



NOTICE OF DECISION

City of Woodinville

Development Services Department

425-489-2754 • 17301 133rd Avenue NE • Woodinville, WA 98072

Desk Hours • Monday – Thursday 7:30am – 5:00pm • Friday 7:30am – 4:00pm

The City of Woodinville has issued a Notice of Hearing Examiner Decision for the following project:

Project Name: Woodinville-Duvall Road Widening Project

Proponent: City of Woodinville

Project Number: CAE12001 / SEP11018

Description of proposal: Construction includes the widening of NE Woodinville-Duvall Road to a three-lane configuration. Construction will include a center turn lane and pedestrian and bicycle facilities; as well as drainage, traffic signal, street lighting, landscaping improvements. SEPA is required due to the presence of wetlands and streams in the project area. Mitigation for impacts to existing wetlands is also proposed.

Project Decision: Approved with Conditions

Project Location: NE Woodinville-Duvall Road from approximately 400 feet west of 156th Avenue NE to the east City limits 50 feet east of 171st Place NE, Woodinville, WA.

Notice of Decision Date: Monday, July 23, 2012

End of Appeal Period Date/Time: Monday, August 6, 2012 by 4:00 p.m.

Project Permit Expiration Date: July 23, 2014

A public hearing was held before the Woodinville Hearing Examiner on June 13, 2012 for review of the Project Approval and Critical Area Exception application. After considering comments by the public, City staff, and outside agencies, the project was approved with conditions by the Woodinville Hearing Examiner, subject to the attached Findings of Fact, Conclusions and Decision.

The Project Approval and Critical Area Exception shall be valid for two (2) years from the date of this Notice of Decision. If construction has not commenced within this period, the Project Approval and Critical Area Exception shall become null and void, and a new application would need to be submitted.

The Project Approval and Critical Area Exception shall also be declared void if there is a failure to comply with the approved plans or conditions of approval.

The application, supporting documents, and studies are available for review at the City of Woodinville, 17301 133rd Avenue NE, Woodinville, WA 98072. Contact: Erin Martindale, Project Manager, at (425) 877-2283. Email address: erinm@ci.woodinville.wa.us.

Appeals

A Party of Record must file an appeal of this decision within fourteen (14) days from date of this Notice of Decision. The final decision of the Hearing Examiner's Decision is appealable to the Woodinville City Council. Appeals must be delivered to the City of Woodinville and must be filed no later than Monday, August 6, 2012 by 4:00 p.m.

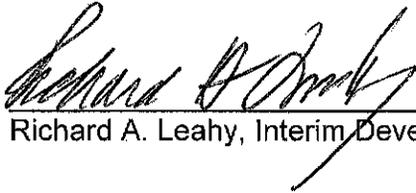
Appellants must be a party of record. To receive additional information on appeals for this application, please contact the Project Manager listed below.

Affected property owners may request a change in valuation with King County for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the King County Assessor's Office at 206-296-7300.

