



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 23, 2002

Ordinance 14476

Proposed No. 2001-0535.5

Sponsors von Reichbauer and Sullivan

1 AN ORDINANCE concurring with the decision of the
2 hearing examiner to approve, subject to conditions, the
3 preliminary plat of Panther Meadows, department of
4 development and environmental services file no.
5 L99P3016.

6
7

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. Except as modified by section 2 of this ordinance, this ordinance
10 does hereby adopt and incorporate herein as its findings and conclusions the findings and
11 conclusions contained in the report and decision of the hearing examiner dated April 8,
12 2002, which was filed with the clerk of the council June 10, 2002, to approve, subject to
13 conditions, the preliminary plat of Panther Meadows, designated land use services
14 division file no. L99P3016, and the council does hereby adopt as its action the decision(s)
15 contained in said report.

16 SECTION 2. The report and decision of the hearing examiner dated April 8,
17 2002, is amended to read as follows:

- 18 A. The fourth sentence of finding no. 27 is corrected to read:
19 "A road variance has been approved for a slight reduction in entering
20 sight distance, provided that the applicant grade the vertical curve to a
21 lower elevation and provide paved shoulders on both sides of SE 196th
22 Street."
23 B. Within condition no. 13, the centerline reference is corrected to read "42 feet,"
24 not 50 feet.
25 C. The following new subsections are added to condition no. 7:
26 7.e. The new 30-inch conveyance pipe to Panther Creek shall be
27 installed during the first summer construction season during which any
28 plat improvements are constructed. Immediately prior to final plat
29 approval, it shall be inspected by DDES for satisfactory performance,
30 and accumulated sediment shall be removed by the Applicant.

Ordinance 14476

31 7.f. Catch basins shall be installed for the new 30-inch pipe at 150-foot
32 intervals, as approved by DDES.
33

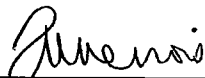
Ordinance 14476 was introduced on 11/13/2001 and passed by the Metropolitan King County Council on 9/23/2002, by the following vote:

Yes: 9 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Gossett and Mr. Irons
No: 1 - Mr. Pullen
Excused: 3 - Mr. Constantine, Ms. Hague and Ms. Patterson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Hearing Examiner Report dated April 8, 2002, B. Hearing Examiner Report dated September 10, 2002

April 8, 2002

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON PRELIMINARY PLAT APPLICATION

SUBJECT: Department of Development and Environmental Services File No. **L99P3016**

PANTHER MEADOWS
Preliminary Plat Application and
SEPA Threshold Determination Appeal

Location: Lying between SE 192nd Street and SE 196th Street, and between
113th Way SE and 114th Court SE, if both streets were extended

Applicant: Michael J. Feuerborn, *represented by*
Michael J. Romano
Centurion Development Services
22617 8th Drive Southeast
Bothell, WA 98021
Telephone: (425) 486-2563
Facsimile: (425) 486-3273
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Tacoma, WA 98401-1533
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Appellants: Jim Dojan and Ollie Burton, *represented by*
Bill H. Williamson, Attorney at Law
700 Fifth Avenue Suite 3910
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Telephone: (206) 682-5900
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King County: Department of Development and Environmental Services,
Land Use Division, *represented by*
Lanny Henoch
900 Oakesdale Avenue SW
Renton, WA 98055-1219
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Facsimile: (206) 296-7051
E-mail: Lanny.Henoch@metrokc.gov

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny SEPA appeal; approve preliminary plat
Department's Final Recommendation:	Deny SEPA appeal; approve preliminary plat
Examiner's Decision:	Deny SEPA appeal; approve preliminary plat

EXAMINER PROCEEDINGS:

Hearing Opened:	March 12, 2002
Hearing Closed:	March 15, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Drainage
- Flooding
- Traffic
- Pedestrian facilities
- Road design
- Recreation space

SUMMARY:

The SEPA threshold determination appeal is denied, and the preliminary plat is approved, subject to conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Developer:	Michael J. Feuerborn M.J.F. Holdings, Inc. 215 E. Meeker Kent, WA 98032
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Agent: Michael J. Romano
 Centurion Development Services
 22617 8th Drive Southeast
 Bothell, WA 98021

Location: Lying between SE 192nd Street and SE 196th Street, and approximately
 between 113th Way SE and 114th Court SE, if both streets were
 extended

STR: NE ¼ of the NE ¼ of Section 5, Township 22, Range 5

Zoning: R-8-SO

Acreage: 11.03

Number of Lots: Total: 86 lots (including 24 lots of detached single-family residences
 and 62 lots for townhouses

Density: 7.94 dwelling units per acre

Lot Size: Detached single-family residences: ranges from approximately 4,000 to
 8,000 square feet
 Townhomes: ranges from approximately 2,100 to 4,100 square feet

Proposed Use: Detached single-family residences and townhouses

Sewage Disposal: Soos Creek Water and Sewer District

Water Supply: Soos Creek Water and Sewer District

Fire District: No. 37

School District: Kent No. 415

Complete Application Date: December 3, 1999

A. Background

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the March 12, 2002 public hearing are found to be correct and incorporated herein by reference. The LUSD staff recommends denial of the SEPA appeal and approval of the application, subject to conditions.
3. Centurion Development Services, on behalf of M.J.F. Holdings, Inc., has submitted a preliminary plat application to subdivide 11.03 acres into 86 lots for the development of 24 detached single-family residences and 62 townhouses. The property is located north of Panther Lake, just east and uphill from an area that is subject to chronic flooding problems. The property is currently about one-third forested and one-third pasture, with the southern third of the site characterized by single family development and a wetland at the property's southwest corner. The site has frontage on both SE 192nd Street and SE 196th Street, and will obtain primary access to the south via 196th Street.
4. A mitigated determination of non-significance was issued for the Panther Meadows application on October 19, 2001. The MDNS requires the applicant to contribute a pro rata share to proposed WSDOT signalization improvements west of the site at the intersection of SR 515 and SE 196th Street. The MDNS also mitigates for downstream flooding impacts by requiring level 3 flow control for the stormwater detention system as well as construction of the downstream conveyance system upgrades outlined in a Surface Water Management adjustment request approved for the property on July 12, 2001.

5. A timely appeal of the MDNS was filed by attorney Bill Williamson on behalf of neighboring property owners Jim Dojan and Ollie Burton. As stated within the December 29, 2001 pre-hearing order for this proceeding, the following issue is raised within the SEPA appeal:

Can the downstream conveyance system for Panther Creek accommodate drainage flows from this plat without causing significant adverse environmental impacts to properties located along SE 196th Street?

6. A consolidated public hearing on the preliminary plat application and the SEPA threshold determination appeal was held by the King County Hearing Examiner's office on March 12, 2002, and continued to March 14 and 15, at which time the record closed.

