



COUNTY COMMISSIONERS

Cathy Wolfe  
 District One  
 Sandra Romero  
 District Two  
 Karen Valenzuela  
 District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
 IN AND FOR THE COUNTY OF THURSTON**

In the Matter of the Appeal of )  
 )  
**William and Camille Pederson** )  
 )  
 )  
 of the July 18, 2013 )  
 Mitigated Determination of )  
 Non-Significance Issued in review of )  
 Fire District No. 8 Special Use Permit )  
 )  
 and )  
 )  
 In the Matter of the Application of )  
**Thurston Fire District #8** )  
 )  
 for a Special Use Permit to Build a )  
 New Fire Station at 7804 and 7736 )  
 Hendershot Street NE, Olympia, WA )

Project No. 2011100142  
 AAPL 13-110111 VE

**Fire District #8 SUP and  
 Pederson SEPA Appeal**

**FINDINGS, CONCLUSIONS, AND  
 DECISIONS**

**SUMMARY OF DECISIONS**

The Appellants did not satisfy their burden of proving that the mitigated determination of non-significance was clearly erroneous and therefore the SEPA appeal is **DENIED**.

The requests for special use permit and plat alteration to allow construction of a manned fire station and necessary utility facilities at 7804 and 7736 Hendershot Street NE with emergency vehicle only access onto 78th Avenue NE are **APPROVED**.

## SUMMARY OF RECORD<sup>1</sup>

### **Request**

Thurston County Fire District #8 (Applicant) requested approval of a special use permit to construct a new 5,200 square foot, manned fire station, with appurtenant water, septic, and stormwater facilities, five staff parking spaces, and six public parking spaces. The Applicant concurrently proposed a plat alteration to allow emergency vehicles direct access onto 78<sup>th</sup> Avenue NE.

Thurston County Resource Stewardship Department reviewed the proposal for compliance with the requirements of the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on July 18, 2013.

### **Issues on Appeal**

On August 8, 2013, an appeal of the MDNS was timely filed on behalf of William and Camille Pederson (Appellants) through counsel, alleging the following (paraphrased) errors in the MDNS which were further developed in legal briefing and testimony on the record:

1. The MDNS's conclusion that the proposal would not result in probable, significant, adverse environmental impacts is inconsistent with the opinions of staff from the US Army Corps of Engineers and from Washington Department of Fish and Wildlife, as well as with that of the Appellant's expert.
2. The environmental checklist relied on was inaccurate and deficient in material respects including: site hydrology; animal and plant species on-site and downstream; and plans for future development of the adjacent lot owned by the Applicant.
3. The condition requiring that "eco-friendly soap" be used for all truck washing on-site is inadequate to mitigate the impacts of truck washing on-site.
4. Various MDNS conditions relating to erosion and stormwater control are inadequate because the hydrologic connection to the Appellants' property was not properly studied, and the information relied upon in crafting these conditions was inaccurate and deficient.
5. The MDNS does not adequately mitigate for impacts to the on-site swale, the downstream wetland and fish bearing stream, and ultimately Puget Sound, because it allows development of the stormwater facilities within the on-site swale.
6. The MDNS fails to address significant impacts that will result from transportation deficiencies on roads serving the site.
7. The MDNS was procured by misrepresentation or lack of material disclosure because the information relied upon in its issuance misrepresent hydrologic conditions on and near the site and fail to address the Applicant's future plans for the adjacent parcel.

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<sup>1</sup> Findings begin on page 10.

8. The MDNS was issued in error because the County failed to identify, evaluate, and require or implement reasonable alternatives that would have mitigated the impacts of the proposal, including expansion of existing fire stations or alternative site plans.

### **Hearing Date**

The Thurston County Hearing Examiner conducted a consolidated open record public hearing on the SUP request and SEPA appeal on October 21 and October 22, 2013. The record closed at the conclusion of the hearing.

### **Testimony**

At the open record public hearing, the following individuals presented testimony under oath:<sup>2,3</sup>

#### *For the Appellants*

Mike Layes, Professional Wetland Scientist  
Cora Morely Eklund  
Tom Engle  
Susan Rogers  
Tom Thayer  
William Pedersen  
Camille Pedersen

#### *For the Applicant*

Chief Bryan VanCamp  
Calvin Jordon  
Eric Johnston  
Eric Russel  
Dave Every, PhD

#### *For the County*

Tony Kantas, Thurston County Resource Stewardship  
Arthur Saint, P.E., Thurston County Public Works  
Brad Sangston, Thurston County Environmental Health  
Jack King, Thurston County Public Works

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<sup>2</sup> For the sake of expediency and due to schedule conflicts on the parts of some witnesses, counsel for the Applicant requested that testimony of Applicant expert witnesses be accepted for both the SEPA appeal and the SUP hearing, without the need to recall witnesses or hear duplicative comments.

<sup>3</sup> On October 21, 2013, a substantial number of persons appeared desiring to testify in the public comment period of the permit hearing, which was possibly not to occur on the first day of the hearing. Public comment on the permit application was taken out of order in order to allow those who could not return the following day to offer testimony, and a second public comment period on the permit was announced to occur as usual after the County's and Applicants' presentation on the permit. Audience members were also informed that they could submit written comments up to the close of the record.

*Public Comment*

Wesley Jones  
Susan Coleman  
Carie Born  
Kim Gyls  
Bradley Hummel  
Evelyn Grundy  
Bill Bourg  
Greg Olson  
Nick Libby  
Thomas Thayer

**Attorney Representation**

Stephen Manning, Attorney, represented the Appellants.  
Heather Burgess and Martha Whalen, Attorneys, represented the Applicant.  
Jeff Fancher, Deputy Prosecuting Attorney, represented Thurston County.

**Exhibits**

The following exhibits were admitted in the record of this matter:

*For the County*

Exhibit C1 Resource Stewardship Land Use & Environmental Section Report on Special Use Permit including the following attachments:

- A. Mitigated determination of Non-Significance, issued July 18, 2013
- B. Site Plan, Revision date 3/5/13
- C. Architectural Design, Revision date 3/5/13
- D. SEPA Appeal, Received August 8, 2013
- E. SEPA Comment Letter dated July 31, 2013 from Ryan D. White, Appellant's Attorney
- F. October 18, 2012 Comment letter from Heather L. Burgess, Applicant's Attorney
- G. September 24, 2012 Comment Letter from WDFW
- H. July 31, 2012 Comment Letter from Army Corp of Engineers (Corp)
- I. November 7, 2012 Email from Thurston County to WDFW and the Corp
- J. December 9, 2011 Memorandum from Public Works

- K. July 20, 2011 URS Wetland Delineation
- L. October 28, 2011 ACERA Technical Memorandum
- M. April 22, 2013 Letter from Fire District 8
- N. Thurston County Fire Protection District 8 Operating Guideline
- O. June 6, 2012 Public Works SEPA Recommendation
- P. July 2, 2013 Thurston County Health Department Recommendation
- Q. August 24, 2010 Public Well Site Approval
- R. SEPA Checklist dated May 3, 2011
- S. Addendum to the Environmental Checklist dated September 13, 2011
- T. January 30, 2013 Memorandum from Public Works
- U. April 4, 2012 Memorandum from Public Works
- V. October 28, 2011 Memorandum from Public Works
- W. June 8, 2011 Letter from Resource Stewardship
- X. April 11, 2011 Letter from Resource Stewardship
- Y. March 16, 2011 Memorandum from Public Works
- Z. December 17, 2010 Drainage Scoping Report Response Letter

Exhibit C2 Resource Stewardship Land Use & Environmental Section Report on Special Use Permit including the following attachments:

- A. Master Application, dated March 21, 2011
- B. Special Use Permit application, dated January 14, 2011
- C. Short Plat Alteration application, dated March 21, 2011
- D. Site Plan/Landscape Plan, Revision date 3/5/13
- E. Architectural Design, Revision date 3/5/13

- F. Preliminary Civil Site Plan, dated 1/25/13
- G. Recorded Short Plat SS 05-112264 TC
- H. Thurston County Board Briefing, dated April 6, 2011
- I. Mitigated Determination of Non-Significance, issued July 18, 2013
- J. Thurston County Fire Protection District 8 Operating Guideline
- K. July 20, 2011 URS Wetland Delineation
- L. October 28, 2011 ACERA Technical Memorandum
- M. October 18, 2012 Comment letter from Heather L. Burgess, Applicant's Attorney
- N. September 24, 2012 Comment Letter from WDFW
- O. July 31, 2012 Comment Letter from Army Corp of Engineers (Corp)
- P. November 7, 2012 Email from Thurston County to WDFW and the Corp
- Q. July 29, 2013 email from the Corp
- R. July 8, 2013 letter from Thurston County Health Department (SUP Recommendation)
- S. May 5, 2011 letter from Thurston County Health Department (Group B Water System)
- T. April 28, 2011 memorandum from Thurston County Health Department (Group B Water System)
- U. August 24, 2010 letter from Thurston County Health Department (Group B Water System)
- V. July 19, 2013 memorandum from Thurston County Public Works (SUP Recommendation)
- W. May 25, 2012 memorandum from Thurston County Public Works (Stormwater Review)
- X. August 1, 2013 comment letter from Washington State Department of

Ecology

Y. March 23, 2011 comment letter from Washington State Department of Ecology

Z. February 4, 2011 comment letter from Washington State Department of Ecology

AA. April 22, 2013 letter from South Bay Fire Department

BB. July 31, 2013 letter from Ryan White, Attorney

CC. Stormwater Plan, Revised March 2012

DD. Comment letters received by the County prior to the public hearing can be found listed at the end of the Decision in Appendix A.

