

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BELLEVUE**

In the Matter of the Consolidated Hearing
Process for the **PARK POINTE PUD**
Application and Appeals of the Mitigated
Determination of Non- Significance
(MDNS) and Critical Areas Land Use
Permit (CALUP) issued for such project:

AAD 23-01

**Department File Numbers: 16-143970-LK and
16-145946-LO**

COAL CREEK HOLDINGS, LLC,
Applicant/Respondent,

DECISION

**SAVE COAL CREEK AND ISSAQUAH ALPS
TRAILS CLUB,**
Appellants,

**CITY OF BELLEVUE DEVELOPMENT
SERVICES DEPARTMENT,**
RESPONDENT.

*(Project: Planned Unit Development (PUD)
proposal consisting of 35 single-family detached
residences on a 12.2-acre site located at 7219 and
7331 Lakemont Blvd. SE in the City of Bellevue,
Washington)*

I. SUMMARY OF DECISION.

The appellants failed to meet their burden of proof, so their appeals of the SEPA MDNS and Critical Areas Land Use Permit (CALUP) issued for this project must be denied. The applicant presented a preponderance of evidence establishing that its pending proposal for a Planned Unit Development (PUD) merits approval, subject to conditions.

**DECISION ON PARK POINTE PUD AND APPEALS
OF MDNS AND CALUP ISSUED FOR SUCH
PROJECT – AAD 23-01, AND DEPARTMENT FILE
NUMBERS 16-143970-LK AND 16-145946-LO**

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II. PROCEDURAL BACKGROUND.

The applicant, Coal Creek Holdings, LLC, initiated the application process for the current development proposal now known as the Park Pointe Planned Unit Development (PUD) at some point in 2016 using paper materials, and resubmitted application materials using the City’s online/paperless format on or about April 13, 2021. (*Staff Report, page 6, DSD-00000006-07*).

The Park Pointe PUD would allow for 35 single-family detached residences on a 12.2-acre site, with the residential development concentrated in the eastern portion of the site on about 5.9 acres adjacent to Lakemont Boulevard SE, and the other 6.3-acres of the site contained in a separate 6.3-acre critical areas tract, known as “Tract Z”, which will be dedicated to the City of Bellevue. The land to be preserved in Tract Z and dedicated to the City of Bellevue is about 51.5% of the site area. (*Staff Report, pages 3 and 5*).

The requested PUD requires a Process I public hearing and final decision by the City’s Hearing Examiner, consistent with provisions found in the City’s Land Use Code (LUC) at LUC 20.30D. Given undisputed site conditions, the project also requires a separate Critical Areas Land Use Permit (CALUP) addressed in LUC 20.30P, and a SEPA threshold determination, addressed in BCC 22.02. Both the CALUP and SEPA determination are considered Process II land use decisions made administratively by the Director, which are subject to appeal before the Examiner.

On January 26, 2023, the City’s Interim Co-Director of the Development Services Department, Elizabeth Stead, issued a combined Staff Report for the Park Pointe proposal, which included a recommendation of approval for the requested PUD, subject to detailed conditions of approval; a final administrative decision approving the requested CALUP; and a Mitigated Determination of Non-Significance (MDNS). (*Staff Report, DSD 000001-133*).

On February 9, 2023, the appellants, Save Coal Creek and the Issaquah Alps Trail Club, filed a joint Notice of Appeal challenging the MDNS and CALUP decisions. There is no dispute that appellants have standing to pursue their appeals. Consistent with LUC 20.35.250.C, the appeals were consolidated into a single hearing process before the Hearing Examiner for the underlying PUD application.

Consistent with public notices and pre-hearing orders issued for this matter, the open record pre-decision public hearing for the PUD occurred on March 2, 2023, with written comments from appellant’s counsel regarding the PUD application due no later than March 9, 2023. The applicant’s response to PUD public hearing comments was timely filed on April 16, 2023.

The parties to the appeal portion of the hearing process cooperated with one another and exchanged lists of witnesses and copies of proposed exhibits in accord with the pre-

1 hearing order. The appeal portion of the hearing process occurred on April 17, 18, 19, and
2 24, 2023, with witnesses called by counsel and subject to cross-examination by other parties.
3 Closing arguments were provided in the form of briefs, all filed in a timely manner, with
4 timing extended on request of the parties. The Examiner explained that this was a complex
5 matter, with multiple issues, and that a Decision would take more time than usual. Upon
6 consideration of all evidence included in the record, relevant caselaw and applicable law, this
7 Decision is now in order.

8 **III. APPLICABLE LAW.**

9 ***Jurisdiction.***

10 There is no dispute that applications for a Planned Unit Development are subject to a
11 Process I open record public hearing and final decision by the City's Hearing Examiner (*see*
12 *LUC 20.35.015.B.3*), and that any appeals of associated Process II administrative decisions,
13 including an MDNS and a CALUP, are consolidated into a single hearing process before the
14 Examiner. (*LUC 20.35.250.C; and LUC 20.35.015.C, for list of Process II matters*).

15 ***Decision Criteria for PUD.***

16 LUC 20.30D.150 provides the Decision Criteria for approval of a Planned Unit
17 Development, and reads as follows:

18 The City may approve or approve with modifications a Planned Unit Development plan if:

19 A. The Planned Unit Development is consistent with the Comprehensive Plan; and

20 B. The Planned Unit Development accomplishes, by the use of permitted flexibility and
21 variation in design, a development that is better than that resulting from
22 traditional development. Net benefit to the City may be demonstrated by one or more of
23 the following:

- 24 1. Placement, type or reduced bulk of structures; or
- 25 2. Interconnected usable open space; or
- 26 3. Recreation facilities; or
1. Other public facilities; or
2. Conservation of natural features, vegetation and on-site soils; or
3. Reduction in hard surfaces; or
4. Conservation of critical areas and critical area buffers beyond that required
under Part 20.25H LUC; or
5. Aesthetic features and harmonious design; or
6. Energy efficient site design or building features; or
7. Use of low impact development techniques; and

8. The Planned Unit Development results in no greater burden on present and projected
public utilities and services than would result from traditional development and
the Planned Unit Development will be served by adequate public or private facilities

including streets, fire protection, and utilities; and

D. The perimeter of the Planned Unit Development is compatible with the existing land use or property that abuts or is directly across the street from the subject property. Compatibility includes but is not limited to size, scale, mass and architectural design of proposed structures; and

E. Landscaping within and along the perimeter of the Planned Unit Development is superior to that required by this code, LUC 20.20.520 and landscaping requirements applicable to specific districts contained in Chapter 20.25 LUC, and enhances the visual compatibility of the development with the surrounding neighborhood; and

F. At least one major circulation point is functionally connected to a public right-of-way; and

G. Open space, where provided to meet the requirements of LUC 20.30D.160.A.1, within the Planned Unit Development is an integrated part of the project rather than an isolated element of the project; and

H. The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity; and

I. That part of a Planned Unit Development in a transition area meets the intent of the transition area requirements, Part 20.25B LUC, although the specific dimensional requirements of Part 20.25B LUC may be modified through the Planned Unit Development process; and

J. Roads and streets, whether public or private, within and contiguous to the site comply with Transportation Department guidelines for construction of streets; and

K. Streets and sidewalks, existing and proposed, are suitable and adequate to carry anticipated traffic within the proposed project and in the vicinity of the proposed project; and

L. Each phase of the proposed development, as it is planned to be completed, contains the required parking spaces, open space, recreation space, landscaping and utility area necessary for creating and sustaining a desirable and stable environment.

Burden of Proof for PUD application.

To obtain approval of the requested PUD, the applicant shall have the burden of proof and must demonstrate by a preponderance of the evidence, that the application merits approval or approval with modifications. (*Rule 2.6, Bellevue Hearing Examiner Rules of Procedure*). The preponderance of evidence standard is equivalent to “more likely than not.” *In re. Pres. Restraint of Woods*, 154 Wn.2d 400, 414, 114 P.3d 607 (2005).

1 ***Burden of Proof on Appeals, Substantial Weight Given to Director’s Decision:***

2 In their appeals, the appellants bear the burden of proof to establish that the challenged
3 SEPA threshold determination and CALUP are not supported by a preponderance of
4 evidence. *LUC 20.35.250.E*. The same provision of the City’s Land Use Code mandates
5 that the Hearing Examiner “*shall accord substantial weight*” to the Process II decisions
6 challenged in this appeal.

7 For the challenged SEPA MDNS, the same deference is required by RCW
8 43.32C.090. Such deference is further mandated by Washington caselaw, including
9 *Anderson v. Pierce County*, 86 Wn. App. 290 (1997) (holding that substantial weight is
10 accorded to agency threshold determinations), and is consistent with *WAC 197-11-*
11 *680(3)(a)(viii)* (“*Agencies shall provide that procedural determinations made by the*
12 *responsible official shall be entitled to substantial weight.*”). However, substantial weight,
13 like judicial deference to agency decisions, is neither unlimited nor does it approximate a
14 rubber stamp. See *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*,
15 161 Wn.2d 415, 435 n.8, 166 P.3d 1198 (2007); and *Concerned Friends of Ferry County v.*
16 *Ferry County*, 191 Wn. App. 803, 365 P.3d 207 (Div. II, 2015). If an environmental impact
17 statement is required by the weight of evidence and if a government agency’s SEPA official
18 does not require an environmental impact statement (as it did not here), then the decision is
19 clearly erroneous. *King County*, 122 Wn.2d at 667; *Norway Hill*, 87 Wn.2d at 274.

20 **IV. RECORD AND EXHIBITS.**

21 Exhibits entered into evidence as part of the record, and an audio recording of the
22 open record public hearing for the requested PUD, and the continued hearing process for
23 the consolidated appeals of the MDNS and CALUP issued for this project, are maintained
24 by the City of Bellevue, and may be examined or reviewed by contacting the Clerk in the
25 Hearing Examiner’s Office.

26 Throughout the hearing process, Special Counsel, J. Zachary (“Zach”) Lell, from the
Ogden Murphy Wallace law firm represented city staff who generated the Staff Report for
the PUD, CALUP, and MDNS, and oversaw preparation of environmental review documents
included in the record; Dean Williams, from the Johns Monroe Mitsunaga Kolouskova law
firm, represented the applicant, Coal Creek Holdings, LLC; and Claudia Newman and
Audrey Clungeon, from the Bricklin & Newman law firm represented the appellants, Save
Coal Creek and Issaquah Alps Trail Club.

Exhibits: The Record includes all pre-hearing orders, motions, and briefs filed or issued
before and after the hearing, copies of which are maintained by the Clerk for the Hearing
Examiner’s Office, and all exhibits described and numbered on the attached Exhibit Lists.

1 **Hearing Testimony:** The following individuals presented testimony under oath at the duly
2 noticed public hearing for the underlying application, which occurred on March 2, 2023, with
3 most participants appearing in-person at Bellevue City Hall, and other participating via an
4 online hearing platform coordinated by staff.

5 *For the City of Bellevue:* Reilly Pittman, Environmental Planning Manager, for Development Services
6 Department;

7 *For the applicant:* Dean Williams, counsel for the applicant.