B. SEPA Threshold Determination Appeal.

7. The drainage basin for Panther Lake encompasses about 400 acres, approximately 270 of which lie south of SE 196th Street. Since about 1990 the area north of Panther Lake, including portions of both the Burton and Dojan properties, have flooded on an annual basis covering acres of low lying pastureland. Mr. Burton's property, which lies between the north end of Panther Lake and SE 196th Street, contains the greatest area of inundation, but in recent years Mr. Dojan's property, which lies north of SE 196th Street and directly west of the Panther Meadows property, has experienced regular flooding as well.
8. The causes of this increased flooding are not difficult to discern. The Panther Lake basin is very flat, and the lake does not possess a natural drainage outlet. Beginning before the turn of the 20th century, it appears that ditches were excavated off the northwest corner of the lake in order to drain low lying adjacent areas and make them suitable for agricultural use. This system worked well enough as long as the drainage ditches were cleared and dredged on a periodic basis. In recent times, the bulk of this labor was provided by Mr. Burton, who testified to periodically clearing the channel about every five years up until the early 1980's. Since the channel of what is now known as Panther Creek has not been recently dredged or cleared, it has steadily become more clogged with sediment and overgrown with vegetation. In addition, development activity within the basin has occurred, bringing with it increased surface water volumes and higher peak flow rates.
9. Since the adoption of more restrictive sensitive areas regulations, the periodic clearing and dredging of Panther Creek no longer offers itself as a simple expedient. The migration of fish out of Panther Lake has endowed the creek with a class 2S rating under the County's Sensitive Areas Ordinance, thus requiring a 100-foot protective buffer and precluding a stream alteration project unless it also qualifies as fish-friendly. Under any circumstances, the alteration of Panther Creek is now subject to a laborious and time consuming regulatory process, requiring a variety of state and local permits and myriad environmental studies. As a consequence, the dredging of Panther Creek no longer appears to be a viable prospect unless a major public capital improvement project is proposed and supported with adequate funding. While the problems attendant to flooding at Panther Lake have long been well-known to County administrators,

implementation of a solution has not been designated a high priority, and a future public commitment to effecting a solution to the drainage problem remains speculative.

10. The drainage environment for the Panther Lake basin may be described as follows: Panther Creek exits Panther Lake at its northwest corner and travels over a low gradient, mostly level area to a 36 inch culvert beneath SE 196th Street. From the culvert outlet, the creek bed rises slightly due to sediment accumulation, then gently descends to a second 36 inch culvert crossing beneath State Route 515. Generally accepted measurements indicate that the culverts under SE 196th Street and SR 515 lie at the same elevation. After exiting the culvert beneath SR 515, the channel gradient increases, and by the time it reaches its outlet at Springbrook Creek, erosional problems have come to characterize the system.
11. The distance between the southwest corner of Panther Meadows and Panther Creek where it crosses under SE 196th Street is approximately 1,200 feet. The low point of the Panther Lake basin appears to occur just about at the midpoint of the roadside ditch system that connects Panther Meadows to the creek. At this location, flows arriving east from Panther Meadows, augmented by an additional 15 acres of off-site upland terrain, enter into an 18 inch pipe that runs approximately 600 feet to intersect the 36 inch culvert under SE 196th Street that contains Panther Creek. In addition, at this low point overland drainage arrives from residential properties north of SE 192nd Street via a ditch system as well as from the south through an 18 inch cross culvert that connects the SE 196th Street ditch to the pasture areas north of Panther Lake.
12. A number of factors combine to make the drainage pattern for the Panther Lake north basin somewhat complex. In addition to the naturally flat topography, sedimentation creates local areas of adverse gradient both within Panther Creek north of SE 196th Street and in the 18 inch pipe lying east of the creek. Because SE 196th Street acts as a weir, flood stages below elevation 434 are divided into two reservoirs, one lying south of the road adjacent to the lake and the second north of the road. In the early stages of flooding, backwater effects induce reverse flows through both culverts lying beneath SE 196th Street, thus creating a temporary net flow from north to south. Eventually, however, as flood levels increase within Panther Lake, sufficient head pressure is built up to reestablish the northward outward flow, and the flooded areas begin to once again discharge through Panther Creek.
13. Urban density development at Panther Meadows will decrease on-site infiltration and cause an increase in the volumes of storm water discharged from the site and, absent mitigation, the peak durations of such volumes. To mitigate for these increased impacts, the applicant has offered to provide level 3 flow control as defined in the County Surface Water Design Manual as well as capacity improvements within the downstream system between the site and Panther Creek. These downstream improvements include some expansion of ditch capacity, larger culverts under intervening driveways and, most notably, replacement of the current 18 inch culvert along the north side of SE 196th Street with a 30 inch culvert that will have its own separate outlet to Panther Creek. The primary issue presented by this appeal concerns the effectiveness of these proposed mitigations.

14. Although no specific volume calculations have been offered to the record, using standard runoff coefficients one may expect the total volume of surface flows discharged from Panther Meadows to approximately double after site development. Level 3 detention and discharge is designed to attenuate the peak flow from such increased volumes so that the site will be releasing its flows after the normal storm peak has subsided. But in the Panther Lake basin, with its chronic winter flooding conditions that endure for weeks on end, the peak flow delay provided by level 3 treatment is unlikely to be effective mitigation because restrictions within the downstream conveyance system prevent the natural discharge cycle from occurring in the normal way. Thus, the success or failure of the proposed mitigation under chronic flooding conditions depends on the effectiveness of the downstream conveyance improvements.
15. The appellants' assertion, and the fervent conviction of the neighborhood community, is that the primary impediment to the efficient discharge of flows from the Panther Creek system is channel blockage lying between SE 196th Street and SR 515. Their belief is that without dredging and clearing the Panther Creek channel north of SE 196th Street, any improvements made within the conveyance system between the plat and the creek will be futile. This viewpoint is derived from and supported by earlier drainage complaint investigations conducted by the County Surface Water Management Division within the 1994-95 timeframe.
16. While the applicant's engineer, Mr. McCarthy, acknowledged the importance of the constrictions within the Panther Creek channel below SE 196th Street, his analysis suggests that this limitation is simply one of many systemic incapacities. These include, in addition to the backwater effect created by the flat gradient and sediment buildup in Panther Creek downstream of SE 196th Street, the limited capacity of the 18 inch concrete pipe along the north side of SE 196th Street; channel restrictions upstream from SE 196th Street within Panther Creek; restricted capacity within the 36 inch culvert under SE 196th Street resulting from sediment buildup; and backwater conditions created by the restricted capacity of the culvert under SR 515. According to his analysis, a substantial improvement that reduces any one of these limiting factors offers the possibility of adequately mitigating the contribution of the 11-acre Panther Meadows site to flooding conditions within the 400 acre Panther Lake basin.
17. Using a combination of software programs, Mr. McCarthy has modeled the hydraulic behavior of the Panther Lake basin drainage system under a variety of assumptions. The critical comparison presented in these studies is an analysis of whether the flooding duration and return period for the current condition employing the existing 18 inch pipe system will be exceeded after development if the 18 inch pipe is replaced by a 30 inch culvert. Sensitivity analyses for this comparison have been run using a range of variables for the amount of attenuation provided by Panther Lake and various reductions in conveyance capacity for the 36 inch pipe system under SE 196th Street. While the reported values for each scenario differ, the consistent result of the exercise has been that replacement of the 18 inch pipe with the 30 inch pipe will reduce flooding durations and return periods after development of Panther Meadows as compared to the existing condition retaining the 18 inch pipe.

