the proposed development, complying with specific design review criteria for proposed retail and office buildings, complying with specific design review criteria for the proposed senior care facility, complying with sign standards, screening utility, mechanical, and sanitation equipment from view, submitting a detailed lighting plan, submitting a detailed landscape plan, including pedestrian and bicyclist amenities in pedestrian plazas, outdoor gathering areas, and constructing pedestrian paths to specific design review standards. Exhibit A-13; Exhibit A-15; Exhibit A-20, page 7.

59. At the hearing, City Staff submitted a proposed revision to proposed condition A.5 within the Staff Report. City staff proposed that condition A.5 be revised to read (language added highlighted in bold):

Prior to final grading, civil or building permit issuance the applicant shall provide to the City for administrative review and approval an overall development plan showing a unified design concept with significant pedestrian connections and specific building designs that comply with the conditions of the Mixed Use Design Decision, dated October 9, 2007.

At the hearing, the Applicant submitted a proposed revision to the City's revised condition A.5. The Applicant proposed that condition A.5 be revised to read (language added underlined):

Prior to final grading, civil or building permit issuance, the City must administratively review and approve an overall development plan submitted by the Applicant showing a unified design concept with significant pedestrian connections and specific building designs that comply with the conditions of the Mixed Use Design Decision, dated October 9, 2007. If the Applicant's overall development plan complies with those conditions, the City shall approve it.

Exhibit A-20, Staff Report, page 22; Exhibit C-2; Exhibit C-3; Exhibit C-10.

60. Mr. Huey testified that Exhibit C-8 depicts a portion of the Verdana residential development landscape plan approved by the City. Mr Huey testified that landscaping depicted in the plan along the west border of the
proposed commercial development will screen the development from the Crystal Meadows development. The plan depicts landscaping with mixed deciduous trees and conifers surrounding both sides of a pedestrian trail along the proposed commercial development's western border. Exhibit C-8; Testimony of Mr. Huey.

**Utilities**

61. The City of Kent will provide public water service to the proposed commercial development. *Exhibit A-20, Staff Report, page 7.*

62. The City of Auburn will provide sewer service to the proposed commercial development. The proposed commercial development is located within the City of Auburn Sanitary Sewer service area. In May 2005, the Auburn City Council approved a utility extension agreement between the City of Auburn and Kent 160 LLC that governs the proposed commercial development site. The City of Auburn and Kent 160 LLC executed the agreement on June 6, 2005. According to comments submitted February 12, 2007, the City of Auburn had not determined whether the proposed commercial development is consistent with the agreement and whether further analysis or changes in design are required. The Staff Report accompanying the PUD modification proposal states that the design point of the new sewer lift station required as a condition of PUD approval has been updated to reflect additional flows from the proposed commercial development. New lift station design has also been modified to incorporate additional capacity needed to serve the proposed development. *Exhibit A-2; Exhibit A-6; Exhibit A-20, Staff Report, page 7.*

63. Mr. Huey testified that the Applicant agreed not to contest annexation by the City of Auburn under the utility extension agreement. The agreement states "[i]n consideration and as a condition of the provision of City sewer service, the Owner shall fully cooperate with and agree to the annexation (which shall include all types and manner of annexation) of the property to the City. It is further agreed and understood that in the event of any breach of this Agreement to annex, the City may terminate the provision of sewer service to the Property." Ms. Moorehead testified that City of Kent and City of Auburn representatives have not thoroughly identified the impact of annexation on the proposed commercial development as it is not certain when annexation by Auburn would actually occur. *Exhibit A-2; Testimony of Mr. Huey; Testimony of Ms. Moorehead.*

**CONCLUSIONS**

**Jurisdiction**

The Hearing Examiner has jurisdiction to hold a hearing on an application for major modification to Planned Unit Development (PUD) plans. *Kent City Code (KCC) Ch. 2.32; KCC 15.08.400.F.7; KCC 15.08.400.I.2.* For PUDs that propose a use not
typically permitted in the underlying zoning district as provided in KCC 15.08.400.B.4, the Hearing Examiner shall forward a recommendation to the City Council, which shall have the final authority to approve or deny the proposed PUD. KCC 15.08 400.F.7.