8 *Public Comments:*

- 9 1. Steve Williams
- 10 2. Randy Gaddy
- 11 3. Michael Intlekofer
- 12 4. Don Marsh
- 13 5. Vivian Chin
- 14 6. Barb Williams
- 15 7. Sally Lawrence
- 16 8. David Kappler
- 17 9. Anne Newcomb
- 18 10. Marika Bell
- 19 11. Barbara Braun
- 20 12. Curtis Allred
- 21 13. Elaine Duncan
- 22 14. Garry Kampen
- 23 15. Grace Ostrom
- 24 16. Stacy Hauser
- 25 17. Trudi Jackson
- 26 18. Franja Bryant
- 19 19. Alison Evans
- 20 20. Thomas Doe
- 21 21. Nicole Price
- 22 22. Ryan McIrvin
- 23 23. Ella Woodward
- 24 24. David Murray
- 25 25. Peggy Price
- 26 26. Alex Zimmerman
- 27 27. Mark Norelius
- 28 28. Doug Smith
- 29 29. Erica Bonilla

21 Responses to public comments were provided by Zach Lell, Special Counsel for the Department, with brief
22 follow-up testimony from Mr. Pittman; and by Mr. Williams, for the applicant, who provided brief initial
23 responses to public comments, with the opportunity to submit a written response to public hearing comments,
24 which was submitted to the Examiner's Office and counsel for other parties in the form of an 11-page letter,
dated April 16, 2023, with an attached chart responding to 102 separate public comments, listed and numbered
as shown on the City's Index of Written Comments.

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1 *Appeal Hearing Testimony:*

2 *April 17, 18, 19, 24, 2023*

3 *Appellants' Witnesses: Brief summaries of topics raised in testimony are provided below,*
4 *but should not be read to modify or diminish full testimony provided by each witness, all of*
5 *which has been considered in preparing this Decision.*

6 1. Sally Lawrence, local resident, hiker, resume included in the record as Ex. S-47; addressed
7 concerns about water quality issues, in Coal Creek, Stream 1, and area, how development
8 could impact water quality, wants land to become part of Bellevue Parks' system, does not
9 want homes on the property;

10 2. John Adams, architect, resume included in the record as Ex. S-43. Offered testimony
11 explaining his concerns about potential aesthetic and land use impacts. Believes the site is
12 uniquely situated, that the proposed PUD is incompatible with the area; concerns about
13 possible height, bulk, scale impacts; concerns about density of homes where they will be
14 clustered;

15 3. William "Bill" Lider, P.E., called by appellants as an expert to address stormwater
16 impacts, resume included in the record as Ex. S-42. Disagrees that stormwater cannot be
17 dispersed on the site, suggests it could be accomplished by eliminating Lots 5-20. Suggested
18 that "salmon-safe" certification is a low bar. Described concerns with stormwater manual
19 minimum requirements, including 5, 4, and 8, as well as concerns about proposed directional
20 boring for utility work, suggested that sewer line design could fail, cause impacts, concerns
21 about potential backups into lowest house, believes project will have significant stormwater
22 and sewage impacts. Mr. Lider was the only appellant witness called a second time for
23 purposes of providing rebuttal testimony after all applicant and city witnesses concluded their
24 testimony;

25 4. Brian Footen, resume at Ex. S-46, called by appellants to testify as an expert about impacts
26 on streams, Coal Creek, fish and fish habitat. Expressed concerns that there was inadequate
data about presence of fish, or not, in streams, particularly Stream 1. On cross, he was shown
map found in Appx. A to S-68, where Yellow shows fish-bearing, and tan is used for non-
fish-bearing streams, and not all areas of expressed concern were actually marked showing
them to be fish-bearing.

5. Steve Williams, local resident, provided extensive testimony and written materials,
including book on history of mining in the area during the PUD portion of the hearing, called
during appeal portion of hearing for appellants to testify regarding his personal observations
regarding wildlife, mine hazards, aesthetics, recreation concerns, and historic/cultural
resources in and around the project site.

6. Mark Jordan, resume at Ex. S-45, called by appellants to testify as an expert regarding

1 potential wildlife impacts of the project. Believes habitat connectivity is important, disagrees
2 with Staff, that Lakemont Blvd. somehow breaks connectivity. Suggested a wildlife
3 underpass as mitigation (*S-67, Jordan Wildlife Report, at page 6*). On cross, Mr. Jordon
conceded that he has not visited the property, could not speak to engineering or digging
questions about possible underpass.

4 7. Garry Kampen, President of Newcastle Trails, offered testimony regarding potential
5 impacts on recreation. Called the site a priceless area that can never be replaced, compared
it to Notre Dame, Central Park.

6 *Applicant witnesses regarding the appeals:*

7
8 1. Ron Froton, Project Manager for Coal Creek Holdings, LLC, explained history of
9 ownership and parties involved in proposals to develop the site since annexation into the City
10 of Bellevue; noted that owners never refused any offer to purchase the site; mentioned that
11 the “Commons” project in Newcastle has views into the park corridor, so high density uses
are visible elsewhere along the trail [this project would not stand alone, as development that
is visible from trail]; mentioned that sale mechanism for units would most likely be as
condominiums, but he could not say for sure.

12 2. Scott Sherrow, P.E., Principal with Pace Engineers, called by the applicant/respondent to
13 address civil engineering aspects of the project. Offered detailed testimony rejecting
14 concerns by Mr. Lider regarding sewer system, differences between gravity and force main
15 systems. Credibly described how system will satisfy city standards and Ecology’s Orange
Book regarding sewer line design. Addressed Mr. Lider’s concerns about directional boring,
rebutted speculative testimony on topic.

16 3. Tim Gabelein, P.E., with DCG Inc., called by the applicant/respondent to address
17 stormwater control issues raised in the appeals.

18 4. Michael Lubovich, P.E., with Kennedy Jenks, called by the applicant/respondent to
19 address concerns expressed about the proposed sewer lift station, offered credible testimony
20 as a qualified professional regarding how lift station would function, operate, and be
21 maintained. He disagrees with Mr. Lider that a 35-home lift station would have high
22 maintenance costs; noted that failures of pumps in city approved systems are reported directly
to the City via a telemetry system for the facility, so the City receives problem message
immediately. Expressed opinion that it would be highly unlikely multiple even failures
would occur, and that a failed pump would not cause the lift station holding tank to fill up.

23 5. Kevin Donald, Project Manager, Tierra ROW, called by the applicant/respondent to
24 address cultural resource considerations for the project, summarized review of DAHP
25 resources, pedestrian survey, test digs, shovel dig; confirmed that the site is not eligible for
listing, but that there is an Inadvertent Discovery Plan that will apply to groundwork on the

1 site.

2 6. Brian Beaman, P.E., Principal with Icicle Creek Engineers, provided credible, expert
3 testimony, describing condition of mine shafts in and around the project site. Mr. Beaman is
4 one of the 3 most qualified experts in the state regarding coal mine hazards, noted examples
5 of other large developments in the region with coal mine hazards, that have not experienced
6 adverse impacts like sinkholes feared by appellant witnesses, largely because the projects
7 were designed to follow recommendations he and his firm provided. These projects include
8 Talus, Suncadia, and Issaquah Highlands. Mr. Beaman noted that weight of the proposed
9 stormwater vault would be less than ground (dirt, soil, etc.) that is being removed for its
10 installation, so it will be lighter than the present load that exists over the limited part of the
11 project site most affected by a mine below, along the south end of the property where the
12 stormwater vault is now proposed. The Examiner finds and concludes that Mr. Beaman was
13 probably the most qualified expert to testify on any subject through the course of the hearing,
14 and that his testimony credibly and substantially rebutted public comments and appeal
15 testimony regarding potential coal mine hazards for the proposed PUD. Despite strong
16 questions from appellant's counsel, Mr. Beaman's testimony with examples of previous
17 projects he has worked on, fully supports the Staff Report analysis and conditions, all of
18 which establish how the PUD has been designed or conditioned to appropriately address
19 potential coal mine hazards as the development process unfolds.

20 7. Brian Way, licensed landscape architect, Project Manager with PACE Engineers, called
21 by the applicant to describe the landscaping plans, conceptual plantings, and tree retention
22 plans, that he oversaw for this project, included in the record as Ex. S-2, at DSD 151, Sheet
23 L1, Preliminary Landscape Plan. He noted that newly planted trees included in the plan
24 would take about 5 to 10 years to provide a good screen from Lakemont Blvd.

25 8. Dave Teesdale, Senior Ecologist, Project Manager, with Talasaea Consultants, Inc., called
26 by the applicant to address streams, fish, wildlife in the area. Heard testimony about potential
presence of fish in streams, noted that Stream 1 has a waterfall as it leads down to Coal Creek
(the same waterfall many members of the public enjoy seeing along the trail route), which is
too high for fish to jump; says stream 2 has a 'nasty cascade' down to stream 1, so fish could
not get up there, and there is no evidence of fish there; noted that there is no "fish recruitment"
because of the waterfall, and that there is no habitat for fish to live given the presence of 'rust
colored' water, where 'ferrous hydroxide' depletes oxygen in water. Noted how the
significant blackberry cluster on the site, and an abandoned car, serve as barriers to animals;
that the new plantings will be good for habitat.

9. Jim Strange, P.E., called by the applicant to address geotechnical issues raised in the
appeal.

1 *Witnesses called by the City:*

2 1. Molly Johnson, P.E., Transportation Development Review Manager, in the City's
3 Transportation Department, called by the City to address traffic and transportation issues
4 raised in appeals. Ms. Johnson credibly explained how she has heard nothing in the course
5 of the appeal that would cause her to believe that the project will result in adverse
6 transportation related impacts.

7 2. Mark Dewey, Senior Utilities Review Professional, 23 years in his position with the City's
8 Utilities Department, called by the City to address stormwater and sewer utility system design
9 reviews that will be required for the project. Mr. Dewey concurred with engineering
10 testimony from applicant witnesses, regarding stormwater and sewer system design issues,
11 and that the Staff Report and MDNS adequately address potential impacts on those topics.
12 Regarding Mr. Lider's concerns that utility systems would have operational and maintenance
13 problems, Mr. Dewey disagreed, noting that the City of Bellevue monitors lift stations (like
14 some around Lake Sammamish), and that they are monitored by staff off-site using telemetry,
15 on a 24-hour basis, so staff can be sent out after an alarm; "we already do that" – monitoring
16 utility facilities like those proposed in this project 24-hours, 7-days a week, 365-days per
17 year. Mr. Dewey provided detailed, credible testimony summarizing reasons why he believes
18 appellant's concerns about sewer and stormwater system facilities are adequately addressed
19 in the Staff Report, proposed conditions, and the MDNS.

20 3. Reilley Pittman, Environmental Planning Manager, for the City. Provided credible and
21 detailed testimony responding to issues raised in the appeal, as addressed throughout the Staff
22 Report, MDNS, CALUP, and this Decision.

23 4. Elizabeth Stead, Interim Co-Director, Land Use Director, for the City's Development
24 Services Department. Provided credible and detailed testimony responding to issues raised
25 in the appeals, confirmed that she heard no new evidence or testimony that would cause her
26 to change her MDNS and CALUP decisions that are at issue in the appeals.

Site Visits: The Examiner personally visited the project site, before and after the hearing,
on several occasions, walking the trail segments east and west of the project site, looking in
from Lakemont Blvd., observing surrounding properties in the area and down into Newcastle
that abut the Coal Creek Trail corridor, and the local road network that would serve the
applicant's proposal.

Closing Briefs: In lieu of closing arguments at the conclusion of the public hearing, counsel
for all parties to the SEPA appeal requested the opportunity to submit post-hearing briefs,
which are included as part of the record. Because Appellants bear the burden of proof, their
Closing Brief was filed first, followed by Closing/Post-Hearing Briefs from both the
applicant and the City, ending with a Reply Brief from the appellants.

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V. FINDINGS OF FACT.