18. Relying on these modeling studies, DDES reviewing engineers issued a SWM adjustment approval based on a finding that the applicant's proposed conveyance improvements after development of Panther Meadows would reduce flooding frequencies from 1 or 2 years to approximately 10 years and the overtopping of the SE 196th Street by floodwaters from an average of 61 hours to 2 hours per year. Adopting these findings, the SEPA MDNS was issued by the county's responsible official.
19. The appellant's engineer, Mr. Konrady, has not taken issue with the validity of the applicant's modeling approach so much as to criticize some of the modeling data as inconsistent with empirical reality. Mr. Dojan testified that current flooding durations now exceed 61 hours a year, and Mr. Konrady has taken issue with certain elevations referenced with respect to extent of the 100 year flood plain. But both of these criticisms miss the essential point of the modeling analysis. The function of modeling is not to predict absolute values so much as to provide a tool for comparing different treatment scenarios. The significant conclusion of the modeling exercise was that under all plausible scenarios replacing the 18 inch pipe with a 30 inch pipe more than mitigates for the volumetric flow increases resulting from the development of Panther Meadows.
20. Mr. Konrady's emphasis on the importance of elevation 431 as the defining limit of the 100 year floodplain seems particularly misplaced. To begin with, the modeling exercise does not depend in any important way on the 100 year floodplain elevation. In the second place, Mr. Konrady seems to have misinterpreted the level 2 storm analysis report for the 1993 plat of Shirley Ann Manor from which the elevation 431 figure was taken. This figure was not offered as an absolute description of the floodplain elevation but as a benchmark for evaluating the height to which Panther Lake will fill under specified downstream conveyance assumptions before effective drainage occurs. For all other purposes, the Shirley Ann Manor level 2 storm analysis assumes the 100 year flood elevation to be 437 feet. Mr. McCarthy, to the minimal extent that he refers to the 100 year flood elevation at all, assumes it to be 434 feet based on the height at which SE 196th Street overtops.
21. If a successful critique were to be made of Mr. McCarthy's modeling conclusions, the point of attack would surely have to be his assumptions governing the capacity of Panther Creek downstream of the 36 inch culvert beneath SE 196th Street. As long as the capacity of this downstream creek segment exceeds that for the upstream pipe system, the possibility exists for a mitigation scheme based on manipulation of the upstream facilities. Conversely, if the capacity of the downstream creek segment is equal to or less than the upstream pipe complex, then the downstream channel becomes the limiting factor and no amount of upstream alteration can offer effective relief. What is most surprising about the appellants' case is the total absence of any kind of analytical challenge to Mr. McCarthy's modeling assumptions for the Panther Creek channel downstream of SE 196th Street.
22. For his modeling analysis, Mr. McCarthy relies on survey data for Panther Creek obtained in 2000 describing the channel downstream to a point approximately 250 feet upstream of SR 515. While his modeling reports identify backwater conditions resulting from sediment buildup in the downstream portion of the creek as an uncertainty, his sensitivity analysis does not include alternative modeling with such uncertainty as a

variable. The conclusions of his analysis are graphically expressed by the comparison of rating curves depicted in exhibit no. 39, which shows the downstream channel of Panther Creek having approximately 5 cfs greater capacity than the 36 inch culvert system at the 433 foot flood elevation, and approximately 10 cfs greater capacity at elevation 434.

As noted, the appellants provided no data or analysis that calls into question the accuracy of the applicant's survey data for this section of Panther Creek, and therefore no basis exists in the record for rejecting the applicant's computations of downstream conveyance capacity in this location. This element of slightly greater capacity within the downstream portion of Panther Creek is sufficient to render effective the upstream conveyance improvement as demonstrated by the applicant's modeling.

23. Further, it should be emphasized that an unarguable conveyance capacity gain results from providing the new 30 inch pipe along the north side of SE 196th Street with its own separate creek outlet. The current configuration has the 18 inch pipe T-ing into the 36 inch culvert beneath SE 196th Street, thus creating a tailwater effect that reduces the culvert capacity. By eliminating this tailwater effect through a separate outlet, the capacity of the 36 inch culvert increases as much as 20%.
24. In addition to introducing testimony describing the flooding conditions in the Panther Lake neighborhood and offering a general theoretical critique of the applicant's modeling study, the appellants' attorney has also presented some documentary objections to the adequacy of the County's MDNS. First, Mr. Williamson's suggestion that the SEPA decision did not take into account the Panther Lake basin surface water drainage complaint files for 1994 and 1995 is contradicted by the record. The MDNS directly cites reliance on the applicant's preliminary technical information report dated August 1, 2000 (exhibit 13a), which contains an entire section devoted to recitation of the drainage complaint files for this location. The appellants' assertion that the MDNS conclusions cannot be justified by reference to the later modeling study dated February 2, 2002, is also misplaced inasmuch as this latest study did not contradict the conclusions propounded in the earlier modeling report, but simply provides additional supporting detail.

Finally, the appellants have argued that the MDNS is void on its face due to the fact that the substantive authority citations for the two MDNS conditions have been transposed. That is, the authority cited for condition no. 1 belongs to condition no. 2, and vice versa. This argument must be rejected, first, because the error is clearly clerical and subject to correction within this proceeding, and, second, because WAC 197-11-660(1)(a) does not require this level of documentary citation. The requirement for formally designating SEPA substantive authority mandates that the County identify by ordinance those policies, plans and regulations upon which SEPA substantive authority is predicated, not that every discrete SEPA document specifically recite such authority.

C. Preliminary plat application.

25. Both Mr. Dojan and his neighbor to the north, Mr. Toschi, have expressed concerns regarding localized drainage along the Panther Meadows west boundary. Flows within the plat's northernmost subbasin currently travel to wetland B, which in turn discharges

to a 6 inch pipe on Mr. Toschi's property that runs south and empties onto the Dojan parcel. Although most plat flows will be picked up within the on-site drainage system and directed to the R/D facility, some roof drainage will be directed to wetland B to maintain its existing hydrology. The neighbors to the west are concerned that this procedure will create flows that will exceed the capacity of the 6 inch pipe and flood adjacent parcels. Although the precise facility design will not be determined until engineering review, the plan is to only divert those flows to wetland B necessary to maintain its hydrology, with all excess flows to go to the R/D pond. Accordingly, flows from wetland B to the 6 inch pipe on the Toschi property will be less after development than they are in the current state. In like manner, flows from the plat's central subbasin that now sheetflow onto the Dojan property will be picked up by the on-site drainage system and diverted to the R/D pond.

26. Mr. Toschi has also requested that the applicant provide a stub road to the plat's western boundary to provide circulation to his property at such time as it may be redeveloped. Originally the applicant appeared receptive to this suggestion, but has subsequently reconsidered his position due to the fact that the western flank of plat lots will be regraded to an elevation approximately 8 feet above the existing elevation. This regarding will preclude convenient access to the west. Since the requested road stub would not serve the plat of Panther Meadows, the County has no regulatory authority to require its dedication. The properties lying west of Panther Meadows all have direct access either to SE 192nd Street or SE 196th Street, and the fact that the County denied a road variance to the applicant for intersection spacing on SE 192nd Street does not foreclose a different outcome for properties to the west. For example, an access road could exit to SE 192nd Street directly opposite the current entry for 113th Way SE without creating a new intersection spacing issue.

Mr. Dojan has also requested that the applicant provide a fence along the western boundary of the plat adjacent to where he has an apiary. While such a fence may be desirable, from a zoning standpoint the two properties are similarly designated, and no County regulatory authority exists to require a fence between compatibly zoned properties.