The Hearing Examiner's recommendation shall contain findings of fact and conclusions based on those facts drawn from the record of the hearing prepared by the Hearing Examiner. KCC 2.32.090.C.

Criteria for Review

Kent City Code (KCC) 15.08.400.G.2 sets forth the criteria the Hearing Examiner must use to evaluate an application for a non-residential planned unit development (PUD). The PUD request shall only be granted if:

a. The proposed project shall have a beneficial effect which would not normally be achieved by traditional lot-by-lot development and not be detrimental to present or potential surrounding land uses as defined by the comprehensive plan.

b. Unusual and sensitive environmental features of the site shall be preserved, maintained, and incorporated into the design to benefit the development and the community.

c. The proposed project shall provide areas of openness by the clustering of buildings, and by the use of well-designed landscaping and open spaces. Landscaping shall promote a coordinated appearance and break up continuous expanses of building and pavement.

d. The proposed project shall promote variety and innovation in site and building design. It shall encourage the incorporation of special design features such as visitor entrances, plazas, outdoor employee lunch and recreation areas, architectural focal points, and accent lighting.

e. Building design shall be based on a unified design concept, particularly when construction will be in phases.

KCC 15.08.400.G.2.

Conclusions Based on Findings

A. Although the proposed senior care facility may have a beneficial effect which would not normally be achieved by traditional lot-by-lot development, the proposed commercial development as a whole

KCC 15.08.400.B.4 permits commercial uses in residential PUDs of one hundred acres or more located in SR zoning districts, as long as such commercial uses are limited to those uses permitted in the Neighborhood Convenience Commercial (NCC) zoning district. KCC 15.08.400.B.4.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdala PUD - Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 29 of 36
would be detrimental to existing or potential surrounding land uses as defined by the comprehensive plan.

The planned senior care facility within the proposed commercial development may offer elderly or disabled members of the Kent community an option for residential living and medical care. Depending on what tenants are identified to lease space within the proposed commercial development, the commercial development may provide personal services and retail opportunities desired by members of the Kent community. Uses permitted within the NCC zoning district that may be allowed within residential PUDs of 100 acres or more include retail food and convenience stores; eating and drinking establishments, though not drive-throughs; miscellaneous retail stores; liquor stores; finance, insurance, and real estate services; personal services; home day-care; day care centers; and professional services.

Provision of such services within the PUD reflects City comprehensive plan policies for provision of services to neighborhood residents, locating housing within close proximity to shopping and services, and encouraging mixed use developments incorporating bike, pedestrian, and transit amenities. With conditions of mixed use design review, PUD criteria calling for development with a beneficial effect not achieved by traditional development and PUD standards calling for clustering of buildings, well-designed landscaping, and open space to break up building and pavement would be met. With conditions of mixed use design review and proposed conditions of PUD major modification approval, the proposed commercial development would incorporate bike, pedestrian, and transit amenities.