Contact person: Erin Martindale, Project Manager

(425) 877-2283

Email address: erinm@ci.woodinville.wa.us

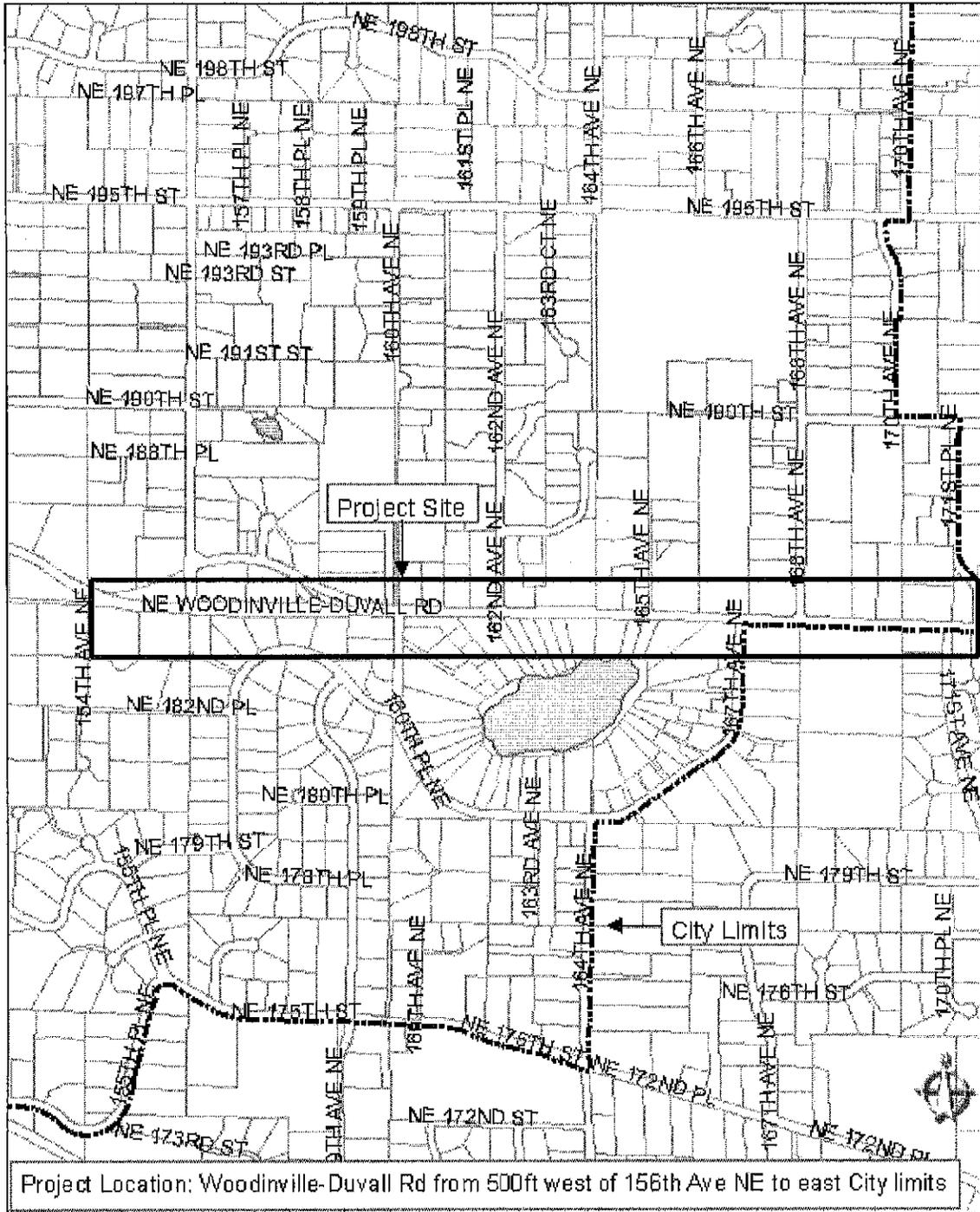


Richard A. Leahy, Interim Development Services Director

Date: July 23, 2012

Project Name: Woodinville-Duvall Road Widening Project
File Numbers: CAE12001 / SEP11018

Location Map



**BEFORE THE HEARING EXAMINER
FOR WOODINVILLE**

In the Matter of Application of)	NO. SEP11018 / CAE12001
)	
Thomas E. Hansen, PE, Public Works Director)	FINDINGS, CONCLUSIONS AND
City of Woodinville)	DECISION
For Approval of a Reasonable Use Exception.)	
)	

SUMMARY OF DECISION

A Reasonable Use Critical Area Exception for a roadway widening project in public right-of way on NE Woodinville-Duvall Road is GRANTED. The project is approved subject to the conditions as listed herein.

SUMMARY OF RECORD

Request:

Stream and wetland mitigations are necessary for losses associated with planned road improvements to the NE Woodinville-Duvall Road in the City of Woodinville. Part of the project would include placement of approximately 400 square feet of fill in two wetlands associated with a roadside ditch. The wetlands are rated Class 3 by the city of Woodinville and Category IV by the Washington Department of Ecology. Stream mitigation would also be required because it is not possible to replace an existing culvert of upper Cold Creek with a fish passable culvert. Thomas E. Hansen, Public Works Director (Applicant), requested approval of a Reasonable Use Exceptions (RUEX) for a roadway widening project within the public right-of way of the Road.