27. As noted above, the original plan for Panther Meadows to obtain access north to SE 192nd Street, a principle arterial, was rejected when the County denied a road variance application to reduce intersection spacing. The revised access southward to SE 196th Street, however, has its own set of problems. The entering sight distance at the proposed plat entrance is deficient due to the existence of a vertical curve east of the property on SE 196th Street. A road variance has been approved for a slight reduction in entering sight distance, provided that the applicant grade the vertical curve to a lower elevation and provide a paved shoulder on the north side of SE 196th Street. More extensive grading of the vertical curve is precluded by the fact that it would necessitate the reconstruction of the 116th Avenue SE intersection. But with the required improvements, improved sight distances over the existing condition will be provided as well as a safe pedestrian walkway. This, combined with a lower frequency of water flooding over SE 196th Street resulting from the drainage conveyance system improvements, will result in better traffic and pedestrian conditions after development than presently exist.

28. The SR 515 corridor west of the site suffers from chronic congestion during commuter hours, and an unsatisfactory level of service condition exists at a number of intersections, including SR 515 at SE 196th Street. The SEPA conditions require the applicant to pay a pro rata contribution to a planned WSDOT signalization project at that intersection, which after installation should improve the service level to D. The plat's traffic impacts on other congested intersections along the SR 515 corridor fall below the County's regulatory threshold for requiring improvements, and therefore the applicant is not mandated to contribute to their resolution.
29. Both Glenridge Elementary School and Meeker Junior High lie within walking distance of Panther Meadows in the neighborhood east of the plat. Inadequate pedestrian facilities presently characterize a number of the roadways that provide walking routes to these schools. It has been noted that as a consequence of regrading the vertical curve east of the site on SE 196th Street a safe walking facility will be provided on the northern side of the roadway between the plat entrance and 116th Avenue SE. In like manner, the plat will also provide a pedestrian pathway north to SE 192nd Street, and an improved shoulder from there eastward to 116th Avenue SE. At that location a signalized intersection and crosswalk will allow students to cross 116th Avenue SE. Elementary school students then may walk south on the east side of 116th Avenue SE along an 8 foot gravel shoulder to a plat access road and associated pathway that connects to the grade school.
30. Less attractive walking conditions are provided along the southern route to the grade school via SE 196th Street. Once students reach 116th Avenue SE, they encounter a roadway that has no shoulders on either side and no intersection control nor crosswalk to facilitate crossing the avenue. Moreover, continuing east on SE 196th Street is also an unattractive option because the shoulder is narrow and the vertical curvature provides poor sight distance conditions. Ideally, additional pedestrian upgrades should be provided along 116th Avenue SE and east of 116th Avenue SE on both SE 192nd Street and SE 196th Street. Under the circumstances, however, the pedestrian upgrades proposed by staff offer a significant level of improvement and are roughly proportional to the impact of the plat on the neighborhood. Accordingly, further walkway requirements cannot be reasonably placed on this applicant and will need to await contribution from other new developments that may be proposed on the large lot parcels lying east of the plat.
31. The DDES staff report also contains a rather detailed critique of the applicant's proposed recreation space plan. It notes a number of defects resulting from the irregular shape of proposed tract B and its inadequate area for the facilities proposed. Proposed condition no. 17 requires the applicant to correct these deficiencies with the submittal of its recreation plan at engineering review. The applicant has not challenged the analysis provided in the staff report, and no basis in the record exists for modifying the provisions of proposed condition 17.
32. A number of area residents have noted that the wooded portion of the Panther Meadows site provides perch trees for red tail hawks and other raptors. In addition, the pasture areas provide raptor foraging habitat. With the exception of the wetlands to be retained on site, most of the raptor habitat at Panther Meadows will be eliminated by

development. The applicant proposes to install three snags within wetland A to replace some of the trees eliminated, a good faith gesture whose actual value may be little more than symbolic. In any event, raptor habitat is not within short supply within this neighborhood, and the elimination of Panther Meadows as a forage site will not have a significant impact.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. The appellants have not met their burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.
3. The flooding impacts within the Panther Lake drainage that are the basis of the SEPA appeal are issues that were thoroughly and extensively reviewed both by the applicant's consultants prior to the issuance of the SEPA determination and by the SEPA responsible official. For the appellants to have succeeded in this appeal, they would have needed to demonstrate in some clear and specific way that the modeling conclusions derived by the applicant's engineering consultant were either based on demonstrably incorrect data assumptions or employed unreliable methodology. While the appellants provided a vast amount of anecdotal information concerning the flooding conditions and raised some very general theoretical objections to the modeling process, no errors within the modeling analysis have been demonstrated. Based on the modeling results, the applicant's proposal will not only have no adverse affect on the existing flooding conditions but will indeed provide a slight improvement in terms of their frequency and duration. Thus, for SEPA purposes, the plat will have no adverse environmental impact, significant or otherwise. Absent an identified impact resulting from the proposal, no foundation exists for requiring a cumulative impacts analysis. As was repeatedly emphasized at the hearing, no one is suggesting that Panther Meadows will cure the existing neighborhood flooding problem. The conclusion is simply that Panther Meadows, as mitigated, will not make this problem any worse and may make it slightly better.
4. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts.
5. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision of the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.

6. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies, and objectives of King County.

DECISION:

The SEPA threshold determination appeal of Ollie Burton and Jim Dojan is DENIED. The preliminary plat application for Panther Meadows as revised and received on June 11, 2001, is APPROVED, subject to the following conditions of final approval:

1. Compliance with all the platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-8 zone classification. All lots shall also meet the minimum dimensional requirements of the R-8 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services (DDES). A note shall be placed on the final plat which states that no lot in the subject plat less than 30 feet in width may be developed with a detached single-family residence, per KCC 21A.12.030A.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant must obtain the approval of the King County Fire Protection Engineer, to demonstrate compliance with the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.

- b. Current standard plan notes and ESC notes, as established by the DDES Engineering Review Section, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
 - d. A drainage adjustment (L00V0085) was approved for this subdivision. All conditions of approval for this adjustment shall be satisfied and reflected on the engineering plans for the subject plat. The new 30 inch conveyance pipe to Panther Creek shall be provided with a separate outlet to the stream.
8. The following road improvements are required to be constructed consistent with the 1993 King County Road Standards (KCRS):
- a. The southerly portion of Panther Lane from Lot 12 to SE 196th St., and the road stub to the east boundary of the site (between Lots 11 and 12) shall be improved to the urban subcollector standard.
 - b. Panther Loop and the portion of Panther Lane lying north of the road stub to the east shall be improved to the urban subaccess street standard.
 - c. The frontage of the subdivision on SE 196th St. shall be improved to the urban neighborhood collector standard.
 - d. The frontage of the subdivision on SE 192nd St. shall be improved by widening the existing paved shoulder to a total width of eight feet and relocation of the existing drainage ditch. The additional widening shall consist of asphalt paved surface outside of the existing paved shoulder, unless the existing shoulder paving has failed.
 - e. SE 196th St. shall be improved to the rural neighborhood collector standard from the southeast corner of the site to 116th Ave. SE. This improvement shall be designed in accordance with the conditions of approval for Road Variance L00V0084. This improvement requires lowering the existing roadway to improve site distance.

If any construction activities for this off-site improvement requires intrusion onto private property, permission from the affected owners shall be provided prior to final engineering plan approval.

- f. The design of Lot 29 shall be revised and a minimum 10-foot-wide pedestrian access tract provided along the western portion of the lot, extending from joint-use driveway Tract H to SE 192nd St. The pedestrian access tract shall be improved with a five-foot-wide asphalt walkway, and fencing along its east and west boundaries to delineate the tract. The pedestrian access tract shall be owned and maintained by the homeowners association for the subject plat.