EE. Legal Notice

Exhibit C3 Photos of Public Hearing Notice Posting on Site

Exhibit C4 2012 Aerial Photo of Site

Exhibit C5 2011 Lidar Map of Site

Exhibit C6 October 7, 2013 Level 1 Traffic Impact Analysis

Exhibit C7 October 16, 2013 Cliff and Judy Runyon Comment Letter

Exhibit C8 October 16, 2013 Carrie B. Born Comment Letter

Exhibit C9 Not admitted

Exhibit C10 October 16, 2013 Jerry and Georgia Cutburth Comment Letter

Exhibit C11 October 16, 2013 Warren and Barbara Hendershot Comment Letter

Exhibit C12 October 21, 2013 Doug Eklund Comment Letter

Exhibit C13 October 21, 2013 Phillip R. Price Comment Letter

For the Appellants, the Pedersons

Exhibit P1 Drafted Determination of Non-Significance dated July 18, 2013

Exhibit P2 Technical Memorandum by Acera LLC dated October 28, 2011

- Exhibit P3 Environmental Checklist dated May 2, 2011
- Exhibit P4 Addendum to the Environmental Checklist dated September 13, 2011
- Exhibit P5 Critical Areas Report by URS, dated May 20, 2011
- Exhibit P6 Letter from Tony Kantas to William and Camille Pederson, dated November 14, 2011
- Exhibit P7 Memorandum from Brad Sangston to Tony Kantas dated October 12, 2012
- Exhibit P8 Memorandum from Brad Sangston to Tony Kantas dated May 6, 2013
- Exhibit P9 Letter from Eric Russell of Russell & Associates to Brad Sangston dated January 18, 2013
- Exhibit P10 Letter from URS to Mr. Brad Sangston, dated June 19, 2013
- Exhibit P11 NOAA Daily Rainfall Totals for 2012/2013 at Olympia Airport
- Exhibit P12 Letter from Department of Fish and Wildlife dated September 24, 2012
- Exhibit P13 Letter from Department of the Army Corps of Engineers dated July 31, 2012
- Exhibit P14 Thurston County Drainage Design and Erosion Control Manual dated July 2009
- Exhibit P15 Preliminary Drainage Scoping Report revised March 2012
- Exhibit P16 Minutes of special South Bay Fire Station meeting, held June 22, 2010
- Exhibit P17 Statement by Cora Morley Eklund, dated May 20, 2011
- Exhibit P18 Photos of Appellant's Property, dated March 2011
- Exhibit P19 Photos of Appellant's Property, dated March 2012
- Exhibit P20 Curriculum Vitae of Mike Laves, Professional Wetland Scientist, ACERA LLC.
- Exhibit P21 Appellant Exhibit List, September 16, 2013
- Exhibit P22 Appellant Witness List, September 16, 2013
- Exhibit P23 Appellant Pre-Hearing Brief, September 16, 2013



For the Applicant, Fire District #8

Exhibit F1 Applicant Pre-Hearing Brief, September 16, 2013 including the following attachments:

- A. Preliminary Site Plan, January 25, 2013
- B. Critical Areas Report, May 20, 2011
- C. Army Corps of Engineers Jurisdictional Determination, July 23, 2013
- D. Fire District responses to review comments dated December 8, 2011 with the following appendices:
  - 1. Revised Preliminary Drainage Scoping Report, March 21, 2012
  - 2. Report of Geotechnical Investigation, URS, October 30, 2009
  - 3. NRSC Soil Survey
  - 4. Thurston County Drainage Design and Erosion Control Manual (2009), Table C-18, Conveyance Pipes and Ditched Maintenance Checklist
  - 5. ACERA LLC Wetland Study, October 2, 2011
- E. Fire District responses to Jack King April 3, 2012 review comments, May 3, 2012
- F. Fire District responses to review comments, January 18, 2013 (provided without duplicative attachments)
- G. Fire District responses to review comments, March 5, 2013, (provided without duplicative attachments)
- H. Fire District responses to review comments, April 22, 2013
- I. Fire District responses to review comments, June 19, 2013 (provided without duplicative attachments)
- J. White Paper Titled "Filterra Bioretention Systems: Technical Basis for High Flow Rate Treatment and Evaluation of Stormwater Quality Performance," September 20, 2010
- K. November 14, 2011 Comment Response from Tony Kantas, Resource Stewardship Department to William and Camille Pedersen

Exhibit F2 Applicant Witness List, September 30, 2013, including the following attachments:

- A. Resume of Chief Brian VanCamp, Thurston County Fire District No. 8

- B. Resume of Calvin Jordan, Project Manager/Site/Facilities, Calvin Jordan Associates, Inc.
- C. Resume of Eric Russell, Russell & Associates
- D. Resume of Wesley Jones, P.W., Civil Project Engineer, Sitts & Hill Engineers, Inc.
- E. Resume of David Every, PhD, Principal Ecologist, URS
- F. Resume of Eric Johnston, P.E., Transportation Planning Manager, SCJ Alliance

- Exhibit F3 Applicant Exhibit List, September 30, 2013
- Exhibit F4 Power Point Presentation titled “North End Fire Station, South Bay Fire District,” undated
- Exhibit F5 Applicant’s Response to Staff Report, October 21, 2013, including attachment
- Exhibit F6 October 22, 2013 Email from Eric Johnston to Martha Whelan and Heather Burgess concerning Emergency Vehicle Warning Signs, including attachment titled “MUTCD Emergency Vehicle Warning Signs”

**The record also includes:**

- A. Pre-Hearing Order Setting Submission Schedule, dated August 20, 2013
- B. Notice of Association of Counsel, filed October 9, 2013

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions. The following findings are applicable to the SEPA appeals and the requested permits.

**FINDINGS**

**Introduction and Site Description**

1. Thurston County Fire District #8 (Applicant) requested approval of a special use permit to construct a new 5,200 square foot manned fire station, with appurtenant water, septic, and stormwater facilities, five staff parking spaces, and six public parking spaces. The Applicant concurrently proposed a plat alteration to allow emergency vehicles direct access onto 78<sup>th</sup> Avenue NE. The proposal includes approximately 3,170 cubic yards of grading and approximately 1,870 cubic yards of fill material for site preparation. Grading and filling were the triggers for review of the proposal pursuant to the State Environmental Policy Act. *Exhibits C2, C2A, C2B, and C2C.*

2. The three acres subject to the application consist of two tax parcels created through a short plat recorded in October 2007 (SS 05-112264 TC). The short plat included a no access strip along the site's frontage on 78th Avenue NE, requiring site traffic to take access from the frontage on Hendershot Street. The requested plat alteration is needed in order to allow emergency vehicles to directly access onto 78<sup>th</sup> Avenue NE instead of via the smaller Hendershot Street. All of the proposed improvements are planned on the eastern of the two underlying tax parcels except for a row of trees along the western boundary of the western parcel. *Exhibit C2; Exhibit C2, Attachment G; Exhibit F1.5.*
3. At the time of platting, the property was zoned RR 1/2; subsequently it was rezoned to Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5) in July 2009. *Exhibit C2.*
4. Surrounding parcels are developed with rural residential uses including homes, septic systems, and single-family wells. According to measurements from the Thurston County Geo Data Mapping System, the nearest residences are setback approximately the following distances from the subject property: to the north 357 feet; to the northwest 331 feet; to the west 110 feet; to the east 90 feet; to the south 695 feet; to the southwest 173 feet; and to the southeast 341 feet. *Exhibit C2.*
5. The site borders 78<sup>th</sup> Avenue to the north, Hendershot Street to the west, and a private road to the east. There are no regulated critical areas or associated buffers on-site. On-site vegetation consists of grass and some trees along the northern and southern boundaries of the overall site. The site contains a low area acting as a natural swale that collects on-site and upstream runoff, which discharges to a ditch in the 78th Avenue NE frontage and from there into a culvert that crosses 78<sup>th</sup> Avenue to the east. *Exhibits C2, C4, and C5; See also C6, Figure 1; Exhibit F3; Exhibit F4, Slides 9 and 10.*
6. Across 78th Avenue NE to the north is a parcel owned by William and Camille Pederson (the Appellants). The culvert that crosses 78th Avenue NE empties onto the Pedersons' 5.5-acre parcel, where it joins a Class III wetland that discharges to a Type 5 stream. Further downstream and down gradient from the Pedersons' property, the stream becomes a fish bearing stream that empties into Mill Bight, joining Puget Sound. The wetland and stream on the Pederson parcel are located approximately 250 feet from the subject property. *Exhibit C2; Exhibit F4, Slide 10; Exhibit P2; Camille Pederson Testimony.*

#### Procedural Background

7. The special use permit application for a proposed fire station was submitted January 14, 2011. On March 3, 2011, notice of application was mailed to all property owners within 500 feet of the subject property, as well as to the Washington State Department of Fish and Wildlife (WDFW), the Washington State Department of Ecology (DOE), the Washington State Department of Transportation (WSDOT), the Nisqually Tribe, the Squaxin Island Tribe, the Chehalis Tribe, and several Thurston County review departments. The Applicant submitted an environmental checklist on May 3, 2011 and an addendum to the checklist was submitted on September 13, 2011. The checklist was

also routed to various review agencies including the WDFW, DOE, the Nisqually Tribe, the Squaxin Island Tribe, and several Thurston County departments. *Exhibits C1 and C2B.*

8. Based at least in part on public concerns about impacts to pedestrian and vehicle safety if the proposed fire trucks accessed public roads via Hendershot Street, on March 11, 2013 the Applicant submitted an application for plat alteration to allow emergency vehicles to access 78<sup>th</sup> Avenue NE directly. Department Staff determined that the plat alteration must be considered by the County Commissioners. On April 6, 2011, Staff briefed the Commissioners on the requested alteration and noted the legislative body could allow the alteration to be decided administratively by Staff, could hold its own public hearing on the request, or could require the plat alteration application to be consolidated with the special use permit application decided by the hearing examiner. The Commissioners selected the last option. *Exhibit C2, Attachment H; Kantas Testimony.*
9. The Department received many comment letters after notice of application from neighbors and Johnson Point residents concerned about various issues including (among others) impacts on the wetland to the east, on traffic and safety, and on neighborhood character. In following up on these concerns and in reviewing for compliance with County code requirements, various County Staff requested additional information from the Applicant, including: a wetland delineation on the adjacent parcel, analysis of water quality for inorganic chemicals, and various design amendments to access, stormwater management, and septic design. Upon receipt of the revised proposal and after considering all submitted comments from agencies and members of the public, the County review departments recommended project approval based on the design's compliance with code requirements. *Exhibit C2; Exhibit C2, Attachments K, L, M, N, O, P, R, S, T, W, Y, Z, AA, CC, and DD; Exhibit C1, Attachments E, F, I, J, M, N, T, U, V, W, X, Y, and Z.*
10. Pursuant to the State Environmental Policy Act, the Department was designated lead agency for review of the proposal's environmental impacts. Upon completion of review, designated Department Staff issued a mitigated determination of non-significance (MDNS) on July 18, 2013. On August 8, 2013, the Appellants submitted a timely appeal, alleging that the MDNS was based on inaccurate and inadequate information, that the MDNS conditions were inadequate, and that the proposal would result in probable, significant, adverse environmental impacts. *Exhibit C1, Attachment B.*
11. Apprised of the appeal for scheduling purposes, the Thurston County Hearing Examiner convened a pre-hearing conference, conducted by telephone on August 20, 2013. The Appellants, Applicant, and County were represented by counsel during the conference. A schedule for pre-hearing exchange of witness and exhibit lists and documents was agreed to and memorialized in a pre-hearing order issued on the date of the conference. *Exhibit A, Pre-Hearing Order.*

### The Proposal

12. At the time of hearing, the Applicant proposed as follows: to construct a new 5,200 square foot manned fire station with five staff parking spaces and six public parking spaces (Attachment B). The proposal includes approximately 3,170 cubic yards of grading and approximately 1,870 cubic yards of fill for site preparation. An engineered stormwater system consisting of a detention pond and a Filterra system for pollution generating surfaces would collect and treat stormwater runoff from new impervious surfaces and provide runoff water quality and quantity control. The proposed fire station would access public roads from two points: direct access onto 78<sup>th</sup> Avenue is proposed for emergency vehicles and a separate public access is proposed along the eastern boundary of the property via an existing private road for non-emergency staff and public vehicles. The Applicant submitted a noise control plan for use at the facility according to which: audible emergency signals would be used only as necessary; limited use of portable equipment on-site; and outside drills, training, and social events would be limited to normal business hours. The noise control plan is intended to ensure that noise levels at the property boundaries fall within State noise standards. *Exhibit C1; Exhibit C1, Attachment N; Exhibit F1.A.*
13. The proposed facility is an emergency response station that would provide storage for apparatus, space for responders to sleep, eat, and bathe, and a small office space for on-site administration. All District business functions, personnel training, and apparatus maintenance would occur at other facilities. The project is designed to accommodate four emergency responders, but it is anticipated that staffing would initially start at only two responders based on funding. No further development of the property is planned. The lifetime of project is intended to be 30-40 years. *VanCamp Testimony*. Further details of the proposal will be developed in the findings that follow.