Hearing Date:

A closed record hearing on the request was held before the Hearing Examiner of Woodinville on June 13, 2012.

Testimony:

At the hearing, the following individuals presented testimony under oath:

Erin Martindale, Senior Planner, City of Woodinville
Rachel Speer, Department of Public Works, City of Woodinville

Exhibits:

At the open record hearing, the following exhibits were admitted into the record:

1. Staff Report
2. Application forms and materials received October 25, 2011 and November 29, 2011
3. 85% Design Plans received November 29, 2011 (Otak)
4. Notice of Complete Application sent November 29, 2011
5. Notice of Application issued December 12, 2011

6. SEPA Determination issued Mar.12, 2012 and SEPA checklist dated Oct. 25, 2011
7. Agency Comments Received and Response from Applicant -January 27, 2012
8. Email from City Attorney on Critical Area Exception Process -June 17, 2010
9. Wetland and Stream Assessment Report- April 21, 2011 (Otak)
10. Mitigation Concept Memorandum - July 13, 2011 (Otak)
11. Draft Geotechnical Engineering Report- July 29, 2010 (Terracon Consultants, Inc)
12. Cultural Resources Assessment - November 11, 2010 (Northwest Archaeological Associates, Inc.)

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

FINDINGS

1. A road widening project for a section of NE Woodinville-Duvall Road is projected to be done by the City in the fall of 2012 (subject to City Council approval). The project would include widening of NE Woodinville-Duvall Road, an existing arterial roadway, to a three-lane configuration with development of center turn lane and pedestrian and bicycle facilities, a traffic signal, street lighting and drainage and landscaping improvements. *Exhibit 1, Staff Report pg. 2; Exhibit 3.*
2. Woodinville-Duvall Road is the major connection point for the east half of the City to downtown Woodinville, as well as to the State Route 522, State Route 9, and State Route 202. It is a through-access for communities east of Woodinville. The current number of average daily vehicular trips for NE Woodinville-Duvall Road is 25,300, which is expected to increase to 33,500 vehicular trips per day by 2030. *Exhibit 1, Staff Report pgs. 4 and 5.* The improved section of NE Woodinville-Duvall Road would result in capacity and safety improvements for vehicles, bicyclists, and pedestrians.
3. The proposed improvements to NE Woodinville-Duvall Road, an existing arterial roadway, would have fewer impacts than constructing a new roadway or upgrading nearby local access streets to provide for arterial-level traffic. *Testimony of Ms. Martindale.*
4. The portion of the NE Woodinville-Duvall Road that is proposed to be improved is public right-of-way with a roadway that is generally flat with a decrease in elevation as it moves from west to east. The road improvements would be done in right-of-way approximately 400 feet west of 156th Avenue NE to 50 feet east of 171st Place NE. *Exhibit 1, Staff Report pg. 1; Exhibit 3.* The proposed road improvements would include:
 - a) Additions of a center turn lane and another signal at 160th Avenue NE, which would improve the effectiveness of existing signals and implement turn restrictions;
 - b) The separation of left-turning traffic from through traffic with an addition of a center turn lane.
 - c) The improvement of local access for the neighborhood south of NE Woodinville-Duvall Road with the new signal at 160th Avenue NE.