Based on the record, and following consideration of all the evidence, testimony, codes, policies, regulations, and other information included therein, the undersigned issues the following findings of fact:

1. All statements of fact included in previous or following sections of this Decision, that are deemed to be findings of fact are incorporated by reference into this section as findings of fact issued by the Hearing Examiner. Captions used in this Decision are for the convenience of the reader and should not be read to modify the meaning of any particular finding.

2. The application at issue in this consolidated hearing process is for a Process I Planned Unit Development (PUD) that would authorize a project with 35 single-family detached residences on a 12.2-acre site known as “Park Pointe” along Lakemont Boulevard SE in the City of Bellevue. The project includes two private roads, various utility improvements, landscaping, trails, and frontage improvements. The development would be clustered and concentrated in the 5.9-acre eastern portion of the property, with the remaining 6.3-acres of the site placed in a separate critical areas tract and dedicated to the City of Bellevue. (*Staff Report, pages 3-5*). In accord with City codes, the associated appeals of the SEPA Mitigated Determination of Non-Significance (MDNS) and the Critical Areas Land Use Permit (CALUP) issued for this project have been consolidated into this single hearing process.

3. Coal Creek Holdings, LLC is the project applicant (“Applicant”). Two organizations, Save Coal Creek and the Issaquah Alps Trails Club, are the appellants, challenging the SEPA MDNS and CALUP issued for this project by the City’s Development Services Department.

Location, Project Description.

4. The Park Point project site is about 12.2-acres located on two lots, currently addressed as 7219 and 7331 Lakemont Blvd. SE, in the south portion of the City of Bellevue, in the Newcastle subarea, near the City of Newcastle to the southwest. There is no dispute that the site contains critical areas, including steep slopes, wetlands, streams, and coal mine hazards. (*Staff Report, pages 3 and 7; Site visits*).

5. The site is surrounded on the north, west and south sides by the City-owned, 450-acre Coal Creek Natural Area. Across Lakemont Blvd. to the southeast is the Redtown Trailhead and the King County Cougar Mountain Regional Wildland Park, with about 3,100-acres of natural open space. The western portion of the site is encumbered by King County restrictive covenants that limit development, and portions of the property covered by such restrictions

1 are not included in development aspects of this proposal and were not included for purposes
2 of performing density calculations. *(Staff Report, pages 8, 9).*

3 6. The proposed 35-unit residential development would be concentrated on the eastern
4 portion of the site (identified as Tract A in the proposed site plans), on approximately 5.9
5 acres of the site adjacent to Lakemont Blvd SE. The proposed single-family detached
6 residences are clustered on the development parcel and are not proposed on separate platted
7 lots. Critical areas and critical area buffers are proposed to be contained in a separate 6.3-acre
8 critical areas tract (Tract Z), made up of the west portion of the site, which is about 51.5% of
9 the total site area. *(Staff Report, page 3).*

10 7. There is no dispute that this area of the City was once used for coal mining, and there
11 is a network of abandoned underground coal mines on surrounding properties that encroaches
12 onto portions of the Park Pointe project site. *(Staff Report, pages 25-30; Testimony of local
13 residents and history buffs, including Mr. Williams; See book submitted into the record by
14 Mr. Williams, numbered as Written Public Comment No. 98, on pages 141-334, titled "The
15 Coals of Newcastle, A Hundred Years of Hidden History" by the Newcastle Historic Society).*

16 8. As noted by multiple members of the public during the open-record hearing for the
17 PUD, the former owner of the property was Milt Swanson, a locally renowned coal mining
18 historian, who lived on the site for 90 years. *(Staff Report, page 70).* While the Parks
19 Department has existing interpretive signage along the Coal Creek Natural Area trail
20 addressing coal mining history generally, there is nothing to recognize Mr. Swanson, so as
21 part of this project, a condition of approval for this project will require the applicant to
provide additional signage to recognize Mr. Swanson. *(Staff Report, page 70; Conditions of
Approval regarding Interpretative Signage for Coal Mining History).*

22 9. For more than 60 years, the eastern portion of the site – Tract A, where the residential
23 development is proposed – was used as a working farm and is now largely comprised of
24 meadow. It now includes three houses, one barn, and five outbuildings. *(Staff Report, pages
25 9, 10).* The Staff Report explains that a Cultural Resources Assessment performed in 2017
26 concluded that none of the existing structures are eligible for local, state, or federal historic
registers. *(Staff Report, on page 9, citing Assessment on DSD 001090-1191).* Throughout
the hearing process, no one offered evidence from a qualified professional to rebut findings
in the Cultural Resources Assessment. The existing structures will be removed as part of the
proposed development. *(Staff Report, page 9).*

27 10. The project site is zoned R-3.5 under the City's zoning code and is designated as
28 Single-Family Medium (SD-M) in the City's Comprehensive Plan. *(Staff Report, page 8).*
29 While some appellant witnesses and members of the public opposing the project expressed
30 their concerns that the PUD might feel like a neighborhood with greater density than seen in
31 projects to the north, with larger lots, wider setbacks and the like, no one offered a
preponderance of evidence or legal authority to rebut the Staff Report's findings and analysis

1 demonstrating how this project satisfies residential density standards for the project site. The
2 aggregate density for this PUD is about 2.87 dwelling units per acre – significantly below the
3 maximum allowable density for the zone. (*Staff Report, page 000067*).

4 11. The proposed PUD Site Plan is found at DSD 000140, and is republished below:



22 12. The Staff Report credibly summarizes the application timeline, public notices issued,
23 and public comments received. (*Staff Report, summary of notices, comments, and responses,*
24 *on pages 73-84*).

25 13. There is no dispute that since the property was annexed as part of the City of
26 Bellevue, the City has never taken steps to purchase the applicant's property for park or open
space purposes, as dozens of project opponents support. Instead, the property has at all

1 relevant times been zoned for residential development and has remained in private ownership.

2 14. In accord with LUC 20.35.080, on January 26, 2023, City of Bellevue Development
3 Services Interim-Director Elizabeth Stead issued a combined Staff Report for the Park Pointe
4 proposal providing a recommendation for approval regarding the requested PUD, a final
5 decision approving the CALUP, and SEPA MDNS. (*Staff Report, in Project File at DSD*
6 *000001 – 000133, also referenced in some briefs as Ex. S-1*).

7 15. The Staff Report credibly and thoroughly evaluated the Applicant’s PUD and CALUP
8 applications under the applicable Land Use Code approval criteria; conducted a SEPA review
9 of the proposal’s anticipated environmental impacts; acknowledged and responded to public
10 comments; imposed several pages of conditions for the CALUP and MDNS, and
11 recommended over 50 Conditions of Approval for the PUD, with all conditions applicable to
12 the project as a whole (unless noted otherwise). (*Staff Report, 58 Conditions of Approval on*
13 *pages 118-133*). The Examiner finds and concludes that testimony and evidence presented
14 by Applicant and City witnesses throughout the hearing process, even following thorough
15 and specific cross-examinations, fully supports the Staff Report.

16 16. There is no dispute that the appellants filed a timely written Notice of Appeal
17 challenging the CALUP and MDNS issued for this project. Neither the applicant or the
18 Department raised any procedural objections, like standing, that would have prevented the
19 appeal from moving forward.

20 17. Consistent with LUC 20.35.250.C, the appeals were consolidated with the underlying
21 PUD application hearing process before the City’s Hearing Examiner.

22 18. During the portion of the hearing process where public comments were offered
23 regarding the proposed PUD, almost 30 individuals provided testimony expressing their
24 concerns about the proposal, most in strong opposition to any residential development on the
25 site, and most expressing a strong desire to see the City of Bellevue purchase the property for
26 park or open space purposes. Before the hearing, Staff received dozens of written comments
from local residents and other interested parties. Comments were from Bellevue residents,
as well as people who live outside the City but enjoy the trails and recreational amenities in
the area. (*Public hearing Testimony; Index of Written Public Comments; DSD 001669-*
002137).

19 19. Public comments failed to provide sufficient evidence or controlling law that would
20 rebut the thorough analysis of facts, reports generated by qualified professionals, and
21 determinations on how the proposed development has been designed or can be conditioned
22 to comply with applicable approval criteria for a PUD, all credibly explained in the Staff
23 Report, and further supported by testimony from qualified professionals and experienced City
24 Staff through the course of this consolidated hearing process.

1 20. The consistent theme from most opposition comments, explicitly and implicitly, was
2 a plea to City leaders to purchase the Park Pointe property for park, open space, or historic
3 preservation purposes. There is no dispute this has not come to pass, and instead, the property
4 has held a zoning designation allowing for single-family residential development for over a
decade, and the property has been included in the City's long-term planning documents as a
potential residential development site – not a park, trail, or open space.

5 21. Neither Staff or the Examiner hold discretion or authority to deny a project application
6 that satisfies applicable approval criteria, as part of an effort to prevent development and hold
7 the site open for eventual sale or dedication as a park or open space. (*Staff Report, pages 78-
79, response to written comments advocating for city acquisition of the property; Testimony
of Ms. Stead*).

8 22. Public comments expressing general concerns about seeing new houses and urban-
9 type development within the PUD from surrounding trails or public recreation areas appear
10 to ignore the fact that the greater Coal Creek Natural Area is already surrounded by similar
11 housing developments in Bellevue as well as neighboring Newcastle. (*Site visits; Aerial
12 maps; Testimony of Mr. Pittman; Staff Report, including without limitation response to
13 comments about density and compatibility with surrounding development in the area on
14 pages 79-80*). In fact, a townhouse project in the City of Newcastle (on or near Newcastle
Commons Drive) is already well within view of hikers and users of the Coal Creek trail and
park system, so much so that users may be able to see into windows of the homes. (*Aerial
maps, Street View images, particularly multifamily buildings located up near trail along 134th
Pl. SE; Site visit*).

15 23. In contrast, substantial evidence in the record establishes that his PUD project will
16 include plantings and other design features to minimize views into the part of the property
17 where new homes will be located. Many public comments in the PUD hearing, and witnesses
18 in the appeal hearing, expressed concerns about potential adverse impacts on recreational
19 opportunities and venues in and around the site. As for use of the property itself, the site is
20 private property, so it is not required to serve as a recreational venue. And, comments
21 opposing the project by alleging that the perimeter of the Park Pointe PUD development –
22 most all of which will be on Tract A – will not reach to the edges of the adjacent Coal Creek
23 Natural Area. Instead, the development site, Tract A, is surrounded on the north, west, and
24 south, by areas that will be dedicated as part of the critical areas, trail, and open space tract,
25 with new trails running through the middle and east side of the PUD project. (*See Ex. S-2,
Preliminary Landscape Plan, at DSD 000151*).

26 24. As designed and conditioned as recommended in the Staff Report, the Park Pointe
PUD will include or provide the following public benefits, all of which are appropriate,
supported by evidence in the record, and capable of accomplishment, and adequately address
many of the environmental concerns raised throughout the public comment and hearing
process for this project:

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- 1 • Permanent preservation of over half (6.3 acres) of the project site’s highest value
2 habitat through the dedication of Tract Z or the granting of a Native Growth Protection
3 Easement. (*Staff Report, pages 3, 5, 64-65, 131; Condition of Approval No. 47*).
- 4 • Preservation, restoration and enhancement of on-site critical areas and buffers along
5 the periphery of the project site. (*Staff Report, pages 3, 67-68; DSD 000139; DSD
6 000157; DSD 000498; DSD 000499-000500*).
- 7 • Site design and architecture features addressing the size, scale, mass and
8 architectural features of future homes to ensure compatibility with surrounding, pre-
9 existing land uses. (*Staff Report, pages 67, 99-101; DSD 000157 – 000194*).
- 10 • Installation of a marked pedestrian crosswalk with a Rectangular Rapid Flashing
11 Beacon (RRFB) across Lakemont Boulevard near the Red Town trailhead parking area.
12 (*Staff Report, page 123; Condition of Approval No. 20*).
- 13 • Improved stormwater quality through pretreatment and discharge from a tightline
14 conveyance pipe to a single outfall. (*DSD 000762 – 000763*).
- 15 • Improved quality of storm and surface water by eliminating the tainted runoff and
16 groundwater pollution from on-site septic systems. (*Staff Report, pages 82-83*).

