

# REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 22, 2005

PLAT/PROJECT NAME: *LAURELCREST*

APPLICANT/  
LANDOWNER: The McNaughton Group

FILE NO.: 04 118048

TYPE OF REQUEST: A 179-lot Planned Residential Development subdivision on 24.61 acres

DECISION (SUMMARY): APPROVED subject to conditions

## BASIC INFORMATION

GENERAL LOCATION: The property is located on the south side of 180<sup>th</sup> Street SE, southeast of its intersection with 29<sup>th</sup> Drive SE, one mile south of Mill Creek, Snohomish County

ACREAGE: 24.61 acres

NUMBER OF LOTS: 179

AVERAGE LOT SIZE: 3,068 square feet

MINIMUM LOT SIZE: 2,975 square feet

DENSITY: 7.27 du/ac (gross)  
11.76 du/ac (net)

OPEN SPACE: 214,415 square feet

ZONING: CURRENT: R-9600  
PROPOSED: R-7200

### COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential  
Subarea Plan: Mill Creek East UGA Plan  
Subarea Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water: Alderwood Water District  
Sewage: Alderwood Water District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services (PDS): Approve subject to conditions  
Public Works (DPW): Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on December 3, 2004. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 29, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 24, 25 and 26)

A SEPA determination was made on September 29, 2005. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on December 7, 2005, the 209<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on December 7, 2005 at 11:00 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Brian Holtzclaw and Ms. Cher Anderson, of the McNaughton Group, appeared representing the applicant. Mr. Holtzclaw stated that regarding page 6, no. 11 of the PDS staff report, he wanted to show that they have sufficient sight distance.

With regard to page 10, he indicated that no perimeter landscaping is required on the west and south boundaries under the county code. With regard to page 14, no. v., the date should show July 1, 2005, otherwise he indicated that he had no objections to the other conditions.

He stated that they will take out the temporary turnaround on the east and the west, and that they will protect the wetlands on the west. He indicated that they will not have an effect on the off property rockery and that there is no longer access off the alley.

He stated that under the county policy (Exhibit 130), they can get up to nine units under PRD. He indicated that the Northshore School District raised no objection, plus they will paying impact fees.

He stated that The Jay Group investigated the area and that there is no evidence of any eagles' nests. (Exhibit 131)

He stated that they have parking spaces in 214,000 square feet. He indicated that they are also paying the parks fee for the Tambark Creek Park.

He stated that the DPW has determined that they would have to eliminate traffic problems and that they will paying mitigation fees of \$435,000.

He stated that the critical areas will be protected. He indicated that under PRD-8400, 153 units could be built versus the 179 which they are proposing. He stated further that under the R-9600 PRD, 134 units could be built.

3. Mr. Bob Pemberton, PDS, submitted Exhibit 32, which was a letter commenting on the proposal.
4. Mr. Andrew Smith, DPW, stated that there is a stopping sight distance of 330 feet, which is sufficient and that there is presently a contract to phase in road improvements.
5. Mr. Paul Slavens, who lives next door to the east, spoke on the matter.
6. Mr. Scott Fullner, who lives on the southwest corner, is concerned as to runoff and drainage and feels the homes would be flooded continually. He wanted trees screened on the south to remain in place.
7. Ms. Roseanne Zamp, who lives to the south of the proposal, states that she sees no creativity in the development and that her back door will be five fee away from the homes.
8. Mr. Holtzclaw responded and stated that the underlying zoning sets the density limitation and that there will be underground detention vaults. He indicated that there is no authority for fencing or trees to be placed.

The hearing concluded at 12:25 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.

3. Numerous comments from surrounding neighbors were received, including those who spoke expressing their concerns. There was general objection to the number of units proposed, loss of trees, increased traffic congestion and impacts to schools and parks.
4. The PDS staff report responded to the comments and stated that the number of dwelling units proposed is consistent with land use regulations and other county regulations address the protection of natural areas, impact mitigation for parks and schools and traffic safety and road capacity.
5. The request is for a rezone from R-9600 to R-7200 with a Planned Residential Development site plan for a 179 lot preliminary subdivision on 24.6 acres. The site and the area to the north are currently zoned R-9600, while the area to the north is developed with single-family residential subdivisions with small lots. To the west it is developed as single-family residential subdivision with PRD-9600 zoning and to the east is a single-family residential subdivision zoned R-8400, while to the south is a PRD-SA 1 developed subdivision with larger lots.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$918.00 for each new single-family home.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. (See Pages 3-6, Exhibit 129)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. The site contains three Category 3 wetlands. Two of them are forested wetlands and a much larger emergent wetland is located in the middle of the north end of the property. This wetland will be preserved and protected with a minimum 25-foot wide Native Growth Protection Area (NGPA) buffer. PDS has reviewed the Critical Areas Report and Mitigation Plan and Addendum to the Report and determined that the project complies with the Critical Areas Regulations of Chapter 30.62 SCC (Chapter 32.10 SCC).
10. Runoff from the newly created impervious surfaces will be collected and transported by a system of catch basins and pipes to a detention system underground vault in the southwest corner, and a detention system near the center of the site. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems should be abandoned.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map and the Mill Creek East UGA Plan Future Land Use map. The site located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be

developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.” The Mill Creek East UGA Plan PDS finds the requested rezone to be consistent with the General Policy Plan’s Urban Low Density Residential designation of the property.