- d) Signed and striped bike lanes and sidewalks that would increase the connections to adjacent residents and businesses, and provide better walking routes to Wellington Elementary and Leota Junior High schools.
 - e) Construction designs that avoid impacts to roadside wetlands wherever possible, and minimize limited incursions to the extent possible. Use of soldier pile and modular block walls will be used to minimize impacts to wetlands, as well as to minimize grading and tree removal.
5. Cold Creek, a Type 4 stream, crosses the roadway from the east side of the NE Old Woodinville-Duvall Road near Lake Leota. Immediately west of 167th Avenue NE, it passes on the south side of NE Woodinville-Duvall Road in the project area, before flowing south at 168th Avenue NE. The creek eventually flows in a northerly direction where it again abuts NE Old Woodinville--Duvall Road. *Exhibit 1, pg.3; Exhibit 3; Testimony of Ms. Speer.*
 6. The design of the project required a critical areas study, which identified four wetlands, each classified as a "Class 3" wetland as defined in the Woodinville Municipal Code (WMC) 21.24.320. Wetland 1, near the intersection of NE Woodinville-Duvall Road and 167th Avenue NE, is associated with the Cold Creek Stream on the south side of NE Woodinville-Duvall Road. It is a small riverine wetland associated with seasonal outflow from Cold Creek and is dominated with salmonberry. Wetland 2, on the north side of NE Woodinville-Duvall Road, west of the intersection with 165th Avenue NE, is a small depressional wetland that has scrub-shrub and forest components. Wetlands 3 and 4 are segments of a drainage ditch on the south side of NE Woodinville-Duvall Road east of the intersection with 156th Avenue NE and are dominated by invasive reed canary grass. *Exhibit 3; Exhibit 9, pg. 1.* In the City of Woodinville, Class 3 wetlands are regulated with a standard 50-foot wide buffer (WMC 21.24.330), which is measured from the delineated wetland edge. The buffer may be administratively reduced to 25 feet with buffer enhancement (WMC 21.24.330). *Exhibit 1, pg. 2.*
 7. In a technical memorandum, drafted for the City by the Otak consulting firm, the wetlands were identified and reviewed. In the memorandum, it was concluded that Wetlands 1 and 2 would have impacts to its required buffers from the delineated edge of wetland 1 of seven feet, and one foot for wetland 2. In addition, approximately 400 square feet of fill would be placed in Wetlands 3 and 4. *Exhibit 10, pg. 2; Exhibit 1, pg. 4 (chart).* Although the Army Corps of Engineers and the Washington Department of Ecology both indicated that no mitigation would be required for this small amount of wetland impact, the City of Woodinville determined that mitigation of these impacts must occur. *Exhibit 10, pg. 2.*
 8. WMC 21.24.080(1) allows critical area exceptions for projects that are constructed by a public agency, such as the proposed project. The City of Woodinville's proposal includes improvements that are to be done within the buffer (closer than 25 feet). A RUEX is required for the proposed wetland fill and impacts to the wetland buffer because there is no other permitted alteration in WMC 21.24.340 for direct impacts to wetlands with a different roadway. *Testimony of Ms. Martindale.*

9. A mitigation plan, projected to be implemented in Woodin Creek at Woodin Creek Park, would require fish and wetland buffer enhancement. An existing physical barrier and an existing log would be designed to allow water in low flow periods to continue to flow. Additionally, buffer enhancement, including removal of existing non-native invasive species and planting of native species, would be completed. A final planting plan would be submitted prior to construction, and any changes to the mitigation plan are subject to approval by the Development Services Director. *Testimony of Ms. Martindale*. There is no other reasonable use with less impact on the sensitive area. Mitigation for the fill will be provided and the general area and the sensitive areas will be improved. *Testimony of Ms. Martindale*.
10. While the proposed project is not for a regional stormwater facility, storm drainage improvements for both water quality and detention are proposed to improve the water quality for Cold Creek and Lake Leota. Included in these improvements would be replacement replanting on-site, including impacted stream buffer areas. In addition, off-site mitigation to Woodin Creek would be provided to replace the lost functions and values of the filled wetlands. Temporary erosion control measures would be installed, including storm rain inlet protection, silt fencing, check dams, seeding fertilizing and mulching, street cleaning, and a stabilized construction entrance. *Exhibit 1, pgs. 6 and 7; Exhibit 9*.
11. Cold Creek, categorized as a Type 4 stream (*see: WMC 21.24.370*), enters the project area in two locations. East of the intersection with NE Old Woodinville-Duvall Road, the stream crosses the roadway from north to south and flows toward Lake Leota, which is outside the project area. West of 167th Avenue NE, the stream reenters the project area and flows along the south side of NE Woodinville-Duvall Road for about a block, before flowing south at 168th Avenue NE into unincorporated King County and out of the project area. Because it is a Type 4 stream, it has a standard 50-foot wide buffer measured from the ordinary high water mark per the standards established in WMC 21.24.380.
12. The improved Road would cross Cold Creek in two locations: The first crossing would be between the intersections with NE Old Woodinville-Duvall Road and 160th Avenue NE at the point where NE Woodinville-Duvall Road crosses Cold Creek; and the second crossing would be at 167th Avenue where there would be a replacement of an existing 24" culvert for Cold Creek. Pursuant to WMC 21.24.390, road crossings are a permitted alteration to streams. Critical area alterations are subject to approval by the Woodinville Development Services Director, who has approved the crossings for this project. *Exhibit 1, pg; 4; Exhibit 3*.
13. The Director submitted that the approval of the crossings are supported by the following facts:
 - a) The existing stream crossings will not be changed and no new crossings are proposed;
 - b) The stream is a Type 4 stream with perennial or intermittent flows but is not used by fish;
 - c) The work at, or near, the identified crossings would occur during the summer months when there is no flow or surface water present;

