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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

PEOPLE FOR AN ENVIRONMENTALLY RESPONSIBLE KENMORE (PERK),)	No.
)	
Petitioner,)	LAND USE PETITION
)	
v.)	
)	
CITY OF BRIER; PDI PROPERTIES, INC., a Washington corporation; PHOENIX DEVELOPMENT, INC., a Washington corporation)	
)	
Respondents,)	
)	
MARGARET H. DARE, an individual,)	
)	
Third-Party Respondent.)	
)	

Petitioner, People for an Environmentally Responsible Kenmore (PERK), allege and petition the Court as follows:

I. PARTIES

1.1 Petitioner is People for an Environmentally Responsible Kenmore (PERK). PERK is a non-profit organization with membership primarily comprised of residents of Brier and the adjoining communities of Kenmore and Lake Forest Park. PERK's mailing address is People for an

1 Environmentally Responsible Kenmore (PERK), c/o Elizabeth Mooney, 5934 NE 201st Street,
2 Kenmore, Washington 98028. The name and mailing address of PERK's attorney is Claudia M.
3 Newman, Bricklin & Newman, LLP, 1001 Fourth Avenue, Suite 3303, Seattle, WA 98154.

4 1.2 The local jurisdiction whose land use decision is at issue is the City of Brier. The
5 mailing address of the City of Brier is 2901 228th Street SW, Brier, Washington 98036. The
6 Brier City Council was the final decision making body in this matter. On November 10, 2009, the
7 Brier City Council adopted Resolution No. 516, which adopted with amendments, the
8 recommendations of the City of Brier Hearing Examiner denying PERK's appeal of the State
9 Environmental Policy Act (SEPA) Mitigated Determination of Nonsignificance issued for the
10 Sunbrook preliminary subdivision application and approving the Sunbrook preliminary
11 subdivision. A duplicate copy of the City Council resolution is attached hereto as Attachment 1.
12 A duplicate copy of the Recommendation of the Hearing Examiner is attached hereto as
13 Attachment 2.
14

15 1.3 PDI Properties, Inc. is identified as the applicant in the City Council's written
16 decision. The address of PDI Properties, Inc. (PDI) is 16108 Ash Way, Suite 201, Lynnwood,
17 Washington 98087.
18

19 1.4 Phoenix Development, Inc. is identified as the taxpayer for the property at issue in
20 the records of the County Assessor based upon the description of the property in the application.
21 The address provided by the Assessor for Phoenix Development, Inc. is 16108 Ash Way, Suite
22 201, Lynnwood, WA 98037.¹
23

24
25
26 ¹ It appears that the Assessor has listed an incorrect zip code.

1 1.5 Margaret H. Dare is an individual and a representative of the Brier Horse
2 Network, a community group. Margaret Dare filed a motion for reconsideration with the Hearing
3 Examiner and, therefore, is potentially a party to be named pursuant to RCW 36.70C.040(2)(d).

4 II. JURISDICTION/VENUE

5 2.1 The Court has jurisdiction over the subject matter of this action pursuant to RCW
6 Chapter 36.70C, Land Use Petition Act, (LUPA), which grants exclusive jurisdiction for appeals of
7 local land use decisions to Superior Court along with appeals of determinations under the State
8 Environmental Policy Act, Chapter 43.21C RCW, for the underlying land use action.

9 2.2 Venue is proper in this Court under RCW 36.70C.040.

10 FACTS TO DEMONSTRATE STANDING

11 3.1 PERK and its members have been aggrieved and adversely affected by the City of
12 Brier land use decision in this matter. PERK has been a leading advocate for restoration of salmon
13 passage and habitat in the tributaries of Stream 0056 flowing from the Abbey View Pond through
14 Brier and Kenmore to Lake Washington at Log Boom Park. PERK and its members have been
15 actively engaged in stream and habitat restoration and salmon release in Stream 0056, including
16 obtaining King County grant funds for salmon release in the stream along with salmon and habitat
17 education and stewardship programs for the stream.

