ORDINANCE NO. 3953

AN ORDINANCE of the City Council of the City of Kent, Washington, granting a revised major modification of the Verdana Planned Unit Development located at 12200 SE 304th Street, Kent, Washington (PUD-2004-4(R)).

RECITALS

A. The Verdana Planned Unit Development (PUD) (PUD 2004-4(R)) received approval with conditions for a 378 lot single family residential development and Future Development Tracts on February 16, 2006 (the “2006 PUD Approval”). Kent 25 LLC/Kent 160 LLC (Applicant) submitted a request for a major modification of the PUD on September 12, 2006. The City Council denied the major modification request without prejudice by Ordinance No. 3874 on February 19, 2008. The Applicant filed a Land Use Petition Act (LUPA) appeal of the City Council’s action in King County Superior Court on March 10, 2008.

B. The Applicant submitted a revised request for major modification on July 2, 2009 (Revised Major Modification). The City’s SEPA responsible official analyzed the environmental impact of the Revised Major Modification under the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The City issued an addendum to the City’s October 16, 2007 Revised Mitigation Determination of Nonsignificance (MDNS) on December 31, 2009. The Addendum determined that the impacts of the Revised Major Modification are consistent with the type of development analyzed under

1 Verdana PUD – Approve Revised Major Modification
the October 16, 2007 MDNS, and concluded that adequate environmental analysis has been conducted under SEPA.

C. A community meeting was held regarding the Revised Major Modification on October 13, 2009, and an open public hearing followed on March 3, 2010. The hearing examiner issued findings, conclusions, and a recommendation of approval with conditions on March 15, 2010 (Recommendation). The Recommendation is attached as Exhibit “A” and incorporated herein.

D. On April 20, 2010, the City Council voted to adopt, with modifications, the Recommendation and approve the Revised Major Modification. The first modification to the Recommendation is to clarify that the conditions attached to the approval of the Revised Major Modification are in addition to the conditions originally imposed in the 2006 PUD Approval. The second modification is to clarify that the traffic conditions imposed on the Revised Major Modification relate only to revised improvements required for the Revised Major Modification. Traffic conditions imposed in the 2006 PUD Approval are governed by the 2006 PUD Approval. If the development envisioned by the Revised Major Modification occurs prior to the development envisioned by the 2006 PUD Approval, traffic improvements adjacent to the Revised Major Modification will be constructed consistent with the 2006 PUD Approval and the Revised Major Modification.

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 are incorporated by this reference.

SECTION 2. - Decision. The hearing examiner’s findings, conclusions and recommendation (Recommendation), dated March 15, 2010, is attached and incorporated as Exhibit “A.” The City Council adopts the Recommendation approving the Revised Major Modification with the following modifications:

1. Council imposes conditions A. 1 through 9 and B.1 through 3 in addition to the conditions imposed in the 2006 PUD Approval.

2. Council modifies Condition B. 1 to clarify that construction of improvements prior to a certificate of occupancy for the commercial development is related to additional improvements only required by the commercial development and not to those improvements originally required by the 2006 PUD Approval.

B. PRIOR TO THE ISSUANCE OF A COMMERCIAL CERTIFICATE OF OCCUPANCY THE APPLICANT SHALL:
1. Construct required road and utility improvements adjacent to and only serving the commercial development within the future development tracts as required through the February 15, 2006 Verdana PUD approval and the Revised MDNS issued October 16, 2007, including any mitigation (EMA or EMF) charges.

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. - Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

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

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 4 day of May, 2010.
APPROVED: 4 day of May, 2010.
PUBLISHED: 7 day of May, 2010.
I hereby certify that this is a true copy of Ordinance No. 3953 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, CITY CLERK

(SEAL)
SUMMARY OF RECOMMENDATION
The revised request for major modification of a previously-approved Planned Unit Development, PUD-2004-4, to include an assisted living facility and retail, commercial, and office uses within future development tracts of PUD-2004-4, located at 12200 SE 304th Street, Kent, Washington should be APPROVED. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD
Request:
Kent 25 LLC / Kent 160 LLC makes a revised request for major modification of a previously-approved Planned Unit Development, PUD-2004-4, to include an assisted living facility and retail, commercial, and office uses within future development tracts of PUD-2004-4. The property subject to the requests is located at 12200 SE 304th Street, Kent, Washington.

Hearing Date:
The Hearing Examiner held an open record hearing on the request on March 3, 2010.

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

Sharon Clamp, City Planner
Virginia Haugen
Art Weichbrodt

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Kim Adams-Pratt, City Attorney, represented the City of Kent at the open record hearing. Mike Murphy, Attorney at Law, represented the Applicant at the open record hearing.

Exhibits:

1. City Staff Report, dated February 24, 2010
2. Revised Modification to Planned Unit Development Application, received July 2, 2009
3. Revised PUD Major Modification Description, undated
4. The Village at Bridges Revised PUD Major Modification Description, received September 22, 2009
5. Village at Bridges Amendment to the Verdana Technical Information Report, dated July 2009
7. Large and Reduced Plan Set: Sheets 1 – 10, Bridges PUD Major Modification (Formerly Verdana), dated September 21, 2009
8. Large Plan Set: SSD Profile Exhibit, Bridges PUD Major Modification (Formerly Verdana), dated January 14, 2010; and 124th Avenue SE Channelization Exhibit, Bridges PUD Major Modification (Formerly Verdana), dated January 14, 2010
9. Comments from the City of Auburn
   A. Email message from Elizabeth Chamberlain, Principal Planner, City of Auburn, dated February 9, 2010
   B. Letter from Elizabeth Chamberlain, Principal Planner, City of Auburn, dated February 9, 2010
   C. Email message from Joe Welsh, Transportation Planner, City of Auburn, dated January 12, 2010
   D. Email message from Joe Welsh, Transportation Planner, City of Auburn, dated November 16, 2009
   E. Letter from Chris Hankins, Senior Planner, City of Auburn, dated December 18, 2007
   F. Letter from Chris Hankins, Senior Planner, City of Auburn, dated November 6, 2007

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

**FINDINGS**

**Application and Notice**

1. Kent 25 LLC / Kent 160 LLC (Applicant) requests approval of a revised request for a major modification (Revised Request) to a Planned Unit Development (PUD), PUD-2004-4. PUD-2004-4 was approved with conditions by the Hearing Examiner on February 15, 2006. The revised major modification request (PUD-2004-4(R)) would modify the previously approved PUD-2004-4 through development of approximately 13.21 acres

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1 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 31.

*Findings, Conclusions and Recommendation*

*Hearing Examiner for the City of Kent*

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within PUD-2004-4, consisting of four Future Development Tracts (FDTs): Tracts LLL, MMM, NNN, and OOO. Under the Revised Request, the tracts would be developed with an assisted living facility and retail, commercial, and office uses. PUD-2004-4 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 SE. The Future Development Tracts are located within the PUD at the northwest corner of 124th Avenue SE and SE 304th Street in Kent, Washington. FDTs LLL, MMM, NNN, and OOO are bounded by The Bridges (formerly Verdana) residential development to the north, 124th Avenue SE to the east, SE 304th Street to the south and Crystal Meadows plat to the west. Exhibit 2; Exhibit 4; Exhibit 7; Exhibit 31.