Although KCC 15.03.010 limits location of NCC districts to areas designated for neighborhood services in the comprehensive plan, the City Council had an opportunity to address whether commercial development may be permitted within residential PUDs when it modified PUD provisions by ordinance on August 15, 2006. At the time it modified PUD provisions, KCC 15.03.010 provisions were also before the Council; the Council most recently addressed KCC 15.03.010 by ordinance on November 11, 2005. However, to date the Council has not chosen to address PUD provisions that permit commercial development within residential PUDs in light of KCC 15.03.010. Thus, the Hearing Examiner must give full effect to both ordinances where possible, and where ordinances conflict, the Hearing Examiner's recommendation must be governed by the ordinance that is last in time. To resolve the apparent conflict between KCC 15.08.400.B.4 and KCC 15.03.010, the Hearing Examiner decides that the provisions of KCC 15.08 govern to permit commercial uses in residential PUDs of one hundred (100) acres or more located in SR zones.
Facts in the record support a determination that the proposed commercial development would be detrimental to existing or potential surrounding land uses as defined by the comprehensive plan. The City of Kent and City of Auburn comprehensive plans designate areas surrounding the proposed commercial development as single-family residential land use. The Urban Separator designation of the proposed commercial development site was meant to protect environmentally sensitive areas and to create open space corridors. With proposed commercial development, the site would be detrimental to the purpose of the Urban Separator designation and the intent of the City Council in placing the designation on the site. Proposed commercial development would defeat the purpose of the Council to provide environmental, visual, recreational, and wildlife benefits in designating the area Urban Separator. Although buffers alongside the on-site wetland and stream proposed and approved under the Applicant’s conceptual mitigation plan would protect the wetland and stream, the proposed commercial development would create additional urban development on the site that would detract from the site’s ability to serve as an open space separation between already developed urban areas. The proposed commercial development would be visible from residential development on surrounding slopes as well as at ground level.

Residential development within the PUD future development tract would likely also detract from the site’s ability to serve as an open space separation between already developed urban areas, but not to the same extent as commercial development. The site’s SR-1 underlying zoning classification provides for low density single-family residential development at one dwelling unit per acre. Such low-density residential development would not be as intense as the proposed commercial development, which includes two-story buildings, building footprints dwarfing the size of a typical single-family residence, parking lots, artificial lighting schemes, and complicated traffic mitigation requirements. PUDs at greater density may be developed within the SR-1 zoning district; however, in this case, a portion of the proposed commercial development site has been dedicated as open space to provide for a development density bonus in another portion of the PUD already undergoing construction.

Development of the proposed commercial development would be detrimental to surrounding residential and other land use as designated by the Comprehensive Plan. Owners of property surrounding the proposed development testified and submitted written comments that a commercial development is not needed at the proposed development site, and that impacts of commercial development are not compatible with surrounding residential development. Existing commercial development already serves the existing residential area. Landscaping would not serve as a buffer.
between the proposed development and surrounding development, due to the location of surrounding development above the proposed development.

The City of Auburn's pre-annexation agreement with King County for the Lea Hill area includes a provision requiring the City of Auburn to maintain established Urban Separator areas within the Lea Hill Annexation area, which would encompass the proposed commercial development site when it is de-annexed by the City of Kent. Ms. Moorehead testified for the City that de-annexation will eventually occur; the utility extension agreement for providing sewer service to the site requires the Applicant to support City of Auburn annexation of property including the proposed development site, lest sewer service be terminated.

The exact impacts of the proposed development on surrounding land uses are not known as specific tenants for the proposed commercial development have not been identified. Tenants secured in the future may not reflect the assumptions of the Traffic Impact Analysis for the project estimating the proposed development's traffic impact on the surrounding road system. Even if the Traffic Impact Analysis proves to have accurately forecasted proposed development tenants, the City of Auburn supplied additional evidence for the record that the Traffic Impact Analysis may have underestimated the traffic impact of the proposed commercial development, particularly in the AM peak period. For example, the City of Auburn determined that a coffee shop business typical of developments like the proposed development can, by itself, generate up to 200 AM peak hour trips and over 70 PM peak hour trips. The TIA for the proposed development concluded that the entire proposed development would only generate a total of approximately 122 weekday AM peak hour trips and 262 new weekday PM peak hour trips. A greater number of vehicle trips entering and exiting the proposed commercial development than otherwise estimated would exacerbate the LOS "E" experienced by traffic at the proposed southern driveway along 124th Avenue SE. According to King County intersection standards, a LOS "E" is the least acceptable LOS at an intersection. A congested intersection, especially in the AM peak period, may impede school bus traffic along 124th Avenue SE.