### Environmental Review of the SUP Application

14. As stated in the MDNS, the Department's threshold determination was based on information included in (but not necessarily limited to) the following documents:
- Thurston County Master Application dated January 14, 2011
  - Special Use Permit Application dated January 14, 2011
  - Plat Alteration Application dated March 21, 2011
  - Environmental Checklist dated May 3, 2011
  - Addendum to the Environmental Checklist, dated September 13, 2011
  - Notice of Application (NOA), dated March 3, 2011
  - Comment Letters and Emails Received in Response to the Notice of Application
  - Thurston County Pre-Submission Conference, dated July 2, 2009
  - December 17, 2010 Drainage Scoping Report Response Letter from Thurston County Public Works
  - Final Short Plat – Project No. 2005103774
  - Drainage Plan & Report, dated March 2012

- Site Plan Revision, dated March 5, 2013
- Email dated 8/12/12 from Bill and Camille Pederson
- Public Well Site Inspection Approval, dated August 24, 2010
- Drainage Scoping Report Response Letter, dated December 17, 2010
- Washington State Department of Ecology Letter, dated February 4, 2011
- Thurston County Project Review Letter, dated February 22, 2011
- Thurston County Response Letter to Comments Received in Response to the NOA, dated 4/11/11
- Thurston County Public Works Project Review Letter, dated March 16, 2011
- Thurston County Health Department Project Review Memorandum, dated March 15, 2011
- Washington State Department of Ecology Letter, dated March 23, 2011
- Thurston County Board Briefing, dated April 16, 2011
- Thurston County Project Review Letter, dated April 11, 2011
- Letter from Fire District 8, dated April 18, 2011
- Letter from Fire District 8, dated April 25, 2011
- Letter from Fire District 8, dated May 9, 2011
- Letter from URS, dated May 2, 2011
- Letter from Fire District 8, dated May 9, 2011
- URS Critical Areas Report, dated May 20, 2011
- Thurston County Project Review Letter, dated June 8, 2011
- Letter from URS, dated July 20, 2011
- Letter from Sitts & Hill Engineers, Inc., dated July 20, 2011
- Noise Abatement Practices at Fire District 8, dated August 11, 2011
- Two Letters from URS, dated September 22, 2011
- ACERA LLC Environmental Technical Review, dated October 28, 2011
- Email dated 11/23/11 from Washington State Department of Ecology
- Review Memorandum from Thurston County Health Department, dated October 18, 2012
- Review Memorandum from Thurston County Public Works Department, dated October 28, 2011
- Letter dated November 1, 2011 from Bill & Camille Pedersen
- Letter dated November 14, 2011 from Thurston County to William & Camille Pedersen
- Letter dated November 23, 2011 from Bill Pedersen
- Email dated 11/29/11 from Bill & Camille Pedersen
- Email dated 12/1/11 from Bill & Camille Pedersen
- Review Memorandum from Thurston County Public Works Department, dated December 9, 2011
- Two Emails dated 12/6/11 from Bill & Camille Pedersen
- Email dated 12/13/11 from Bill & Camille Pedersen
- Email dated 12/13/11 from Darren Habel, Army Corp
- Email dated 12/15/11 from Bill & Camille Pedersen
- Two Emails dated 1/8/12 from Bill & Camille Pedersen
- Email dated 2/6/12 from Bill & Camille Pedersen
- Letter from Susan Rogers, dated April 2, 2012

- Review Memorandum from Thurston County Public Works Department, dated April 4, 2012
- Email dated 4/6/12 from Bill & Camille Pedersen
- Letter from Sitts & Hill Engineers, Inc., dated May 3, 2012
- Email From Jack King, Thurston County Public Works to Bill & Camille Pedersen, dated 5/22/12
- SEPA Recommendation Memorandum from Thurston County Public Works, dated June 6, 2012
- Letter dated July 31, 2012 from the Army Corp of Engineers
- Letter dated October 18, 2012 from heather L. Burgess, Attorney
- Email from Thurston County to the Army Corp and WDFW, dated 11/7/12
- Thurston County Public Works Department Review Memorandum, dated January 30, 2013
- Letter from Fire District 8, dated March 5, 2013
- Letter from Bill and Camille Pedersen, dated March 31, 2013
- Letter from Fire District 8, dated April 22, 2013
- Review Memorandum from Thurston County Health Department, dated May 6, 2013
- Review Memorandum from Jack King, Public Works, dated June 6, 2012
- Letter from URS, dated June 19, 2013
- Letter from URS, dated June 21, 2013
- Email from Sitts & Hill Engineers, Inc., dated 6/27/13
- Email dated 7/1/13 from Bill & Camille Pedersen
- Thurston County Health Department Recommendation, dated July 8, 2013

*Exhibit C2, Attachment A.*

15. The following mitigation measures were imposed through the MDNS:
- 1) To ensure the Fire Station maintains the rural character of the neighborhood, the applicant shall amend the landscape plan to include additional trees and shrubs and retention of existing vegetation to soften the appearance of the Fire Station.
  - 2) The architectural design of the building, including the colors and building materials shall be designed to blend in and compliment the surrounding rural neighborhood and environment.
  - 3) Outdoor lighting fixtures shall complement the project design and shall be oriented to avoid direct glare to adjacent properties.
  - 4) Any mechanical equipment that is not attached to a structure shall be enclosed within an enclosure that is an aesthetic amenity to the building. For mechanical equipment attached to the building, it shall be enclosed within the roof form or within a screening structure.
  - 5) Window boxes, planter boxes and hanging flower baskets shall be incorporated into the design to create a friendly pedestrian environment.

- 6) The applicant shall implement the Thurston County Protection District 8 Operating Guideline dated August 11, 2011 for noise abatement practices, which includes measures for control of unnecessary noise in and around the fire station.
- 7) The landscape plan shall be amended to include an 8-foot high fence and sight obscuring landscaping along the south property line.
- 8) If truck washing is to take place on-site, eco-friendly vehicle soap shall be used to wash all fire trucks.
- 9) Erosion and storm water control Best Practices meeting Thurston County standards shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from leaving the site. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
- 10) The Thurston County *Drainage Design and Erosion Control Manual* establishes requirements and provides guidance for managing the quantity and quality of stormwater runoff produced by development. The project's stormwater plan has been found to be in compliance with the Thurston County Stormwater Manual. To ensure additional safeguards in protecting surface and ground water quality, all major maintenance and repair of vehicles shall occur off-site.
- 11) Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact the existing drainage or other properties.
- 12) Land-disturbing activities associated with the project should be performed during dry weather to reduce opportunities for erosion and sedimentation to occur.
- 13) Backfill shall consist of clean materials including such earth materials as clean gravel.
- 14) All other applicable state and federal permits / exemptions must be obtained prior to the start of project work.
- 15) In the event that archaeological deposits or skeletal material or features of a burial/interment situation are encountered during construction activities, all work in the vicinity of the discovery area must stop immediately and contact made with the Washington State Historic Preservation Officer.
- 16) If archaeological materials are located, a professional archaeologist should be retained to evaluate and delineate the extent of the material.
- 17) Construction activity shall be limited to the hours of 8:00 a.m. to 7:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends to minimize associated noise.
- 18) All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.



- 19) During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.
- 20) Non-merchantable trees and natural groundcover shall be retained to the maximum extent possible to limit soil exposure and prevent erosion.
- 21) Prior to the commencement of work on site, the applicant will need to obtain County approval of a Special Use Permit, which requires a public hearing and is appealable.

The Department determined that compliance with the above mitigation measures and all requirements for environmental analysis, protection, and mitigation in the County's adopted development regulations and comprehensive plan would adequately address potential environmental impacts of the proposal to a point of non-significance. *Exhibit C2, Attachment A.*

### Arguments and Evidence on Appeal

#### *Appellants Case*

16. Since the initial notice of application, appellants William and Camille Pederson have submitted at least 23 comment letters opposing the proposal. On July 31, 2013, an attorney filed another comment letter within the 14-day MDNS comment period on behalf of the Appellants.<sup>4</sup> Then, on August 8, 2013, the Appellants filed a timely appeal of the MDNS alleging the issues listed in the summary of the record on pages 2 and 3 above. *Exhibit C2, Attachment DD; Exhibit C1, Attachment D.*
17. In 2011, the Appellants commissioned a technical memorandum prepared by a professional wetland scientist ("the ACERA report") to provide "an independent review and impact analysis of sensitive aquatic resources related to the [proposal]." *Exhibit C2, Attachment L, page 1.* The ACERA report included a review of the Applicant's wetland delineation report (prepared by URS, dated July 20, 2011). At hearing, Appellants offered Mr. Layes as a wetland science expert at hearing; he testified relating to his review of the proposal and his October 2011 report. *Exhibit C2, Attachment L; Layes Testimony: Exhibit P20.*
18. The ACERA report concurred with the Applicant's wetland delineation report, but classified the wetland as a Class II wetland requiring a 200-foot buffer. He also identified the Type N stream on-site, which becomes a Type F (fish bearing) stream as it nears Puget Sound pursuant to Department of Natural Resources mapping. Regarding the proposal, the ACERA report notes that:

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<sup>4</sup> Prior to the hearing, Stephen Manning, Attorney, filed a substitution of counsel on behalf of the Appellants. Mr. Manning, who had listened in on the pre-hearing conference, appeared at hearing for the Appellants. *Manning Comments; Exhibit B.*

Upstream ... of the regulated stream, a swale with an undefined channel extends... to 78th Avenue and is connected to the Project Area via a culvert... Thurston County Lidar mapping clearly shows the swale and its connection to the mapped stream and wetland on the Pedersen property.... Flowing surface water has been observed within the swale during high rainfall events and subsurface flow likely continues through the area all year. Development of a large storm water treatment pond within the swale will likely interrupt the natural flow of the water to the downstream wetlands and fish bearing stream. In addition, toxins contained in stormwater runoff from the Project (treated or not) will eventually end up in the wetland and stream. Due to possible impacts to downstream aquatic resources, ACERA recommends that the Project avoid impacts to the swale entirely. If the swale is to be impacted, an analysis of existing surface and subsurface flow should be conducted by a licensed professional hydrologist to ensure the project does not negatively impact downstream aquatic resources.