18 3.2 PERK's members include residents of Kenmore, Brier, and unincorporated
19 Snohomish County whose properties abut both Stream 0056 and the proposed Sunbrook plat and
20 development, including many members who live downstream and whose properties have been
21 subjected to flooding and harm due to upstream development on Stream 0056. PERK and its
22 members have been active in trail promotion and planning for Brier, Kenmore and Lake Forest Park.
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1 3.3 PERK member Peggy Trompler and her family own and reside on property adjoining
2 the eastern portion of the proposed Sunbrook plat and development, through which an intermittent
3 stream flows through the Trompler property to the eastern tributary of Stream 0056 from wetlands
4 designated "A" and "B" by the City of Brier and Hearing Examiner during consideration of the
5 appeal relating to approval of the Sunbrook subdivision plat.

6 3.4 Numerous PERK members have hiked through the trails on the lands forming the
7 proposed Sunbrook subdivision, including children who have learned about nature and wildlife
8 on the property, some of whom testified at the public hearing on the appeal of the mitigated
9 Determination of Non-Significance and of preliminary plat approval.

10 3.5 The Sunbrook plat and development will have significant adverse impacts to the
11 interests described above as is set forth in great detail throughout this Petition.

12 3.6 PERK and its members' asserted interests are among those that the City of Brier
13 was required to consider when it made the land use decision. The purpose of land use laws and
14 the State Environmental Policy Act is to protect against significant adverse impacts to the
15 community, to neighbors, and to those who live downstream of the site.

16 3.7 PERK's and its members' interests and rights to a healthful environment, PERK's
17 activities for restoration of stream habitat and salmon restoration, and the interests of PERK
18 members in the health of Stream 0056 and the avoidance of flooding or erosion are all prejudiced
19 by the decisions of the City of Brier in regard to the proposed Sunbrook plat and subdivision,
20 including, but not limited to, interests which state and municipal laws are specifically intended to
21 protect.

22 3.8 A judgment in favor of PERK would substantially eliminate or redress the
23 prejudice to PERK caused or likely to be caused by the land use decision. PERK seeks either
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1 denial or additional mitigation of the development with the purpose of alleviating or eliminating
2 the adverse impacts described above.

3 3.9 PERK has exhausted its administrative remedies to the extent required by law.
4 The administrative process below involved a hearing before the City of Brier Hearing Examiner
5 with a recommendation from the Hearing Examiner to the City Council. The City Council,
6 acting as the local jurisdiction's body with the highest level of authority to make the
7 determination, issued its final determination on the Sunbrook matter on November 10, 2009.
8 This appeal followed.
9

10 IV. CONCISE STATEMENT OF FACTS TO SUPPORT STATEMENTS OF ERROR

11 The Sunbrook Proposal and the Project Site

12 4.1 On June 8, 2006, PDI Properties sought preliminary subdivision approval for a
13 proposal referred to as "Sunbrook," a 29 lot subdivision for single family residential development
14 of a 13.7 acre parcel zoned RS 12,500.
15

16 4.2 The subject property is located at 24215 Brier Road, on the east side of Brier Road
17 directly across from the Brier Road/243rd Place SW intersection. The southern boundary of the
18 property is also the southern boundary of Brier and Snohomish County. The City of Kenmore
19 and King County are located immediately south of the property.
20

21 4.3 The project site is the last substantial undeveloped property in South Brier. The
22 great majority of the entire 13.7 acres is currently forested with very little development of the
23 site. The plat application proposes cutting of one hundred and eleven trees that were designated
24 as "significant" pursuant to BMC chapter 18.20, along with hundreds of additional trees. Ninety
25 three percent of all significant trees on the site would be cut down with this proposal. The plans
26 show that ultimately only 16 significant trees would be retained and protected on the site (of the

1 total count of 789). The largest trees on the property, up to 66" in diameter, are all proposed to
2 be cut down.