A ten-foot-wide pedestrian access easement shall be shown on the final plat across Tracts G and H, to permit pedestrian access for the residents of the plat from the site to SE 192nd St. The easement shall allow for access to Tracts G and H by the homeowners association for the purposes of maintenance of the pedestrian easement. A sign shall be provided in the vicinity of the intersection of the pedestrian access easement with Panther Lane, advising the residents of the existence of this pedestrian walkway.

- g. Tract G shall be improved as a private access tract, per KCRS Section 2.09.

Tract G shall be owned and maintained by Lots 26 – 29. A note to this effect shall appear on the final plat and engineering plans.

- h. Tract H shall be improved as a joint use driveway, per KCRS Section 3.01.

Tract H shall be owned and maintained by Lots 28 and 29. A note to this effect shall appear on the final plat and engineering plans.

- i. The roadway shoulder on the south side of SE 192nd St. between the site and 116th Ave. SE shall be widened to a continuous eight foot section. The additional widening can be gravel surface outside the existing paved shoulder.

- j. Roadway shoulder improvements shall be provided as described below on the north side of SE 192nd St., east of 116th Ave. SE, in the vicinity of Tax Parcels 6198400160 and 6198400163. The area where the shoulder improvement must be made is approximately 100 feet in length, beginning approximately 100 feet east of 116th Ave. SE. The existing road shoulder at this location is approximately 4.5 feet wide, beyond which lies a 1.5 to 2 foot level grassed area adjacent to a roadside ditch. To increase the walkable surface, the applicant shall replace the 1.5 to 2 foot wide level grassed area with a gravel surface to the edge of the ditch.

- k. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.

9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
10. The applicant or subsequent owner shall comply with KCC 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the

first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

11. Lots within this subdivision are subject to KCC 21A.43 and Ordinance 14258 which imposed impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 50% of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
12. There shall be no direct vehicular access to or from SE 192nd St. and SE 196th St. from those lots in the subject plat which abut these two streets. A note to this effect shall appear on the final plat and engineering plans.
13. Twelve feet of additional right-of-way for SE 192nd St. shall be dedicated along the frontage of the site, to create a total of 50 feet of right-of-way from centerline.
14. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

15. The proposed subdivision shall comply with the sensitive areas requirements as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
16. Preliminary plat review has identified the following sensitive areas issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the applicant.
 - a. Within the subject plat, a 25-foot-wide native growth buffer shall be provided from Wetlands A and B as depicted on the preliminary plat map, and from the off-site wetland adjacent to Lot 48.
 - b. As an alternative, wetland buffer averaging may be utilized, subject to compliance with KCC 21A.24.320B and the approval by LUSD of a buffer averaging plan. Bonding or other financial guarantees may be required by LUSD to assure the installation and survival of required plantings.
 - c. Wetlands A and B, and the required wetland buffers noted above shall be placed in sensitive area tracts within the subject plat. A building setback line 15 feet from the sensitive area tracts shall be placed in adjacent lots or tracts in the subject plat.
 - d. Encroachment into Wetland A and its buffer is permitted for the construction of required road improvements to SE 196th St., subject to compliance with the KCC 21A.24.330N2 – 5 and approval by LUSD of a wetland mitigation plan. The mitigation plan shall include the installation of at least three snags in Wetland A to provide perch trees for red-tailed hawks or other raptors, unless LUSD determines the snag placement is infeasible. Bonding or other financial guarantees may be required by LUSD to assure the installation and survival of required plantings and other wetland enhancements.
 - e. Wetland hydrology shall be maintained to Wetland A, Wetland B, and the off-site wetland adjacent to Lot 48, to the extent feasible as determined by LUSD.
17. Suitable on-site recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children’s play equipment, picnic table[s], benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by LUSD, with the submittal of the engineering plans. The conceptual recreation plan shall include location, area calculations, dimensions, and general improvements. The plan shall address the problems noted in Section P of the LUSD staff report. (Note that the required design changes will likely result in either the elimination of lots from the plat, or changing some of the proposed single-family lots to townhouse lots.) The engineering plans shall be consistent with the approved conceptual recreation plan.

inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

20. To implement KCC 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of KCC 21A.38.230. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC 21A.38.230B4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to KCC 21A.38.230B4d(2).

A note shall be placed on the final plat indicating that trees located in open space, landscape, or recreation tracts which are shown to be retained on the tree retention plan shall be maintained by the homeowners association, consistent with KCC 21A.38.230B6. If trees shown to be retained on the tree retention plan are located within lots, a note on the final plat shall indicate these trees shall be maintained by the underlying lot owners, consistent with KCC 21A.38.230B6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

The following conditions have been established under SEPA authority as necessary to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.

21. The subject plat will have a significant adverse impact on the intersection of S. R. 515/SE 196th St. The Washington State Department of Transportation (WSDOT) has improvements planned for this intersection, including signalization, which are expected to be constructed in 2002. To address the impacts from the subject plat, prior to final plat approval, the applicant shall contribute a pro-rata share to WSDOT for the cost of the planned intersection improvements as follows:
- \$1,426.12 for each lot in the plat planned for the construction of a detached single family residence.
 - \$866.86 for each lot in the plat planned for the construction of a townhouse.

The above pro-rata share dollar amounts may be modified by WSDOT, if requested by the applicant and deemed appropriate by WSDOT.

22. To address impacts from the subject plat on flooding which has occurred in the past downstream from the site in the vicinity of SE 196th St., the final engineering plans for the plat shall conform with all conditions of approval stated in the DDES July 12, 2001 letter approving SWM Adjustment Request L00V0085. These conditions include the application

of Level 3 flow control to the stormwater detention system for the plat, and the construction of upgrades to the off-site conveyance system between the subject property and Panther Creek.

ORDERED this 8th day of April, 2002.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 8th day of April, 2002, to the parties and interested persons of record:

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Mukilteo WA 98275

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K C Exec Horse Council
Eleanor Moon
12230 NE 61st
Kirkland WA 98033

Wm & Candi Mc Kay
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Renton WA 98058

R. J & Gretchen LaRoche
10850 SE 196th
Renton WA 98055

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Renton WA 98055

Bartholda Manderville
11415 SE 196th Street
Renton WA 98055

Stan Mitchell
19219 SE Auburn-Black Diamond Rd
Auburn WA 98002

Ron & Leah Monroe
11427 SE 196th St
Renton WA 98055

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Renton WA 98055

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Centurion Dev. Services
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Kent WA 98031

Renee Stewart
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Renton WA 98055

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c/o Baima & Holmberg
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Issaquah WA 98027

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DDES/LUSD
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MS OAK-DE-0100

Peter Dye
DDES/LUSD
Engineering Review
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Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Lanny Henoch
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Aileen McManus
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Land Use Traffic
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Carol Rogers
LUSD/CPLN
MS OAK-DE-0100

