

April 20, 2009

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CITY OF BRIER

Brier City Council
c/o Paula Swisher
Brier City Clerk
2901 228th Street SW
Brier, WA 98036

Re: Appeal of MDNS for Sunbrook Preliminary Plat Application

Dear Ms. Swisher:

People for an Environmentally Responsible Kenmore (PERK) hereby appeals the Mitigated Determination of Non-Significance (MDNS) that was issued for the Sunbrook preliminary plat proposal. The MDNS was issued in error and PERK requests that the City Council reverse the MDNS for the reasons and grounds stated herein.

PERK was established in April of 2002 by a group of neighbors dedicated to preserving the quality of life and natural environment in Kenmore, Washington. By encouraging the conservation of existing natural areas, the restoration of degraded natural systems, and the use of low impact development schemes, the group worked to improve the community's environment and health and welfare. The mission of the group is to foster understanding and appreciation for our natural environment and to promote environmentally responsible practices and development and infrastructure within Kenmore and its surrounding areas.

Overall, the Sunbrook Preliminary Plat proposal will have significant adverse environmental impacts, the impacts have not been adequately mitigated, and the MDNS was issued in error. In some respects, the City has not collected adequate information necessary to make a threshold determination. The City has not adequately disclosed and analyzed all of the significant impacts of this proposal and the mitigation proposed in the MDNS does not adequately address those impacts that the City did consider. The City has failed to apply the requirements established in the specific environmental policies set forth in BMC 18.08.080; 18.08.090; 18.08.180; and 18.08.240.

1. The Sunbrook Proposal Will Have Significant Adverse Impacts to Stream 0056

There will be probable significant adverse environmental impacts caused by this proposal to Tributary 0056 and the City has not adequately disclosed and analyzed these adverse impacts or potential mitigation of those impacts. The proposal will have significant adverse impacts to the fish in the stream, to fish habitat, and to property owners downstream, such as the Harbour Village Marina in Kenmore. In addition, the City has not collected or relied upon adequate information to assess those impacts. The impacts to this stream are numerous, the proposal's approach towards this stream is ill-advised. The City has not adequately considered the cumulative effects of this proposal with other development in the area.

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A tributary of Stream 0056 flows across the southwest corner of the proposed preliminary plat, continues into the City of Kenmore following an easterly direction close to the southern border of the plat, and ultimately drains into Lake Washington. Stream 0056 is a fish-bearing stream. Cutthroat Trout (a salmonid) are present throughout much of the drainage, as are other fish, including Western Brook Lamprey. Coho salmon were introduced at the edge of the Sunbrook property in April 2005 and these fry were successful at surviving in the habitat where they were resampled in July 2005 by NOAA Fisheries mentors, part of the Lockwood Adopt A Stream Project funded by King County's Small Change for a Big Difference. Recently (December 2007), experts have observed year-round anadromous fish passage and year-round hydraulic connectivity to Chinook salmon juvenile habitat in the shoreline at Log Boom Park in Kenmore. The City clearly has not designated or protected the tributary and stream adequately.

PERK and the newly formed SnoKing Watershed Council have been working since October 2007 to initiate an interlocal agreement with cities Kenmore, Brier and Lake Forest Park to organize a cross jurisdictional watershed management for Stream 0056 and its associated tributaries. Because Brier has not participated in these meetings, the MDNS decision was lacking in its failure to incorporate information concerning this effort.

The City of Kenmore classifies this stream as a Type II stream. Type II streams are defined by Kenmore as natural streams with perennial flow or intermittent flow and that are used by salmonid fish. Pursuant to the Kenmore critical areas regulations, a 100 foot buffer width with an additional 15 foot setback is required from the edge of this stream. KMC 18.55.270, 18.55.42.

The City of Brier has incorrectly typed Stream 0056 and has assigned incorrect buffer requirements. A 25 foot buffer is inadequate to mitigate probable significant adverse environmental impacts from this proposal for the reasons expressed in greater detail in comment letters that have been submitted to the City on this proposal.

