CITY OF SHORELINE
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

APPEAL OF SEPA THRESHOLD DETERMINATION ON A PROPOSED REZONE

PROJECT INFORMATION SUMMARY

APPLICANT:	Echo Lake Associates
LOCATION:	19250 Aurora Avenue North
PROJECT NUMBER:	201372
APPELLANT:	Echolake City Hall Oversight–People Against Rezone (ECHO-PAR) 940 NE 147th Street Shoreline, WA 98155
SEPA THRESHOLD DETERMINATION:	Mitigated Determination of Non-significance (MDNS)

BACKGROUND AND PROCEDURAL HISTORY

Decision on appeal.
The City of Shoreline Planning and Development Services Department (Department) issued a corrected Mitigated Determination of Nonsignificance (MDNS) February 16, 2005, on a proposed contract rezone of property addressed as 19250 Aurora Avenue North. The Department issued an Addendum to the MDNS on April 21, 2005.

The MDNS was appealed by Echolake City Hall Oversight – People Against Rezone (ECHO-PAR) on March 2, 2005.

Prehearing motions
The Department moved for clarification of issues and discovery on March 22, 2005. The Appellant filed motions on March 24, 2005, to remand the rezone and to combine the hearings on the comprehensive plan amendment, rezone and SEPA appeal. On March 30, the parties filed responses to each other's motions.

Prehearing conference

A prehearing conference was conducted by Hearing Examiner Pro Tem Sue Tanner on March 31, 2005. Represented at the conference were the Appellant, ECHO-PAR, BY Brian Derdowski; the Director, Department of Planning and Development Services (Director) by Ian R. Sievers, City Attorney; and the Applicant, Echo Lake Associates, by Harley O'Neil, Jr. At the conference, the parties presented arguments on their prehearing motions. The Appellant requested a continuance of the hearing, which had been scheduled for April 14, 2005, to allow the parties to discuss possible settlement. The other parties agreed with the request for a continuance.

Prehearing order
On April 5, 2005, the Hearing Examiner issued a prehearing order continuing the hearing to May 4 and 5, and ruling on the Department's motion to strike some of the issues in this appeal. The Order also set forth a prehearing schedule for disclosure of witnesses and exhibits.

Motions and orders on request for recusal
ECHO-PAR members Timothy and Patricia Crawford through their attorney filed a request on behalf of themselves, dated April 8, 2005, that Hearing Examiner Tanner recuse herself from hearing the SEPA appeal. On April 11, 2005, the Hearing Examiner denied the request. On April 25, 2005, the Crawfords filed a request for reconsideration of the Examiner's order denying the request. On April 28, 2005, the Department filed a response objecting to the request for recusal. By order dated April 29, 2005, the Examiner denied the motion for reconsideration. On April 29, 2005, subsequent to issuance of the Examiner's April 29, 2005 order, the Examiner received a letter from Janet Way of ECHO-PAR, noting that the Crawfords' request for recusal represented ECHO-PAR's position. The Examiner issued an order on May 1, 2005, denying ECHO-PAR's request for reconsideration.

Substitution of Hearing Examiner
On May 2, 2005, Examiner Tanner notified the parties that, because of an injury sustained by Ms. Tanner, the hearing would be conducted by Anne Watanabe, another examiner in Ms. Tanner's office.

Settlement agreement
On May 5, 2005, a letter was submitted to the City Clerk which was signed by Janet Way, Peter Henry, Mamie Bollender, and Richard Purn, stating that the signatories were withdrawing from the SEPA appeal and that "Our spokesperson, Mr. Brian Derdowski has also withdrawn from his involvement from the appeal." Attached to the letter was a document entitled "Agreement Between Parties" that was signed by Harley O'Neil, Jr., and the people listed above, as "Member of ECHO-PAR." At hearing, Mr. Derdowski appeared and explained the letter, and clarified that the individual members who had signed the letter did not intend to withdraw the appeal on behalf of ECHO-PAR's other members.

Public hearing
A public hearing before the Planning Commission on the proposed rezone was held on May 4 and 5, 2005. The SEPA appeal was held before the undersigned Hearing Examiner Pro Tem on May 5, following the completion of the public testimony on the proposed rezone. At the hearing, Appellant ECHO-PAR was represented by Patricia and Timothy Crawford; the Department was represented by Ian Sievers, Assistant City Attorney and Flannary Collins, Assistant City Attorney; and the applicant, Echo Lake Associates, was represented by Troy Romero, attorney at law.

At hearing, the Department and the applicant moved to dismiss the appeal, on the grounds that withdrawal by four of ECHO-PAR's eight original members, and the withdrawal of ECHO-PAR's representative, Mr. Derkowski, served as a withdrawal of ECHO-PAR's appeal. Patricia and Timothy Crawford, members of ECHO-PAR, objected to the motion and also requested that the hearing be delayed. The motion to dismiss was denied, and the Crawfords were permitted to substitute themselves as representatives on behalf of ECHO-PAR. The Appellant's motion for a continuance was denied. The Appellant's request was based on its desire for additional time to prepare for hearing and to find other counsel. However, those difficulties were created by the actions of ECHO-PAR's members and did not constitute good cause for delaying the hearing again.