3 4.4 A stream runs through the western side and southwest corner of the property and
4 parallel to the southern boundary of the property. This stream is referred to as Stream 0056, or
5 the western tributary of Stream 0056. It flows from the Abbey View Pond through Brier into
6 Kenmore and ultimately drains into Lake Washington at Log Boom Park. Stretches of the stream
7 support resident fish. Salmon release programs have been funded by King County via grants for
8 enhancement of the stream.
9

10 4.5 Lake Washington is home to populations of Puget Sound Chinook salmon
11 (*Oncorhynchus tshawytscha*) and steelhead trout (*Oncorhynchus mykiss*), both of which are listed
12 as threatened species under the federal Endangered Species Act. Juvenile Chinook salmon use
13 tributary mouths and near shore areas in Lake Washington to forage in and migrate through en
14 route to the ocean.
15

16 4.6 Sedimentation resulting from the development of the Sunbrook property will have
17 a significant adverse impact on shoreline areas and associated juvenile salmon habitat in the
18 vicinity of the mouth of Stream 0056 as well as on downstream properties. Upstream
19 development causes significant adverse impacts on downstream properties and each development
20 must be mitigated to address the cumulative impacts of development on this stream. Downstream
21 impacts from this development and from cumulative impacts will adversely impact fish and fish
22 habitat downstream; will adversely impact private property interests downstream; will adversely
23 impact the ability of the state and local governments to enhance and restore salmon habitat
24 downstream; and will "adversely modify critical habitat" as designated under the Endangered
25 Species Act, 16 U.S.C. §§ 1531-1544 (specifically 16 U.S.C. § 1536(a)(2)).
26

1 4.7 There are four wetlands on the Sunbrook property. They were described by the
2 Hearing Examiner as follows:

3 F. Three delineated wetlands are found on the *Sunbrook* site.
4 Two, Wetlands A and B, are located in the low, eastern portion of
5 the site. The third, Wetland C, is a riparian wetland associated with
6 the stream as it crosses the site. (Exhibits B-08 and B-18) The
7 hearing participants dispute the existence of a fourth, small
8 depressional wetland in the western portion of the site. This dispute
9 is addressed in detail in Finding of Fact C.4, below.

8 Hearing Examiner Recommendation at 7.

9 4.8 Wetlands A, B, and C on the site are not isolated. The United States Army Corps
10 of Engineers originally designated Wetlands A and B as "isolated," but then, based on corrected
11 information, withdrew that designation. The Army Corps' letter withdrawing the designation
12 directly contradicts Findings of Fact and Conclusions of Law adopted by the City Council in
13 regard to designation of Wetlands A and B as isolated. The Washington Department of Ecology,
14 via letter of Paul Anderson, found that Wetlands A and B are not isolated, that the wetlands were
15 not properly delineated, and that the applicant (PDI) had failed to delineate another 440 square
16 foot wetland (Wetland D, which the applicant has referred to as a "cattle wallow").

18 4.9 Wetlands A, B and C are each significant wetlands with more than one dominant
19 plant species and they do not have a predominance of exotic species.

20 4.10 The sole access road to the development is via a road crossing across the stream
21 from Brier Road. The access road is within fifty feet of the delineated Wetland C. Significant
22 clearing of trees and earth is planned along with the access road. The road through Sunbrook will
23 run as close as ten feet from the edge of Wetlands A and B.

24 4.11 Stormwater from the developed site is proposed to be collected in a stormwater
25 vault. The Sunbrook Plat does not propose the use of a wet pond design despite an explicit legal
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1 requirement in the Brier Code for such a design where feasible. The wet pond is certainly
2 feasible on this relatively flat site. The original application by PDI showed a wet pond in
3 compliance with the code. Nor does the proposal propose the use of biofiltration, which is the
4 legally required alternative if a wet pond is not feasible.

5 The City's Review of the Sunbrook Proposal

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7 4.12 The Sunbrook Plat has been the subject of a long application and SEPA process
8 starting in 2006, with applications and SEPA reviews withdrawn and resubmitted.

9 4.13 As mentioned above, Phoenix Development (applicant later changed to PDI
10 Properties) filed its application for preliminary subdivision approval with the City of Brier on
11 June 8, 2006. Over the years following, new information was submitted to the City and the
12 proposal was changed significantly. Finally, on March 27, 2008, the City of Brier issued a letter
13 determining that the project could be accepted as complete.

14
15 4.14 Following the issuance and withdrawal of the Mitigated Determination of Non-
16 Significance (MDNS) twice, the City ultimately issued the MDNS at issue in this matter on
17 March 19, 2009. PERK appealed the MDNS on April 20, 2009 on the grounds that the
18 responsible official did not adequately disclose, analyze and mitigate the probable significant
19 adverse impacts of the Sunbrook proposal.