17 25. General comments opposing residential use of the site run contrary to long-standing
18 City Comprehensive Plan goals and policies, particularly those that promote Bellevue as “a
19 City in a Park.” (*Testimony of Mr. Pittman*). The proposed PUD does both – it provides
20 additional urban style housing in a clustered development, and sets aside over half the site
21 for public, open space, uses, to be dedicated to the City or preserved in a Native Growth
22 Protection Easement. (*Condition No. 47; Ex. S-56, at p. 13; Ex. 57, at 161*).

23 26. Public comments, testimony by appellant witnesses during the appeal hearing, and
24 arguments provided by Appellant’s counsel, appropriately expressed concerns about how the
25 public can be confident that future reviews, permits, and approvals required for construction
26 or development of the site will comply with various conditions, referenced standards, reports,
and requirements referenced in the Staff Report. Arguments included speculation that a
future owner/developer on the site might attempt to build homes with a 40-foot façade, or up
to whatever height and bulk limit in effect at the time; that landscaping and planting
commitments might not be fulfilled; and that some utility infrastructure might not comply
with applicable stormwater system design requirements, among other things.

27 27. While Condition of Approval No. 1 explains that construction permits will be required
28 for any clearing/grading or construction activity, and that “Plans submitted as part of any
29 permit application shall be consistent with the activity permitted under this approval”, the
30 Examiner finds and concludes that Conditions of Approval should be modified to strengthen

1 and clarify this requirement. Mr. Pittman testified that all future building permits would have
2 to comply with terms of the PUD approval. Condition No. 1 has been modified to prevent
3 approval of future development permits that are not in substantial conformance with all
4 standards, codes, professional recommendations, and conditions referenced the Staff Report
5 and used by City Staff as a basis to issue the challenged MDNS and CALUP, and to
6 recommend approval of the PUD itself, expressly including those addressing utilities like
7 sewer and stormwater facilities; the type, design, and arrangement of structures, as shown on
8 the PUD site plan and in preliminary architectural plans submitted for the project. The
9 Examiner has modified or added additional conditions to address such concerns. Further,
10 concerns were expressed that requirements addressed in the PUD approval might somehow
11 be modified in subsequent reviews and approvals. Those concerns are well-founded, and
12 serve as a basis to add new language in the Conditions of Approval, detailing City codes and
13 processes that apply to any future requests for revisions to this CUP. *(See Condition of*
14 *Approval No. H2, No. 1 and No. 3).*

15 28. Comments and testimony expressing concerns about potential impacts on Cultural or
16 Historic resources that may be found on and around the site are adequately addressed in the
17 Staff Report's analysis of historical resource assessments performed for the site and review
18 by the State's Department of Archaeology and Historic Preservation (DAHP). *(Staff Report,*
19 *pages 9, 68-70, and 80-81).* Conditions of approval are included to ensure that a DAHP-
20 approved Site Protection Plan and DAHP-approved Monitoring and Inadvertent Discovery
21 Plan; mandatory archaeological training, instruction, and notification protocols for on-site
22 workers; and interpretative signage to acknowledge the historic role and contributions of Milt
23 Swanson, as noted above. *(Staff Report, pages 129, 130, 133; Conditions of Approval Nos.*
24 *40, 41, and 56).*

25 29. The Staff Report includes a thorough and credible analysis of potential coal mine
26 hazard on the project site, which involved review of historic mine maps, surface
27 reconnaissance, and subsurface investigation including drill borings. *(Staff Report, pages 26-*
28 *30).* During public comments and the appeal hearing, project opponents and appellant
29 witnesses relied mostly on lay testimony regarding worst case scenarios that could occur on
30 and around the site, related to abandoned coal mines under the site. On this topic, the
31 Examiner finds and concludes that Mr. Beaman, with Icicle Creek Engineers, was the most
32 credible, qualified, expert providing testimony. Appellants did not offer evidence from
33 qualified subject matter experts that rebutted Mr. Beaman's assessment of mine hazards.

34 30. Testimony from Brian Beaman, one of the state's most qualified and experienced
35 experts in assessing coal mine hazards posed to development projects, was credible and
36 substantial in most every way. A summary of his testimony provided in the
37 City's and Appellant's closing briefs, with citations to portions of the record, are adopted by
38 the Examiner as findings of fact, addressing and responding to comments and testimony
39 speculating about how coal mine hazards may not have been adequately considered. The
40 Staff Report findings and analysis addressing risks and proposed conditions to address

1 potential coal mine hazards were not rebutted by sufficient evidence presented in public
2 comments or any appeal testimony.

3 31. In fact, geotechnical monitoring is required by Condition of Approval No. 8, and
4 Condition No. 46 imposes a requirement on the developer to record a document appropriately
5 disclosing Coal Mine hazards at the site, all of which is in the public interest.

6 32. Comments and appeal testimony about potential wildlife impacts failed to establish
7 that the Staff Report is deficient in its analysis of the subject, or that the SEPA MDNS was
8 issued in error. In fact, substantial evidence in the record shows that Lakemont Blvd. already
9 presents a significant challenge for animals that may try to cross the roadway, with high trip
10 counts on the roadway, and the numerous dead animals observed after being struck while
11 trying to cross Lakemont Blvd. (*Testimony of Mr. Williams*).

12 33. In the face of thorough cross-examinations, Applicant and City witnesses called
13 during the appeal hearing all provided credible and substantial evidence to rebut or show how
14 appropriate conditions, compliance with applicable code, or mitigation measures, sufficiently
15 address all issues raised in the two appeals. The weight of evidence in this record supports
16 the Staff Report recommendation of approval for the PUD, subject to conditions. Substantial
17 evidence in this record establishes that the Park Pointe project will not result in significant
18 adverse impacts, including without limitation those that are alleged in this appeal. (*Testimony*
19 *of Mr. Pittman; Testimony of Ms. Stead; Testimony of Ms. Johnson; Testimony of Mr. Dewey;*
20 *Testimony of Mr. Beaman*).

21 34. Except as modified in this Decision, all findings and statements of fact that are
22 included in the Staff Report are adopted as findings of fact of the Hearing Examiner. Further,
23 the even-handed tone, thorough citations to portions of the record, and respectful approach
24 to addressing public comments found in the City's written Response to Appeal, and its
25 Closing Brief are commendable, and speak for themselves. The Examiner hereby adopts all
26 statements of fact and summaries of evidence made with specific references to portions of
27 testimony or evidence in the record that are included in the City's Response to Appeal and
28 Closing Brief as findings of the Examiner supporting this Decision. There is no reason to put
29 more words to the page, when others have done it better in other papers.

30 35. Having listened to, read, and carefully considered each page and word offered in
31 testimony provided in the course of this hearing process, the Examiner finds and concludes
32 that City Staff witnesses were credible and informed on issues raised in this appeal, and that
33 Ms. Stead's decisions, to issue the CALUP and MDNS for this project, were not in error, and
34 were not a mistake.

35 36. In the end, the appellants failed to meet their burden of proof to demonstrate that the
36 challenged MDNS and CALUP should be rejected, so the appeals must be denied. However,
37 evidence and testimony provided during the course of the appeal hearing provides the

1 Examiner with a basis to modify some Conditions of Approval, to clarify certain issues, and
2 to ensure that going forward, key commitments, standards, and requirements found in the
3 Staff Report and PUD site plans are satisfied in all subsequent reviews associated with
development of any aspect of this project. In short, Appellants' request that PUD conditions
should be "locked down" is granted in the form of modified Conditions of Approval.

4 37. Based on credible evidence, reports from qualified experts, and the analysis of
5 applicable codes and regulations found in the Staff Report, the Examiner finds and concludes
6 that the applicant has satisfied its burden to provide a preponderance of evidence showing
7 that its proposed PUD project satisfies all applicable approval criteria, including without
limitation those found in LUC Ch. 20.30D. Accordingly, the PUD should be approved,
subject to appropriate conditions of approval.

8 38. Members of the public who generally opposed the requested PUD and appellant
9 witnesses failed to submit a preponderance of evidence to rebut the Staff Report's analysis,
10 findings, and conclusions that establish how the applicant's proposal, as conditioned, satisfies
11 all approval criteria. The Examiner has modified some recommended conditions to better-
ensure that the project will be constructed and operated in a manner that satisfies applicable
development regulations.

12 VI. CONCLUSIONS OF LAW.

13 1. As explained above, the record includes far more than a preponderance of evidence
14 establishing that the pending PUD application satisfies all applicable decision criteria
15 specified in the City's code and merits approval, subject to conditions of approval.

16 2. The City's Land Use Code mandates that, in making a decision in an appeal of a
17 Process II administrative decision, like the CALUP and MDNS issued for this project, the
18 hearing examiner shall give deference to and afford substantial weight to the decision of the
19 responsible official. Even if such deference were not required, for reasons explained in the
Findings of Fact, the appellants failed to meet their burden of proof regarding any of the
specific issues raised in their appeals. The appeals must be denied, and the challenged MDNS
and CALUP should be affirmed.

20 3. Any finding or other statement contained in this Decision that is deemed to be a
21 Conclusion of Law is hereby adopted as such and incorporated by reference.

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25 **DECISION ON PARK POINTE PUD AND APPEALS**
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GARY N. MCLEAN
HEARING EXAMINER FOR THE CITY OF BELLEVUE

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VII. DECISION.

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing for the PUD and testimony during the appeal portion of the hearing, all materials contained in the contents of the record, and the Examiner’s site visits to the area, the undersigned Examiner denies the SEPA and CALUP appeals, affirms such decisions made by the Director, and APPROVES the Process I Planned Unit Development known as Park Pointe, assigned project File Nos. 16-143970-LK and 16-145946-LO, subject to the attached Conditions of Approval that are incorporated by reference as part of this Decision.

ISSUED this 5th Day of October, 2023



Gary N. McLean
Hearing Examiner

1 **CONDITIONS OF APPROVAL**

2 for the
3 PARK POINTE

4 PLANNED UNIT DEVELOPMENT (PUD)
5 FILE NOS. 16-143970 and 16-145946

6 *(Location: 7219 and 7331 Lakemont Boulevard SE, Bellevue, Washington)*

7 H1. This Process I Planned Unit Development (PUD) approval authorizes a project with 35
8 single-family detached residences on a 12.2-acre site known as "Park Pointe" along Lakemont
9 Boulevard SE in the City of Bellevue. The project includes two private roads, various utility
10 improvements, landscaping, trails, and frontage improvements. The development would be clustered
11 and concentrated in the 5.9-acre eastern portion of the property, with the remaining 6.3-acres of the
12 site placed in a separate critical areas tract and/or dedicated to the City of Bellevue.

13 H2. All development activities on the site shall be in substantial conformance with the approved
14 Site Plans for the PUD, and all requirements, standards, and conditions described in the Staff Report.