2. The Applicant submitted a previous request for major modification of PUD-2004-4 on September 12, 2006. Following a revised recommendation by the Hearing Examiner on January 17, 2008, the City Council denied the major modification request without prejudice by adopting Ordinance No. 3874 on February 19, 2008. The Applicant filed a Land Use Petition Act (LUPA) appeal of the City Council's action in King County Superior Court on March 10, 2008. In subsequent meetings with the Applicant, City staff determined a revised PUD major modification application could be submitted. The Applicant submitted a revised request for major modification on July 2, 2009. Exhibit 1, Staff Report, page 3; Exhibit 2; Exhibit 4; Exhibit 31; Exhibit 37; Exhibit 38.

3. The City of Kent (City) published notice of a community meeting on the Revised Request hosted by the Applicant in the Kent Reporter on October 3, 2009. Exhibit 14. The City posted notice of the open record hearing associated with the Revised Request on the subject property on February 19, 2010. The City also mailed notice of the hearing to local agencies,

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2 At the time of Hearing Examiner approval of PUD-2004-4 and preliminary plat SU 2004-11 with conditions, the PUD 2004-4 contained one future development tract at the SE 304th Street/124th Avenue SE intersection, with no uses specified for the tract. Under the revised PUD modification proposal, PUD-2004-4(R), four future development tracts, Tracts LLL, MMM, NNN, and OOO, take the place of the single future development tract at the SE 304th Street/124th Avenue SE intersection. Exhibit 4; Exhibit 7; Exhibit 31. The Applicant's SEPA Environmental Checklist states that the Applicant recorded a final plat for The Bridges (formerly Verdana) under King County File No. 20071220000095, and that the final plat contained Future Development Tracts LLL, MMM, NNN, and OOO. Exhibit 17. The four future development tracts within the final plat total approximately 13.21 acres; the earlier single future development tract totaled approximately 13.30 acres. Exhibit 4.

3 The property that contains the four future development tracts is identified by King County Parcel Nos. 108562-3960, 108562-3970, 108562-3980, and 108562-3990. Exhibit 2.

4 The City staff report states a revised Notice of Application for the minor revision to the major modification request is not required. According to the staff report, the City mailed notice of application for the original proposal to local, state, and federal agencies, published notice in the Kent Reporter, and posted notice on the subject property on January 27, 2007. On July 7, 2007, the City...
interested parties, and owners of property within 300 feet of the subject property on February 19, 2010. The City published notice of the hearing in the Kent Reporter on February 20, 2010. Exhibit 13.A.

SEPA Determination

4. The City analyzed the environmental impact of the Revised Request under the State Environmental Protection Act (SEPA), Ch. 43.21C RCW. The City issued an Addendum5 to the City’s October 16, 2007 Revised Mitigation Determination of Nonsignificance (MDNS)6 on December 31, 2009. The Addendum analyzed whether impacts associated with the Revised Request were evaluated under the October 16, 2007 MDNS. The Addendum determined that Revised Request impacts are consistent with the type of development analyzed under the October 16, 2007 MDNS, and concluded that adequate environmental analysis has been conducted under SEPA. Exhibit 1, Staff Report, page 6; Exhibit 16.

City Comprehensive Plan Designation

5. The proposed PUD is located within an area designated as an Urban Growth Area under the Washington State Growth Management Act (GMA). Exhibit 1, Staff Report, page 5. Urban growth areas are designated as areas and densities sufficient to permit the urban growth that is projected to occur in published a revised notice of application that identified the addition of two drive-through lanes in the Kent Reporter, mailed notice to all parties of record, and posted notice on the subject property. Exhibit 1, Staff Report, page 12.

5 An “addendum” under SEPA is “an environmental document used to provide additional information or analysis that does not substantially change the analysis of significant impacts and alternatives in the existing environmental document. The term does not include supplemental EISs. An addendum may be used at any time during the SEPA process.” Washington Administrative Code (WAC) 197-706.

6 The City reviewed the environmental impact of the initial proposal for a major modification of the PUD, as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The City found that with four conditions, the proposal would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of Nonsignificance (MDNS) on September 19, 2007. MDNS conditions concerned 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. 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 37.
the county or city for the succeeding 20-year period. RCW 36.70A.110(2).
Each urban growth area shall permit urban densities and shall include
greenbelt and open space areas. RCW 36.70A.110(2). Urban growth should
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).

6. 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 as annexed into the
City of Kent through City Ordinance No. 2743. FDTs LLL, MMM, NNN, and
OOO are 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 1, Staff Report, page 14; Exhibit 7.*

7. The City Comprehensive Plan contains Land Use Element goals and policies
relevant to the PUD major modification application.7 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 1, Staff
Report, pages 14 - 15.*

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7 The City staff report identified Comprehensive Plan Policy LU-14.8, Goal LU-24, Policy LU-24.1, Goal
applicable to the proposed revised major modification to the PUD. *Exhibit 1, Staff Report, pages 14 –
17.*
8. 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 1, Staff Report, pages 16 - 17.*

Zone Classification and Land Use

9. FDTs LLL, MMM, NNN, and OOO are located within the City’s SR-1 Residential Agricultural zoning district. *Exhibit 1, Staff Report, page 4.* The purpose of the SR-1 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 northern portion of the proposed PUD are located within the City’s SR-3 Single-Family Residential zoning district. *Exhibit 1, Staff Report, page 4.* The purpose of the SR-3 zoning 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.*

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8 The City staff report states that a residential development within the same sized area as the PUD FDTs typically could contain 16 residences plus associated impervious surface. *Exhibit 1, Staff Report, page 20.*

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PUD Standards

10. 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.

11. 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 15.04.090.9 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.

Revised Request

12. Kim Adams-Pratt, City Attorney, stated for the City that the Applicant has submitted a revised application for major modification of the PUD (Revised Request),10 and that the Revised Request contains substantial changes from the initial application for major modification. The Applicant submitted a Revised PUD Major Modification Description (Revised Description), dated September 8, 2009. City Planner Sharon Clamp testified that the Revised

9 The purpose of the NCC zoning district is to "provide small nodal areas for retail and personal service activities convenient to residential areas and to provide ready access to everyday convenience goods for the residents of such neighborhoods. NCC districts shall be located in areas designated for neighborhood services in the comprehensive plan." KCC 15.03.010.

10 The City Council denied the previous application for a major modification of the PUD without prejudice. Exhibit 38. Kim Adams-Pratt, City Attorney, argued that the Washington Supreme Court decision in Hilltop Terrace Homeowners Ass'n v. Island County, 126 Wn.2d 22 (1995) means the Applicant's revised application is not barred under the res judicata doctrine, as the Applicant's revised application is sufficiently different from its initial application. Statement of Ms. Adams-Pratt.
Request is a significant revision because there are numerous changes from the initial application, but a minor change because the overall nature of the development proposal for the PUD future development tracts – commercial and residential – has not changed. Exhibit 4; Testimony of Ms. Clamp; Statement of Ms. Adams-Pratt.