- d) None of the crossings of the NE Woodinville-Duvall Road would be altered by the project;
 - e) No stream crossing would be altered even though the existing concrete culvert under 167th Avenue NE will be replaced;
 - f) There are no salmonid spawning areas in the project area.
Exhibit 1, pg. 5.
14. The project would relieve traffic congestion, improve safety, and add pedestrian and bicycle amenities on the NE Woodinville-Duvall Road. The design drafts of the project include plans that would be consistent with the Community Development Goal CD4 that is to create pedestrian friendly environment in Woodinville. *Exhibit 1, pg. 4.*
15. The design of the road improvement provides safe, convenient, and comfortable neighborhood access and integrates circulation to the city-wide transportation system. It emphasizes an arterial street system that would minimize potential for external traffic cutting through other neighborhoods. The design of the Road will improve the arterial street system to accommodate regional trips and would minimize potential for external traffic to use residential streets for through access. The proposed project is consistent with the City's Transportation Goal T-10 and sections therein. *Exhibit 1, pg. 4.*
16. The drainage improvements, traffic signal improvements, street lighting, and landscape improvements, as shown in the plans, would create more effective and safer conditions for the residents of the City. *Exhibit 2, pgs. 2 and 7; Exhibit 3.*
17. As part of the proposed project work within the wetlands and buffers, the City must secure a Critical Areas Permit and exception. On October 25, 2011, the City's Public Works Department submitted an application for a Critical Area Exception and SEPA Determination. The application became vested on November 22, 2011. A Notice of Complete Application was sent on November 29, 2011, and a Notice of Application issued on December 12, 2011, with a comment period through December 28, 2011. *Exhibits 4 and 5.*
18. A SEPA Determination of Nonsignificance was issued on March 12, 2012, with a comment period through March 26, 2012. No appeals were filed, but agency comments and an email were submitted. *Exhibits 2, 4, 5, 6, 7 and 8.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exceptions and associated variances pursuant to Chapter 36.70 of the Revised Code of Washington and WMC Chapter 21. 24. A critical area exception is required to be processed pursuant to WMC 2.30, Appeal Procedures. Per WMC 21.24.080, the Hearing Examiner conducts a closed record hearing to review the recommendation from the Development Services Director on critical area exceptions:

Applicable Ordinances

WMC 21.24.080 (1)(a) and (b) Exceptions.

- (1) If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this subsection:
 - (a) The public agency or utility shall apply to the Department and shall make available to the Department other related project documents such as permit applications to other agencies, special studies and environmental documents. The Development Services Director shall prepare a recommendation to the Hearing Examiner.
 - (b) The Hearing Examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 2.30 WMC. The Hearing Examiner shall make a decision based on the following criteria:
 - (i) There is no other practical alternative to the proposed development with less impact on the sensitive area; and
 - (ii) The proposal minimizes the impact on critical areas.

WMC 21.24.080 (2) (a) (b) and (c) Criteria for Review for Requests for Exceptions

- (2) If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection:
 - (a) The applicant shall apply to the Department, and the Development Services Director shall prepare a recommendation to the Hearing Examiner. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards for which a variance cannot be granted pursuant to the provisions of Chapter 21.44 WMC;
 - (b) The Hearing Examiner shall review the application and shall conduct a public hearing pursuant to the provisions of Chapter 2.30 WMC. The Hearing Examiner shall make a final decision based on the following criteria:
 - (i) The application of this chapter would deny all reasonable use of the property;
 - (ii) There is no other reasonable use with less impact on the sensitive area;
 - (iii) The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest;
 - (iv) Any alterations permitted to the sensitive area shall be the minimum necessary to allow for reasonable use of the property; and
 - (c) Any authorized alteration of a sensitive area under this subsection shall be subject to conditions established by the Hearing Examiner including, but not limited to, mitigation under an approved mitigation plan.

