

September 10, 2002

**OFFICE OF THE HEARING EXAMINER  
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**SUPPLEMENTAL REPORT ON REMAND FROM THE KING COUNTY COUNCIL**

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

**PANTHER MEADOWS**  
Preliminary Plat Application

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

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

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

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

### **Downstream Conveyance System Monitoring and Maintenance**

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

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

### **Sedimentation Buildup**

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

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

### **Lowering the Culvert Beneath SR 515**

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

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

### Catch Basins

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

### Additional Drainage Analysis

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

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

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

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

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

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

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

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

### **Applicability of RCW 58.17.120**

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

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

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

### **RECOMMENDED CONDITIONS**

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

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

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

RECOMMENDED this 10<sup>th</sup> day of September, 2002.

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Stafford L. Smith  
King County Hearing Examiner

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

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

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

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

The following exhibits were offered and entered into the record:

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

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