13. Mike Murphy, Applicant Attorney, argued that the Revised Request is materially changed from the initial application for major modification. Michael Huey testified for the Applicant that since initial design, proposed retail uses have been consolidated into the center of the proposed commercial development, the stormwater detention pond associated with the proposed development has been relocated for increased open space over the initial design, and landscaping has been added to the proposed development. Statement of Mr. Murphy; Testimony of Mr. Huey.

14. Katherine Orni, Applicant Planner/Development Manager/Representative, testified that the Revised Request differs from the initial proposal through greater clustering of proposed buildings, increased open space, and decreased impervious surface as compared to the initial proposal. Ms. Orni testified that the detention pond has been moved to provide additional buffer between the existing wetland and proposed development; more pedestrian ways have been added; the proposed assisted living facility has been relocated behind a landscaped area; the design incorporates “Northwest design” features, large plazas, and connecting ways; and parking spaces have been moved to the interior of the subject property. Ms. Orni added that landscaping would be located adjacent to parking spaces. Ms. Orni also added that proposed one-story buildings along 124th Avenue would buffer proposed two-story buildings moved to the interior of the subject property. Testimony of Ms. Orni.

15. The Revised Description explains that total PUD site area would still be 155.33 acres. According to the Revised Description, total future development tract site area would decrease from 13.30 acres to 13.21 acres, as revised; total impervious surface would decrease from 69 percent to 48 percent; and parking would decrease from 446 spaces to 398 spaces. Proposed building footprints would be reduced from 20 percent of the site to 18 percent of the site. Proposed buildings would be decreased from nine to seven buildings. Within the PUD’s four future development tracts, the Revised Description proposes commercial development limited to uses allowed within the City’s Neighborhood Convenience Commercial zoning district. According to the Revised Description, the revised proposal clusters proposed retail buildings tighter to provide more open space than the initial proposal. Open space within the future development tracts would increase from 4.12 acres under the initial PUD major modification application to 6.82 acres under the revised application. Open space within the entire PUD would

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increase from 77.15 acres to 83.97 acres, with 61.11 acres of passive open space and 16.33 acres of recreational open space, compared to 59.47 acres and 16.09 acres, respectively, under the initial proposal. Exhibit 4; Exhibit 7; Exhibit 36; Exhibit 42.

Revised Site Plan

16. The Applicant’s September 21, 2009 revised site plan map depicts the development proposal under the Revised Request. The revised site plan map depicts seven buildings within FDTs LLL, MMM, NNN, and OOO: Building A (76,128 square feet), Building C (7,520 square feet), Building D (10,975 square feet), Building E (18,473 square feet), Building F (8,125 square feet), Building G (13,631 square feet), and Building J (16,778 square feet). None of the proposed buildings would exceed 35 feet in height. The Olson Creek stream course and surrounding wetland and buffer bisect the area of proposed development within FDTs LLL, MMM, NNN, and OOO. Olson Creek would be protected by a 40-foot wide stream buffer and a 15-foot wide building setback from the wetland buffer. Building J, a proposed office building, would be located on the west boundary of the FDTs, with access from SE 304th Street. A grasscrete emergency vehicle access lane would extend north, adjacent to the east of proposed Building J. A pedestrian bridge would cross the grasscrete emergency access to connect a public plaza adjacent to Building J to the remainder of the proposed buildings located adjacent to the east and north, across Olson Creek and wetland areas. Buildings E and F, proposed mixed-use office and retail buildings, would be located adjacent to the east end of the proposed bridge. Building A, an assisted living facility, would be located adjacent to the north of Building E. A proposed detention pond would be located adjacent to the north of Building A. Buildings C, D, and G, proposed retail buildings, would be located adjacent to the east of Buildings A, E, and F, separated by a central courtyard. 124th Avenue SE would lie adjacent to the east of Buildings C, D, and G. A pedestrian plaza would be located between proposed Building C and 124th Avenue SE. A pedestrian trail would lead north from the pedestrian plaza to open space and residential development within the PUD. A pedestrian path would also be located adjacent to the west of proposed Buildings F, E and A, and the proposed detention pond, roughly parallel to the Olson Creek stream course. Internal roads would connect proposed buildings, with parking spaces for vehicles. Overall, the proposed development with FDTs LLL, MMM, NNN, and OOO would total approximately 48,724 square feet of retail space; 26,778 square feet of office space; and a 76,128 square-foot assisted living facility. Buildings around the perimeter of the proposed development would be one-story; buildings in the retail core (Buildings A, E, and F) would be two-story buildings. Exhibit 7.
17. Photo schematics show that after development proposed under the Revised Request, a person standing at the SE 304th/124th Avenue SE intersection roundabout looking north along 124th Avenue SE would see trees planted along the west side of the road. A parking lot and pedestrian trails would be located adjacent to the west of the trees, and the proposed commercial development would be located along 124th Avenue NE adjacent to the north of the trees. The parking lot would serve the proposed commercial development; both the lot and the development would be surrounded by landscaping, including trees. Exhibit 42.

18. Vehicles would access the proposed assisted living center through a driveway from 124th Avenue SE to the assisted living facility. A driveway to the south of the assisted living facility driveway would provide access to proposed retail development. Another driveway would access proposed Building J from SE 304th Street. Exhibit 7.

19. Type I solid screen landscaping would be installed between proposed Building J and the Crystal Meadows subdivision, including large evergreen and deciduous trees, for a solid screen of vegetation between proposed development and the subdivision. Type II visual screen landscaping would be installed throughout proposed development within the FDTs, including large and small deciduous and evergreen trees. Type II landscaping would screen parking areas located along 124th Avenue SE and along SE 304th Street from the street. Proposed development within the FDTs would also include ornamental planting areas consisting of shrubs, groundcover, perennials, and lawn. Exhibit 1, Staff Report, pages 20 and 24; Exhibit 7.

20. The Applicant’s Revised Description states that as proposed, anticipated uses within the future development tracts of the PUD could include, consistent with KCC 15.08.400(B)(4): retail food and convenience stores; eating and drinking establishments, with no drive-through eating and drinking establishments; drive-through/up businesses; miscellaneous retail; liquor store; finance, insurance, and real estate services, personal services; home day-care or day-care centers; professional services; utility and transportation facilities; public facilities; wireless telecommunications facilities, with a conditional use permit; group homes; drive-in churches; and welfare facilities, such as retirement homes, convalescent homes, or facilities for rehabilitation or correction with a conditional use permit. Exhibit 4.

Current Status, Construction Phasing and Occupancy

21. Michael Huey, Applicant Representative, testified that the final plat for subdivision SU 2004-11 has been recorded, and that some improvements within the subdivision have already been bonded. Mr. Huey testified that

11 The Applicant recorded the final plat under AFN 20071220000095. Exhibit 4.
development under the Revised Request would be tied into the subdivision, including pedestrian access and open space elements. Some civil construction work for the residential portion of the PUD has already been completed. The completed work includes detention ponds, roadways, and lots. Portions of the PUD FDTs are currently used as a stockpile site for topsoil and mineral dirt from the residential development, to be used for fill as necessary to construct the proposed commercial development. Exhibit 1, Staff Report, page 7; Exhibit 31; Testimony of Mr. Huey.