20 4.15 The City of Brier appointed a Hearing Examiner who convened a consolidated
21 open record hearing on the SEPA appeal as well as the underlying Sunbrook application on July
22 30, 2009, which was continued to July 31, 2009, and then to August 4, 2009, to complete receipt
23 of testimony and evidence. The hearing concluded on August 4, 2009, after approximately 18
24 hours of testimony.
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1 4.16 Following the hearing, the Hearing Examiner issued his Recommendation on
2 September 23, 2009, in which he recommended that the City Council deny PERK's SEPA appeal
3 and approve the Sunbrook Preliminary Plat.

4 4.17 On September 30, 2009, PERK filed a motion for reconsideration of the Hearing
5 Examiner decision. After consideration of comments in response to the request for
6 reconsideration, the Hearing Examiner denied PERK's motion. Numerous parties of record were
7 denied notice of the Hearing Examiner's Recommendation, notice of the opportunity to file a
8 motion for reconsideration, and notice of opportunity to submit comments on the Motions for
9 Reconsideration. All persons who testified at the hearing were "parties of record" who had a
10 legal right to notice of such. However, they were not asked to provide their addresses when
11 testifying and they were informed that it was not necessary to sign up (thereby provide an
12 address) to testify. Therefore, the City of Brier did not have addresses of all parties of record and
13 did not, therefore, send the notice of the above.

14 4.18 On November 10, 2009, the Brier City Council adopted Resolution No. 516,
15 which adopted the Hearing Examiner's Findings and Recommendations with some additional
16 conditions. The Council denied PERK and PERK members' requests to present legal argument
17 to the City Council. Instead the Council began its deliberations and adopted its Resolution after
18 hearing only an unsupported description of the proceedings at the Hearing Examiner level
19 provided by the City Planner.

20 **V. CONCISE STATEMENT OF EACH ERROR COMMITTED**

21 5.1 The Brier City Council engaged in unlawful procedure and failed to follow
22 prescribed process thereby violating the constitutional rights of petitioners and causing harm to
23 petitioners as follows:
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1 5.2 The Brier City Council failed to provide opportunity for petitioners to present
2 legal argument, in violation of its own code and of Petitioner's rights to due process. The Brier
3 Municipal Code allows the City Council to make a decision only "after hearing the argument of
4 the parties." BMC 18.04.030.

5 5.3 The process was flawed because the City failed to provide notice of the Hearing
6 Examiner's Recommendation, notice of opportunity to file a motion for reconsideration, and
7 notice of opportunity to comment on such motions to all parties of record.

8 5.4 The Hearing Examiner erred in failing to allow the interested public time to testify
9 until after 10:00 PM on July 30, 2009, rather than early in the hearing, which convened at 7:00
10 PM, pursuant to the published public notice for the combined SEPA hearing and plat approval
11 appeal hearing. By allowing applicant PDI to present its case until after 10:00 PM, over PERK's
12 objection, numerous members of the public who wished to testify were denied the opportunity to
13 testify. It is impossible to determine how many members of the public left without testifying or
14 cut short vital testimony.

15 5.5 The Brier City Council decisions to approve the Sunbrook preliminary plat and
16 deny PERK's SEPA appeal were based on erroneous interpretations of the law, were not
17 supported by substantial evidence and constituted clearly erroneous applications of the law to the
18 facts for the following reasons:

19 5.6 The City Council erred when it approved 25 foot buffers for Wetlands A and B.
20 More than a 25 foot buffer is required by Brier Code for Wetlands A and B because they are not
21 in the Abbey View drainage (if isolated, they are outside the drainage; and if not isolated, they
22 flow to a stream outside the drainage). In addition, more than a 25 foot buffer is required for
23 Wetlands A and B because the wetlands are, at minimum, Category III, if not Category II,
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1 wetlands. The Brier Code requires buffers of at least 50 feet for Category III, and more for
2 Categories I and II.

3 5.7 Testimony offered by experts regarding the use of the wetland areas by rare
4 species supported a conclusion that Wetlands A and B are Category II wetlands under the City of
5 Brier code.

6 5.8 The City Council erred in designating Wetlands A and B as "isolated," and,
7 therefore, erred in categorizing these wetlands as Category IV wetlands. Because they are not
8 Category IV, a buffer of a minimum of 50 feet is required by the Code.