*Exhibit P2.*

19. At hearing, Mr. Layes testified that in order to prepare the ACERA report, he reviewed the Applicant's URS wetland report, reviewed aerial photographs available online, and conducted a site visit on October 19, 2011 during which he walked the entire Pederson property. In his testimony, he concurred with the URS wetland delineation, but he clarified that the wetland on Appellants' property is a Class III wetland, as opposed to the Class III rating his October report gave it. In discussing his visit to the subject property Mr. Layes testified that he had observed a "pretty defined swale" that continues north of 78th Avenue and appears to be a natural drainage course that feeds the wetland and the stream on Appellants' property. Mr. Layes opined that although the subject property is a pasture now, it was likely graded and may have been a wetland or stream in the past. He stated that water flows through the on-site swale for at least a portion of the year, and the wetland and stream on the Appellants' parcel are downhill from the swale. He reiterated his report's conclusion that any contaminants that enter the swale would find their way into the wetland and stream during high water events. Mr. Layes reasserted his recommendation that a licensed professional hydrologist do a full study of the subsurface hydraulic connection prior to authorizing any development of the swale. *Layes testimony.*
20. In his testimony, Mr. Layes conceded he is not a licensed hydrologist. He agreed that the proposal complies with the critical area buffers required by the Thurston County critical areas ordinance (CAO) for both the wetland and the stream. He acknowledged that the purpose of the CAO buffers is in part to protect water quality in the event of adjacent development. *Layes testimony.*
21. The Appellants presented the testimony of Cora Morley Eklund, who lives opposite the subject property. Ms. Eklund testified about traffic safety and stormwater runoff concerns. She indicated that 78<sup>th</sup> Avenue is hilly, with dips and bumps that affect

visibility. She stated that it is a family neighborhood road where people bike and kids wait for busses. She asserted that drivers coming off of Johnson Point Road onto 78<sup>th</sup> Avenue drive 50 mph. Her concern was that adding emergency vehicles will increase accidents and pedestrian conflicts. Regarding stormwater runoff, she stated that in its present state, runoff flows in ditches on both sides of 78<sup>th</sup> Avenue, and flows onto her parcel that fronts the street and causes erosion. Her concern is that the proposal will make it worse, because there will be "lots of paving" and her perception is that the Applicant is not concerned about water pollution. She and all her neighbors have wells. She is concerned that contaminated runoff will leave the site, infiltrate into the groundwater that feeds their wells, and eventually reach Mill Bight and the sound.  
*Eklund Testimony.*

22. Appellants offered the testimony of Susan Rogers, a long time resident of Johnson Point. Ms. Rogers testified that she is concerned that the project would be out of character with the rural residential uses in the area and that the Applicant will not be able to camouflage the structure in her lifetime. She seconded the concerns about impacts to traffic safety and well water quality and added a concern that the septic system would result in effluent that would join stormwater runoff and harm the environment. *Rogers Testimony.*
23. Appellant Camille Pedersen testified in support of her appeal. She indicated that her parcel across from project is 5.5 acres of undisturbed woodlands. Their home of 33 years is placed in an area that was hand-cleared to preserve forest. From personal observation, she has seen the subject parcel's swale collect water that flows on-site from the south and empties into the culvert under 78<sup>th</sup> Avenue. She has seen the swale contain flow that "looks like a trout stream". Ms. Pederson offered 18 photographs taken by William Pederson showing surface water in the subject parcel's swale, water in the ditches along 78<sup>th</sup> Avenue, water emerging from the culvert under the road into the wetland, the wetland itself, the stream, and wildlife in the stream and on her property. She regularly sees frogs, newts, and salamanders and the smaller animals they feed on. She argued that there have been septic system failures on other fire district properties and that septic systems are not fail proof. She asserted that any failure of the proposed on-site septic would eliminate amphibian life in her wetland and stream. *Camille Pederson Testimony; Exhibits P18 and P19.*
24. Ms. Pedersen testified that when they learned about the proposal from the March 2011 notice of application, the Appellants hired ACERA because they were concerned that the fire district's wetland study was inaccurate. She indicated that the initial May 2011 URS study had said there was no hydrologic connection between the two properties. She then acknowledged that URS subsequently performed an addendum study in September 2011 that included a site visit to the Pederson parcel and acknowledged hydraulic connection between the two properties. However, Ms. Pederson asserted that the fire district has no interest in documenting critical areas. She argued that at one point, County Health Department Staff recommended a wet season study to evaluate the swale and determine whether it contains standing or flowing water continuously for at least four months.

*Exhibit P7.* Yet the Department issued an MDNS without requiring the recommended wet season study. *Camille Pederson Testimony.*

25. The Appellants contacted the Army Corps of Engineers (ACOE) and the Washington Department of Fish and Wildlife (WDFW) to ask them to weigh in on the proposal. In a July 31, 2012 letter, the ACOE indicated that the proposal does not require a Department of the Army permit but asserted,

However, because of the increased public interest towards the water quality of the discharge from the proposed stormwater detention pond and septic system area onto an area that eventually conveys the water into Puget Sound, the Corps highly recommends that the detention pond be construction in the northeast corner of the property and that a bioswale also be constructed to connect the detention pond to the natural swale area to ensure water quality. *Exhibit P13.*

In a September 24, 2012 letter, WDFW stated:

The proposed detention pond is located in the headwater swale of a stream. Discharge of stormwater runoff can adversely affect the hydraulics of the stream creating downstream impacts. WDFW does not permit instream detention ponds. Considering the surface flow from the swale discharges into a stream, we recommend relocating the detention pond southeast of the fire station outside of the swale. We recommend all storm water be retained onsite with no connection of the detention pond to the swale. We also recommend relocating the septic drainfield to this area to reduce potential water quality problems which could impact downstream fish resources. *Exhibit P12.*

Ms. Pedersen contended that the MDNS is in error because it doesn't defer to the concerns of the ACOE and the WDFW. *Camille Pedersen Testimony.*

26. Appellants also offered the testimony of Tom Thayer, another long time area resident. He testified that he is concerned regarding possible contamination resulting from fire fighting water becoming contaminated by toxic burning materials. He is concerned that particulates from fires will return on the apparatus and end up on stormwater runoff that reaches the sound, where there are a lot of shellfish being produced down the hill from the subject property. *Thayer Testimony.*

#### *County Case*

27. In response to the appeal, the Thurston County Resource Stewardship Department noted that the required buffer for a high intensity land use from a Class III wetland is 100 feet, and the required buffer from a Type 5 stream is 50 feet. No party disputes that the project exceeds these required setbacks. The proposal is in compliance with the critical areas ordinance. *TCC Title 17.15, Table 10; TCC 17.15.935(A)(3) ; Exhibit C1; Kantas Testimony.*

28. While infiltration is typically the preferred method for dealing with stormwater where there are no slopes, the site's soils make infiltration infeasible. Instead, the proposal would treat, detain, and release stormwater runoff. Flows from non-pollution generating impervious surfaces would be directed to a detention pond constructed in the parcel's natural low point, the swale mentioned above. Runoff from pollution generating surfaces (including driveway, parking, lawn, and landscaped areas) would be collected and treated by a Filterra treatment unit before being conveyed to the detention pond. Retained water would be discharged at a rate that mimics the pre-developed condition for the site at or very near the existing, natural location where runoff enters the roadside ditch and then crosses under 78th Avenue by the existing 12-inch culvert. At hearing, County Public Works Staff testified that the proposed stormwater design complies with applicable standards of the County's Drainage Design and Erosion Control Manual (DDECM). *Exhibit C2, Attachment CC; Saint Testimony.*
29. During stormwater review, the proposed design was run through hydrologic computer models, which showed an overall reduction in the peak flow volumes discharging from the site. While minor increases in runoff volumes reaching the Puget Sound are anticipated, all flows into and generated on-site flows would be captured, detained, and metered out through the detention pond. Projected peak flows would not be larger than existing runoff volumes and would remain within the capacity of the existing 12-inch culvert that crosses 78<sup>th</sup> Avenue. The project has been designed to provide treatment to all pollutant generating surfaces on the site including parking, lawn and landscaped areas and the proposed resurfaced access lane along the east side of the project. *Saint Testimony; Exhibit C2; King Testimony.*
30. In cross examination of County Public Works Staff Arthur Saint and Jack King, the Appellants asserted that placement of the detention pond in the existing swale would constitute a violation of the DDECM's Minimum Requirement #4, which reads:

Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable.

*Exhibit P14, page 2-15.* In response, Staff testified that placing the pond in the natural swale would not result in an interruption of the natural drainage pattern. Staff asserted that, as designed, the project would maintain natural drainage patterns because it would accommodate existing flows from off-site as well as existing and newly created flows from the subject property and release them at nearly identical rates and location as the existing natural drainage flow path, which meets the intent of Minimum Requirement #4. Flows would continue to enter the site from the south and exit to the north at roughly the same quantities as predeveloped conditions. On-site flows would be changed, but the intent of the requirement is to maintain predevelopment flow volumes and path as the stormwater exits the developed property. Off-site flow paths and volumes would not be changed. *Saint Testimony; King Testimony.*

31. Mr. King testified that his knowledge of the intent of Minimum Requirement #4 is based on the body of his professional experience and also on the fact that he had a review role in developing the 2009 Drainage Design and Erosion Control Manual based on DOE's 2005 Stormwater Management Manual for Western Washington. *King Testimony.*
32. Treatment of runoff from pollution generating surfaces with a Filterra system is approved in the 2009 DDECM and the 2005 DOE manual. *King Testimony.*
33. Regarding the Appellants' assertion that the County did not require hydrologic study of potential impacts to the critical areas on their property, the Department asserted that the Applicant was required to demonstrate through the permit review process how the project's stormwater would affect downstream water quality and quantity. Thurston County stormwater regulations require stormwater quality and quantity control for the developed portions of parcels. Information submitted by the Applicant's engineer demonstrated that downstream water quantity would not be impacted through the use of a detention pond that would control release rates. Water quality requirements would be satisfied through the use a Filterra unit to drain runoff from the parking and driving areas. The Thurston County Public Works Department reviewed the preliminary drainage design and report and found it to comply with the Thurston County Drainage Design and Erosion Control Manual. *Exhibit C1; Exhibit C 1, Attachments J, O, T, U, V, W, X, Y, and Z; Saint Testimony; King Testimony.*
34. The Department contended that the Appellant's assertion that the County did not consider the ACOE and WDFW recommendations in reaching the threshold determination is factually incorrect. Department Staff noted that both agencies acknowledged that the project is not subject to either agency's jurisdiction. Following up on the July and September 2012 comments on November 7, 2012, the Department emailed the Corps and WDFW requesting the agencies to provide technical information or analysis supporting their recommendations of relocating the stormwater pond and drainfield. *Exhibit C2, Attachment I.* Neither agency responded at that time. During the MDNS comment period, the ACOE submitted an additional comment, stating: "the Corps stands by its recommendation that the septic system and stormwater pond [be relocated] and that a bioswale be construction to relay stormwater into the swale area, thus reducing public concerns towards water quality." *Exhibit C2, Attachment Q.* The Department opined that both agencies made the recommendation to relocate the stormwater pond based upon the Appellant's active concern in the proposal. Department Staff submitted the position that the agencies' recommendations do not take into consideration that the project's stormwater management is engineered, that runoff would be required to be treated, and the outflow volumes would be no greater than before the project. *Exhibit C1.*
35. Department Staff reviewed and considered the Appellants' comments, their expert's report and recommendation, the photographs offered by Appellants at Exhibits P18 and P19, other public comments, and the ACOE and WDFW comments prior to issuing the MDNS. They also had the Applicant's revised proposal and technical design information and County Department review comments that indicated, as proposed at the time of

issuance, the project complied with County critical areas, storm drainage, and public health requirements. After considering all this information, the Department issued the MDNS. *Kantas Testimony; Exhibit C1.*