Steven C. Townsend
DDES/LUSD
Land Use Inspection
MS OAK-DE-0100

Larry West
DDES/LUSD
Site Development Services
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before April 22, 2002**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before April 29, 2002**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MARCH 12, 14 and 15, 2002 public hearing on Department of Development and Environmental Services file no. L99P3016; Panther Meadows.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing, representing the Department were Lanny Henoeh, Kristen Langley, Nick Gillen, Steve Foley, Brian Sleight and Bruce Whittaker; representing the Applicant were Jim Handmacher, Attorney at Law, Michael Romano and Ed McCarthy; representing the Appellants was Bill Williamson, Attorney at Law; and Jim Dojan, Ollie Burton, Paul Konrady, Steve Toschi, Dennis Beckwith, Barbara Harrington, Bartholda Manderville.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L99P3016
- Exhibit No. 2 Department of Development and Environmental Services Preliminary report, dated March 11, 2002
- Exhibit No. 3 SEPA Environmental checklist, received December 3, 1999
- Exhibit No. 4 SEPA Mitigated Determination of Non-Significance, issued October 19, 2001
- Exhibit No. 5 Affidavit of Posting, received January 14, 2000, indicating that signs were posted on the property giving notice of the filing of the subject application
- Exhibit No. 6 Applicant's revised plat map, received June 11, 2001
- Exhibit No. 7 Land use map
- Exhibit No. 8 King County Assessor map for the NE ¼ of Sec. 5, Twp. 22, Range 5, annotated by the applicant's representatives
- Exhibit No. 9a Traffic Impact Analysis for Panther Meadows, prepared by Garry Struthers Associates, Inc., dated October 21, 1999 (including an addendum dated November 22, 1999)
- Exhibit No. 9b Memorandum from Gary A. Norris, P.E., Garry Struthers Associates, Inc., to Michael Romano, dated June 26, 2000, providing additional traffic information
- Exhibit No. 9c Memorandum from Gary A. Norris, P.E., Garry Struthers Associates, Inc., to Michael Romano, dated June 6, 2001, providing additional traffic information
- Exhibit No. 10a Wetland Delineation Report, prepared by The Watershed Company, dated July, 1999
- Exhibit No. 10b Letter from Jennifer Creveling and Greg Johnson, The Watershed Company, to Mike Romano, dated May 16, 2000, containing additional wetland information, and stream and wildlife information
- Exhibit No. 10c Letter from Mark Indrebo, The Watershed Company, to Mr. Romano, dated June 29, 2000, containing additional wetland information
- Exhibit No. 10d Letter from Kathy Curry, The Watershed Company, to Mike Romano, dated June 6, 2001, containing wetland buffer information, with an attached drawing entitled "Wetland Buffer Mitigation Plan"
- Exhibit No. 11 Letter from Ronald J. Paananen, P.E., County Road Engineer, to Michael Romano, dated February 21, 2001, denying Road Variance Application L00V0084 concerning intersection spacing and a proposed access onto SE 192nd St., and granting a variance for entering sight distance and an access on SE 196th St. (including a memorandum to the variance file).
- Exhibit No. 12 Letter from Pete Dye, P.E., and Jim Chan, P.E., King County Department of Development and Environmental Services, to Dreamcraft Homes and Edward J. McCarthy, P.E., dated July 12, 2001, approving SWM Adjustment Request L00V0085, subject to conditions. This exhibit also includes the Applicant's SWM adjustment application and supporting information.

- Exhibit No. 13a Panther Meadows Preliminary Technical Information Report, prepared by Haozous Engineering, P.S., originally dated October 8, 1999 and revised August 1, 2000.
- Exhibit No. 13b Panther Meadows Hydraulic Assessment of SE 196th Street, prepared by Haozous Engineering, P.S., dated December 31, 2000
- Exhibit No. 13c Panther Meadows Hydraulic Assessment of SE 196th Street under Full Buildout Conditions, prepared by Haozous Engineering, P.S., dated April 12, 2001
- Exhibit No. 13d Letter from Edward McCarty, Ph.D., P.E., Haozous Engineering, P.S., to Michael Romano, containing additional flood analysis for SE 196th St., with attached supporting data.
- Exhibit No. 14 Drawing (map) entitled “SE 196th Street Preliminary Road Frontage Improvement Plan,” prepared by Centurion Development Services, received June 11, 2001
- Exhibit No. 15 Drawing (map) entitled “SE 196th Street Conceptual Sight Distance Improvements,” prepared by Centurion Development Services, received June 11, 2001
- Exhibit No. 16 Letter from Gregg Zimmerman, Administrator, City of Renton Planning/Building/Public Works Department, to Lanny Henoch, dated December 3, 2001
- Exhibit No. 17 Letter from Shupe Holmberg, P.E., Baima & Holmberg, Inc., to Lanny Henoch, dated June 1, 2000, regarding the Toschi property
- Exhibit No. 18 Letter from Steve Toschi, to Lanny Henoch, dated February 21, 2002, with exhibit nos. 12 and 17 attached
- Exhibit No. 19 Letter from James C. Dojan to Lanny Henoch, dated January 26, 2000, with attached photos.
- Exhibit No. 20 Letter from Jim Dojan to Lanny Henoch, dated October 11, 2000, with attachments
- Exhibit No. 21 Letter from Kelly Harper (not dated, not address to any party)
- Exhibit No. 22 E-mail from Michael J. Lombardy to Nick Gillen, dated August 31, 2000
- Exhibit No. 23 Letter from Bill H. Williamson, Attorney for the Appellants, to Greg Borba, and Office of the King County Hearing Examiner, dated November 12, 2001 appealing the SEPA determination for the subject plat, with supporting attachments
- Exhibit No. 24 Letter from Jim Dojan to Mr. Whittaker, dated January 10, 2002, with attached December 5, 2001 letter from David Melby, WSDOT
- Exhibit No. 25 Aerial photo (2000) of the vicinity of the site and land use map containing information regarding walkway facilities
- Exhibit No. 26 Appeal statement from Bill Williamson
- Exhibit No. 27 Color photos, pages A-M
- Exhibit No. 28 Hydraulic Project Approval, dated June 15, 1982, from Departments of Games and Fisheries
- Exhibit No. 29 Memorandum from James Sander, P.E., to Dick Thiel, dated February 3, 1994
- Exhibit No. 30 Map—Existing SE 192nd Downstream Conditions Sketch, dated May 12, 1995
- Exhibit No. 31 Map—Proposed SE 192nd Downstream Conditions, dated May 12, 1995
- Exhibit No. 32 Memorandum from Michael O’Neil to Curt Crawford, dated May 16, 1995
- Exhibit No. 33 Memorandum from Pricha Tuksaudom to Curt Crawford, dated May 31, 1995
- Exhibit No. 34 Map—Panther Lake Garden Tracts
- Exhibit No. 35 Photos (a-c) submitted by Renee Stewart
- Exhibit No. 36 Basin Map
- Exhibit No. 37 Sketch of existing drainage system
- Exhibit No. 38 Proposed off site 30 inch pipe drainage system
- Exhibit No. 39 Chart—Comparison of Rating Curves
- Exhibit No. 40 Proposed solution advantages
- Exhibit No. 41 Revised plat map