Conclusions based on Findings

1. The City of Woodinville Department of Public Works has applied for exceptions to the Critical Area Ordinances of the City of Woodinville. The requests have been made in order to construct improvements on a section of the Woodinville-Duvall Road. The Department of

Public Works has made available project documents including plans, special studies and agencies, special studies and environmental documents and has prepared a recommendation to the Hearing Examiner pursuant to WMC 21.21.080(b) (i-iv). *Findings of Fact Nos. 1, 4, 6, 7 and 19.*

2. The strict application of the Woodinville Critical Areas Chapter would deny all reasonable use of the property projected to be part of the road improvements in right-of-way from approximately 400 feet west of 156th Avenue NE to 50 feet, east of 171st Place NE. in the City of Woodinville. With the road improvements, traffic and drainage will be improved and access to residences in the area will be made available. The subject area, including the wetlands and buffer, are needed for this reasonable use, and no other reasonable use has been presented. *Findings of Fact Nos. 2, 3, 6, 8, 10, 13, 14, 15 and 16.*
3. There is no other reasonable use with less impact on the sensitive area. Mitigation for the fill will be provided and the general area and the sensitive areas will be improved. *Finding of Fact Nos. 3 and 9.*
4. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest. It is consistent with goals and policies of the Comprehensive Plan, improves the traffic and safety in the area and improves drainage in the general areas. The proposal, including that part of it that is to be done in critical area wetlands, is in the public interest. *Findings of Fact Nos. 4, 7, 8, 9, 10, 13, 14, 15 and 16.*
5. The construction in the sensitive areas will be the minimum necessary to allow for reasonable use of the property. *Findings of Fact Nos. 8 and 9.*

DECISION

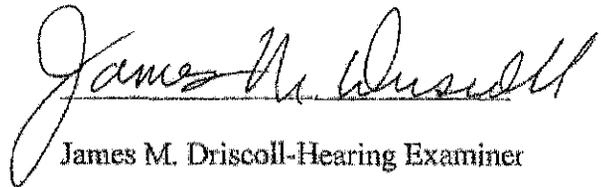
A Reasonable Use Critical Area Exception for a roadway widening project in public right-of way on NE Woodinville-Duvall Road is Granted. The Reasonable Use Critical Area Exceptions as identified in these Findings is GRANTED, and the project is approved subject to the following conditions.

1. All improvements shall be constructed in reasonable conformance with the approved 85% design plans (*see exhibit 3*), and as they are amended and clarified by the contracting and design process directed by the Public Works Director. The Planning Director may approve minor modifications of the plans submitted if the modifications do not change the Findings of Fact or the Conditions of Approval.
2. A final buffer mitigation plan shall be provided prior to the start of construction for review and approval by the Development Services Director. This plan shall include buffer enhancement at Woodin Creek at a ratio of 1:1.5 of the wetland area impacted by the NE Woodinville-Duvall Road (approximately 600 square feet), and shall show the improvements in the submitted Mitigation Concepts Memorandum prepared by Otak and dated July 13, 2011. Any proposed changes shall be reviewed and approved by the

Development Services Director prior to doing the changes work. All mitigation work shall be completed prior to finalizing the road widening project, or within the next planting season.

3. All required state, federal and other permits shall be obtained prior to beginning construction.
4. Any wall on private property over four (4) feet in height, or that carries a surcharge is required to obtain a separate building permit.
5. The stream biologist shall be on-site at all times during the use of heavy equipment within Woodin Creek or its buffer for the off-site mitigation
6. Tree removal on private property requires a tree removal permit and Tree Plan IV.
7. The final irrigation plan shall provide for coverage as required by WMC 21.16.110.

Dated this 29th day of June, 2012



James M. Driscoll-Hearing Examiner