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**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
CENTEX HOMES ) **FILE NO. 05 128884 SD**  
119-lot planned residential subdivision (PRD) of )  
19.45 acres with concurrent rezone from Residential- )  
9,600 (R-9,600) to Residential-7,200 (R-7,200) )

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DATE OF DECISION: November 30, 2006

PLAT/PROJECT NAME: *Sinclair Woods*

DECISION (SUMMARY): The 119-lot PRD and the concurrent rezone to R-7,200 are **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 22302 39<sup>th</sup> Avenue SE, Bothell, Washington.

ACREAGE: 19.45 acres

NUMBER OF LOTS: 119

AVERAGE LOT SIZE: 3,932 square feet

MINIMUM LOT SIZE: 3,367 square feet

DENSITY: 6.1 du/ac (gross)  
9 du/ac (net)

ZONING: CURRENT: R-9,600  
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)

UTILITIES:

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions

Public Works (DPW): Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on March 7, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on October 6, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on November 15, 2006, the 69<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 November 15, 2006 at 3:01 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Centex Homes, was represented by Barbara Yarrington. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works. No member of the general public appeared at the hearing.
3. By pre-hearing letters, three citizens express opposition or concern about the proposal. Gene Grieve (Exhibit 27) and Danielle Olson (Exhibit 26) lament an asserted lack of planning for public parks in the emerging East Bothell community. Ms. Olson pleads for human scale parks to help create a sense of place for the new residents of the many residential developments in the vicinity. Mr. Grieve meticulously lists more than 30 residential developments underway or proposed in the 2,000 acres of the East Bothell community, which will be home to 20,000 people. The third person with concerns is Tim Jenkins (Exhibit 38), who described flooding of his property adjoining the subject site. The applicant has since met with him to describe the flood event as a one-time failure of a sprinkler head in the Sutherland plat. The County has inspected the site and finds no likely further flooding.

The hearing concluded at 3:23 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

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 Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The request is for a rezone of 19.45 acres from R-9,600 to R-7,200 in order to construct a 119-lot subdivision. Average weekday vehicle trips are 1,073, of which 84 are a.m. peak hour trips and 113 are p.m. peak hour trips. The applicant agrees that an inadequate road condition at the York Road/Jewell Road intersection must be no longer designated as such by the County engineer before this plat may receive any certificate of occupancy or final inspection. (See Exhibit 40 and Condition C.iv. herein.)
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home. Although witnesses Olson and Grieve express doubt that such fees will result in parks appropriately serving the needs of East Bothell, the Examiner finds that such fees are the legislatively enacted regulatory device which must be applied here.
5. 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 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.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
7. A Category 3 wetland is located along the eastern property boundary adjacent to 39th Avenue SE. The wetland is dominated by Western red cedar, black cottonwoods, vine maple, salmonberry, lady fern, and other plants associated with wetlands, such as horsetail. The wetland extends onto the adjacent property to the south eventually draining to a Type 5 stream.

The proposed access road will cross in an area where an old gravel access road is currently located impacting the wetland, although the impacts will be minimized by using the existing road location. An existing culvert allows water to flow beneath the existing road. The applicant proposes to fill 1,789 square feet of wetland and impact 1,425 square feet of buffer. To mitigate, the applicant proposes to create 3,708 square feet of wetland and add 2,425 square feet of buffer. All wetland and buffer areas will be contained in Native Growth Protection Area (NGPA) Tracts.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is in conformance with Chapter 30.62 SCC (Critical Areas Regulations) and is consistent with the purpose and objectives of the chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare.

8. 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.
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service and electrical power will be available for this development.
11. The subject property is designated Urban Low Density Residential (ULDR) on the GPP Future Land Use map, and is 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-7,200, which is the case here.
12. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A 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.
13. 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.

14. 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.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. 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 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision 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.
4. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
5. 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. Because no evidence was submitted contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

### **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a 119-lot Planned Residential Development Subdivision on 19.45 acres with a concurrent rezone from R-9,600 to R-7,200 are **CONDITIONALLY APPROVED**, subject to compliance with the following conditions:

## CONDITIONS

- A. The preliminary plat/PRD official site plan received by PDS on May 22, 2006 (Exhibit 13) shall be the approved plat configuration and PRD official site plan. 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 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 platlor 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 conceptual wetland mitigation plan called out as Sinclair Woods Grading Plan, prepared by Sewall Wetland Consulting, dated May 2006, (Exhibit 20) 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 18 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 dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
  - ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District 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 the two existing parcels. Lots 1 and 2 shall receive credit."

- iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,073.48 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area F. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$66.84 per lot paid to the county for the WSDOT as traffic impact mitigation to state highways.

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payments 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.

- iv. Improvements to remove the inadequate road condition (IRC) at the York Road/Jewell Road intersection must be complete or under contract before a building permit for this development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued. <sup>1</sup>However, if conditions change such that the York Road/Jewell road intersection is no longer designated to be an IRC by the County engineer, then this condition shall be rendered obsolete and no longer apply to the development.

- v. ~~<sup>2</sup>Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 39th Ave SE and the plat road into Beaumont, adjacent to the panhandle in the northeast corner of this development, with a 35 foot radius curve is required to be shown on the face of the plat.~~

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 39th Ave SE and the plat road (Road A), with a 35 foot radius curve is required to be shown on the face of the plat.

Dedication of additional right-of-way adjacent to the existing right-of-way of 39th Avenue SE along the development's entire frontage such that a minimum of 40 feet of right-of-way exists from centerline of the 39th Avenue SE right-of-way is required to be shown on the face of the plat.

- 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 30.91N.010 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."

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<sup>1</sup> Condition Revised as submitted in Exhibit 40 – scrivener's error corrected 12/6/06.

<sup>2</sup> Scrivener's error corrected – there is no plat road into Beaumont adjacent to the panhandle. (4/30/08)

D. Prior to recording of the final plat:

- i. Construction of urban standard frontage improvements on 39th Avenue SE shall have been completed.
- ii. 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 plat 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.

- iii. The final mitigation plan shall be completely implemented.
- iv. 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. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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.

Decision issued this 30<sup>th</sup> day of November, 2006.

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Ed Good, Deputy Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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The 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 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **DECEMBER 11, 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 Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application 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. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 14, 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 or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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 shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

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 the case.

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Staff Distribution:

Department of Planning and Development Services: Paul MacCready/ Norm Stone

<p>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.</p>
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