To date, development on Stream 0056 has caused severe problems of sediment deposition at the mouth of the stream. Development along the stream has left enormous amounts of sediment in the stream and ultimately in ponds at the Harbour Village Marina in Kenmore. In 2005, because the problem had become so severe, the City of Kenmore engaged Herrera Environmental Consultants to prepare a sedimentation study for the stream. In that study, Herrera estimated current and historical rates of sediment production, identified existing sediment sources, and predicted the future conditions of sediment production within the Stream 0056 watershed, and identified sediment management measures that could be implemented by the City of Kenmore and others in the watershed.

The stormwater management and control plan will have significant adverse impacts to the critical areas on the site (streams and wetlands). In the Herrera study, it is made clear that

the process of deforestation along the stream and the combined storm flow in the stream resulting from stormwater runoff from development along the stream causes the sediment production. The study recommends maximizing the infiltration and dispersion of stormwater runoff at those sites instead using outdated detention methods.

It is clear from reviewing this study and from reviewing the impacts of the Sunbrook proposal, that Sunbrook's plan for management and control of stormwater should be dramatically altered to incorporate Low Impact Development concepts in the place of outdated stormwater detention methods. The Herrera study states that pursuing a natural drainage system design throughout the Stream 0056 watershed would provide means for reducing stormwater runoff and enhancing infiltration. Such natural drainage systems include small wetland ponds, swales, and stormwater cascades that can be constructed on small parcels or within ditches along right-of-way areas. These systems are designed to mimic the pre-developed landscape, even in constrained, urbanized areas, by using natural vegetation and amended infiltrative soils. Natural drainage systems can offer opportunities for water quality enhancement as well. This focus conforms with the intentions of "Low Impact Development" techniques that has been receiving increasing attention in the Puget Sound area. The study states that for new development projects, modifications to the site plans to accommodate stormwater infiltration and/or dispersion systems would not necessarily result in an increase in total cost for the developer. Use of Low Impact Development techniques for stormwater management in the Puget Sound region is increasingly competitive with traditional stormwater management techniques in terms of costs.

In addition, the work on the site in the stream (widening the access road or putting a bridge in) or in the currently unidentified wetland on the north portion of the site will likely require a § 404 Army Corps permit and a § 401 Water Quality Certification from the Department of Ecology. It is premature to issue the MDNS when the City of Brier does not yet have a clear understanding of the impacts related to this work.

2. The Proposal Will Have Significant Adverse Wetland Impacts

There will be probable significant adverse wetland impacts caused by the Sunbrook preliminary plat proposal that have not been adequately disclosed, analyzed, and/or mitigated. In addition, the City has not collected or relied upon adequate information to assess those impacts.

The stormwater management and control plan will have significant adverse impacts to the wetlands on site. The City should require that the developer employ low impact development techniques to mitigate and avoid these significant impacts.

On June 4, 2008, Paul Anderson from the Department of Ecology wrote to the City of Brier about significant problems with the critical areas report and the wetland findings. We incorporate those concerns herein. The comments made by Mr. Anderson are very serious and clearly demanded attention *before* issuing a threshold determination. We have been told by Mr. Anderson that the City has not followed up on or addressed any of these significant concerns with him. We do not believe that Mr. Anderson was contacted by Robert Thorpe in the issuance of the MDNS. It is not checked on the MDNS.

3. Removal of Trees Will Cause Significant Adverse Impacts

There will be probable significant adverse environmental impacts caused by the removal of trees on this site and the City has not adequately disclosed and analyzed these adverse impacts or potential mitigation of those impacts. In addition, the City has not collected or relied upon adequate information to assess those impacts.

As Mr. Thorpe pointed out in his September 6, 2006 letter to the City, the City's Comprehensive Plan calls for inventorying and preserving significant trees and clumping of trees. Furthermore, the Brier Municipal Code requires a subdivider to strive to preserve natural foliage and trees. BMC 16.16.160. The Code states that if preservation of existing significant trees would reduce negative environmental effects, the City may impose cutting restrictions on such significant trees. *Id.*

We appreciated Mr. Thorpe's initial recognition two years ago in his September 6, 2006 letter that the proposal site is currently a beautiful site with significant trees that could be managed and developed well by preserving the majority of the trees and providing for a high quality addition to the City of Brier. But that is not what is being proposed by the applicant.