15 H3. This PUD and the associated CALUP approval expire 5 (five) years from the date of approval.
16 Thus, this PUD and the CALUP will be void and of no effect if the applicant/permittee fails to submit
17 complete application materials necessary to obtain clearing and grading permit(s) or other necessary
18 development permits within 5 years of the date of approval for this PUD.

19 H4. The conditions set forth below collectively reflect the conditions imposed by the Director and
20 confirmed or modified by the Hearing Examiner in relation to the Critical Areas Land Use Permit and
21 MDNS issued for this project, as well as the conditions recommended by the Director and confirmed
22 or modified by the Examiner for the Planned Unit Development Permit. Except where expressly noted
23 in these conditions and/or where the surrounding context clearly indicates a different intent, all such
24 conditions shall be applicable to the proposal as a whole.

25 H5. In the development and use of the subject property, and in implementing and effectuating the
26 conditions set forth herein, the applicant shall comply fully with all applicable Bellevue City Codes,
Standards, and Ordinances, whether mentioned in this Decision of the Staff Report, including but not
limited to:

| Applicable Ordinances | Contact Person |
|--------------------------------------|------------------------------|
| Clearing and Grading Code- BCC 23.76 | Tom McFarlane, 425-452-5207 |
| Land Use Code- BCC Title 20 | Reilly Pittman, 425-452-4350 |
| Transportation Code- BCC 14.60 | Ian Nisbet, 425-452-4851 |
| Utility Code- BCC Title 24 | Mark Dewey, 425-452-6179 |
| Fire Code- BCC 23.11 | Scott Gerard, 425-452-6808 |
| Construction Codes- BCC Title 23 | Bldg. Division, 425-452-6864 |

27 H6. Nothing herein shall be construed as excusing the applicant's compliance with all regulatory
28 permitting and approval requirements applicable to the development and use of the subject property.
29 Without limitation of the foregoing, the applicant shall be responsible for obtaining approval of any

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1 subdivision, binding site plan, boundary line adjustment, and/or other applicable regulatory
2 mechanism needed in order to divide the subject property, or any portion thereof, into separate legal
3 lots or tracts, if and to the extent that such division is necessary to effectuate the applicant's
4 development intent.

5 **A. GENERAL CONDITIONS**

6 **The following conditions apply to all phases of development.**

7 **1. Construction Permits Required:** Approval of this Critical Areas Land Use Permit and Planned
8 Unit Development Permit does not constitute an approval of any construction permit. The proposal is
9 required to obtain construction permits prior to the commencement of any clearing/grading or
10 construction activity. Site improvements and right-of-way improvements will be required and
11 reviewed with construction permits. Plans submitted as part of any permit application shall be
12 consistent with the activity permitted under this approval. Conformance with all zoning requirements
13 will be verified as part of the required Building Permit review.

14 It is expressly understood that this Condition mandates that all future development permits associated
15 with this project shall be in substantial conformance with all standards, codes, professional
16 recommendations, and conditions referenced the Staff Report and used by City Staff as a basis to
17 issue the challenged MDNS and CALUP, and to recommend approval of the PUD itself, expressly
18 including without limitation those addressing utilities like sewer and stormwater facilities; and the
19 type, design, and arrangement of structures, as shown on the PUD site plan and in preliminary
20 architectural plans submitted for the project. Further, the height of all homes in the PUD shall be no
21 more than 2 levels, with roofs not exceeding 12 feet in height above the second level, for a total height
22 not to exceed 30 feet including roofs (See Ex. S-2, DSD 000158-173).

23 Authority: Land Use Code 20.30P.140

24 Reviewer: Reilly Pittman, Development Services Department

25 **2. Critical Area and Critical Area Buffer Modification Limitations:** The modifications to the
26 critical area buffers approved in this report are limited to the approved PUD Site Plan and Critical
Areas Mitigation Plans (DSD 000140 and 000496 - 000500). There is no implied approval for future
modifications or expansion of any sort within the prescribed critical area, critical area buffer, or
structure setback.

Authority: Land Use Code 20.25H.230; 20.25H.055

Reviewer: Reilly Pittman, Development Services Department

3. Amendment of an Approved Planned Unit Development: All modifications, revisions, additions
or amendments to the approved Planned Unit Development plan shall follow the processes as
specified in LUC 20.30D.285, and/or other City regulations, as applicable. PUD modifications
processed by the Director as an Administrative Amendment are subject to Process II review
requirements, and Process II administrative decisions are subject to appeal before the City's Hearing
Examiner. Any proposed changes or modifications to the PUD Site Plan or requirements set forth in
the Staff Report or these Conditions of Approval may require additional SEPA review and
opportunities for public comment, as determined by the City's SEPA responsible official. (See LUC

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1 20.30D.285.D). For instance, while not required, the applicant may propose building materials other
2 than those identified in the PUD plan materials approved with this Decision, so long as they are more
3 consistent with the surrounding character, subject to review and approval by the Director or their
4 designee, all in accord with procedures set forth in LUC 20.30D.285.

5 Authority: Land Use Code 20.30D.285

6 Reviewer: Reilly Pittman, Development Services Department

7 **4. Salmon-Safe Certification:** The applicant shall continue with annual verifications and shall
8 comply with the guidelines and certification conditions in the Salmon-Safe Certification Report dated
9 October 8, 2018, as applicable throughout the construction process and ten-year monitoring and
10 maintenance period, and in accordance with the timelines specified in the report. The applicant shall
11 provide reports to DSD demonstrating compliance with the Salmon-Safe Certification guidelines and
12 conditions. Once the maintenance and monitoring is complete the development must maintain
13 salmon-safe certification and update as needed per the guidelines of this certification process.

14 Authority: Land Use Code 20.30.167; 20.25H.245

15 Reviewer: Reilly Pittman, Development Services Department

16 **B. PRIOR TO ISSUANCE OF CLEAR AND GRADE PERMIT**

17 **5. Clearing and Grading Permit Required:** Approval of this Critical Areas Land Use Permit and
18 Planned Unit Development Permit does not constitute an approval of any other development permit.
19 Without limitation of the foregoing, an application for a Clearing & Grading Permit must be submitted
20 and approved before construction can begin. Plans submitted as part of any permit application shall
21 be consistent with the activity permitted under this approval.

22 During construction, the contractor will operate under an NPDES permit that requires a project-
23 specific Temporary Erosion and Sediment Control Plan, Spill Containment and Counter Measures
24 Plan and requirements for water quality monitoring and a reporting protocol. These measures will be
25 enforced under the Clearing & Grading Permit.

26 Authority: Clearing & Grading Code 23.76.035

Reviewer: Tom McFarlane; Development Services Department, Clearing & Grading

6. Rainy Season Restrictions: No clearing and grading activity may occur during the rainy
season, which is defined as October 1 through April 30 without written authorization of the
Development Services Department. Should approval be granted for work during the rainy season,
increased erosion and sedimentation measures, representing the best available technology must be
implemented prior to beginning or resuming site work.

Authority: Bellevue City Code 23.76.093

Reviewer: Tom McFarlane, Development Services Department, Clearing & Grading

1 **7. Geotechnical Review of Construction Plans:** The project geotechnical engineer of record
2 shall review construction plans and provide documentation that the plans adhere to the geotechnical
3 recommendations.

4 Authority: Land Use Code 20.25H.145

5 Reviewer: Reilly Pittman, Development Services Department

6 **8. Geotechnical Monitoring:** The project geotechnical engineer of record or his representative must
7 be on site during critical earthwork operations. The geotechnical engineer shall observe all
8 excavations and fill areas. In addition, the engineer shall monitor the soil cuts prior to construction of
9 rockeries and verify compaction in fill areas. The engineer must submit a field report in writing to the
10 DSD inspector for soils verification and foundation construction. All earthwork must be in general
11 conformance with the recommendations in the geotechnical reports.

12 Authority: Bellevue City Code 23.76.160

13 Reviewer: Tom McFarlane, Development Services Department, Clearing & Grading

14 **9. Engineering Evaluation During Site Grading:** Icicle Creek Engineers, or other qualified expert
15 shall evaluate and confirm potential undocumented coal mine workings during site grading. The
16 expert shall be contacted immediately if a shallow void or evidence of mine rock fill is encountered
17 during site development. ICE shall in that event promptly provide a report to the DSD inspector.

18 Authority: Land Use Code 20.25H.130

19 Reviewer: Reilly Pittman, Development Services Department

20 **10. Construction Limits of Disturbance:** Construction limits of disturbance, consistent with the
21 approved plans, shall be shown on the Clearing & Grading permit and the limits shall be clearly
22 delineated in the field prior to construction. There shall be no site disturbance outside the identified
23 temporary disturbance construction limits, except for the mitigation planting.

24 Authority: Land Use Code 20.25H.205

25 Reviewer: Reilly Pittman, Development Services Department

26 **11. Tree Protection, Intrusion Approval, Installation and Maintenance Assurance Devices:** The
Clearing & Grading permit submittal shall include tree protection measures to protect existing,
retained trees during construction activity per City BMP T101 as well as the following measures.

i. To ensure tree protection fencing is installed and remains for the duration of all construction or
until the City allows removal, an installation assurance device is required for 150% of the cost of
fencing and other measures required in the City's Tree Protection BMPs T101. Release of the
installation assurance device can occur upon inspection approval that verifies installation of tree
protection measures. The installation assurance device is required to be submitted prior to issuance of
the clearing and grading permit. Tree protection fencing must be installed prior to construction.

ii. A maintenance assurance device is required for 100% of the cost fencing and tree protection
measures which is to be in place for the duration of construction. The maintenance assurance is

1 required prior to release of the installation assurance and will be held until final inspection approval
2 of the clearing and grading permit.

3 iii. A cost estimate for the full cost of tree protection fencing and measures is required to be submitted
4 with the clearing and grading permit application.

5 iv. Plans submitted under the future grading permit shall depict the tree protection fencing and the
6 project arborist shall provide a letter to confirm the placement of the proposed protection fencing plan
7 meets their recommendations. Removal of tree protection fencing, or intrusion requires arborist
8 approval and request to the City under future construction permits.

9 v. Arborist review of protected trees is required prior to request of the release of the assurance device
10 for tree protection fencing. The arborist is required to provide a letter confirming trees were protected
11 and confirming if any hazards exist.

12 Authority: Land Use Code 20.20.900, 20.40.490, BCC 23.76 Reviewer: Reilly Pittman,
13 Development Services Department

14 **12. Utility Extension Agreement:** A Utility Extension Agreement approved by the City shall be
15 required for review and approval of the utility design for sewer, water and storm drainage. Submittal
16 of the Utility Extension shall coincide with future clearing and grading permit review.

17 Authority: BellevueCityCode24.02,24.04,24.06
18 Reviewer: Mark Dewey, Development Services Department, Utilities Review

19 **13. Public and Private Utility Easements:** Public and private easements will be required for water
20 mains, water and side sewer services across adjoining properties and will be required to be shown on
21 the plans with appropriate language. The applicant shall be responsible for securing all such
22 easements. Prior to recording any easements, they shall be reviewed and approved by City staff as
23 part of the clearing and grading permit and utilities permits.

24 Authority: Bellevue City Code 24.02,24.04, 24.06
25 Reviewer: Mark Dewey, Development Services Department, Utilities Review

26 **14. Utilities Final Inspection and Acceptance:** Utilities shall be constructed and accepted by the
Utilities Department or sufficient bonding submitted. No new homes will be allowed to connect to
water, sewer or storm utilities until the utilities have received final inspection approval and acceptance
by the Utilities Department.