9 5.9 Even if Wetlands A and B are isolated, the City Council erred when it concluded
10 that Wetlands A and B were Category IV wetlands because the evidence showed that more than
11 one dominant plant species was present and there was no evidence of a predominance of exotic
12 species.
13

14 5.10 The City Council erred to the extent that it concluded that the Sunbrook
15 development is a "low intensity" development per the Brier Code. Because it is not a low
16 intensity development, a 50 foot buffer is required under BMC 18.12.110 even if Wetlands A and
17 B are Category IV wetlands.
18

19 5.11 Even if the Brier Code allowed 25 foot buffers for Wetlands A and B, such
20 approval would cause significant adverse environmental impacts that were not adequately
21 disclosed, analyzed, or mitigated by the City.
22

23 5.12 The City Council erred when it approved a plan that proposed to build roadways
24 through the buffer required by BMC Chapter 18.12 for Wetlands A and B. A roadway through
25 the buffer is not permissible under the Brier Code. The Brier Code makes no exception to allow a
26 road within a buffer. Even if the Brier Code allowed approval of a road within a buffer, such

1 approval would cause significant adverse environmental impacts that were not adequately
2 disclosed, analyzed, or mitigated by the City.

3 5.13 The City Council erred when it concluded that there was no evidence in the record
4 to support the imposition of additional conditions on Sunbrook pursuant to BMC 12.18.090(B).

5 5.14 The City Council erred when it approved the proposal without requiring a wet
6 pond or biofiltration. Brier City Code and the Comprehensive Plan call for stormwater to be
7 detained with use of a wet pond, where feasible. Biofiltration is required when a wet pond is not
8 feasible. BMC 16.16.150 provides:

9
10 Plats with five lots and more shall use a wet pond design where
11 feasible. Plats with five lots and more that are not served by a wet
12 pond shall provide biofiltration, designed in accordance with the
13 above manual. All drainage plans and calculations shall be
14 reviewed by the city engineer for a written recommendation.

15 5.15 In violation of BMC 16.16.040, the City did not require that the public road
16 continue through the property to the boundary as required. Instead, the Council approved a plan
17 with a private road "hammerhead," which is also not permitted under the Brier Code, and reduced
18 right of way. That provision is meant to facilitate trail systems and to make connections between
19 neighborhoods and the City Council erred in failing to require that the proposal be consistent with
20 that provision.

21 5.16 The City Council erred in concluding that the application vested on June 8, 2006.
22 The application was not complete on June 8, 2006; the applicant did not submit fees for the
23 application on June 8, 2006; and the application underwent significant changes after June 8,
24 2006, coupled with a change in ownership.

1 5.17 The Brier Staff Report stated “the application was deemed complete on March 27,
2 2008.” The Staff finding is uncontroverted. If the application was not deemed complete until
3 March 27, 2008, it could not have vested in 2006.

4 5.18 The City Council erred when it concluded that the “opponents” failed to cite any
5 specific plan provisions with which Sunbrook is inconsistent. The record did contain such
6 Comprehensive Plan citations, for example, those submitted by the Brier Horse Network
7 representative Margaret Dare.

8 5.19 The City Council erred when it failed to require that the subdivision streets be
9 public pursuant to Chapter 16.16 BMC, especially BMC 16.16.060 regarding rights-of-way. The
10 City Council’s factual and legal conclusions concerning this issue were in error.

11 5.20 The City Council’s conclusion that Sunbrook meets the tree protection
12 requirements of both BMC 16.16.160 and Chapter 18.20 BMC were in error. PERK recognizes
13 that clearing is an inherent aspect of urban development, but that code specifically recognizes that
14 there should be removal of no more trees or vegetation than is necessary to achieve the proposed
15 development. That provision was not applied correctly by the City Council.

16 5.21 Regardless of the vesting issue, it was an error of law to conclude that the
17 Comprehensive Plan of 2008 was not to be considered in regard to review of significant
18 environmental impacts under SEPA. SEPA requires that mitigation measures or denials under
19 authority of SEPA must be based upon adopted SEPA policies “in effect when the DNS or
20 [Draft] EIS is issued,” rather than plans in effect nine years prior to the MDNS. WAC 197-11-
21 660(1)(a).