22. According to the Applicant’s Revised PUD Major Modification Schedule of Development (Schedule), the Applicant would submit detailed construction and building plans if the PUD modification is approved. Construction of the proposed PUD modification would begin in late 2010 or in 2011, followed by first occupancy in 2012. The Schedule states that building construction may be phased based on market conditions. Exhibit 3.

23. The Applicant’s Schedule states that the Applicant anticipates the assisted living facility would be owned and operated separately from proposed retail and office buildings. Retail and office buildings may have separate owners managing and leasing floor space. The Applicant would prepare design covenants to meet architectural, lighting, open space and landscaping requirements of the City’s Mixed-Use Design Review process. A homeowners association has been formed for the overall Bridges subdivision and PUD, and the City of Kent has reviewed and approved Conditions, Covenants, and Restrictions (CC&Rs) for the overall subdivision and PUD. The Applicant would prepare similar covenants addressing continued maintenance of the open space, parking lot, buildings, storm facilities, and other common areas associated with the revised request for major modification of the PUD. Exhibit 3.

24. KCC 15.08.400.I provides that “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.” KCC 15.08.400.I.

25. Pursuant to 15.08.400(C)(5)(a) KCC, a minimum of 35 percent of the total PUD site area (or in mixed use PUDs, 35 percent of the area containing residential uses) is required to be provided as common open space. As proposed under the Revised Request, 83.97 acres or 54.06 percent of the total PUD site area would be set aside as open space. Exhibit 1, Staff Report, pages 11 - 12; Exhibit 4.
Urban Separator Development

26. Residential areas within the PUD would be located to the west and north of FDTs LLL, MMM, NNN, and OOO. Pedestrian trails would extend between the areas of the PUD to connect residential neighborhoods. A trail would extend northwest and another trail would extend north from the FDT area to connect to residential neighborhoods within the PUD. *Exhibit 24.*

27. 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.* Of the 40.28 acres of unconstrained Urban Separator area, 20.14 acres must be retained as common open space, under the City code. Of the 20.14 acres, 16.42 acres were recorded as open space with the urban separator designation on the final plat. The Applicant would set aside another additional 3.72 acres of common open space in other future development tracts within the PUD. *Exhibit 1, Staff Report, page 12; Exhibit 4.*

Wetlands

28. 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. *12* Wetland 1, the largest wetland, is located adjacent to the future development tract. Wetland 1 would be protected within a Native Growth Protection Area. *Exhibit 7; Exhibit 24; Exhibit 28; Exhibit 31.*

29. According to the Hearing Examiner's February 15, 2006 decision, the City's consultant reviewed the Raedeke delineation. 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 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 31.*

30. 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

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*12* Raedeke delineated wetlands according to the 1993 City 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 28; Exhibit 31.*

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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 Olson Creek as non-salmonid. Exhibit 1, Staff Report, page 7; Exhibit 28; Exhibit 31.

31. The western arm of Wetland 1 containing Olson Creek and required buffers bisects development proposed under the Revised Request. Proposed Building J, parking, and landscaping would be located adjacent to the west of the western arm of Wetland 1 and Olson Creek. The remainder of development proposed under the Revised Request, including buildings, parking, and landscaping, would be located east of the western arm of Wetland 1 and Olson Creek. The portion of proposed development on the west of the wetland would be connected to the remainder of the commercial development to the east by a pedestrian foot bridge over the wetland. Wetland 1 extends to the west and north adjacent to development proposed under the Revised Request. Residential housing would be located adjacent to the west and north of the wetland. Exhibit 7; Exhibit 42.

32. Development proposed under the Revised Request would impact 0.44 acre of wetland buffer, requiring buffer averaging under Chapter 11.06 KCC. The City approved a May 4, 2007 conceptual wetland buffer averaging plan 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. Under the Revised Request, the 2007 approved buffer line would change slightly in the northeast corner of the proposed Building J site, resulting in approximately 122.37 square feet of reduced buffer and approximately 677.33 square feet of added buffer, for a total surplus buffer of approximately 5,104.96 square feet. The City staff report states that a final wetland buffer averaging and restoration plan must be approved under Chapter 11.06 KCC prior to issue of any development permits. Remaining wetland, stream, and wetland buffer would be protected within a Native Growth Protection Area (NGPA). Exhibit 1, Staff Report, page 8; Exhibit 7; Exhibit 30.

Topography

33. The Staff Report describes topographical conditions on the proposed development site. The southwest portion of the site contains a 30- to 55-

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13 Raedeke delineated streams according to the 1996 City 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 28; Exhibit 31.

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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 staff report states erosion potential exists on the east and west sides of the site and further investigation should be undertaken 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 1, Staff Report, page 6.

Stormwater Facilities

34. The Applicant submitted an Amended Technical Information Report (TIR), dated July 2009. The Amended TIR addresses the Revised Request. According to the Amended TIR, the Revised Request proposes minor changes to the PUD drainage basin boundary and decreases the amount of impervious surface over the initial PUD modification request. Under the Revised Request, the proposed detention pond would be relocated to the north portion of the future development tracts. The pond would provide detention and water quality treatment for all proposed development within the future development tracts. Exhibit 5.

35. Development within the future development tracts would use a pipe and catch basin system to collect surface water runoff and route it to the proposed detention pond. Stormwater runoff from the development pad proposed for the west portion of the future development tracts would be conveyed to the detention pond through a pipe under the pedestrian bridge. Stormwater would be treated and discharged from the detention pond to the onsite wetland, eventually flowing to Olson Creek. Stormwater would be released from the west side of the detention pond at pre-development rates to maintain wetland hydrology and water to Olson Creek. The detention pond would be landscaped to blend with surrounding green spaces, with a trail corridor along the top of the pond berm. The stormwater conveyance system would be designed to meet 2002 City Stormwater Design Manual and 1998 King County Stormwater Design Manual standards. The Revised Request is vested to these standards. Exhibit 4; Exhibit 5.

Access and Traffic

36. The driveway to access the proposed retail buildings and parking along 124th Avenue SE would be located approximately 415 feet north of the SE 304th Street/124th Avenue SE intersection. The driveway to access the proposed assisted living facility would be located north of the retail access driveway on 124th Avenue SE, approximately 400 feet north of the driveway to access...
proposed retail buildings. A driveway to access proposed Building J would be located along SE 304th Street, approximately 350 feet west of the SE 304th Street/124th Avenue SE intersection. The City staff report states that SE 304th Street and 124th Avenue SE are both under City of Auburn jurisdiction following annexation on January 1, 2008. Exhibit 1, Staff Report, page 8; Exhibit 7.

37. The Applicant submitted a Revised Traffic Impact Analysis (TIA), prepared by the Transpo Group in May 2007, to evaluate traffic impacts of the initial PUD modification proposal and to respond to comments from 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 Street/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 26.