36. With regard to allegations that septic design would result in significant adverse downstream environmental impacts, the Department offered the testimony of Brad Sangston from the Environmental Health Section of the Public Health Department. Mr. Sangston reviewed site for suitable soil and adequate area to hold septic system. He reviewed the conceptual design by the Applicant's septic designer, which identified adequate area for primary and reserve drainfields. His review included confirming required setbacks were satisfied. On his first visit, he intended to evaluate whether the swale would meet the County definition of surface water or a seasonal drainage. If it was a surface water, 100 foot setback, was required. If a seasonal drainage, a 30-foot setback was required. In order to be considered a surface water, water must be observed flowing continuously for four months of the year. He issued the memorandum requiring a wet season study on October 18, 2012, but the study would have had to be performed December through April. Mr. Sangston testified that he visited site on 12 separate occasions (en route to other sites under review) and never saw any standing water in the swale. At hearing, Mr. Sangston did not have the notes containing the dates of the 12 visits and he acknowledged that some may not have been wet season visits. Subsequently, the Applicant revised the proposal from an infiltration pond to a lined detention pond. This removed the question of how to treat the swale, because the lined pond requires a 30-foot setback, as would an interceptor drain or ditch. With a lined pond, the outfall is treated as surface water. With the design revision to a lined pond, the proposed septic design satisfied all County and State Sanitary Code requirements. After reviewing the preliminary septic system design and the approved well site, Mr. Sangston concluded that groundwater and surface waters are protected and recommended approval. *Sangston Testimony; Exhibit C2, Attachment P.*
37. Regarding Appellant testimony that the proposed fire station would be incompatible with neighborhood character, the Department noted that the Applicant submitted conceptual elevations and a landscape plan showing improvements that attempt to complement residential development. *Exhibit F4, Slide 4.* In addition, several mitigation measures required by the MDNS address aesthetic issues requiring such features as landscaping, lighting, and building materials that complement the surrounding development, window and planter boxes and hanging baskets to mirror residential landscape touches, an eight-foot sight obscuring fence on the south lot line adjacent to residential development, and compliance with the Fire District's noise plan. *Exhibit C1; Exhibit C1, Attachments B, C, and N.*
38. In response to Appellants' claims that the Applicant failed to adequately identify and analyze the type of traffic to be expected, the Department offered the following information. Only emergency vehicles would directly access 78th Avenue. Public Works Staff reviewed the project for traffic impacts and concluded that proposed access

and the traffic anticipated to be generated from the project comply with the Thurston County Road Standards. *Exhibit C1.*

*Applicant's Case*

39. Defending their proposal in the SEPA appeal, the Applicant offered testimony of Fire Chief Brian VanCamp. Fire District #8 currently operates one staffed station and two unstaffed stations. The instant proposal would replace the two unmanned stations; the two properties would be sold. The location of the proposal was chosen after a 2004 community risk survey revealed that the eastern portions of the District were not receiving as high a level of service as southern part, with travel times were much longer. After evaluating a list of options for addressing the disparate levels of service in a process that took several years and included public meetings and workshops, the District determined to build a more centrally located station. They engaged in a property search process that involved two task forces and a series of public neighborhood meetings. Once the subject property was selected, neighbors voiced design concerns initially about emergency access via Hendershot and traffic impacts. In response to community concerns the proposal was redesigned, which required acquisition of right of way to allow non-emergency access via the private road to the east instead of from Hendershot Street. The proposal was originally scoped to provide public meeting space, but that use was removed based on neighbor concerns. *VanCamp Testimony; Jordan Testimony; Exhibit F4, Slide 3.*
40. Regarding the proposed stormwater management improvements, the Applicant offered the testimony of Wes Jones as an expert in civil engineering and stormwater design. *Exhibit F2.D.* Mr. Jones visited the site twice personally, while members of his design team visited the site an additional three to four times. He oversaw civil site plan, drainage, water quality, flow control, and drainage scoping, including ensuring that DDECM Minimum Requirements 1 through 12 were satisfied. He confirmed that the proposed drainage captures all runoff from pollution generating surfaces and routes it the Filterra system prior to conveyance to the pond, and roof runoff would be routed separately and stored for rainwater harvest for landscape use. All runoff discharged from the site would go through the pond and be released at a metered rate through a control structure into the culvert. To determine discharge rates, the site was computer-modeled as if it were still in a forested condition, which results in a lower allowed rate of discharge than is experienced from the existing lawn surface of the site. Regarding the pond's location in the swale, it is designed and intended to be in the natural drainage channel. Its elevation (lowest point on site) makes the swale the logical placement and natural best fit for capturing runoff, which runs downhill. As proposed, the downstream flow path and the on-site flow path are maintained. The stormpond was sized and the 30-inch culvert was proposed to accommodate the 78 acres upstream that are tributary to the site. The proposed Filterra proprietary device treats for runoff from roadways to a level that is comparable to if not more effective than a bioswale. *Exhibit F1.D; Jones Testimony; Exhibit F5.*



41. Mr. Jones testified that the ACERA report was considered in the project design and is an attachment to the preliminary drainage scoping report. In response to concerns in that report, the following changes were made: the scoping report was expanded to more fully address each Minimum Requirement; the 12-inch culvert was replaced with a 30-inch culvert; the plan added a stormwater pipe profile; and the geomembrane was added to the pond design. The proposed drainage improvements would maintain the existing on-site flow path, and the swale would be regraded to provide the required detention volume. Mr. Jones testified that the existing conditions on the Pederson property were included in review of downstream structures and flow path. He stated that after construction peak flow rates discharging from the subject property would be maintained at current if not reduced, which would improve the wetland system by reducing erosive velocities without changing total runoff volumes. He opined that there would be no adverse impact on areas tributary to wetland. *Jones Testimony: Exhibit F1.D, F1.E, F1.I, and F1.J.*
42. Mr. Jones noted the project would be required to obtain and abide by the conditions imposed by a National Pollutant Discharge Elimination System (NPDES) construction permit and would be required to implement all DOE- and County-required erosion control measures prior to construction. Maintenance of the system, including the Filterra unit, during operation would be the responsibility of the Applicant; the Filterra maintenance manual includes a sample maintenance checklist to ensure structures function as designed for the life of the facility. *Jones Testimony.*
43. Regarding the allegation that placement of the stormpond in the swale would result in adverse downstream environmental impacts, the Applicant offered the testimony of David Every PhD as an expert wetland biologist. *Exhibit F2.E.* Dr. Every, Principal Ecologist for URS, accompanied the ACOE representatives when they conducted their site visit of the Pedersen property. In its various reports taken as a whole, URS found subsurface hydrologic connection and high flow event surface connection between the subject property and the downstream properties. Dr. Every reiterated that there is no dispute that downstream includes critical areas. The on-site swale is part of the overall watershed, and water flows downhill both surface and subsurface, but the swale is not a critical area. *Dr. Every Testimony.*
44. Dr. Every was present for the testimony of Mike Layes and is familiar with the ACERA report and testified that neither lead him to conclude that the conclusions in the critical areas studies prepared by URS for the proposal are incorrect. Regarding the ACOE and WDFW recommendations for moving the detention pond out of the swale, he testified that he does not agree because the general rule of storm facility placement must be tempered by site specific facts. To make room for the recommended bioswale in the southeast corner of the parcel, a lot of grading and earthwork would be required because site is naturally sloped the other direction. Further, the pond with the Filterra filter would provide better water quality treatment than relocation to the southeast corner and construction of bioswale. The critical area buffers are intended to allow adequate distance for natural processes to provide natural water quality treatment. Dr. Every testified that, based on his experience with similar systems designed to satisfy County

standards, the proposed stormwater system would protect downstream critical areas from adverse impacts resulting from the project. He stated that with the filters on both the stormwater system and the septic system, the risk of harm to downstream properties is mitigated to a point of non-significance. *Dr. Every Testimony.*

45. Regarding impacts resulting from the proposed on-site septic system, the Applicant offered the expert septic design testimony of Eric Russell. *Exhibit F2.C.* In preparation for designing the proposed septic system, Mr. Russell conducted numerous site visits from 2009 to the present, and he also reviewed the site's NRSC soil survey, the geotechnical evaluation of the site, and site topography. The site has a relatively shallow layer of soil appropriate for septic system use over an impervious layer, so the issues faced during design included locating areas of adequate soils that complied with required setbacks from domestic and surface waters. The current septic design is still conceptual in nature; typically full design occurs after land use approval. Fire fighters are typically live-in residents and residential systems are sized per bedroom. The proposed conceptual design is sized for four bedrooms and would be adequate to serve the facility at full staffing. Fire stations are not a use listed the Environmental Health Department guidelines, so due to soil constraints the system was sized conservatively. A minimum of 12 inches of suitable soil is needed for the drainfield and the reserve with the use of an approved enhanced treatment modality, such as the proposed Glendon Biofilter.<sup>5</sup> Test pits in the northwest corner showed 24 to 28 inches of adequate soils were available at the northwest corner of site adjacent to Hendershot Street, and the drainfield and reserve were placed there. *Exhibits F1.A and F1.F; Russell Testimony.*
46. Regarding whether a wet season study should have been done, Mr. Russell testified that once the stormpond design was revised to include an impervious geomembrane, the wet season study was no longer required for septic design. It is a question of setbacks. If the pond would contain standing water for four or more continuous months each year, it is treated as a surface water requiring a 100-foot setback to septic components. By removing the infiltration function of the pond, the setback is reduced to 30 feet. As proposed, the septic system complies with applicable standards and it was reviewed and approved by the County Environmental Health Department. *Exhibit C2.R; Russell Testimony.*
47. Regarding concerns that septic failure would have adverse downstream impacts, Mr. Russell testified that the system would be maintained on a regular schedule by the property owner, who should evaluate the system annually and pump every couple years. If the system should somehow be allowed to fail, the Applicant would be required by the County Health Department to remediate the failed system and build a new system in the 100% reserve drainfield area. The proposed drainfield reserve meets all requirements to build a new system if the initial system were to fail. *Russell Testimony.*

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<sup>5</sup> The Glendon Biofilter is an elevated feature on the ground filled with filter media; waste water is treated through the filter, which consumes organic matter and releases treated water into the drainfield for infiltration. *Russell Testimony.*