Motion in limine by City Attorney. The Department renewed its pre-hearing motion to strike the issue of stream "entombment" and to exclude evidence concerning this issue. The Hearing Examiner's April 5 order provided that the Appellant's brief on the issue of "entombing a piped water course on the subject property" was to be filed by April 27, 2005 and served on the parties, but no clarifying brief was submitted. The Department's motion to strike this issue was therefore granted, and the motion exclude evidence on this issue was granted.

Witnesses who offered testimony at the hearing were:

Appellant:	Patricia Crawford
Department:	Kim Lehmberg
Applicant:	Harley O'Neil, Jr.

FINDINGS OF FACT

Site and vicinity

1. The project site is addressed as 19250 Aurora Avenue North. The proposal site is approximately 8.61 acres, and is located on the south shore of Echo Lake. The site is occupied by a trailer park, an abandoned restaurant, a gas station/convenience store, and a used car dealership. Access to the site is from Aurora Avenue north and North 192nd Street.

2. Development in the vicinity of the site includes a small strip of lakeside single-family development next to the northeastern corner of the site, which is zoned R-6 Residential, six units per acre. To the west are Aurora Avenue North, and more commercial development. The Interurban Trail lies east of the property, and beyond the trail, properties are zoned single family residential and developed with single family homes. The Metro Transit Center is located to the north and a Metro Park and Ride is located across Aurora from the site. The area southeast of the site is characterized by single family development, with low- to medium-density zoning.

3. The property is currently split-zoned, with 2.21 acres of Regional Business (RB) and 6.4 acres designated Residential 48 units per acre (R-48). The Comprehensive Plan designates that property as Mixed Use (MU), High Density Residential (HDR) and Public Open Space (POS).

4. Echo Lake is classified as a Type II wetland under Chapter 20.80 SMC. There is no category for "lake" under the City's Code. SMC 20.80.330 requires a maximum buffer of 100 feet for a Type II wetland.

5. Echo Lake is a headwaters to McAleer Creek, a salmonid-bearing stream. The Lake is designated under state water quality regulations for Salmon and Trout Spawning, Core Rearing and Migration aquatic life uses.

6. Wildlife found at or near the site include many species of birds, including waterfowl, blue heron, eagles, hawks, and songbirds. The lake environment supports frogs and turtles, as well as trout that are stocked.

7. Surface water from the site currently flows into Echo Lake without treatment or detention.

8. A 30-inch corrugated conveyance pipe runs along the west property line. The pipe is located in the Aurora Avenue North right-of-way, and is at a depth of between 10 feet (at the south end) to almost 20 feet (towards the north end). The pipe turns to the east at the northwest corner of the site, following the north property line, then flows into Echo Lake. A smaller catch basin system on the site collects site drainage. The southern portion flows south and connects with the larger conveyance pipe that flows northward. The northern portion of the smaller pipe flows north and connects directly to the lake.

9. The Director issued a memorandum on January 26, 2005, concluding that, in order to be regulated as a "stream" under the Code, a stream must have surface water, and the surface water must produce a defined channel or bed. Thus, the Director concluded that the piped water course on the site identified as EL2 in the City's Stream and Wetland Inventory would not be regulated as a "stream."

10. A preliminary geotechnical engineering report was prepared for the site by Pacrim Geotechnical, Inc, a geotechnical engineering firm. The report reviewed the results from test pits dug at the site, and characterized the subsurface conditions encountered as fill,

glacial till and advance outwash. The report also noted that the groundwater seepage observed in two of the nine test pits, was surface water that had perched on the glacial till. The report included recommendations for site preparation and construction at the site.

11. Phase I and II Environmental Assessments were conducted in 2002 to identify the presence of hazardous substances and petroleum products at the site. Contaminated soils were found in the proximity of the gas station and some heating storage tanks. The potential for groundwater contamination was deemed to be minimal. The site has been partially cleaned up, with the remaining clean-up to take place with the decommissioning of the trailer park or with development of the site.

12. As noted above, the site is currently developed with a trailer park, a former restaurant, gas station/mini-mart, and a used car dealership. The Weiman House is a 1924 structure located on the site. The house is not on the state or national registries of historic landmarks. A King County Historic Preservation Officer reviewed the property and recommended that the project proponent be encouraged to find a way of incorporating the house into the future plans for the site, rather than demolishing it.

Proposal

13. The proposal is to change the zoning designation from its current split-zoned designation of RB/R-48 to Regional Business with a contract rezone (RB-CZ). An associated comprehensive plan amendment is proposed to designate the current HDR portion of the site as MU.

14. The proposed contract rezone would allow mixed-use development at the site. The proposed development would include retail/trade, offices, housing (which may include low-to-moderate-income senior housing apartments), market-rate housing in the form of condominium units, and possibly a YMCA. (Although the proposal had originally included a City Hall on the site, that use is no longer planned.) The proposal would also include open space, including a buffer adjacent to the lake.

15. Under the proposed contract rezone, development would be limited to 182,000 square feet of commercial uses and 350 housing units in four separate buildings, with parking structures located underneath the buildings. Total building coverage would be approximately 188,000 square feet. A wetland buffer of 115 feet (consistent with the proposed amendments to the Critical Areas Ordinance concerning buffers for Type II wetlands) would be established next to the lake as permanent open space.

16. The traffic impact analysis prepared for the proposal indicates that there would be no significant differences between the current zoning and proposed zoning for the site, in terms of trip generation or parking demand. Because the analysis was based on City Hall as a use at the site, the trip generation numbers for government office use are comparable or higher than those likely to occur with general office uses. If some of the use originally