38. The Revised TIA estimated potential traffic impacts of proposed commercial development based on the average trip rates for the "Shopping Center," "Assisted Living," and "Medical/Dental Office" ITE Land Use Codes. However, the Revised TIA stated that actual project trips generated would be less than the trips associated with the ITE Land Use Codes, as the Revised TIA assumed lesser linked trips between the different uses within the commercial development than assumed under the ITE Codes. The Revised TIA concluded that the proposed commercial development would generate approximately 122 new weekday AM peak hour trips and 262 new weekday trips.

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 commercial development based on the following project description: commercial retail space totaling up to 55,000 square feet gross leasable area, medical/dental office space totaling up to 25,000 square feet gross floor area, and a 150-bed assisted living facility. The TIA states that the project would be completed and generate traffic by 2009. Exhibit 26.

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PM peak hour trips. The Revised TIA also divided total trips per intersection. In the AM peak hour, the Revised TIA concluded the proposed development would contribute 36 vehicle trips to the SE 284th/124th Avenue SE intersection, 36 trips to the SE 293rd/124th Avenue SE intersection, 42 trips to the SE 296th/124th Avenue SE intersection, and 64 trips to the SE 304th/124th Avenue SE intersection. In the PM peak hour, the Revised TIA concluded the proposed development would contribute 80 vehicle trips to the SE 284th/124th Avenue SE, 80 trips to the SE 293rd/124th Avenue SE intersection, 93 trips to the SE 296th/124th Avenue SE intersection, and 127 trips to the SE 304th/124th Avenue SE intersection. Exhibit 26.

39. The Revised TIA determined that existing traffic at the SE 304th/124th Avenue SE intersection currently experiences Level of Service (LOS) B in the AM peak hour and LOS A in the PM peak hour. Traffic at the SE 284th/124th Avenue SE intersection currently experiences LOS B in the AM and PM peak hour. Without the proposed commercial development, the Revised TIA estimated that traffic at the SE 304th/124th Avenue SE intersection in 2009 would experience LOS A in the AM and PM peak hour. Traffic at the SE 284th/124th 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 development, the Revised TIA estimated that traffic at the SE 304th/124th Avenue SE intersection in 2009 would experience LOS A in the AM and PM peak hour. With the development, traffic at the SE 284th/124th 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 293rd/124th Avenue SE and SE 296th/124th Avenue SE intersections in 2009 would experience LOS D with or without the proposed development. Based on King County intersection standards, LOS E or better is considered acceptable intersection operation. Exhibit 26.

40. The Revised TIA determined that traffic at the northern driveway proposed along 124th Avenue SE would experience a LOS C in the AM and PM peak hours. Traffic at the southern driveway proposed 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 26.

41. The Applicant states in its Revised Description that the May 2007 Revised TIA conservatively estimates traffic impacts based on uses allowed in the NCC

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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 (2nd 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 26.
zoning district. The Revised Description states the Assisted Living, Medical/Dental Office Building, and Shopping Center land use categories reflect proposed uses on the site but would have generally higher trip generation rates than what is proposed by the Applicant. In a letter dated December 18, 2007, the City of Auburn determined that the May 2007 Revised TIA adequately addressed its concerns on trip generation and LOS roadway impacts. Exhibit 4; Exhibit 9.E.

42. The City staff report states the driveway that would access the proposed assisted living facility was relocated to the north in the Revised Request to respond to City of Auburn comments about traffic using the driveway instead of waiting in vehicle queues at the SE 304th Street/124th Avenue SE intersection. An email message from Elizabeth Chamberlain, City of Auburn Principal Planner, stated that the proposed traffic channelization plan was acceptable to the City of Auburn, and the proposed north driveway on 124th Avenue SE is acceptable in relation to the main entrance of the proposed assisted living facility. Mike Murphy stated for the Applicant that traffic studies submitted to date address City of Auburn concerns. Exhibit 1, Staff Report, page 9; Exhibit 9.A; Statement of Mr. Murphy.

43. A February 9, 2010 letter from Elizabeth Chamberlain, City of Auburn Principal Planner, requested a redesigned bike lane and sidewalk, and resulting shifts in bike and road lane widths. The City staff report states improvements would be constructed under the Revised Request, with review of proposed improvements by the City in conjunction with civil construction permit application submittal. Exhibit 1, Staff Report, page 10.

44. Kevin Jones, transportation engineer for the Applicant, testified that he prepared an updated traffic review with actual traffic counts at the roundabout intersection, analyzing traffic impact of development proposed under the Revised Request. In an email message dated July 6, 2009, Mr. Jones wrote that he reviewed traffic data collected on each leg of the SE 304th Street/124th Avenue SE intersection, and calculated a three-day traffic average, total entering volumes, AM peak hour approach volumes, and PM peak hour approach volumes. Mr. Jones compared the actual data with the May 2007 Revised TIA and with 2015 PM peak hour traffic volume forecasts generated by a traffic model developed by the City. Mr. Jones found that at the SE 304th Street/124th Avenue SE intersection, existing AM peak hour traffic volumes (total entering) are very similar to PM peak hour traffic volumes; existing AM peak hour traffic volumes (total entering) are much less than initial 2009 without-project forecasts; and the City’s 2015 PM peak hour traffic volumes (total entering) are less than 2009 without-project forecasts by 50 vehicle trips. Mr. Jones concluded in his email message that based on these observations, without-project traffic volume forecasts more reasonably reflect 2015 conditions than 2009 conditions, and thus the

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analysis presented in the May 2007 Revised TIA addresses potential traffic impacts of development proposed under the Revised Request, with build out two or three years beyond 2009, as was initially forecast. Exhibit 44; Testimony of Mr. Jones.

Public Comment

45. Virginia Haugen testified to her concern that the proposed development would have significant environmental impacts, including impacts on wetlands and tree removal, and that there would not be sufficient water to support the proposed development. Art Weichbrodt, resident of the Crystal Meadows community, testified to his concern that the proposed development would result in an increase in emergency traffic, and that the proposed structure to be built on the west side of the proposed commercial development would interfere with views of Mt. Rainier. Mr. Weichbrodt testified to his recollection of communication with City staff that the subject property would not be developed. Mr. Weichbrodt added that his concerns might be addressed in part by landscaping that would be required as part of a proposed condition of approval.17 Testimony of Ms. Haugen; Testimony of Mr. Weichbrodt.

46. Debbie Pratum, resident of 304th Street, testified to her concern that the proposed commercial development is not needed by the residents of the property surrounding the proposed development, as the residents already have gas, food, and a Fred Meyer store in the area. Ms. Pratum added that condominiums within a major development in the vicinity of the subject property are not currently occupied. Ms. Pratum also testified to her concern about traffic that would be generated by the proposed development, including emergency vehicles, and her concern about sight distance limited by hills along 304th Street. Testimony of Ms. Pratum.