48. Regarding traffic impacts, the Applicant offered the testimony of Eric Johnston as an expert transportation engineer. *Exhibit F2.F*. After conducting a site visit, Mr. Johnston prepared a Level 1 traffic impact analysis (TIA) for the proposal, which looked at trip generation, trip distribution, and the existing conditions of the road system in the vicinity including a collision history. At ultimate build out, the facility would "house" four responders. The industry-standard trip generation manual published by the Institute of Transportation Engineers does not have a fire station category, so Mr. Johnston generated estimates with the intention they would be conservatively high, projecting 12 trips per day: two emergency vehicle trips (one in/one out), ten passenger vehicle trips (five in/five out), and four trips in the PM peak hour. For purposes of comparison, a similarly sized office building would generate 14 trips per day, while a single-family residence on the lot would generate 10 per day. At four PM peak hour trips, the proposal did not trigger Level 1 study pursuant to County standards except for the required special use review. *Johnston Testimony; Exhibits F4 Slide 5 and F6*.
49. The ten non-emergency trips would access via the private access lane to the east, and the two emergency vehicle trips would access 78th Avenue directly. The proposed trips would replace the existing trips from the two unmanned stations on the same road network. Existing 78<sup>th</sup> Avenue is a collector with a two-lane roadway, no sidewalks or bike lanes currently. As of traffic counts taken in 2008, 78<sup>th</sup> Avenue had 205 trips per day. To the west, Johnson Pont Road is an arterial with two lanes, narrow shoulders, no sidewalks, occasional street lighting, and a posted speed limit 50 mph. Average 2008 daily traffic counts were 1,108 trips per day. Nearby to the east, Marvin Road is a collector with no sidewalks and a posted speed limit of 50 mph. In a 2003 study, it averaged 366 trips/day. Mr. Johnston testified that the project would not cause the any of the affected roads to exceed design capacity. *Johnston Testimony; Exhibits F4 and F6*.
50. The Level 1 TIA included review of the accident history for the area back to 2001, when there was a fatality at the intersection of 78<sup>th</sup> Avenue and Marvin Road. In the review period, there were 15 reported accidents in the area. Only two involved multiple vehicles. The majority included exceeding safe speeds speeding and/or alcohol. Mr. Johnston noted that the environmental checklist's estimated 30 trips was based on the initially proposed additional uses at the facility and different staffing levels. At the time the Level 1 traffic study was done, the public meeting space had been removed. *Exhibit F6; Johnston Testimony*.
51. Chief VanCamp testified that all District drivers are already familiar with the roadway in vicinity, in particular familiar within conditions on 78th Avenue and at the intersection of 78th Avenue and Marvin Road, which they are already driving in emergencies. Present and future drivers would continue to be trained on the driveways and roadways in vicinity and on the use of lights and sirens, which are used in due caution to warn traveling public and to request right of way. The Applicant anticipates fewer than one emergency response per day from the proposed facility based on historical and projected demand. *VanCamp Testimony*.

52. Regarding concerns of impacts from emergency vehicle washing on-site, the Applicant volunteered to have all vehicle washing (post-emergency and routine) conducted at an off-site facility in order to avoid impacts of potentially toxic materials from fires and of soaps from entering the runoff from the facility. *VanCamp Testimony.*
53. Regarding aesthetic impacts to the rural character of the area from emergency vehicles in action, the Chief noted that District drivers are trained to use lights and sirens only as necessary and not to rely on them when seeking right-of-way. By way of example, he noted that lights and sirens would not be implemented on an empty road at 2:00 am. *VanCamp Testimony.*
54. Regarding the alleged impacts from emergency signage, the proposal does not call for any electric signs outside. There could be some warning signage on the right-of-way to indicate emergency vehicle path and a station identification sign. However, the Applicant's traffic engineer reviewed the vehicle warning signage guidance in the Manual on Uniform Traffic Control Devices (MUTCD manual), which indicates that "vehicular traffic warning signs should be used only in locations where the road user's sight distance is restricted, or the condition, activity, or entering traffic would be unexpected." *Exhibit F6, excerpt from MUTCD.* Based on unrestricted sight distance at the 78th Avenue emergency vehicle entrance and low number of projected emergency responses, Mr. Johnston commented that vehicle warning signage may not be warranted. All signage would comply with applicable County and State signage requirements. *VanCamp Testimony; Jordan Testimony; Exhibit F6.*
55. The Applicant has no current plans to expand the proposed facility. There is no plan yet for what use the southern parcel would be put to. *VanCamp Testimony.*
56. In closing, the Applicant asserted that the Appellants did not meet their burden of proof, arguing that they offered no credible evidence that the proposed facilities fail to comply with applicable County standards or would result in any adverse environmental impacts that would not be not mitigated through application of development regulations and the conditions of MDNS approval. *Exhibit F1.*

#### Special Use Permit Findings

57. The underlying RRR-1/5 zoning designation allows fire stations, which are defined as public facilities, through the special use permit process. *Exhibit C1; Thurston County Code (TCC) 20.54.070; TCC 20.03.040(107).*
58. There are no minimum open space requirements applicable to the proposed use. The maximum building height in the RRR 1/5 zoning district is 35 feet, and the minimum building setback from side and rear property lines for commercial structures is 10 feet and 35 feet from major roadways. Building coverage for fire district facilities is specified through the special use permit process and/or SEPA environmental review process as applicable. Maximum lot coverage by impervious surface is 45%. *TCC 20.09A.050(4);*

*TCC 20.07.030; TCC 20.09A.050(30); TCC 20.09A.050(6)(c)*. As proposed, the total impervious surface is 16.6% for the total three-acre ownership and 33.3% on the subject tax parcel where improvements are proposed. Setbacks can be satisfied. As proposed and conditioned, the proposal complies with the design standards of the RRR 1/5 Zoning District. *Exhibit C2; Kantas Testimony*.

59. The subject property is located centrally within the fire district, which according to the Applicant would improve response times to emergencies. Once the new station is constructed, two existing stations would be decommissioned. *Exhibit C2*.
60. The submitted design elevations depict that the view from 78<sup>th</sup> Avenue would be of three apparatus bays with the public entry off of the private access road. The Applicant's designer attempted to provide a residential appearance to the structure and to maintain and reinforce existing landscaping along Hendershot Street. The landscaping proposed would soften the appearance of an edge on the stormwater pond with low shrubs. Overall landscaping aims for a residential feel through the use of low shrubs and flowering ornamental trees. No fence is proposed along 78th Avenue due to sight distance needs of emergency vehicles. No fence is proposed around the stormpond because it doesn't hold water for significant period of time; as designed it would empty itself in about 45 minutes. *Jordan Testimony; Exhibit F4, Slide 4; Exhibits C2.D, C2.E, and F1.A*.
61. To further address aesthetic concerns raised by neighbors in public comment on notice of application, the MDNS was conditioned with several mitigation measures addressing the appearance of the finished project relating to landscaping, exterior materials selection, outdoor lighting, mechanical equipment screening, screening the adjacent residential property to the south with an eight-foot fence, and noise mitigation. Department Staff submitted the position that compliance with the mitigation required in the MDNS would adequately mitigate adverse effects to neighboring parcels and neighborhood character. *Exhibit C2; Kantas Testimony; Exhibit C2, Attachments D, E, I, and J*.
62. Pursuant to TCC 20.45.040, the following landscape requirements for commercial uses apply:
  1. Commercial uses must have a minimum five-foot landscaped buffer strip along all public rights-of-way or adjacent to a residential district or use. Some visibility into parking lots from public rights-of-way is desirable for public safety.
  2. Buffers adjacent to public rights-of-way shall be any combination of trees, live groundcovers, shrubs, earthen berms, and other landscape features; provided that the resultant effect is to provide partial screening and to soften the appearance of parking lots and structures. The size and spacing of plant material and landscape features shall be selected and maintained so that the entire landscape area is covered within three years.
  3. Such screening and landscaping shall be interrupted by normal entrances and exits.
  4. Buffer strips adjacent to residential districts or uses shall contain any combination of trees, live ground covers, shrubs, earthen berms, and other landscape features which

will provide a year round sight-obscuring screen within three years. An aesthetically pleasing high solid fence may be substituted for the vegetative screen. See Section 20.45.060 regarding incompatible uses.

5. There shall be no signs hung or attached to a vegetative screen.

Department Staff submitted that the proposal complies with the landscape requirements of TCC 20.45.040 and 20.45.060. *Exhibit C2; Exhibit C2.D.*

63. The proposal includes five staff parking spaces and six public parking spaces, which would access 78<sup>th</sup> Ave via a private road along the eastern boundary of the site. Although the Thurston County Code contains off-street parking provisions, fire stations or other public facilities are not specifically listed within the code section. Pursuant to TCC 20.44.030(3), the off-street parking requirements for uses not specifically listed in the code shall be the same as the use most similar from the standpoint of parking needs. Having reviewed the proposed use and staffing of the facility, Department Staff submitted the position that the proposed number of parking spaces complies with the intent of TCC 20.44 and would be adequate. *Exhibit C2; Kantas Testimony.*
64. The Applicant proposed to construct a Group B public water system and on-site septic, as detailed above. The water system plans and specifications have been submitted and approved in accordance with Article III of the Thurston County Sanitary Code and the well site has received approval. The Environmental Health Section of the Public Health and Social Services Department reviewed the project for compliance with applicable Article IV design standards and concluded that setbacks for proper operation and maintenance of the sewage system have been met. The Environmental Health Department reviewed and approved a hazardous materials spill prevention and control plan. County Staff submitted that all health codes, including requirements for protection of ground and surface waters, have been met. *Exhibit C2; Exhibit C2, Attachments R, S, T, U, and V; Sangston Testimony.*
65. The Applicant applied for a waiver reducing the sanitary wellhead protection radius down from 100 to 80 feet, which was administratively approved. All stormwater facilities, septic components, and driving and parking areas are still required to be 100 feet away from the well site. Only the building, specifically sleeping quarters, would be placed within 100 feet, and all development would be at least 80 feet away. *Sangston Testimony; Exhibit C2, Attachments T and U; Exhibit F1.A.*
66. Thurston County Public Works Department Staff reviewed the project for stormwater and erosion control requirements, traffic, and access. Public Works Staff accepted the Level 1 TIA and found no traffic impacts to County transportation facilities. Staff reviewed a preliminary engineered drainage plan and report and is recommending approval subject to conditions. *Saint Testimony; Exhibit C2, Attachment V.*

67. The District performs post-emergency decontamination at the main station, where boots and other personnel equipment is cleaned. Apparatus and non-emergency vehicles are cleaned at the same at 3506 Schekne Road. *VanCamp Testimony*.
68. The Thurston County Engineer reviewed the proposed short plat alteration and recommended approval in order to allow emergency vehicle access onto 78<sup>th</sup> Avenue. *Saint Testimony; Exhibit C2*.
69. Written notice of the public hearing was sent to all property owners within 500 feet of the site and to others who had requested notice, published in The Olympian, and posted on site on October 11, 2013. *Exhibits C2 and C3*.
70. Public comment offered at hearing and the written comments offered before and during the hearing relating to the special use permit application opposed the proposal on the following (paraphrased) grounds:

Neighborhood character: Many stated that they moved to or have stayed in the area expressly for the rural quiet neighborhood character and that the Applicant is invading this pristine and unique area with a commercial use that is not welcome by the neighbors. Some commented that the positioning of the improvements adjacent to 78th Avenue will result in undue impacts that could be corrected if they just moved the building and facilities to the rear of the lot. Someone expressed the opinion that the proposal will "like an auto shop" and "ruin the neighborhood". People expressed the concern that red flashing signage would be installed on 78th Avenue, referring to a red flashing sign at the main station that looks like it belongs in Las Vegas, not rural Thurston County.

Traffic safety and impacts: There was concern for the children and parents who walk their children or pets on area roads, particularly on Hendershot Street. There was testimony about how dangerous the 90 degree intersection of 78th Avenue and Marvin Road already is, without a fire station so near. One person estimated that there are two unreported accidents for every reported accident the Applicant's traffic consultant discovered during his review.