The 179-lots proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

14. The request for a Planned Residential Development found under Chapter 30.42B SCC is set forth in detail on pages 8-11 of the PDS staff report. (Exhibit 129) The staff has correctly analyzed the affect under the PRD regulations and it is hereby adopted by the Examiner.

15. It should be noted that one of the main concerns of those persons sending letters and appearing in opposition, related to the density of the development. Evidence indicates that the zoning allows for dense development on this large piece of property and the PRD, if used as here, would allow 134-153 units (i.e. only 45 to 16 units less) as compared with the requested 179. In other words, no matter which method is used, there is already allowed on this large piece of land a heavy density regardless of this proposal.

It should be noted however, that PRDs, under Chapter 30.42B SCC provides in Section 30.42B.010, entitled Purpose, that one of the purposes (in paragraph six) is for the integration of new development into the existing community while protecting and preserving the value of the surrounding neighborhood. In this regard, the Examiner has concerns that there should be some tree buffering or a fence to protect the existing neighborhoods and preserve this value. However, no provision is allowed for the imposition of these protections, based upon the evidence submitted. The Examiner, however, would recommend that at the minimum that the applicant place a fence between the existing residential developments and this development to provide a better protection for both properties, which would preserve the value of the surrounding neighborhood and this development as well.

16. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

17. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

18. The proposal has been evaluated by PDS for compliance with the Planned Residential Development provisions of Chapter 30.42B SCC. This proposal is consistent with these provisions.

19. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
20. The aerial photograph (Exhibit 13) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
21. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

### **CONCLUSIONS:**

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are only minor changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request meets the requirements of the Planned Residential Development section of the Snohomish County Code. It will provide for additional single-family homes in this very rapidly growing area of the county.
6. While the Examiner does not have sufficient evidence submitted to justify the placing of a fence, the placing of a fence or trees, on the boundaries adjoining the already existing family homes, is highly recommended to protect the existing neighborhood, as well as the proposed development.
7. The requested rezone from R-9600 to R-7200, along with a 179-lot Planned Residential Development subdivision should be approved subject to compliance by the applicant with the following Conditions:

### **CONDITIONS**

- A. The PRD official site plan/preliminary plat received by PDS on July 1, 2005 (Exhibit 18) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

- ii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- iii. A final mitigation plan based on the *Critical Areas Study and Conceptual Mitigation Report* prepared by The Jay Group dated revised April 18, 2005 (Exhibit 16) and *Addendum to the Critical Areas Study and Conceptual Mitigation Report* prepared by the Jay Group dated revised June 30, 2005 (Exhibit 22) shall be submitted for review and approval during the construction review phase of this project.
- iv. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 19 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
- v. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District No. 417 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,927.77 per lot for mitigation of impacts on county roads paid to the county,

\$73.73 per lot for transportation demand management paid to the county,

\$49.07 per lot for mitigation of impacts on WSDOT project DOT-11 paid to the county.

\$31.32 per lot for mitigation of impacts on WSDOT project DOT-38 paid to the county.

\$37.66 per lot for mitigation of impacts on WSDOT project DOT-13 paid to the county.

\$21.08 per lot for mitigation of impacts on WSDOT project DOT-41 paid to the county .

\$296.56 per lot for mitigation of impacts on City streets for the city of Mill Creek paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payment obligations shall be contained in any deeds involving this

subdivision or the lots therein. Once building permits have been issued, all mitigation payments shall be deemed paid by PDS.

- iii. One to 21 feet of right-of-way shall be dedicated to Snohomish County as indicated on the plat received by PDS on July 1, 2005 [SCC 30.66B.510 and 30.66B.520].
- iv. Issuance of building permits are only permitted for Lot 1 through Lot 54 until Condition C. v. below is met.
- v. In accordance with SCC 30.66B.170 (6), and as offered in the applicant's letter of July 1, 2005, construction of a northbound right-turn lane on 35<sup>th</sup> Ave. SE at Seattle Hill Road as needed to mitigate a future level of service condition shall be under contract prior to issuance of building permits for Lot 55 through Lot 179.
- vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- vii. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$918.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- ii. Construction of frontage improvements consisting of half of a five lane section (34 Feet of pavement including a bike lane) with curb, gutter, planter strip and a five-foot sidewalk.
- iii. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1



sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- iv. The final wetland mitigation plan shall be completely implemented.
- v. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 19) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION:**

The request for a REZONE from R-9600 to R-7200 and a 179-lot Planned Residential Development are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 22nd day of December, 2005.

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Robert J. Backstein, Hearing Examiner

**EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. (The Examiner's action on reconsideration would be subject to appeal to the Council.) The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council rules of procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **January 3, 2006**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

### Appeal

An appeal to the County Council may be filed by any aggrieved Party of Record. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **January 5, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the county and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant’s agent or representative, if any; and the required filing fee.

The grounds for filing an appeal are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record.

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the county file number in any correspondence regarding this case.

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Staff Distribution:

Department of Planning and Development Services: Bob Pemberton  
Department of Public Works: Andrew Smith

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.