47. Mike Pratum testified to express his concern that there not be any development on the subject property, especially not commercial, including a prohibition on any alcohol sales. Mr. Pratum testified that the proposed development would not benefit the surrounding community. Mr. Pratum added that commercial development already exists on 312th Street, 132nd Street, and Kent-Kangley Road, and some of this development is currently without tenants. Mr. Pratum also testified that the subject property is not currently served by sidewalks and only one bus serves the area through a north-south route. Mr. Pratum added that construction of a roundabout in

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17 Mr. Weichbrodt referred to condition No.9 proposed by City staff. As proposed, condition No. 9 reads "Type I solid screen landscaping shall be installed between the westerly office building and Crystal Meadows Subdivision, and Type II visual screen landscaping shall be installed throughout the remainder of the site. Foundation landscaping shall be installed around the perimeter of all buildings. “Exhibit 1, Staff Report, page 33; Testimony of Mr. Weichbrodt.

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the vicinity of the subject property since the initial PUD major modification proposal would create a lack of openings in traffic flow, resulting in a lack of opportunities to enter and exit the driveways of the proposed development. 

Testimony of Mr. Pratum.

48. Corey Forsberg testified in favor of allowing the City of Auburn to annex the subject property, expressing a concern that the City of Kent has no constituents in the vicinity of the subject property. Mr. Forsberg testified to his concern about traffic that would be generated by the proposed development, that surrounding neighborhoods including Vintage Hills, Lea Hill, and Crystal Meadows would not benefit from the proposed development, and that the subject area should remain residential. Testimony of Mr. Forsberg.

49. Eric Pfaff testified in favor of the proposed assisted living facility, saying that the area could use child care services, medical services, or a police station, for example, but the area does not need affordable housing, tattoo parlors, or pay-day loan services. Mr. Pfaff testified in favor of the architectural drawings for the proposed development and in favor of incorporating underground parking in the development. Mr. Pfaff also testified in favor of working with the Applicant for a development responsive to community concerns. Testimony of Mr. Pfaff.

50. In a letter dated March 2, 2010, Ron Novak wrote to recommend denial of the Revised Request, based on City Code, the history of zoning on the subject property, and information available at the time of initial PUD approval. The letter expressed concern that the City Comprehensive Plan does not designate the subject property as suitable for a NCC district, and that physical characteristics and expected uses of the NCC district are not compatible with the Urban Separator designation, citing KCC 15.02.531. The letter cited KCC 15.03.010 in reference to the City’s Comprehensive Plan designation for the subject property, and expressed concern that the City Council did not intend NCC-type development in the Urban Separator designation on the subject property in adopting Ordinance No. 3685. The letter expressed concern that density transfer from the future development tracts to residential areas of the PUD were approved on the basis that the property designated Urban Separator would include active recreation area and open space. Exhibit 39.

51. The letter from Mr. Novak also expressed concern that the subject property is located far from the main area of the City of Kent, and would be de-annexed by the City of Kent and annexed to the City of Auburn. The letter noted ongoing commercial development approximately one-half mile south of the development proposed under the Revised Request, within the Lea Hill neighborhood of the City of Auburn. According to the letter, development
proposed under the Revised Request is not compatible with surrounding residential development. The letter urged a limit to flexibility of PUD regulations. Exhibit 39.

52. In a letter dated March 2, 2010, Kay L. Everson wrote to recommend denial of the Revised Request. The letter asserted that the area upon which the PUD would be developed is unique, in that it contains environmentally sensitive systems, including wetlands and wildlife habitat. The letter expressed concern that existing systems be protected and that commercial development not be allowed within PUD future development tracts. Exhibit 40.

53. An article titled “Olson Creek Marsh: the Jewel in Kent’s Crown”, dated April 6, 2004 and submitted by Mary Roberts, describes Olson Creek Marsh as an area of “ecoregional” significance, with the following principle functions and values, including groundwater discharge and recharge; diverse wildlife habitat; storm and floodwater control for the entire watershed; aesthetic values; and education and passive recreation opportunities. The article states Olson Creek Marsh is hydrologically connected to groundwater, and increased development may alter base groundwater to modify systems dependent on wetland hydrology. Exhibit 43.

54. A letter from residents of the Crystal Meadows Homeowners Association, dated November 11, 2009, expressed opposition to any development of commercial property on the subject property. The letter asserted the subject property is projected to be annexed by the City of Auburn in the future; that the proposed development is not needed as the commercial buildings standing vacant in the City should be filled first; and that the proposed use would have a negative impact on traffic and pedestrians. Exhibit 10.B.

**Applicant Response**

55. Mr. Murphy stated for the Applicant that the revised proposal for a major modification of the PUD was crafted over the past two years to meet concerns of the City and the public. Mr. Murphy noted that the City of Auburn will not annex the subject property, because the City of Kent does not intend to de-annex the property. Michael Huey testified for the Applicant that landscaping surrounding proposed Building J, the building within the proposed commercial development that would be closest to residential development, would be surrounded by landscaping that would obscure the buildings but still allow views of Mt. Rainier. Statement of Mr. Murphy; Testimony of Mr. Huey.

56. Mr. Jones testified for the Applicant that the Applicant traffic study evaluated both a signalized intersection and the existing roundabout, and found that both types of intersection permit entry onto 124th Avenue SE from the

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proposed development. Mr. Jones testified that driveways to the
development proposed under the revised major modification would be
located approximately 350 to 450 feet from the roundabout, and traffic
queues at the roundabout would not block driveways. Mr. Jones added that
he calculated necessary sight distance along SE 304th Street using a
conservative estimate – a speed ten miles per hour faster than the posted
speed along SE 304th Street – and that sight distance meets American
Association of State Highway Transportation Officials (ASHTO) standards,
adopted by the City of Auburn. Mr. Jones testified that in his professional
opinion as a traffic engineer, the proposed revised major modification of the
PUD would not unduly burden the traffic system in the vicinity of the
proposed development, and sight distance standards would be met along SE
304th Street. *Testimony of Mr. Jones.*

57. Ms. Orni testified for the Applicant that a criterion for review of a PUD major
modification proposal requires that the proposed PUD project have a
beneficial effect which would not normally be achieved by traditional lot-by-
lot development, as well as shall not be detrimental to present or potential
surrounding land uses as defined by the Comprehensive Plan. Ms. Orni
testified that the criterion focuses on benefits of proposed development as
well as detrments, and that benefits of the proposed development would
include less use of gas and greater convenience (as proposed uses would be
located closer to residential uses than existing commercial and retail uses)
and greater opportunities for exercise within the proposed development (with
availability of the proposed pedestrian trail). Ms. Orni also testified that the
proposed revised PUD major modification would not be detrimental to
existing land uses, and that personal objection to the proposal does not
mean the proposal is a detriment to existing land uses. *Testimony of Ms.
Orni.*