Impacts to downstream wildlife, critical areas, and properties: Several people testified that they are concerned for environmental effects of the proposed stormwater and septic management systems, given what they characterized as the site's "problem" soils and drainage. Several people mentioned concern regarding impacts to commercial shellfishing in Puget Sound, as well as to wildlife species generally. Some questioned whether a septic system designed to serve a four bedroom home would in fact be adequate for all the staff and visitors to the site. Some questioned the installation of a 30-inch culvert, if the proposal isn't supposed to increase runoff. Some concern was expressed over the toxic nature of the particulates that will land on apparatus as they fight fires from such toxic sources as meth labs.

Lack of community need and desire for the proposal: Some neighbors expressed the opinion that they are adequately served by the two existing unmanned stations, with better than acceptable response times, and they see no need the proposed station; they disputed that there was any possible public benefit, much less an overriding public benefit. There were also assertions that the Applicant hasn't submitted any compelling information to support the need for this station at this location. Several people referenced the fact that a fire bond was voted down and they feel the District has an agenda to proceed with the new station in spite of the bond vote. There were also complaints that there was inadequate public process around the decision to build a new manned station and over the site selection and anger that the District would proceed in the face of neighborhood opposition. There was some suspicion expressed over future expansion onto the second tax parcel.

*Testimony of Cora Morley Eklund, Susan Coleman, Carrie Born, Kim Gylys, Tom Ingle, Camille Pedersen, Bradley Hummel, Evelyn Grundy, Bill Bourg, Bill Pedersen, Greg Olson, Nick Libby, and Thomas Thayer; Exhibit C2, Attachment DD; Exhibits C10, C11, C12, and C13.*

71. There was no public comment related to the proposed plat alteration.
72. In response to concerns expressed about plans for the second tax parcel, Department Staff initially testified that they would require the two lots to be consolidated into one. The Applicant objected, noting that the trees planted along the southern boundary or the southern parcel were required in the private purchase agreement and are not the result of code requirements for permit. The Applicant reiterated that there is currently no intent to develop any portion of the second parcel as part of this project and that they know of no legal requirement that the two lots be consolidated. Staff withdrew the recommendation to require the two lots to be consolidated. *Kantas Testimony; Burgess Comments.*
73. Department Staff stated that all relevant concerns expressed in public comment prior to the public hearing were considered in the review of the special use permit application. Staff noted that the Thurston County Comprehensive Plan and Zoning ordinance recognizes the need for emergency services within the rural areas of the County. Staff asserted that as proposed and conditioned the project mitigates all potential adverse effects to the extent reasonably possible. Finally, with regard to concerns about signage, Staff noted that the County signage ordinance (TCC Title 20) would apply. Staff recommended denial of the SEPA appeal and approval of the SUP and plat alteration. *Kantas Testimony; Exhibits C1 and C2.*
74. In response to public comment, the Applicant offered the following responses. Drivers for the District participate in a recently updated training program and an emergency vehicle incident prevention program. The training mirrors the state commercial driver license program. Drivers are subject to background checks and trained on apparatus, aid cars, and pumpers and tenders. Ongoing training is required and



employee driver licenses are reviewed annually. Neither the Applicant's traffic study nor County review indicated there are any safety concerns arising from the low number of anticipated emergency trips on roads already in use by the District. In response to neighbor concerns about Hendershot Street children's safety, the Applicant purchased an access easement to the east and relocated the non-emergency vehicle to the private lane and emergency access to 78<sup>th</sup> Avenue. Regarding signage, the Applicant traffic consultant indicated that no traffic warning signage would likely be required on 78th Avenue due to good sight distances. Signage for the proposal would be required to comply with all State and County standards. No testimony alleged that wildlife on-site would be injured by the proposal. All water discharging from the site would be subject to treatment prior to release. The stormwater and septic systems as proposed and conditioned comply with all applicable treatment and flow control standards. The Applicant's critical areas study considered impacts to wildlife. New permits would be required for the project to expand onto the adjacent parcel, and any future development would be subject to all applicable standards. Outdoor lighting would be required to prohibit off-site glare, per compliance with MDNS conditions. Regarding a photo shown during public comment that allegedly depicted many cars parked on the subject property, the Applicant stated that no permission was ever given for the site to be used for parking, and if those cars were on the site, they were parked there without the knowledge of consent of the District. No fire fighter family members would ever stay overnight in the facility. The Applicant doesn't intend the adjacent parcel for any use. *Burgess Comments; Exhibit F6; Exhibit F1.D; VanCamp Testimony; Saint Testimony; Johnston Testimony; Russell Testimony.*

75. The Applicant waived objection to the Department's recommended conditions of approval and suggested an additional condition of approval that would preclude vehicle washing on-site. *Burgess Comments.*

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner has jurisdiction to decide this Special Use Permit application under Sections 2.06.010 and 20.54.015 of the Thurston County Code, and Section 36.70.970 of the Revised Code of Washington. The Examiner is authorized to decide appeals of environmental threshold determinations made pursuant to the State Environmental Policy Act pursuant to TCC 2.06.010(E) and TCC 17.09.160(A).

### **Criteria and Standards for Review**

#### ***SEPA Appeal***

The State Environmental Policy Act (Chapter 43.21C RCW or "SEPA") specifies the environmental review procedures the County must follow for proposals that may have an impact on the environment. *RCW 43.21C.030 (b)*. The SEPA threshold determination is a determination as to whether a proposal is "likely to have a probable significant adverse environmental impact." *WAC 197-11-330*. If the responsible official determines that a proposal

will not have a probable, significant adverse environmental impact, a Determination of Non-Significance (DNS) is issued. If the responsible official determines that a proposal *will* have a probable, significant adverse environmental impact, a Determination of Significance (DS) is issued and an Environmental Impact Statement (EIS) must be prepared. SEPA provides a process in which a Mitigated Determination of Non-Significance (MDNS) may be issued to address identified probable significant adverse environmental impacts so that an EIS need not be prepared. WAC 197-11-350. The lead agency must make its threshold determination “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. The lead agency’s reliance on existing laws and plans to mitigate some of the environmental impacts of a project need not be disclosed in the MDNS. *Moss v. City of Bellingham*, 109 Wn. App. 6, 21-23 (2001). Use of mitigation to bring a project into compliance with SEPA, without promulgation of an EIS, has been viewed favorably by Washington Courts. *Anderson v. Pierce County*, 86 Wn. App. 290, 303 (1997).

Clear error is the standard of review applicable to substantive decisions under SEPA. *Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 747, (1988). The determination by the governmental agency is clearly erroneous only if the reviewing tribunal is left with “the definite and firm conviction that a mistake has been committed.” *Id.* at 747 (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, (1978)). The burden of proof is on the Appellant to show that the proposal will have probable, significant adverse environmental impacts. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, (2002). The procedural determination of the County's Responsible Official shall be accorded substantial weight in appeals. *TCC 17.09.160.I.2; TCC 17.09.160.S; RCW 43.21C.075(3)(d); RCW 43.21C.090.*

### ***Special Use Permit Criteria for Review***

The Hearing Examiner may approve an application for a Special Use Permit only if the following general standards set forth in TCC 20.54.040 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
  1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the

public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.

2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

### ***Plat Alteration Criteria***

The Thurston County Code does not contain provisions establishing procedures or criteria for alteration of recorded plats. Pursuant to RCW 58.17.215,

...[T]he legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. ... After approval of the alteration, the applicant [shall] produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

### **Conclusions Based on Findings**

#### **1. SEPA Appeal**

In order to prevail, the Appellants must prove that the MDNS was clearly erroneous in the face of the deference due to the SEPA Responsible Official's determination. *TCC 17.09.160.I.2; Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 747, (1988). Washington courts have held that an MDNS must be upheld if the record demonstrates that "environmental factors were adequately considered ... and that the decision... was based on information sufficient to evaluate the proposal's environmental impacts." *Anderson v. Pierce County*, 86 Wn. App. 290 (1997). In this case, three years were spent in review of the proposed project. In issuing the MDNS, the Department determined that compliance with the required mitigation measures and all applicable development regulations would reduce any probable, significant adverse impacts to a point of non-significance. While the Appellants' expert may continue to disagree, the Department is not required to defer to that opinion in the face of the competing evidence and credible expert opinion that support the conclusion that all standards would be satisfied by the proposal. The Appellants' concerns, comments, and expert report were not only seriously considered, but they also resulted in significant changes to the proposal that reduced the project's impacts. Assertions that the Department ignored Appellants' concerns, or those mentioned in the ACOE and WDFW comment letters, are not substantiated in the record. There was a generous amount of back and forth, in which Appellants' comments triggered Department requests for additional information or redesign from the Applicant, which then occurred. The fact that some of the additional information submittal and redesign occurred after issuance of the MDNS does not constitute a procedural failure. *Boehm v. Vancouver*, 111 Wn. App. 711 (2002). SEPA does not mandate the

identification and consideration of "reasonable alternatives" unless an EIS is required; there is no error here in not considering alternative proposals. WAC 197-11-440(5). The Department is not required to consider potential future development on the adjacent tax parcel that is not proposed in the application under review. Appellants asserted but offered no evidence showing that the septic system as proposed is inadequate or likely to fail. The Department was not obligated to defer to the recommendations of the ACOE and the WDFW regarding relocating the stormpond outside of the non-jurisdictional swale, as neither agency has jurisdiction over the proposal. Review of the two agency comment letters indicates that the basis of each recommendation was public concern, rather than technical matters or alleged violation of applicable stormwater management or environmental standards. Because the revised proposal meets all applicable standards and because the Appellants did not submit evidence showing probable, significant, adverse environmental impact, the Department was justified in issuing the MDNS. Neighboring property owners have made their concerns manifestly known and still are not satisfied by the revisions to proposal resulting from consideration of their concerns. However, community displeasure alone cannot justify denial of a land use permit where the application meets applicable criteria. *Sunderland Servs. V. Pasco*, 127 Wn.2d 782, 797 (1995). Based on the record presented, environmental factors were adequately considered and the MDNS was based on information sufficient to evaluate the proposal's environmental impacts. The Appellants have not shown clear error in issuance of the MDNS. *Findings 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56.*

## **2. Special Use Permit**

A. The proposed fire station is allowed in the RRR1/5 zone as a public facility pursuant to special use review. As proposed and conditioned, the project would comply with the development standards of the RRR 1/5 zone, as well as County landscaping, off-street parking, critical areas protection, roads, and drainage standards and the Comprehensive Plan. The proposed design has been modified to reduce the impacts of the use, the number of potential users, and the traffic to the site by removing public meeting rooms. Access was reconfigured through the purchase of an easement to avoid adding any traffic to Hendershot Street, on which the site fronts. The proposed septic system complies with all applicable standards. Stormwater management was rigorously reviewed in a three-year process that involved Applicant, County, and neighbor expert review. The revised stormwater design would capture and treat all runoff from pollution generating surfaces and detain it on-site for discharge at a metered rate that is lower than the pre-development condition, reducing velocity to the downstream property's wetland and non-fish-bearing stream without reducing flow volumes. The proposed drainage plan maintains the natural flow pattern. *Findings 4, 5, 6, 12, 13, 18, 27, 28, 29, 30, 32, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 48, 70, 72, 73, 74, and 75.*