While the Sunbrook application documents do include a Tree Inventory Report and a Tree Removal/Replacement Plan, there is no analysis whatsoever of the significant negative environmental effects of removing existing trees from this site. Furthermore, no analysis has been done to determine consistency of the proposal with BMC 16.16.160. The replacement calculations and the assumptions are all based on the assumption that only 44 trees will be removed, when indeed, the proponent is requesting approval of removing over 149 healthy trees. It seems that a trick of phrasing has been employed to avoid review of impacts of removal of trees where the 105 "existing trees to possibly be removed in the future" are apparently assumed to remain. In addition to the 149 healthy trees, the proponent will also remove an unidentified number of additional trees that are deemed "unsuitable for retention." It is important to note that the arborist, S.A. Newman Forest Engineers, Inc., declared trees "unsuitable for long-term retention" not only if they were dying, defective, or diseased, but also if they were simply "not compatible with residential land use." The information should reveal how many of the trees were deemed "unsuitable

for long-term retention” by the arborist on the grounds that they were simply not compatible with residential land use.

The new Community Development Director Nicole Gaudette has confirmed that it would be possible, despite Brier’s Tree Ordinance, for new owners of the individual lots to cut down all the trees. For this reason, we asked about Low Impact Development. Ms. Gaudette said she contacted the developers and suggested a redesign using “Clustered Housing” for the purpose of protecting open space. This apparently was not carried out or required by the MDNS. That failure to require this as a condition to the MDNS was error.

The area where the developer plans to place the runoff from the detention vault is where the fish reside on 60th Ave NE. The developer has not looked into nor contacted us about where the fish reside on this street’s stream, Stream 0056, also known as Tschet Cha Thl, or Little Creek.

4. It Appears That the City May Be Improperly Phasing SEPA Review

It appears from a letter from Robert Thorpe to the City dated May 7, 2008, that the City may be proceeding with improper phased review for this project.

Phase review is appropriate in certain circumstances, but it is not appropriate when: (1) it would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or (2) it would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document under WAC 197-11-060(3)(b). WAC 197-11-060(5)(d). Proposals and their impacts are required to be evaluated in a single environmental document when they are related to each other closely enough to be, in effect, a single course of action. WAC 197-11-060(3)(b).

In his May 7, 2008 letter to the City, Robert Thorpe recommended that the City phase SEPA review. Phase I would be to issue a limited clearing permit to clear alder and cottonwoods outside the drainage areas, leaving all of the living firs. In Phase I, surface grading of the road could occur, leaving all the firs. This would allow the subsequent site inspection to determine how many trees in clumps might be best preserved, and if minor modifications can be made to the building site layout to preserve clumps of firs. PERK certainly commends and supports any efforts to preserve as many trees as possible, but phasing development, as Mr. Thorpe suggests, can be done without phasing SEPA review. SEPA review of both phases must be conducted now.

4. The City’s Development Regulations are Outdated

The City of Brier’s development regulations, including its Critical Areas Ordinance, are outdated (the CAO has not been updated since 1992) and therefore the MDNS is based on

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outdated regulations and old science. The City's existing regulations do not adequately address and mitigate the probable significant adverse impacts of the proposal. Therefore, the City must adopt conditions above and beyond the City Code requirements to adequately protect the critical areas on and off the site.

5. Conclusion

For the reasons stated above, the City's conclusion that the Sunbrook preliminary plat proposal would not have probable significant adverse environmental impacts was made in error and was based on improper process as well as incomplete and incorrect analysis.

PERK respectfully requests that the City withdraw its MDNS for the Sunbrook preliminary plat application and conduct additional analysis of the impacts of the proposal with adequate information and adequate disclosure of those impacts.

Very truly yours,

PEOPLE FOR AN ENVIRONMENTALLY
RESPONSIBLE KENMORE (PERK)

By: *Cathy Interacci* *Board member*
Its: *Darrond* *President*
4/20/09