58. The Applicant's Revised Description interprets KCC 15.08.400(B)(4) to mean
that residential development of 100 acres or more generates sufficient need
for conveniently located commercial services, so that residents could walk
and not need to depend upon cars to access services. The Revised
Description asserts that the closest retail development to the PUD - one-half
mile away - consists of predominantly very small retail spaces insufficient to
serve the large Lea Hill residential development. The Revised Description
also asserts that providing landscape tracts adjacent to the wetland and
buffer at the interior of the Urban Separator area within the PUD effectively
increases buffer size and provides more area to the wildlife corridor.
According to the Revised Description, approximately 52 percent of the
revised site plan is located in critical areas and their buffers, common open
spaces, and landscape buffers. *Exhibit 4.*
City Planning Services reviewed the revised PUD modification proposal under the City’s mixed use design review process for mixed use development with a residential component. The Applicant submitted schematic drawings dated December 23, 2008, but did not submit floor plans for the proposed assisted living facility at the time of design review. According to the revised proposal, the facility would include indoor recreation facilities and two landscaped courtyards for private outdoor areas for residents. The Applicant’s application narrative states that all proposed buildings would share architectural expression elements, with the theme incorporating elements of Northwest influence and using a variety of materials. Proposed buildings would use a variety of materials including brick, stucco, and wood siding. Buildings would be constructed at a human scale and emphasize the pedestrian scale of the surroundings. Varying roofline heights would provide visual interest. Common signage would be used throughout the proposed development. The assisted living facility would include residential design elements such as wood wrapped windows, bay windows, gable roofs, and trellises. According to the design review document, the revised landscape plan and revised site plan give the appearance of structures situated around green spaces rather than green spaces being added between structures. Exhibit 15.

The Planning Manager for the City Community Development Department issued a Mixed Use Design Review Decision on January 7, 2010, approving the mixed design review for the PUD modification with 16 conditions of approval. Conditions call for strong pedestrian connections between buildings; pedestrian corridors connecting high activity areas; landscaping; expressing common design elements throughout the proposed development; compliance with retail and office building design review criteria; compliance with assisted living facility design review criteria; compliance with Village sign standards; a detailed lighting plan; a detailed landscaping plan; pedestrian plazas; and compliance with pedestrian pathways design review standards. Exhibit 15.

Puget Sound Energy would provide electric and gas service to the PUD. The City of Kent would provide water service, and sewer service would be provided by the City of Auburn under a sewer extension agreement. Since initial PUD approval, the Applicant revised the design and capacity of the new sewer lift station to reflect additional flows from the proposed commercial and assisted living development. Exhibit 1, Staff Report, page 10; Exhibit 4.

Ms. Clamp testified that the City of Kent has no current plan to de-annex the subject property. Ms. Clamp added that the subject property is not very far
from a main boundary of the City of Kent, located at 282nd Street. Ms. Clamp also added that the maximum residential density for the entire PUD has already been achieved, so no additional homes can be constructed within the PUD. Testimony of Ms. Clamp.

63. Ms. Clamp testified that City staff recommends approval of the proposed major modification to the PUD, with conditions. The City staff report states that with conditions, the proposed PUD is consistent with PUD development standards set forth in KCC 15.08.400(C) and PUD review criteria in KCC 15.08.400(G)(2). Conditions of approval concern compliance with terms and conditions of Mixed Use Design Review MUDR-2007-3(R), issued January 7, 2010, and the revised Mitigated Determination of Nonsignificance, dated October 16, 2007; Low Impact Development techniques; landscaping; uses allowed within the PUD; retail stores not permitted within the PUD; roadway and utility improvements; sight distance at proposed new driveways; buffer landscaping; wetland, stream, and buffer mitigation; wildlife passable fences; and street, street lighting, water, sewer, and stormwater management facilities. The City staff report states staff proposed a condition of approval prohibiting liquor stores and auto-oriented retail stores normally associated with gas stations due to strong public opposition to allowing these uses within the development and to strengthen the intent to provide ready access to everyday convenience goods and encourage alternatives to an auto-oriented mode of transportation. Exhibit 1, Staff Report, pages 19, 27, and 32 – 33; Testimony of Ms. Clamp.

64. City staff recommended a revision to proposed condition of approval A-2. The proposed condition A-2 in the staff report states:

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, grass-lined open swales for stormwater conveyance and water quality treatment.

As revised, A-2 would state:

The applicant shall utilize the following Low Impact Development Techniques in construction of the project as described on page 11 of the applicant’s Revised PUD Major Modification Description dated 9/08/09: a grasscrete fire access road, open lawn areas planted with eco-lawn, pedestrian trails constructed with porous pavement and where feasible grass-lined open swales for stormwater conveyance and water quality treatment.

In an email message dated September 17, 2009, Kent Fire Prevention Services found that grasscrete as shown on the Applicant’s September 11, 2009 plans are acceptable to Fire Prevention. Exhibit 11.

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applicant may use additional Low Impact Development Techniques where determined feasible by the Kent Public Works Department.

Exhibit 41.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hold a hearing on an application for major modification to Planned Unit Development (PUD) plans. Chapter 2.32 Kent City Code (KCC); 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.

19 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.

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Conclusions Based on Findings

A. **With conditions, the proposed project would have a beneficial effect which would not normally be achieved by traditional lot-by-lot development and would not be detrimental to present or potential surrounding land uses as defined by the comprehensive plan.** Under the SR-1 zoning classification for the subject property, which legislatively implements the Urban Separator Comprehensive Plan designation for the property, traditional lot-by-lot development on the subject property would mean development of single-family residential dwellings on lots at least 34,700 square feet in size. A planned unit development (PUD) is allowed in SR zoning districts on sites at least 100 acres in size, 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. KCC 15.08.400; KCC 15.08.400.A; KCC 15.08.400.C. The Hearing Examiner approved PUD-2004-4 with conditions on February 16, 2006.

The revised request for major modification of PUD-2004-4, PUD-2004-4(R) (Revised Request) would result in a mixture of residential and commercial uses within the PUD, while protecting wetlands and streams through required buffers and setbacks and creating open space within the proposed development. 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. Neighborhood convenience commercial uses proposed under the Revised Request would be located within future development tracts (FDTs) of PUD-2004-4, adjacent to the south and west of 379 residential units that will also be developed under the approved PUD. Conditions of approval are necessary to ensure the proposed development is limited to uses permitted in the NCC zoning district, and further limited to respond to citizen concerns.

The proposed development would be accessible by pedestrian trails connecting the FDTs to residential neighborhoods within the PUD, thus reducing the need for automobile use to access services. Comprehensive Plan 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. While there is testimony in the record that existing residents in surrounding communities are already well served by existing commercial development in the area, there is also testimony in the record that proposed development can benefit new and future residents of the PUD. Neighborhood convenience commercial uses would provide beneficial services for residents of the PUD and may be used by residents of surrounding neighborhoods.
The Revised Request has changed significantly from the initial request for major modification of PUD-2004-4. Under the Revised Request, total impervious surface would decrease within the FDTs; proposed building footprints would be reduced; more open space would be created, including passive and recreational open space; two-story buildings and parking would be clustered in the interior thereby reducing visual impact on surrounding properties; and solid screen landscaping would be installed, further reducing visual impact on surrounding properties. Conditions of approval are necessary to ensure development under the Revised Request is not detrimental to present or potential surrounding land uses as defined by the Comprehensive Plan.