22 5.22 The City Council erred when it upheld the MDNS because the MDNS was in
23 violation of the requirements of SEPA. The City Council also erred when it concluded that
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1 PERK was “confusing the City’s substantive authority under SEPA with its threshold
2 determination obligation under SEPA.” The project will have probable significant environmental
3 impacts and a full environmental impact statement is required if those impacts are not mitigated.

4 5.23 The City Council erred when it failed to adequately analyze, disclose, and mitigate
5 the probable significant adverse stream and wetland impacts caused by the proposal. The
6 evidence proved that 25 foot buffers were inadequate for the stream and wetlands on this site.
7 The City erred when it relied solely on compliance with the outdated City of Brier Code for
8 mitigation of those significant impacts. SEPA requires that the City either prepare an EIS for the
9 probable significant impacts that are caused by a proposal and that are not mitigated by the local
10 regulations or that the City adopt additional mitigation above and beyond the City Code
11 requirements to adequately protect the critical areas on and off the site. WAC 197-11-158. The
12 City Council erred in concluding that PERK had failed to demonstrate that there would be
13 significant adverse impacts caused to Stream 0056 and to the Wetlands A, B, and C by the
14 proposal. The City Council erred when it concluded that “the age of Brier’s development
15 regulations is completely irrelevant to the SEPA threshold determination process.”

16 5.24 The City Council’s conclusion that removal of trees would not cause probable
17 significant adverse impacts was error. The conclusion that clearing trees from a non-sensitive
18 area will not, in and of itself, result in probable significant adverse impacts was clearly erroneous.
19 The City Council also erred when it concluded that petitioners had abandoned this issue. The
20 City also erred because it significantly understated how many trees would be removed because it
21 did not include consideration of the planned phases of development proposed beyond Phase I. In
22 addition, many of the trees that would be cut are located within areas that should have been
23 designated as wetland and stream buffer per the arguments above. The severe impacts caused by
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1 the removal (and the impacts to the stream and wetlands) should have been dramatically lessened
2 via use of Brier's Code for Lot Potential Mitigation, BMC 18.21.100, as was illustrated by a
3 member of the public at the hearing. (Date Testimony.)

4 5.25 The City Council's conclusion that the loss of wildlife presently living on portions
5 of the site was inevitable and a direct result of the legislative decision to urbanize this area was
6 error. The City Council completely disregarded BMC 18.12.090 and the State Environmental
7 Policy Act requirements for analysis, disclosure, and mitigation of these impacts. There is reason
8 to further condition a proposal to preserve more habitat than is proposed. Furthermore, the City
9 of Brier Code includes provisions that indicate a legislative decision to protect such habitat such
10 as the Lot Potential Mitigation provision, BMC 18.21.100.

11 5.26 On the basis that the culvert under State Route 522, which lies between Lake
12 Washington and Sunbrook, is currently impassable for fish, the Hearing Examiner found that the
13 impacts from the proposed action have no probable significant impacts and no further mitigation
14 is necessary. This was a significant error of law failing to consider state policy to restore salmon
15 habitat and duties under federal court decisions regarding Treaty rights. This conclusion is a
16 legal error ignoring the duty of Brier to consider the potential significant impact if the
17 development – and cumulative impacts from other actions by Brier under the same outdated code
18 provision – may affect the ability of salmon to return or be restored to the stream.

19 5.27 The City Council's findings were clearly erroneous in regard to its decision that
20 the City did not also have to consider cumulative impacts downstream caused by Sunbrook and
21 other developments. The City Council also erred in concluding that there was no evidence of
22 cumulative impacts. The City Council and Hearing Examiner disregarded and misunderstood
23 evidence and argument on this issue.

1 5.28 The City and Hearing Examiner decisions are clearly erroneous as a matter of law
2 in failing to consider if substantive authority under the current Brier Municipal Code and
3 Comprehensive Plan provided the basis for adequate mitigation of the probable significant
4 environmental impacts.

5
6 5.29 It was an error of law to dismiss PERK's claim that the Stream 0056 corridor from
7 the Southeast of the property running to the North is a significant wildlife corridor, which will
8 suffer significant disruption if plans proceed without further mitigation. Conclusion of Law B.1
9 in footnote 35, page 35. See expert testimony of Jim Miers, Gordon Orians and others. This issue
10 was clearly raised in the testimony and in the pre-hearing opening statement and appeal in regard
11 to habitat loss impacts.