Authority: Bellevue City Code 24.02, 24.04, 24.06
Reviewer: Mark Dewey, Development Services Department, Utilities Review

15. Open Space Recreation Area on Top of Stormwater Detention Vault: The neighborhood open
space recreation area on top of the stormwater detention vault shall be designed to allow for vector
truck and maintenance crew access to clean the vault.

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PROJECT – AAD 23-01, AND DEPARTMENT FILE
NUMBERS 16-143970-LK AND 16-145946-LO**

1 Authority: Bellevue City Code 24.02,24.04, 24.06
2 Reviewer: Mark Dewey, Development Services Department, Utilities Review

3 **16. Stormwater Pipe Boring:** The stormwater drainage pipe is proposed to be bored sub-surface
4 from the stormwater vault to the outlet above Stream 1. The portion of any storm line within the
5 critical area that is proposed to be bored shall be designed and constructed in a manner to not cause
6 soil subsidence or fracture.

7 Authority: Bellevue City Code 24.02,24.04, 24.06
8 Reviewer: Mark Dewey, Development Services Department, Utilities Review

9 **17. Access to Sewer Pump Station:** The sewer pump station shall be designed and constructed to
10 allow for adequate maintenance crew vehicle access.

11 Authority: Bellevue City Code 24.02, 24.04,24.06
12 Reviewer: Mark Dewey, Development Services Department, Utilities Review

13 **18. Construction Details for Sanitary Sewer Line and Sewer Forces Main Located Within the
14 Lower Risk CMS Zone 2:** Segments of sanitary sewer lines and sewer force mains within the Lower
15 Risk CMS Zone 2 shall be sleeved with a structural pipe capable of providing support to span a 10-
16 foot void to mitigate sinkhole risk.

17 Authority: Bellevue City Code 23.76.050, BCC Title 24.02, 24.04, 24.06, LUC 20.25H.130

18 Reviewer: Tom McFarlane, Development Services Department, Clearing & Grading Mark Dewey,
19 Development Services Department, Utilities Review

20 **19. Vehicular Access Restrictions:** Access to the project site from the southern private road entrance
21 shall be restricted to right-turn-in and right-turn-out access only. This will be achieved through
22 installation of a c-curb and signage, as specified in the final civil engineering plans for the
23 development.

24 Authority: Bellevue City Code 14.60.150
25 Reviewer: Ian Nisbet, Development Services Department, Transportation Review

26 **20. Lakemont Blvd SE Pedestrian Crossing:** To improve pedestrian safety crossing Lakemont Blvd
SE from the Red Town trailhead parking area, the applicant shall be responsible for installing a
marked pedestrian crosswalk with an RRFB (Rectangular Rapid Flashing Beacon) to alert motorists
when a pedestrian is crossing.

Authority: Bellevue City Code 14.60.150

Reviewer: Ian Nisbet, Development Services Department, Transportation Review

1 **21. Transportation Infrastructure Improvements - Civil Engineering Plans:** A street lighting plan
2 and site (civil engineering) plan produced by a qualified engineer must be approved by the City prior
3 to clear and grading permit approval. The design of all street frontage and private street improvements
4 must be in conformance with the requirements of the Americans with Disabilities Act and the
5 Transportation Development Code, and the provisions of the Transportation Department Design
6 Manual.

7 Frontage Improvements and Private Street construction required by the applicant shall include:

8 **i. Lakemont Boulevard:**

- 9 o Install new minimum 6-foot-wide concrete sidewalk, minimum 4-foot-wide planter strip, a
10 minimum 7-foot-wide buffered bike lane, and new curb and gutter along the frontage.
11 o Install pedestrian safety railing behind the new public sidewalk.
12 o Install a new RRFB controlled pedestrian crosswalk across Lakemont Boulevard.
13 o An easement to the City is required to be recorded for any portion of the sidewalk located on
14 private property.
15 o Minimum City of Bellevue sight distance standards are required to be met. o Street lighting is
16 required to meet City of Bellevue Standards.

17 **ii. Internal Private Streets:**

- 18 o Install minimum 20-foot-wide private streets with curb and gutter per Transportation Design
19 Manual standards.
20 o Install minimum 6-foot-wide sidewalks along one side of the private access streets, except where
21 alternative pedestrian facilities are provided.

22 Construction of all street and street frontage improvements must be completed prior to closing the
23 clear and grade permit and right of way use permit for this project. A Design Justification Form must
24 be provided to the Transportation Department for any aspect of any pedestrian route adjacent to or
25 across any street that cannot feasibly be made to comply with ADA standards. Forms must be
26 provided prior to approval of the clear and grade plans for any deviations from standards that are
known in advance. Forms provided in advance may need to be updated prior to project completion.
For any deviations from standards that are not known in advance, Forms must be provided prior to
project completion.

Authority: Bellevue City Code 14.60; Transportation Department Design Manual; Americans with
Disabilities Act

Reviewer: Ian Nisbet, Development Services Department, Transportation Review

22. Right of Way Use Permit: The applicant is required to apply for and obtain a Right of Way Use
Permit before the issuance of any clearing and grading, building, foundation, or demolition permit.
Depending upon the circumstance and the timing of the developments, more than one Right of Way
Use Permit may be required, such as one for hauling and one for construction work within the right
of way. A Right of Way Use Permit regulates activity within the City right of way, including but not
limited to the following:

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- Designated truck hauling routes.
- Truck loading and unloading activities.
- Hours of construction and hauling.
- Continuity of pedestrian facilities.
- Temporary traffic control and pedestrian detour routing for construction activities.
- Street sweeping and maintenance during excavation and construction.
- Location of construction fences.
- Parking for construction workers.
- Construction vehicles, equipment, and materials in the right of way.
- All other construction activities as they affect the public street system.

In addition, the applicant shall submit for City review and approval a plan for providing pedestrian access during construction of this project. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevents access. General materials storage and contractor convenience are not reasons for preventing access.

Authority: Bellevue City Code 14.30
 Reviewer: Mazen Wallaia, Transportation Review

23. Sidewalk/Utility Easements: A permanent public sidewalk easement shall be provided for portion of the sidewalk that will be located outside of the Lakemont Boulevard right of way. A permanent public retaining wall maintenance easement shall be provided for portion of the wall supporting the sidewalk that will be located outside of the Lakemont Boulevard right of way.

Authority: BellevueCityCode14.60.150
 Reviewer: Ian Nisbet, Development Services Department, Transportation Review

24. Access Road Signage for Fire: The fire department access roads shall be marked and signed in accordance with BCCA 23.11.503.3. See Public Information Handout F- 11.

Authority: BCCA 23.11.503.3; BCCA 23.11.503.2.3 Reviewer: Scott Gerard, Fire Department Review

25. Access Road Design for Fire Apparatus: The fire department access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all weather driving capability (BCCA 23.11.503.2.3). See Public information Handout B-1.

Authority: BCCA 23.11.503.3; BCCA 23.11.503.2.3
 Reviewer: Scott Gerard, Fire Department Review

26. Final Mitigation Plan: A Final Mitigation Plan is required to be submitted and approved with the Clearing & Grading Permit. The Final Mitigation Plan shall be consistent with the approved conceptual Critical Areas Mitigation Plans (DSD 000496 - 000500). The Final Mitigation Plans shall show planting locations, plant species, plant quantities, size of plant material and temporary irrigation.

1 Authority: Land Use Code 20.25H.100, 20.25H.220 Reviewer: Reilly Pittman, Development
2 Services Department

3 **27. Final Mitigation Plan Typical Plant Spacing:** The Final Mitigation Plan shall include plant
4 spacing consistent with the Bellevue Critical Areas Handbook in Area C – Disturbed Forest Buffer
5 Enhancement and Area D – Re-Establishment of Forested Buffer. The typical plant spacing is trees
6 at 9 feet on-center and shrubs at 4.5–6-foot on-center spacing depending on the plant species, and
7 groundcovers at 2-foot on-center spacing. Existing retained native tree and shrub vegetation may be
8 counted toward the planting requirements.

9 Authority: Land Use Code 20.25H.220
10 Reviewer: Reilly Pittman, Development Services Department

11 **28. Fencing and Signage:** The Final Mitigation Plan shall include a split-rail fence and critical area
12 signage around the development area to limit pet or human encroachment into the critical areas/critical
13 area buffers.

14 Authority: Land Use Code 20.25H.100, 20.25H.220, Reviewer: Reilly Pittman, Development
15 Services Department

16 **29. Final Mitigation Plan Performance Standards:** The Final Mitigation Plan shall include
17 performance standards to measure the successful establishment of the mitigation plantings. The
18 following performance standards are acceptable and shall be included on the Final Mitigation Plans:

19 Year 1 (from date of plant installation)

- 20 1. 100% survival of all installed plants and/or replanting in following dormant season
21 to reestablish 100%
- 22 2. Maximum 10% coverage of invasive plants in planting area

23 Year 2 (from date of plant installation)

- 24 3. At least 90% survival of all installed material
- 25 4. Maximum 10% coverage of invasive plants in planting area

26 Years 3 - 10 (from date of plant installation)

- 27 5. At least 85% survival of all installed material
- 28 6. Maximum 10% coverage of invasive plants in planting area

29 Authority: Land Use Code 20.25H.220
30 Reviewer: Reilly Pittman, Development Services Department

31 **DECISION ON PARK POINTE PUD AND APPEALS**
32 **OF MDNS AND CALUP ISSUED FOR SUCH**
33 **PROJECT – AAD 23-01, AND DEPARTMENT FILE**
34 **NUMBERS 16-143970-LK AND 16-145946-LO**

1 **30. Timing of Mitigation Planting Installation:** The mitigation planting shall be fully installed and
2 have inspection approval by the City prior to dedication of the tract to the City or recording of the
Native Growth Protection Easement.

3 Authority: Land Use Code 20.25H.220
4 Reviewer: Reilly Pittman, Development Services Department

5 **31. Installation Assurance Device:** An assurance device is required to be submitted to the City to
6 ensure the mitigation planting is successfully installed per the approved plans in a timely manner. An
7 assurance device that is equal to 150% of all installation costs is required prior to issuance of the
clearing and grading permit. A cost estimate for this assurance device is required to be provided with
the Clearing & Grading permit. Release of the assurance device is contingent upon inspection
approval of the planting by DSD staff to verify the planting is installed per the approved plans.

8 Authority: Land Use Code 20.25H.220, 20.40.490
9 Reviewer: Reilly Pittman, Development Services Department

10 **32. Required Monitoring and Maintenance Period:** A monitoring and maintenance period is
11 required to demonstrate that mitigation performance standards have been met. Due to the scale, extent,
and complexity of the proposed mitigation, the monitoring and maintenance period shall be 10 years
12 from the time of installation.

13 Authority: Land Use Code 20.25H.220
14 Reviewer: Reilly Pittman, Development Services Department

15 **33. Maintenance and Monitoring Assurance Device:** An assurance device is required to be
16 submitted to the City to ensure the mitigation planting is successfully established and meets
17 performance standards. A monitoring and maintenance assurance device that is equal to 20% of the
18 cost of plants, installation, and the cost of monitoring is required to be held for a period of ten years
from the date of successful installation. A cost estimate is required to be provided with the Clearing &
Grading permit and the financial surety is required to be posted prior to issuance of the Clearing &
Grading permit. Release of the assurance device after the 10-year monitoring period is contingent
upon a final inspection approval of the planting by DSD staff that finds the maintenance and
monitoring plan was successful and the mitigation meets the required performance standards.