- Exhibit No. 42 Photographs and explanatory material from Barbara Harrington
- Exhibit No. 43 Eighteen inch culvert model
- Exhibit No. 44 Thirty inch culvert model
- Exhibit No. 45 Surface Water CIP, dated March 14, 2002
- Exhibit No. 46 Four Letters regarding surface water management
 - a. From Pete Dye and Jim Chan, to David Casey, P.E., dated December 13, 2001
 - b. From James Sanders and Jim Chan to David Casey, P.E., dated January 3, 2002
 - c. From James Sanders and Jim Chan to Mike Davis and Ken Watanabe, P.E., dated January 24, 2002
 - d. From James Sanders and Jim Chan to Keith Miya and Luay Joudeh, P.E., dated February 7, 2002
- Exhibit No. 47 1998 Surface Water Design Manual Section 1.2 Core Requirements, dated September 1, 1998
- Exhibit No. 48 Revised conditions
- Exhibit No. 49 Notice of Application, date of mailing February 26, 2002
- Exhibit No. 50 Section III Off-Site Analysis, prepared by Browne Engineering, Inc., dated October 9, 1991
- Exhibit No. 51 Report and Recommendation to the King County Council, file no. S90P0115, proposed plat of Shirley Ann Manor, stamped received December 04, 1998
- Exhibit No. 52 Three photos (on one sheet) photos taken late summer 2000 of SE 196th St. 36 inch culvert
- Exhibit No. 53 Ms. Stewart photos mounted on 2 pages, taken March 14, 2002

SLS:cp

\\L99P3016 rpt.doc

September 10, 2002

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

SUPPLEMENTAL REPORT ON REMAND FROM THE KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File No. **L99P3016**

PANTHER MEADOWS
Preliminary Plat Application

Location: Lying between SE 192nd Street and SE 196th Street, and between 113th Way SE and 114th Court SE, if both streets were extended

Applicant: Michael J. Feuerborn, *represented by*
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E-mail: jvhandmacher@bvmm.com

Appellants: Jim Dojan and Ollie Burton, *represented by*
Bill H. Williamson, Attorney at Law
700 Fifth Avenue Suite 3910
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Telephone: (206) 682-5900
Facsimile: (206) 682-5980
E-mail: bhwilliamson@rwillaw.com

King County: Department of Development and Environmental Services,
Land Use Division, *represented by*
Lanny Heno
900 Oakesdale Avenue SW
Renton, WA 98055-1219
Telephone: (206) 296-7168
Facsimile: (206) 296-7051
E-mail: Lanny.Heno@metrokc.gov

1. At its July 8, 2002, Land Use Appeal Hearing the Metropolitan King County Council remanded the Panther Meadows preliminary plat application back to the Hearing Examiner for consideration of additional plat conditions to alleviate flooding downstream from the proposal site. The Panther Meadows application is to subdivide 11.03 acres into 86 lots within the 400-acre drainage basin for Panther Lake. The conditions applied to the development under SEPA authority within the October 19, 2001, mitigated determination of non-significance are not affected by this remand and remain in effect.
2. A notice of remand issued by the King County Hearing Examiner's office on July 12, 2002, identified a number of subject areas in which further information was requested regarding potential plat conditions. The parties were given the opportunity to submit written comments to the record on these topics, and a hearing to receive public testimony on the parties' comments was held on August 13, 2002. In addition, the parties were given an opportunity to supplement their testimony with a second round of written materials. The ensuing discussion follows the topical outline provided within section two of the notice of remand.

Water and Land Resources Division Panther Creek Drainage and Habitat Improvement Capital Project

3. The King County Water and Land Resources Division (WLRD) is planning a capital project to remove excess deposits of sediment and non-native invasive vegetation from the Panther Creek channel and to replant the stream banks with native trees and shrubs for salmonid habitat restoration. According to Glenn Evans, the manager of the Capital Projects and Open Space Acquisitions section for WLRD, and Senior Engineer Doug Brown, funds are available for this project and it is an appropriate use of the Division's resources. The major obstacles to its implementation are obtaining required State and County permits and right-of-entry agreements from private property owners. The Panther Creek improvement project is anticipated to be implemented in the summer of 2003.
4. The WLRD Panther Creek project focuses on the area lying between Southeast 196th Street and State Route 515 (SR 515). It would provide an immediate improvement to stream channel conveyance by removing accumulated sediment deposits as well as improving fisheries habitat. The project appears to be on track for implementation unless permitting obstacles cannot be surmounted or unforeseen emergency use of the funding becomes a higher priority.

Downstream Conveyance System Monitoring and Maintenance

5. Monitoring and maintenance requirements can be placed on the new 30-inch conveyance pipe to be installed by the Applicant on the north side of Southeast 196th Street. An additional plat condition is proposed that requires installation of the 30-inch pipe during the first summer dry

season during which plat construction occurs, with pipe inspection and maintenance to take place prior to final plat approval. This latter requirement will allow any sediment to be removed that may have accumulated in the pipe during the plat construction period. After construction, it is not anticipated that Panther Meadows will contribute significant sedimentation to the downstream system.

Sedimentation Buildup

6. As noted, after plat construction the sediment contribution from Panther Meadows to the Panther Creek system should be negligible. Using standard coefficients, the Applicant's engineer has calculated that the primary cause for sedimentation within the Panther Creek system is agricultural activity, specifically the grazing of cattle on Mr. Burton's property. This grazing activity is estimated to produce over two-thirds of the sediment flowing into the Panther Creek conveyance system. This means that after construction of Panther Meadows sediment generation will probably continue at historic levels. Some systemic improvement can be anticipated, however, from the installation by the Applicant of a 30-inch conveyance pipe along Southeast 196th Street to replace the existing 18-inch pipe. The 30-inch pipe will have a higher flow velocity than its predecessor and, therefore, should be less subject to sediment accumulation.

Based on recent experience, if WLRD cleans sediment from the Panther Creek channel in the summer of 2003, current levels of sediment buildup should not be again encountered until about 2010. A long-term solution to the problem might include an arrangement whereby the County agrees to purchase Mr. Burton's grazing rights in order to eliminate the primary sedimentation source.

Lowering the Culvert Beneath SR 515

7. When a new culvert was placed under SR 515 to convey Panther Creek, it was located at about the same elevation as the culvert upstream at Southeast 196th Street. A possible mitigation for flooding impacts is, therefore, to lower the culvert under SR 515 in order to increase the stream gradient. The cost of such an improvement is predicted to be about \$200,000. It would, as well, require an array of State and County permits for the instream work. Neither the State Department of Transportation nor the Applicant's engineer believes that lowering this culvert would produce a major benefit to the flooding condition. Philip Fordyce, King Area Manager for the State Department of Transportation, in a February 11, 2002, letter states that, "We believe the highway culvert is operating properly and lowering it will not alleviate the flooding in the Panther Lake area. The obstructions upstream from this culvert appear to be the primary cause of the flooding combined with the development in the surrounding area that has increased runoff into Panther Lake." Based on hydraulic modeling under current conditions with the SR 515 culvert lowered one foot, the Applicant's engineer, Ed McCarthy, reached a similar conclusion: "Lowering the culvert has limited effectiveness because the accumulation of sediment upstream from the culvert constricts flows."

In view of the limited benefit of the new culvert plus its high cost, and taking into consideration the limited contribution of Panther Meadows to either the flooding or sedimentation problems within Panther Creek, imposing this mitigation requirement upon the Applicant would not comply with constitutional and statutory requirements for limiting mitigation to the direct impacts of the project and for maintaining rough proportionality between the project's impact and the cost of mitigation.

Catch Basins

8. Maintaining the new 30-inch conveyance pipe along the north side of Southeast 196th Street free of sedimentation and debris can be facilitated by the frequent placement of catch basins along its 625-foot length. The current 18-inch pipe only has a single catch basin. The Applicant's engineer recommends that catch basins be placed along the length of the new pipe at 150-foot intervals due to the gentle gradient of the conveyance system. This would result in at least four catch basins over the pipe's length. A requirement to such effect is proposed to be added to the plat conditions.