Conditions of approval are necessary to ensure the Revised Request would not be detrimental to present or potential surrounding land uses as defined by the Comprehensive Plan. Comprehensive Plan Policy LU-14.8 ensures that commercial and mixed-use developments adjacent to single-family residential areas are compatible in height and scale, and Comprehensive Plan Goals CD-4, CD-5, and CD-6 encourage designing new commercial projects to accommodate pedestrians, bicyclists, transit, and automobiles; developing 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. Conditions of approval requiring compliance with City mixed design review MUDR-2007-3(R) are necessary to ensure the scale, layout, and character of the proposed development is complimentary to the residential scale, layout, and character of adjacent PUD area and surrounding area.

Comprehensive Plan Goal LU-31 establishes Urban Separator designations to protect environmentally sensitive areas and to create open space corridors. Under the Revised Request, Olson Creek, surrounding wetlands, and wetland buffers would be protected within a NGPA. Subject to City approval, the Applicant would employ buffer averaging resulting in a surplus of wetland buffer to mitigate for impacts to 0.44 acre of wetland buffer. Stormwater runoff would be treated for water quality then released in surrounding wetland to mimic and support natural hydrology. Significant changes made from the initial PUD modification proposal would result in more open space within the PUD, and greater screening of the PUD from surrounding development. Proposed pedestrian trails provide open space linkages within or to the Urban Separator, consistent with Comprehensive Plan Policy LU-31.3 and Policy LU-31.7. Development under the Revised Request would be tied into the subdivision, including pedestrian access and open space elements. With the relocation of the driveway access to the assisted living facility, concerns about increased traffic adjacent to the assisted living facility are alleviated. With updated traffic studies associated with the Revised

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Request, City of Auburn concerns over traffic on SE 304th Street and 124th Avenue SE have been addressed. Conditions of approval are necessary to ensure that MDNS and City mixed design review conditions apply to the proposal; Low Impact Development techniques are used; landscaped buffers are established; only NCC zoning district uses are allowed and liquor and gas station convenience stores are not allowed; roadway improvements are constructed; and wetlands, streams, and buffers are protected. Thus, the Hearing Examiner recommends that Revised Request be approved with conditions, as the proposed project would have a beneficial effect which would not normally be achieved by traditional development and would not be detrimental to present or potential land uses as defined by the Comprehensive Plan. Findings 1, 2, 4 - 21, 23, 25 - 32, 34 - 60, 62 - 64.

B. With conditions, unusual environmental features of the site would be preserved, maintained, and incorporated into the PUD design. The stream, wetland, and required buffers would be preserved in a NGPA and incorporated into PUD design, as proposed development under the Revised Request would be located west and east of the NGPA, with a pedestrian footbridge connecting the west and east portions of the development. Conditions of approval are necessary to ensure City review and approval of the Applicant’s wetland buffer averaging plan prior to development permit issue, that the Applicant installs stormwater facilities for water quality, detention, and release into the wetland according to City-approved plans, and that the Applicant use low impact development techniques within the proposed development. Findings 1, 2, 12 - 16, 28 - 32, 63 - 64.

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, including areas of openness provided through landscaped pedestrian plazas. Greater clustering of buildings and eliminating two of nine initially proposed buildings will create greater open space within the proposed development than under the initial proposal. As proposed, development under the Revised Request would meet PUD open space requirements and common open space requirements for areas within urban separators. Conditions of approval are necessary to ensure compliance with the terms and conditions of Mixed Use Design Review, including conditions for open space, and that Type I and Type II screening landscaping is installed throughout the subject property. Findings 1, 2, 12 - 16, 19, 23 - 32, 55, 58 - 60, 62 - 63.

D. With conditions, the PUD would promote variety and innovation in site and building design, and would contain features that promote
community interaction. According to the revised proposal, the assisted living facility would include indoor recreation facilities and two landscaped courtyards for private outdoor areas for residents. The Applicant's application narrative states that all proposed buildings would share architectural expression elements, with the theme incorporating elements of Northwest influence and using a variety of materials. Proposed buildings would use a variety of materials including brick, stucco, and wood siding. Buildings would be constructed at a human scale and emphasize the pedestrian scale of the surroundings. Varying roofline heights would provide visual interest. Common signage would be used throughout the proposed development. The assisted living facility would include residential design elements such as wood wrapped windows, bay windows, gable roofs, and trellises. According to the design review document, the revised landscape plan and revised site plan give the appearance of structures situated around green spaces rather than green spaces being added between structures. Conditions of approval are necessary to ensure strong pedestrian connections between buildings; pedestrian corridors connecting high activity areas; landscaping; expressing common design elements throughout the proposed development; compliance with retail and office building design review criteria; compliance with assisted living facility design review criteria; compliance with Village sign standards; a detailed lighting plan; a detailed landscaping plan; pedestrian plazas; and compliance with pedestrian pathways design review standards. Findings 59 - 60, 63.

E. With conditions, the PUD would provide a unified design concept. Conditions of mixed use design review for the proposed commercial development require common design elements throughout the proposed development. Findings 59 - 60, 63.

RECOMMENDATION

Based on the preceding Findings and Conclusions, the Hearing Examiner recommends that the City Council APPROVE the revised request for major modification of a previously-approved Planned Unit Development, PUD-2004-4, to include an assisted living facility and retail, commercial, and office uses within future development tracts of PUD-2004-4, with the following conditions:

A. CONDITIONS OF APPROVAL


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20 This recommendation includes conditions required to meet City Code standards as well as conditions required to reduce unique project impacts.

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2. The applicant shall utilize the following Low Impact Development Techniques in construction of the project as described on page 11 of the applicant’s Revised PUD Major Modification Description dated 9/08/09: a grasscrete fire access road, open lawn areas planted with eco-lawn, pedestrian trails constructed with porous pavement and where feasible grass-lined open swales for stormwater conveyance and water quality treatment. The applicant may use additional Low Impact Development Techniques where determined feasible by the Kent Public Works Department.

3. Drive-through lanes shall include Type II landscaping in order to buffer visual and auditory impacts to surrounding areas.

4. 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 (i.e. churches and gas stations) other than the proposed assisted living facility and two drive-through lanes that are accessory to principally permitted uses and public uses such as schools and parks.

5. Convenience stores, such as Seven-Eleven, Circle K, Quick Stop, and The Pantry or similar types of auto-oriented retail stores typically associated with a gas station are not permitted.

6. Liquor stores are not permitted.

7. Roadway improvement plans to be submitted with the civil construction permit application shall meet the design requirements related to lane width and sidewalk tapering contained in City of Auburn’s letter dated February 9, 2010.

8. Engineering plans must demonstrate adequate entering sight distance in both directions at all proposed new driveways.

9. Type I solid screen landscaping shall be installed between the westerly office building and Crystal Meadows Subdivision, and Type II visual screen landscaping shall be installed throughout the remainder of the site. Foundation landscaping shall be installed around the perimeter of all buildings.

21 In an email message dated September 17, 2009, Kent Fire Prevention Services found that grasscrete as shown on the Applicant’s September 11, 2009 plans are acceptable to Fire Prevention. Exhibit 11.
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 tracts as required through the February 15, 2006 Verdana PUD approval and the Revised MDNS issued October 16, 2007, including any mitigation (EMA or EMF) charges.

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.

DATED this 15th day of March 2010.

[Signature]
THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

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