- B. Neighbors to the subject property are opposed to the construction of a fire station in their area, alleging undue impacts to neighborhood character. The Applicant has designed the fire station to complement residential development through selection of exterior materials, landscaping, and treatments such as window boxes and hanging planters. Emergency vehicle calls to the site are projected to be low (one per day). Signage would be installed in compliance with state and County standards. The Applicant would implement a noise control plan to reduce auditory impacts. Despite these efforts, the neighbors remain firm that the use would unduly impact neighborhood character. Based on the record, considering conditions imposed through the MDNS and the instant permit, the hearing body concludes that impacts to neighborhood character have been mitigated to the extent necessary for special use permit approval. Additionally, it is of note that fire stations are public facilities of overriding public benefit and may be allowed in the face of adverse effects to surrounding properties if conditioned to mitigate impacts to the extent reasonably possible. Such is the case here. *Findings 37, 39, 53, 54, 60, 61, 62, and 70.*
- C. Traffic impacts were reviewed consistent with County requirements. The record shows that the project's traffic would not adversely affect levels of service on area roads or intersections. Adequate sight distance exists for the proposed use. The project would provide its own water and sanitary service via on-site amenities that have been reviewed and determined to comply with County Health Code requirements. The project would improve emergency vehicle response times to the Johnson Point area. *Findings 38, 39, 49, 50, and 64.*

**3. Plat Alteration**

The record shows that the requested plat alteration, supported by the County Engineer, would facilitate emergency vehicle access, improve response times, and decrease the potential for emergency vehicle/fire station vehicle conflict with pedestrians. It would facilitate the public interest, safety, and welfare and is approved. *Findings 2, 8, 68, and 71.*

4. The issues of whether there is need for improved response times or expanded fire service, previous bond success or failure, concerns over the cost to the public of the proposal, and concerns about Fire District inclusion of the public in decision making are not properly within the scope of the instant permits.

**DECISION**

Because the Appellants did not satisfy their burden of proof to show that issuance of the MDNS was clear error, the SEPA Appeal is **DENIED**.

Based on the foregoing findings and conclusions, the special use permit and plat alteration applications are **APPROVED, subject to the following conditions:**

Public Works Conditions:

1. The proposed roadway in concept and design shall conform to the Thurston County Road Standards.
2. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.
3. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.
4. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to non-conformance by the applicant shall be transferred to the applicant.
5. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
6. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
7. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
8. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.
9. Proposed utility work within the Thurston County Right of Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific city design requirements but rather only items such as restoration of the County right of way and traffic control.
  - a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20' of asphalt concrete pavement.

10. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
11. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
12. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 786-5214 for a final inspection.
13. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.
14. Once the planning department has issued the official approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
15. PRIOR to construction, the applicant shall:
  - a. Pay outstanding construction review and inspection fees\*
  - b. Receive erosion and sediment control permit
  - c. Have the erosion and sediment control inspected and accepted
  - d. Receive a construction permit
  - e. Schedule a pre-construction conference with county staff.\* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/docs/Roads-Development-Review-Fees-20090301.pdf> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 754-3355, ext. 6595, or by e-mail at [padillr@co.thurston.wa.us](mailto:padillr@co.thurston.wa.us).
16. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Receive and accept Engineer’s Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).

- e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
- f. Execute an agreement with financial security for the maintenance and operation of the drainage facilities in accordance with Thurston County Code 15.05.040.
- g. Completion of required signing and striping.
- h. Payment of any required permitting fees.

Health Conditions:

- 17. Prior to approval and release of any non-residential building and on-site sewage system permits, water system plans and specifications that include the fire water tank must be submitted to the Drinking Water Section for review and approval.
- 18. Prior to final non-residential building occupancy approval, the water system must be completed and designer's final engineering report must be submitted for the water system. The final engineering report must receive Drinking Water Section approval prior to final occupancy of the fire station.
- 19. Prior to approval and release of any non-residential building permit, a complete on-site sewage system design must be approved by Environmental Health.
- 20. Prior to final non-residential building occupancy approval, the sewage system installation and record drawing must receive Environmental Health approval.
- 21. This project was reviewed with respect to water supply, sewage system, and hazardous materials based on specific information provided by the applicants or their consultants. Any future changes in the facility with regard to number of employees or proposed activities will need to be reviewed by Thurston County Environmental Health. Any such changes may result in additional requirements or conditions including, but not limited to, upgrades to or replacement of the sewage system, requirements for a hydro-geological or other reports, a hazardous materials spill plan, and additional public water supply requirements.

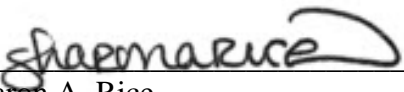
Planning Conditions:

- 22. Signage shall comply with TCC 20.54.040(5). There shall be no more than one two-faced sign not to exceed thirty-two square feet per side; or alternatively, two signs attached to the building below the roofline, or placed close to the building, with a combined square footage not to exceed thirty-two square feet.
- 23. The site shall contain 11 marked parking spaces. All parking spaces shall conform to standards of TCC 20.44.050.
- 24. All conditions of the Mitigated Determination of Non-Significance dated July 18, 2013.
- 25. Lighting shall be designed and shall function in a manner that shields direct light from adjoining streets and properties.



26. All new buildings shall meet minimum setbacks as specified in TCC 20.07. The minimum required setback from 78<sup>th</sup> Avenue is 35 feet.
27. A financial security agreement in the amount of 150% will be required if landscape installation cannot take place prior to occupancy due to the timing of the planting season.
28. The applicant shall maintain all landscape and planting areas in a healthy condition and replace any dead or dying vegetation.
29. A maintenance assurance device for a period of one year from the completion of planting in order to insure compliance with the requirements of this chapter. The value of a maintenance assurance device must equal at least twenty percent of the replacement cost of the landscape materials, and shall be utilized by the county to perform any necessary maintenance, and to reimburse the county for documented administrative costs associated with action on the device.
30. Prior to building permit issuance, the applicant shall submit an amended short plat map that indicates the limited emergency access onto 78<sup>th</sup> Ave NE. Once the amended short plat map has been approved by all Thurston County review agencies, the map shall be recorded with the Thurston County Auditor.
31. All development on the site shall be in substantial compliance with the approved site plan, except as conditioned above. Any expansion or alteration of this use, beyond that initially approved by the Hearing Examiner will require approval of a new or amended Special Use Permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
32. For the purpose of mitigating potential impacts to downstream critical areas to the maximum possible, vehicle washing is prohibited on-site.

DECIDED November 5, 2013.

  
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Sharon A. Rice  
Thurston County Hearing Examiner

## **Appendix A Public Comments Submitted**

### Exhibit C2, Attachment EE, Comment letters

1. Daniel R. and Susan J. Coleman, 7-31-13
2. Maureen and Kent Canny, 8-1-13
3. Kim Gyls, 7-22-13
4. Carolyn Logue, 8-1-13
5. Gerald Bogar, 7-25-13
6. The Nisqually Highlands Community Association Board, 8-1-13
7. William Elton, 7-31-13
8. Mark Lovrien, 7-31-13
9. Lois Speelman, 7-31-13
10. Berley Swanson, 7-31-13
11. Georgia Cutburth, 7-31-13
12. Susan Willis, 7-31-13
13. Michelle Kromm, 7-31-13
14. William Bourg, 7-31-13
15. Carrie B. Born, 7-30-13
16. Michael K. Born, 7-30-13
17. Terri Sinclair-Olson and Greg Olson, 7-30-13
18. Jodi Kunkel, 7-30-13
19. Henly E. reed, 7-29-13 (two emails)
20. William and Camille Pedersen, 7-29-13
21. Susan Mac, 7-29-13
22. Lori Flemm, 7-29-13
23. Evan Evans, 7-29-13
24. John A. Brown, 7-29-13
25. Raneea and Mitch Berndt, 7-29-13
26. Larry Beagley, 7-28-13
27. David and Michelle Andrews, 7-28-13
28. Betty L. Berdnt, 7-28-13
29. Tom Engle, 7-28-13
30. Gary, Sharon and David Southwell, 7-27-13
31. Susan Rogers, 7-24-13
32. Leeann Tourtillot, 7-25-13
33. Cora Morley Eklund, 7-25-13
34. John Bauer, 7-24-13
35. Leland Blankenship, 7-24-13
36. Eleanor Blankenship, 7-24-13
37. Karen Bolin, 7-24-13
38. Steve Ulene, 7-24-13
39. Carolyn and Dean Logue, 7-23-13
40. Kim Gyls, 7-23-13
41. Ann Willis, 7-22-13

42. Maureen Canny, 7-22-13
43. William and Camille, 7-1-13
44. William and Camille Pedersen, 3-31-13
45. William and Camille Pedersen, 4-6-12
46. Susan Rogers, 4-2-12 (received)
47. William and Camille Pedersen, 2-6-12
48. William and Camille Pedersen, 1-8-12
49. William and Camille Pedersen, 1-8-12
50. William and Camille Pedersen, 12-15-11
51. William and Camille Pedersen, 12-13-11
52. William and Camille Pedersen, 11-23-11
53. William and Camille Pedersen, 12-6-11
54. William and Camille Pedersen, 12-6-11
55. William and Camille Pedersen, 12-1-11
56. William and Camille Pedersen, 11-29-11
57. William and Camille Pedersen, 11-23-11
58. William and Camille Pedersen, 11-1-11
59. William and Camille Pedersen, 11-1-11
60. William and Camille Pedersen, 7-23-11
61. William and Camille Pedersen, 7-20-11
62. William Pedersen, 7-18-11
63. Karen Bolin, 7-10-11
64. William C. Elton, 7-3-11
65. Mrs. Michelle Elton, 7-3-11
66. Greg Olson and Terri Sinclair-Olson, 6-29-11
67. Julia Appel and Randy Dubigk, 6-27-11
68. Mr. Michel K. Born, 6-21-11
69. Mrs. Carrie B. Born, 6-21-11
70. Rita Sammons, 6-15-11
71. Sarue Schaeltzel-Hill, 6-3-11
72. Kim Gyls, 6-2-11
73. Rita Sammons, 5-24-11
74. Cora Morley Eklund, 5-20-11
75. Petition dated 5-19-11
76. Phillip and Donna Price, 5-17-11
77. Mrs. Carrie Born, 5-16-11
78. Susan Macomson, 4-14-11
79. Susan Macomson, 4-7-11
80. Ronald and Susan Rogers, 4-1-11
81. Craig and Cathy Spalding, 3-24-11
82. Greg Olson, 3-23-11
83. Gary and Jacquelyn Udovich, 3-21-11
84. Susan Rogers, 3-22-11
85. Susan Rogers, 3-20-11
86. John and Kim Gyls, 1-28-10

87. William and Camille Pedersen, undated
88. William and Camille Pedersen, 3-23-11
89. William and Camille Pedersen, undated
90. William and Camille Pedersen, undated
91. William and Camille Pedersen, undated
92. Susan Rogers, undated
93. Susan Macobsen, 1-12-10
94. William and Camille Pedersen, undated
95. Maureen and Kent Canny, undated
96. Document labeled Tab 7 with handwritten comment, unknown commenter
97. Document beginning with “These are notes I took for myself...”, unknown commenter, 5 pgs.
98. Glen and Donna Kitsch, undated