Additional Drainage Analysis

9. The notice of remand raised the question as to whether under the County's Surface Water Design Manual (the Manual) additional floodplain or closed depression analyses might be required and whether such exercises would serve a useful purpose. The position of the Land Use Services Division is that such additional studies are not required:

"Floodplain analysis and closed depression analysis are not required for this project under the King County Surface Water Design Manual. This drainage system is not considered a closed depression, according to the Manual. Given the complexity of the system and extensive analysis already done, there would be little benefit derived from additional modeling."

This position was strongly supported by Steve Foley of the Water and Land Resources Division. Mr. Foley stated that a closed depression analysis only is required when the flooded area acts as a retention basin, and that the Panther Creek outlet, although impaired, precludes classifying the area as a closed depression.

10. The Manual defines a closed depression as "an area which is low-lying and either has no surface water outlet, or has such a limited outlet that during storm events the area acts as a retention basin, with more than 5,000 square feet of surface water area at overflow elevation."

If a closed depression exists and its elevated water surface causes a severe flooding problem, then section 3.3.5 of the Manual provides the option of increasing the on-site flow control to a level three and performing a point of compliance analysis if the amount of impervious surface area created by the project equals or exceeds ten percent of the 100-year water surface area of the closed depression. The purpose of the point of compliance analysis is to "verify that the water surface levels are not increasing for the return frequencies at which flooding occurs, up to and including the 100 year frequency."

11. There seems to be no disagreement that the portion of the Panther Lake basin that lies downstream from Panther Meadows experiences severe flooding and such flooding is characterized by more than 5,000 square feet of water surface area at the overflow elevation. Assuming for the sake of discussion that the Panther Creek basin functions as a closed depression, it remains the conclusion of the Applicant's engineer that the requirements of Manual section 3.3.5 are nonetheless met by the project. According to Mr. McCarthy's calculations, if the downstream limit of the basin is defined as the inlet to the current 18-inch

culvert lying on the north side of Southeast 196th Street, the 6.35 acres of impervious surface contributed by Panther Meadows after development will constitute 9.4 percent of the basin's 100-year floodplain. This figure falls below the 10 percent threshold established in the Manual for triggering the point of compliance analysis. Further, according to Mr. McCarthy's modeling studies, "upsizing the 18-inch pipe system to a 30-inch pipe system reduces stages in the flood-prone area along Southeast 196th Street for all frequencies up to the 100-year water level."

Thus, pursuant to Mr. McCarthy's analysis, even if Panther Meadows is subject to the closed depression requirements, the mitigation being offered by the Applicant is sufficient to reduce flooding return frequencies below the existing condition and therefore meets the applicable Manual standard. In short, Panther Meadows, after development and with the mitigations proposed, will not increase flooding within the basin but will slightly reduce it. At no point in the proceeding have the Appellants introduced any evidence to the record that contradicts this conclusion.

Applicability of RCW 58.17.120

12. The first paragraph of RCW 58.17.120 reads as follows:

"The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat."

The parties were invited to further comment on the intent and meaning of this statutory provision. Both the Applicant and LUSD staff pointed out that the entire context of the paragraph relates to the "characteristics of a proposed subdivision site," and that conditions for onsite improvements shall be "noted on the final plat." Based on these contextual references, it is their view that the words "flood, inundation, or swamp conditions" also should be interpreted as applying to the proposal site and not given the unlimited interpretation argued for by the Appellants. More critically, as pointed out by the Applicant's attorney, regardless of the meaning assigned to RCW 58.17.120, clearly articulated constitutional principles preclude requiring a development applicant to cure a pre-existing deficiency that is not directly caused by the impacts of the proposal. Thus, to interpret RCW 58.17.120 as authorizing plat conditions to alleviate neighborhood flooding conditions generally would violate well-established constitutional principles and invite reversal on judicial review.

RECOMMENDED CONDITIONS

The Hearing Examiner's April 8, 2002, report and decision for Panther Meadows should be amended by the addition of the following new plat conditions:

- 7.e. The new 30-inch conveyance pipe to Panther Creek shall be installed during the first summer construction season during which any plat improvements are constructed. Immediately prior to final plat approval, it shall be inspected by DDES for satisfactory performance, and accumulated sediment shall be removed by the Applicant.

7.f. Catch basins shall be installed for the new 30-inch pipe at 150-foot intervals, as approved by DDES.

RECOMMENDED this 10th day of September, 2002.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 10th day of September, 2002, to the following parties and interested persons:

Susan Alexander	Dreamcraft Homes	Donald Walkup
Loretta Aschenbrenner	M J F Holdings, Inc.	Bill H. Williamson
Alan Bauer	K C Exec Horse Council	Gregg Zimmerman
Ollie J. Burton	Wm & Candi Mc Kay	Darren Carnell
Betty J. Crnich	Paul Konrady	Kim Claussen
Robert Darrow	R. J & Gretchen LaRoche	Peter Dye
Sea/KC Health Dept	Michael J. Lombardy	Glenn Evans
WA St. Ecology Dept	Bartholda Manderville	Steve Foley
Jim Dojan	Ed McCarthy	Nick Gillen
Roger Dorstad	Stan Mitchell	Lanny Henoach
Dryco Surveying & Mapping	Ron & Leah Monroe	Kristen Langley
George W. Drysdale	Ed Norquist	Aileen McManus
Michael J. Feuerborn	Mike Romano	Anne Noris
Doug Hammarstrom	Loren Sever	Carol Rogers
Jim Handmacher	Renee Stewart	Steven C. Townsend
Kelly Harper	Steve Toschi	Larry West
Barbara Harrington	Jerry & Pat Vardeman	Bruce Whittaker

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MINUTES OF THE AUGUST 13, 2002 PUBLIC REMAND HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P3016.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the remand hearing were Lanny Henoach, Doug Brown, Glenn Evans, Steve Foley, and Bruce Whittaker, representing the County staff; Bill H. Williamson, representing the Appellants; and James Handmacher representing the Applicant. Others participating in the hearing were Ed McCarthy, Jim Dojan, Paul Konrady and Ollie Burton.

The following exhibits were offered and entered into the record:

Exhibit No. 54	Letter to Don Griffith from Stephen Johnson dated January 18, 2002
Exhibit No. 55	Letter to James C. Dojan from Stephen Johnson dated February 15, 2002

- Exhibit No. 56 Letter to James C. Dojan from Jack Cairnes dated February 19, 2002
- Exhibit No. 57 Letter to Hearing Examiner from Ollie J. Burton with photographs dated August 1, 2002
- Exhibit No. 58 FEMA Map
- Exhibit No. 59 Letter to Hearing Examiner from Bill Williamson with attachments dated August 5, 2002
- Exhibit No. 60 Letter to Michael Romano from Edward McCarthy with attachments dated August 2, 2002
- Exhibit No. 61 Email to Michael Romano from Ed McCarthy dated August 12, 2002
- Exhibit No. 62 Water surface profiles in Panther Creek chart
- Exhibit No. 63 Letter to Hearing Examiner from James Handmacher with attachments dated August 5, 2002
- Exhibit No. 64 Letter to Hearing Examiner from Lanny Henoch with attachment dated August 1, 2002
- Exhibit No. 65 King County Maintenance and Defect Agreement (Two Years) for Public Roads and Drainage Facilities Form