19 Authority: Land Use Code 20.25H.220, 20.40.490
20 Reviewer: Reilly Pittman, Development Services Department

21 **34. Annual Maintenance and Monitoring Reports:** The mitigation planting is required to be
22 maintained and monitored for five years to ensure the plants are successfully established. Annual
23 monitoring reports are required to be submitted to document the plants are meeting approved
24 performance standards. Photos from selected photo points shall be included in the monitoring reports
to document the planting. Land Use inspection approval is required by Land Use staff to end the plant
monitoring period.

1 Reporting shall be submitted no later than December 31st of each monitoring year and shall include
2 a site plan and photos from photo points established at the time of Land Use inspection. Reports shall
3 be submitted to DSD by the above listed date and shall be emailed to rpittman@bellevuewa.gov or
4 mailed directly to:

5 Environmental Planning Manager Development Services Department City of Bellevue
6 PO Box 90012 Bellevue, WA 98009-9012

7 Authority: Land Use Code 20.30P.140; 20.25H.220 Reviewer: Reilly Pittman, Development
8 Services Department

9 **35. Species of Local Importance:** If nesting or breeding habitat for species of local importance is
10 found during construction activity, the area shall be protected, and the Washington Department of
11 Fish and Wildlife contacted for recommendations on species management plans.

12 Authority: Land Use Code 20.25H.160
13 Reviewer: Reilly Pittman, Development Services Department

14 **36. Revision to PUD Conservation Features:** The recorded PUD shall be revised to eliminate the
15 conservation feature credit for Landscape/Grass Passive Rec Area (39,037 SF) if this area is not
16 contained in a tract. The draft PUD for recording shall be submitted for review by the City prior to
17 issuance of a Clearing & Grading Permit.

18 Authority: LandUseCode20.30D.160
19 Reviewer: Reilly Pittman, Development Services Department

20 **37. Landscape Plan Revisions:** To ensure the landscape buffer along Lakemont Blvd SE provides
21 the intended screening affect, the number of large, evergreen trees shall be increased. To achieve the
22 screening in a timely manner, the size or caliper of trees within the landscape buffer shall be increased,
23 with at least half of the trees planted at a minimum 2-inch caliper or 6-8 foot height. Tree spacing is
24 required to be at least 12 to 15 feet on center. The plan shall specify the planting area square footage,
25 plant spacing, plant quantity and plant size at installation. A final landscape plan shall be revised and
26 submitted prior to issuance of the Clearing & Grading Permit.

Authority: LandUseCode20.30.150
Reviewer: Reilly Pittman, Development Services Department

38. Visual Screening of Sewer Pump Station: The proposed public sewer pump station is required
to be visually screened per LUC 20.20.650 and LUC 20.20.520. Sewer pumping stations are required
to provide a Type-1 15-foot-wide perimeter landscape buffer around the facility. Type-1 standards
are described in LUC 20.20.520.G. The final landscaping plan submitted with the clearing and grading
permit is required to show this screening.

Authority: Land Use Code 20.20.650, 20.20.520
Reviewer: Reilly Pittman, Development Services Department

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1 **39. Updated Arborist Assessment:** The applicant’s arborist is required to provide the City with an
2 updated assessment of retained trees with root protection zones in vicinity of construction to verify
3 their health prior to construction commencement. This update shall also clarify monitoring of trees
4 during construction.

5 Authority: Land Use Code 20.20.900
6 Reviewer: Reilly Pittman, Development Services Department

7 **40. Archeological Site Protection Plan and Washington State Department of Archaeology &
8 Historic Preservation (DAHP) Site Alteration & Excavation Permit:** The applicant shall submit
9 a site protection plan to demonstrate how project grading and construction will avoid impacts and
10 protect the two (2) archeological sites identified as eligible for listing in the National Register of
11 Historic Places. The site protection plan shall be reviewed and approved by DAHP. A DAHP Site
12 Alteration & Excavation Permit may be required if DAHP determines site work may result in potential
13 impacts to the archeological sites.

14 Authority: SEPA Authority, RCW 27.53 and 27.44
15 Reviewer: Reilly Pittman, Development Services Department

16 **41. Monitoring & Inadvertent Discovery Plan (MIDP):** The applicant shall develop a project-
17 specific Monitoring & Inadvertent Discovery Plan (MIDP) for the entire site area, and specifically for
18 areas outside of the two eligible archaeological sites. This plan shall be reviewed and approved by the
19 Washington State Department of Archaeology & Historic Preservation (DAHP) prior to issuance of
20 a Clearing & Grading Permit.

21 Authority: SEPA Authority, RCW 27.53 and 27.44
22 Reviewer: Reilly Pittman, Development Services Department

23 **42. Archeological Training and Reporting:** The applicant’s project archaeologist shall provide
24 training for all on-site workers regarding archaeological laws, how to identify archaeological
25 materials, and how to appropriately report incidental finds. In the event that archaeological materials
26 are encountered during project grading or construction, the project archaeologist shall be immediately
27 notified, and work shall be halted in the vicinity of the find until the materials can be inspected and
28 assessed. At that time, DAHP shall notified of the exact nature and extent of the resource so that
29 measures can be taken to secure them.

30 Authority: SEPA Authority, RCW 27.53 and 27.44
31 Reviewer: Reilly Pittman, Development Services Department

32 **43. Hold Harmless Agreement for Steep Slope Hazards:** The applicant shall submit and execute a
33 hold harmless agreement in a form approved by the City Attorney which releases the City from
34 liability for any damage arising from the location of improvements proximate to steep slope areas.
35 The hold harmless agreement is required to be recorded with King County and a copy submitted to
36 DSD prior to final approval of construction permits.

1 Authority: Land Use Code 20.25H.145; 20.30P.170 Reviewer: Reilly Pittman, Development
2 Services Department

3 **44. Hold Harmless Agreement for Coal Mine Hazards:** The applicant shall submit and execute a
4 hold harmless agreement in a form approved by the City Attorney which releases the City from
5 liability for any damage arising from the location of the development improvements in coal mine
6 hazard areas. The hold harmless agreement is required to be recorded with King County and a copy
7 submitted to DSD prior to final approval of construction permits.

8 Authority: LandUseCode20.25H.130.F
9 Reviewer: Reilly Pittman, Development Services Department

10 **45. Recording of Planned Unit Development Plan:** The approved Planned Unit Development plan
11 shall be recorded with the King County Department of Records and Elections and proof of the
12 recording shall be provided to the Bellevue Development Services Department (DSD) prior to
13 building permit issuance for the site.

14 Authority: LandUseCode20.30D.200
15 Reviewer: Reilly Pittman, Development Services Department

16 **46. Recording of the Planned Unit Development Plan and Disclosure of Coal Mine Hazards:**
17 The approved Planned Unit Development plan shall be recorded with King County and shall include
18 information disclosing the potential for coal mine hazards existing on the site.

19 Authority: SEPA Authority, Land Use Code 20.25H.130
20 Reviewer: Reilly Pittman, Development Services Department

21 **47. Granting a Native Growth Protection Easement(s) (NGPE) or Dedicating the Critical
22 Areas Tract:** Prior to any building permit issuance for the site, the applicant shall: (I) dedicate the
23 critical areas tract (Tract Z) to the City, or (ii) grant the City a permanent Native Growth Protection
24 Easement (NGPE). Such NGPE shall, at a minimum, be coextensive with the boundaries of the
25 proposed tract, shall comply with applicable City standards, including without limitation BCC
26 20.30D.200(B), and shall be in form approved by the City Attorney. The final recorded Planned Unit
Development plan shall contain and reflect the restrictions for use, development and disturbance as
provided herein in a format approved by the City Attorney.

Authority: Land Use Code 20.30D.200
Reviewer: Reilly Pittman, Development Services Department

C. PRIOR TO ISSUANCE OF ANY BUILDING PERMIT

48. Screening of Outdoor Lighting: The applicant shall provide lighting fixture shield details on all
exterior lights to prevent spillover light levels outside of the development area. The applicant may
comply with this requirement by providing shielding to exterior lighting c. No unshielded light shall
be directed toward the critical areas Tract Z.

1 Authority: Land Use Code 20.25H.080; 20.25H.100
2 Reviewer: Reilly Pittman, Development Services Department

3 **49. Transportation Impact Fee:** Transportation impact fees are used by the City to fund street
4 improvement projects to alleviate traffic congestion caused by the cumulative impacts of development
5 throughout the City. Payment of the transportation impact fee contributes to the financing of
6 transportation improvement projects in the current adopted Transportation Facilities Plan and is
7 considered to be adequate mitigation of long-term traffic impacts. Fee payment is required at the time
8 of building permit issuance. Impact fees are subject to change and the fee schedule in effect at the
9 time of building permit issuance will apply.

10 Authority: Bellevue City Code Chapter 22.16
11 Reviewer: Ian Nisbet, Development Services Department, Transportation Review

12 **50. School Impact Fee:** The site is within the Issaquah School District and per BCC 22.18.100 the
13 project is subject to paying school impact fees. Fee payment is required at the time of building permit
14 issuance. Impact fees are subject to change and the fee schedule in effect at the time of building permit
15 issuance will apply.

16 Authority: Bellevue City Code 22.18.100
17 Reviewer: Reilly Pittman, Development Services Department

18 **D. PRIOR TO APPROVAL OF CERTIFICATE OF OCCUPANCY**

19 **51. Environmental Best Management Practices:** The use of pesticides, herbicides and fertilizers
20 within the development area and the critical areas tract shall be consistent with the City's
21 "Environmental Best Management Practices," the Vegetative Management Plan and the Salmon-Safe
22 Certification. The use of herbicides to control non-native, invasive species during routine mitigation
23 monitoring and maintenance shall be limited to those approved to be used adjacent to aquatic
24 environments. These measures shall be included in the Declaration of Covenants, Conditions and
25 Restrictions (CC & Rs) in a form approved by the City Attorney and recorded as a legal document.

26 Authority: Land Use Code 20.25H.080; 20.25H.100
Reviewer: Reilly Pittman, Development Services Department

52. Final Arborist Assessment: The arborist is required to provide post-construction assessment of
retained trees with root protection zones in vicinity of construction to verify their health and retention
following construction. Any tree removals shall be replaced per approved project mitigation ratios
prior to inspection approval.

Authority: Land Use Code 20.20.900
Reviewer: Reilly Pittman, Development Services Department

53. Mitigation and Landscaping Installation: The mitigation and landscaping planting shall be fully
installed and have inspection approval by the City prior to issuance of any occupancy approval.

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1 Allowance to delay planting due to weather, season, or other reasons can be considered through
assurance device submittal.

2 Authority: Land Use Code 20.20.

3 Reviewer: Reilly Pittman, Development Services Department

4 **54. Completion of Infrastructure Improvements:** All street frontage and infrastructure
improvements shown in the final engineering plans or required by city codes and standards must be
5 completed prior to issuance of Certificate of Occupancy. If all the requirements of BCC 14.60.260
6 are met, the director may accept an acceptable financial assurance device equivalent to 150% of the
7 cost of the unfinished improvements. Installation of improvements that would negatively affect safety
if left unfinished may not be delayed through use of a financial assurance device. Improvements must
be approved by the Transportation Department inspector before they are deemed complete.

8 Authority: Bellevue City Code 14.60.100, 110, 130, 150, 170, 190, 210, 240, 241, 260 and
Transportation Department Design Manual Sections 3, 4, 5, 7, 11, 14, 19

9 Reviewer: Ian Nisbet, Development Services Department, Transportation Review

10 **55.Pavement Restoration:** Pavement restoration associated with street frontage improvements or to
11 repair damaged street surfaces shall be provided as follows:

12 Lakemont Boulevard: Based on this street's excellent condition, it is classified with the City's
overlay program as "Overlay Required." Should street cuts prove unavoidable or if the street
13 surface is damaged in the construction process, a half-street or full-street (depending on the
14 extent of street cuts or damage) grind and overlay will be required for a minimum of 50 feet.