There is also testimony in the record that City of Auburn and the City of Kent representatives have not discussed the impact of annexation on the proposed commercial development. The PUD site is located within the City of Auburn potential annexation area; a City of Kent representative testified that the City of Kent would eventually de-annex the proposed development site and the City of Auburn would annex the site. The Lea Hill area surrounding the PUD site will be expected to be annexed by the City of Auburn, effective January 1, 2008. Sewer service will be withdrawn from the proposed development site unless the Applicant supports annexation of the site by the
City of Auburn. Given the likelihood of annexation of the proposed development site into the City of Auburn in the near future, the Hearing Examiner recommends that the citizens of Auburn, through the Auburn City Council, be given the opportunity to decide the future land use of the site.

Thus, The Hearing Examiner recommends that the Kent City Council deny the PUD major modification application, without prejudice. Should the Kent City Council elect to decide the PUD major modification application, the Council should consider whether the residential PUD criteria found in KCC 15.08.400.G.1 are more applicable to evaluating the application, given the residential development surrounding and located within the PUD. *Findings 1, 4, 5, 7-17, 19-23, 27-55, 62, 63.*

B. **With conditions, unusual environmental features of the site would be preserved, maintained, and incorporated into the PUD design.** According to the conceptual buffer averaging plan submitted by the Applicant and approved by the City, wetlands and stream on the proposed commercial development site would be protected through establishment of adequate buffers. Conditions are necessary to ensure that the Applicant installs and operates a water quality best management practice (BMP) similar to a Stormceptor upstream of the proposed detention / water quality vault within Basin A. *Findings 20-25*

C. **With conditions, the PUD would provide areas of openness through use of well-designed open space and landscaping.** The proposed commercial development would lie adjacent to a Native Growth Protection Area (NGPA), proposed as part of the initial PUD that would contain the proposed development. The Applicant has submitted preliminary landscape plans for the proposed commercial development. However, the proposed commercial development would not provide for any areas of open space within the commercial development area; the retail portion of the proposed development would be dominated by a parking lot. Conditions are necessary to ensure that PUD standards calling for clustering of buildings, well-designed landscaping, and open space to break up building and pavement are met, and would require the Applicant to submit a detailed landscape plan for the proposed development. An additional condition is necessary to ensure a sufficient landscape buffer between the proposed development and the Crystal Meadows neighborhood. *Findings 1, 19, 20, 28, 56-60.*

D. **With conditions, the PUD would promote variety and innovation in site and building design, and would contain features that promote community interaction.** A photo collage submitted with the application depicts specific design concepts for the proposed retail, office, and senior care buildings. Pedestrian trails would run through and surround the proposed commercial development. However, building schematics or
building elevations showing building design have not been submitted. The Applicant's proposal for commercial development does not currently provide for lighting of pedestrian paths and outdoor areas. The main commercial parking lot dominates the retail portion of the site, such that the PUD criteria calling for development with a beneficial effect not achieved by traditional development and PUD standards calling for clustering of buildings, well-designed landscaping, and open space to break up building and pavement would not be met. Conditions are necessary to ensure that the Applicant creates strong pedestrian connections between buildings within the development; separates the retail parking area into smaller sections; complies with specific design review criteria for proposed retail and office buildings; complies with specific design review criteria for the proposed senior care facility; complies with sign standards, screening utility, mechanical, and sanitation equipment from view; submits a detailed lighting plan; submits a detailed landscape plan, including pedestrian and bicyclist amenities in pedestrian plazas, outdoor gathering areas; and constructs pedestrian paths to specific design review standards. Findings 57, 58.

E. With conditions, the PUD would provide a unified design concept. The Applicant has identified no specific strategy to create an integrated development pattern for each type of use, whether office, retail, or senior care. Conditions of mixed use design review for the proposed commercial development require common design elements throughout the proposed development. Findings 57 – 59.