12 5.30 Numerous elements of the appellants' case and numerous exhibits were wrongly
13 ruled irrelevant or excluded during the hearing on the basis of the Hearing Examiner's errors of
14 law.
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner prays as follows:

18
19 6.1 That the Court rule that the MDNS is void and thus order Respondent Brier to
20 withdraw its MDNS and prepare an environmental impact statement for the Sunbrook plat
21 proposal;

22 6.2 That the Court order Respondent Brier to provide public notice of, and to take
23 public comment on, a new threshold determination of significance for the Sunbrook Plat
24 application with notice mailed to all adjacent property owners and provided to all existing parties
25 of record;
26

1 6.3 That the Court enter a finding that Brier's designation of Wetlands A and B as
2 isolated was not based on substantial evidence in the record and that Brier's conclusion that
3 Wetlands A and B were Category IV wetlands was clearly erroneous, followed by an order
4 requiring Brier to recategorize the wetlands appropriately.

5 6.4 That the Court order Respondent Brier to provide Stream 0056 and Wetland C
6 with a minimum one hundred foot buffer through which no roads are permitted and tree cutting is
7 not permitted.

8 6.5 That the Court order Respondent Brier to fully consider the potential significant
9 environmental impacts of the proposed project, including cumulative impacts downstream of the
10 project and impacts on the ability of state and local governments to restore and enhance salmon
11 habitat and salmon runs in Stream 0056 and Lake Washington.

12 6.6 That the Court order Respondent Brier to consider the impacts from the planned
13 cutting of hundreds of additional trees on the Sunbrook Plat in Phases 2 and 3 in making its
14 threshold determination under SEPA, and order Respondent Brier to perform an environmental
15 impact statement due to the probable significant cumulative impacts of the related governmental
16 actions from the proposed approval of phases 2 and 3.

17 6.7 That the Court void the approval of the Sunbrook plat application and order
18 Respondent Brier to withdraw its approval of the Sunbrook Plat application and SEPA
19 Determination.

20 6.8 That the Court order Respondent Brier to withdraw its finding that the Sunbrook
21 Plat application "vested" as of 2006, and Order the Respondent to consider the application vested
22 as of the date it found the revised application to be complete (March 27, 2008) with fees paid;

1 and, to fully consider the policies and standards under the laws and Comprehensive Plan in effect
2 on March 27, 2008 while conducting its SEPA and project review.

3 6.9 That the Court order Respondent Brier to withdraw approval of the Sunbrook plat
4 until the applicant prepares, and the City engineer approves, a plan utilizing an open wet pond in
5 conformity with Brier Municipal Code 16.16.150.

6 6.10 That the Court order Respondents to employ Lot Potential Mitigation pursuant to
7 BMC 18.12.100, with reduced lot sizes and designation of sensitive areas for the Sunbrook plat
8 application.

9 6.11 That the Court order Respondent Brier to withdraw approval of the preliminary
10 plat application until presented with a design that conforms with BMC 16.16.040 (B) (public
11 streets must continue to boundary of plat) without such roadway (and related sidewalks and
12 utility rights of way) being within a wetland buffer zone.

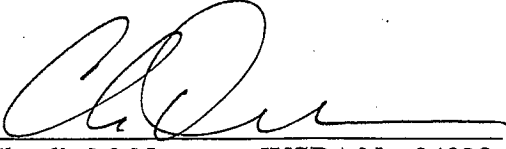
13 6.12 That the Court award attorneys fees and costs to the extent allowed by law.


14 6.13 That the Court grant such other and further relief as it deems just and equitable.

15 Dated this 15th day of December, 2009.

16 Respectfully submitted,

17 BRICKLIN & NEWMAN, LLP

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21 By: 
22 Claudia M. Newman, WSBA No. 24928
23 Attorneys for Petitioner

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25 
26 Gerald M. Pollet, WSBA # 13620
PTA

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Appendix:
Copy of Brier City Council Resolution 516
Copy of Hearing Examiner Recommendation

PERK\Superior\2009\Land Use Petition