15 Authority: Bellevue City Code 14.60. 250; Design Manual Design Standard #23

16 Reviewer: Mazen Wallaia, Transportation Review

17 **56. Interpretive Signage for Coal Mining History:** The applicant shall provide, install and
permanently maintain additional interpretive signage to recognize the historic role of Milt Swanson.
18 The location and content of the signage shall be coordinated with the Bellevue Parks Department.

19 Authority: SEPA Authority

20 Reviewer: Reilly Pittman, Development Services Department

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26 **DECISION ON PARK POINTE PUD AND APPEALS
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57. Survey Verification of Setbacks: The setback of structures from the edge of the NGPA tract Z shall be verified by survey as part of the inspection approval process.

Authority: LandUseCode20.20.010
Reviewer: Reilly Pittman, Development Services Department

58. Lot Coverage and Impervious Surface: The maximum coverage of impervious surface and structural lot coverage is limited to the maximum amounts discussed in section IX.C of this report.

Authority: LandUseCode20.20.010,20.30D.165
Reviewer: Reilly Pittman, Development Services Department

**** End of Conditions of Approval ****

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**NOTICE OF RIGHTS
TO REQUEST CLARIFICATION OR RECONSIDERATION,
AND TO APPEAL**

Request for Clarification or Reconsideration – As provided in Rule 1.25 and 1.26 of the Bellevue Hearing Examiner Rules of Procedure, a party may file a written request for clarification or reconsideration of this Decision within five (5) working days after the date of issuance. Additional requirements and procedures concerning Requests for Clarification or Reconsideration are found in Rule 1.25 and 1.26 of the Hearing Examiner Rules of Procedure.

Appeal to Superior Court – LUC 20.35.070.A, captioned “Appeal of City land use decisions to Superior Court” reads in relevant part as follows: “A final City decision on a land use permit application (Processes I through III and V) may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.

EXHIBIT LISTS

**INDEX TO EXHIBITS
BEFORE THE HEARING EXAMINER
CITY OF BELLEVUE**

| | |
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| <p>In the Matter of the Appeal of</p> <p>SAVE COAL CREEK AND ISSAQUAH ALPS TRAIL CLUB</p> <p>From decisions issued by the City of Bellevue Development Services Dept.</p> | <p>AAD 23-01</p> <p>Department File Numbers: 16-143970-LK and 16-145946-LO</p> |
|--|--|

| Exhibit No. | Title | Bates No. |
|--------------------|--|-------------------|
| S-1 | Staff Report | DSD 000001-000135 |
| S-2 | Plans | DSD 000136-000197 |
| S-3 | Property Information | DSD 000198-000385 |
| S-4 | SEPA MDNS | DSD 000386-000388 |
| S-5 | SEPA Checklist | DSD 000389-000402 |
| S-6 | 2023 01 11 Talasaea Critical Areas Report | DSD 000403-000543 |
| S-7 | 2016 01 19 GeoTech Consultants Study | DSD 000544-000573 |
| S-8 | 2017 03 29 GeoTech Consultants Supplemental Letter | DSD 000574-000576 |
| S-9 | 2018 06 05 GeoTech Consultants Response to Corrections 2 | DSD 000577-000585 |

| Exhibit No. | Title | Bates No. |
|--------------------|--|----------------------|
| S-10 | 2017 03 29 GeoTech Consultants Supplemental Letter | DSD 000586-000594 |
| S-11 | 2018 01 19 GeoTech Consultants Response to Corrections | DSD 000595-000605 |
| S-12 | 2018 06 05 GeoTech Consultants Response to Corrections 2 | DSD 000606-000608 |
| S-13 | 2020 11 10 GeoTech Consultants Memorandum | DSD 000609-000610 |
| S-14 | 2014 10 15 Earth Sciences Assessment | DSD 000611-000625 |
| S-15 | 2014 12 01 Geological Engineering Services Assessment prepared by icicle creek | DSD 000626-000639 |
| S-16 | 2016 08 02 Geo Eng. Svc Proposed Prop Development Assessment & Ground Proofing Program | DSD 000640-000696 |
| S-17 | 2016-10-05 Geological Engineering Svc Assessment by icicle creek- Revised Report | DSD 000697 to 000753 |
| S-18 | 2018-05-17 GeoTech Consultants Response to Comments | DSD 000754 to 000755 |
| S-19 | 2020-11-04 GeoTech Consultants Response to Comments | DSD 000756 to 000757 |
| S-20 | 2020-11-30 Pace Park Point PUD Preliminary Storm Drainage Report | DSD 000758 – 000803 |
| S-21 | 2022-11-15 Davido Consulting Group Drainage Report | DSD 000804- 000978 |
| S-22 | 2023-01-26 City of Bellevue Transportation Certificate of Concurrency | DSD 000979 |
| S-23 | 2016-05-20 Gibson Traffic Consultants Prelim Trip Generation Report | DSD 000980 – 000990 |
| S-24 | 2018-05-18 Gibson Traffic Consultants Prelim Trip Generation Report | DSD 000991 – 001001 |
| S-25 | 2019-08-16 Gibson Traffic Consultants Prelim Trip Generation Report | DSD 001002 – 001012 |

| Exhibit No. | Title | Bates No. |
|--------------------|--|---------------------|
| S-26 | 2020-03-05 Pace Resp to P. Rosen | DSD 001013 – 001021 |
| S-27 | Gibson Traffic Consultants 2021-02 Traffic Impact Analysis | DSD 001022 – 001054 |
| S-28 | 2021-04-21 Pace Response to Nisbet email | DSD 001055 – 001058 |
| S-29 | 2021-06-21 Bellevue Transport. Dpt. Design Justification Form No. 1 | DSD 001059 – 001062 |
| S-30 | 2021-06-21 Bellevue Transport. Dpt. Design Justification Form No. 2 | DSD 001063 -001066 |
| S-31 | 2022-07-05 Salmon Safe Certification | DSD 001067 -001089 |
| S-32 | 2017-04-19 Tierra Archaeological Resources Assessment Report CvrSheet | DSD 001090 – 001191 |
| S-33 | 2018-04-12 Dpt. of Archaeology & Historic Preservation re Permit No. 2018-12 | DSD 001192 -001263 |
| S-34 | 2018-05-24 Tierra Cultural Resources Assessment Addendum Report | DSD 001264 - 001323 |
| S-35 | 2018-08-31 Tierra Archaeological Extent & Eligibility Testing Report | DSD 001324 - 001393 |
| S-36 | Certification of Mailing | DSD 001394 |
| S-37 | Notice of Application Certification | DSD 001395 - 001400 |
| S-38 | Affidavit of Publication | DSD 001401 -001402 |
| S-39 | Communications with Agencies | DSD 001403 - 001432 |
| S-40 | Communication with Applicant | DSD 001433 - 001668 |
| S-41 | Communications with the Public | DSD 001669 - 002137 |

| Exhibit No. | Title | Bates No. |
|--------------------|---|------------------|
| S-42 | A1 Lider CV | |
| S-43 | A2 John Adams CV | |
| S-44 | A3 Tilghman CV | |
| S-45 | A4 Mark Jordan CV | |
| S-46 | A5 Brian Footen CV | |
| S-47 | A6 Sally Lawrence CV | |
| S-48 | A7 City of Bellevue Sanitary Sewer Map | |
| S-49 | A8 APWA-NMFS Stormwater and ESA (Spring 2022) | |
| S-50 | A9 Coal Creek Watershed Assessment Report (April 2021) | |
| S-51 | A10 City of Bellevue Stream Typing Inventory (May 2009) | |
| S-52 | A11 Parks & Trails Guide | |
| S-53 | A12 Bellevue Stormwater Mgmt Guide (Jan 2012) | |
| S-54 | A13 Greenway Letter to Bellevue (Oct 2020) | |
| S-55 | A14 Park Pointe San Sewer Force Main Alignment Map | |
| S-56 | A15 Bellevue Parks and Open Space System Plan (2016) | |
| S-57 | A16 Comprehensive Plan Excerpts | |

| Exhibit No. | Title | Bates No. |
|--------------------|--|------------------|
| S-58 | A17 Coal Creek Natural Area Trail Guide | |
| S-59 | A18 Coal Creek Stream Flow Study (March 2023) | |
| S-60 | A19 Save Coal Creek Stream Photos | |
| S-61 | A20 Mine and Sinkhole Photos | |
| S-62 | A21 Mine Maps, Safety Notices, Diagrams | |
| S-63 | A22 Wildlife Photos | |
| S-64 | A23 Vicinity Images | |
| S-65 | A24 Site Photos | |
| S-66 | A25 Wildlife Corridor, Streams, Coal, and Public Ownership at Coal Creek Lakemont Junction (Sept 26, 2022) | |
| S-67 | A26 Jordan Wildlife Report | |
| S-68 | A27 Footen Fish and Stream Habitat Report | |
| S-69 | A29 KCCP Wildlife Habitat Map | |
| S-70 | A30 City of Bellevue Website screenshots | |
| S-71 | A31 CC Projects (4-29-2022) | |
| S-72 | A32 SCC Wildlife List | |
| S-73 | C2 DSD Power-Point Presentation | |

| Exhibit No. | Title | Bates No. |
|--------------------|---------------------------------------|------------------|
| S-74 | C3 Memorandum from Molly Johnson | |
| S-75 | C4 Memorandum from Mark Dewey | |
| S-76 | C5 Photographs of Park Pointe project | |
| D-1 | Lider Engineering Review | |
| D-2 | Civil Plans Reduced | |
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Stipulated Exhibit List
is modified to include the following items introduced during the Appeal hearing:

S-77 – written comments prepared by Ms. Lawrence

S-78 – Ord. 5836, showing annexation of project site took effect Sept. 20, 2008

S-79 – Final Site Plan, binding site plan material

S-80 – Salmon Safe Standards

S-81 – Western WA Stormwater Manual

S-82 – Storm and Surface Water Engineering Standards, as of January 2023

CERTIFICATE OF SERVICE

The undersigned hereby declares, and states as follows:

In the Matter of the Consolidated Hearing Process for the PARK POINTE PUD Application and Appeals of the Mitigated Determination of Non-Significance (MDNS) and Critical Areas Land Use Permit (CALUP), on this 5th day of October, 2023, I caused to be delivered a true and correct copy of the foregoing document identified below on the following parties of record in the manner indicated below:

DECISION

BY ELECTRONIC SERVICE – EMAIL by electronically mailing a true and correct copy thereof through the City of Bellevue’s electronic mail system to the email address(es) set forth below:

| To Applicant: | To Appellants: |
|---|--|
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| | |
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BY U.S. MAIL by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at the City of Bellevue in accordance with ordinary business practices:

Landon Farrell
14200 SE 10th Place
Bellevue, WA 98007

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Bellevue, Washington on this 5th day of October, 2023.

Maria Buell

María Buell, Program Coordinator
Hearing Examiner's Office

Application, Petition or Case: *Consolidated Hearing Process for the PARK POINTE PUD Application and Appeals of the Mitigated Determination of Non-Significance (MDNS) and Critical Areas Land Use Permit (CALUP)*
DSD File Nos: 16-143970-LK and 16-145946-LO
HE File No: AAD 23-01