RECOMMENDATION

Based on the preceding Findings and Conclusions, the Hearing Examiner recommends that the City Council deny the request for approval of a major modification to construct a Neighborhood Convenience Commercial development within the Future Development Tract of PUD-2004-4, without prejudice.\textsuperscript{22, 23}

If the City Council determines it is appropriate to approve the request according to KCC 1508.400.G.2 review criteria, the Hearing Examiner recommends approval with the following conditions:\textsuperscript{24, 25}

\textsuperscript{22} The words “without prejudice” are intended to convey the Hearing Examiner's opinion that the land use application may be re-submitted to the City of Auburn without a bar based on an argument that the application had already been decided.

\textsuperscript{23} If the PUD is denied by the City Council, the associated application for approval of a CUP for a Senior Care Facility would also be denied based on conditions placed on approval of that application.

\textsuperscript{24} This recommendation includes conditions required to meet City Code standards as well as conditions required to reduce unique project impacts.
A. GENERAL CONDITIONS OF APPROVAL:

1. The terms and conditions of Mixed Use Design Review MUDR-2007-3, which was approved on October 9, 2007, shall apply to this proposal.

2. Where determined feasible by the Kent Public Works Department, the applicant shall utilize Low Impact Development Techniques in construction of the project, including but not limited to rainwater collection systems, porous paving on sidewalks and trails, and bioretention areas with curb cuts in planting strips along roadways.

3. Drive through lanes shall include type II landscaping in order to buffer visual and auditory impacts to surrounding areas. The development shall not include any drive through lanes for eating or drinking establishments or any gasoline stations.

4. There shall be a landscaping barrier along the west side of the pedestrian path adjacent to the west side of office buildings, to provide a noise and visual barrier between the Crystal Meadows residential development and the office buildings.

5. Uses allowed within the PUD shall be limited to those uses that are principally permitted in the NCC zone and shall not include conditionally permitted uses or special permit uses other than the proposed senior care facility and two drive-through lanes that are accessory to principally permitted uses and public uses such as schools and parks.

6. Prior to final grading, civil or building permit issuance the applicant shall provide to the City for administrative review and approval an overall development plan showing a unified design concept with significant pedestrian connections and specific building designs that comply with the conditions of the Mixed Use Design Decision, dated October 9, 2007.

B. PRIOR TO THE ISSUANCE OF A COMMERCIAL CERTIFICATE OF OCCUPANCY THE APPLICANT SHALL:

1. Construct road and utility improvements adjacent to or serving the commercial development within the future development tract as required through the February 15, 2006 Verdana PUD approval and the Revised

---

If the City Council approves the PUD without amendments to the recommended conditions, the application for CUP approval for a Senior Care Facility would also be approved, with conditions. If the conditions of approval are amended by the City Council, the CUP approval for the Senior Care Facility would be returned to the Hearing Examiner for re-opening of the hearing to determine if additional conditions are appropriate.

Findings, Conclusions and Recommendation
Hearing Examiner for the City of Kent
Verdana PUD - Major Modification
PUD-2004-4(R), KIVA RPP4-2064281

Page 35 of 36
MDNS issued October 16, 2007, including any mitigation (EMA or EMF) charges. The King County roundabout at the 124th Avenue SE – SE 304th Street intersection shall be completed and in operation prior to occupancy permit issuance for the development. When the majority of retail tenants have been identified, the Applicant shall evaluate the accuracy of trip generation estimates for the proposed development, and shall consider options for routing the majority of vehicle trips away from the residential senior care facility.

2. Construct all wetland, stream and buffer mitigation and install all required wildlife passable fences unless otherwise approved by the Environmental Engineering Section of the Kent Public Works Department.

3. Receive approval of the required As-Built Drawings for Street, Street Lighting, Water, Sewer, and Storm Water Management Facilities as deemed appropriate by the Kent Department of Public Works. The As-Built Drawings for Storm Water Management Facilities shall include plans for installation and use of a water quality best management practice (BMP) similar to a Stormceptor upstream of the proposed Basin A detention / water quality vault.

DATED this 27th day of November 2007

THEODORE PAUL HUNTER
Hearing Examiner