

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 21, 2007

PLAT/PROJECT NAME: *ARISTATA*

APPLICANT/
LANDOWNER: Phoenix Development, Inc.

FILE NO.: 06-128287-000-00-SD

TYPE OF REQUEST: 51 lot **SUBDIVISION** of 10.6 acres utilizing lot size averaging with
concurrent **REZONE** from R-9600 to R-7200

DECISION (SUMMARY): Approved subject to Conditions

BASIC INFORMATION

GENERAL LOCATION: 21623 35th Ave. SE; Bothell, WA 98021

ACREAGE: 10.6

NUMBER OF LOTS: 51

AVERAGE LOT SIZE: 5,895.5 square feet

SMALLEST LOT SIZE: 4,494 square feet

GROSS DENSITY: 4.81 du/ac

NET DENSITY: 6.02 du/ac

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

SCHOOL DISTRICT: Northshore

WATER/SEWER SOURCE: Alderwood Water and Wastewater

FIRE DISTRICT: No. 7

AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve with Conditions

INTRODUCTION

The applicant is requesting preliminary plat approval of a 51-lot subdivision with a concurrent rezone from R-9600 to R-7200. Access is provided by extension of 218th St. SE, and two new public roads off of 218th St. SE (35th Drive SE and 36th Drive SE). 36th Drive SE will continue north to the proposed subdivision of Nelson Meadow (05-127253-SD). Water and sewer will be provided by Alderwood Water and Wastewater District.

The preliminary plat and rezone application was originally submitted to Planning and Development Services (PDS) on August 31, 2006, and was determined on September 28, 2006 to be complete as of the date of submittal. The 120-day clock started on September 28, 2006, and stopped on October 25, 2006, when a hand-off meeting was held. A resubmittal of the application was received on January 26, 2007, and the 120-day clock started on February 9, 2007. The 120-day clock stopped on March 6, 2007, when a review letter was written. A resubmittal of the application was received on March 19, 2007, and the 120-day clock started on April 5, 2007. The materials submitted were determined to be sufficient to recommend for preliminary approval of the plat. As of the hearing date, 86 days of the 120-day review period will have elapsed. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on May 7, 2007.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19 through 21)

A SEPA determination was made on September 7, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on May 9, 2007, the 86th 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 May 9, 2007, at 2:01 p.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. The Examiner admitted the staff report and exhibits into the record
3. Those in attendance expressing an interest were administered the oath.
4. Eric Olson, planner for Planning and Development Services, appeared and testified under oath. He said that he was appearing for the PDS planner on the case, Ed Caine. He indicated that county staff recommends approval of the proposed development and the rezone request. He explained that the proposal was to create 50 residential lots on 10.6 acres using lot size averaging along with a rezone from R - 9,600 to R - 7,200. He said that PDS received one letter from the public expressing concern that the project would have on traffic. The development has been deemed concurrent and the plan meets the county requirements. Three of the houses currently there will remain. The access will be off 35th, a city of Bothell road and the improvements on that road are city conditions.
5. Jeffery Thomas, representative for the applicant, Phoenix Development, Inc., appeared and testified under oath. He said that he had little to add to the county's proposal. He said there was no opposition to the county's proposed conditions.
6. Eric Olsen reappeared and indicated that there was one change regarding the condition on school impact fees. As there are already 9 residential lots on the site, in the proposed development lots 8, 11, 51 and lots 1-6 will receive school impact credits.
7. No one appeared in opposition to the request.
8. The applicant consented to a delay in the Examiner's preparation of the decision.

The hearing concluded at 2:09 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 these hearings 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. The request is for a rezone from R - 9600 to R -7200.
4. The site consists of 9 existing lots. Currently there are 8 lots developed as single family residences, and one (1) undeveloped lot. The land is landscaped and lightly treed except for a steeply sloping area in the southeastern corner of the site.
5. Land to the west is within the city limits of the city of Bothell. Adjacent lands to the north and south are zoned R-9600, and adjacent lands to the east are zoned either R-9600 or R-7200 PRD. Within 500 feet of the site are additional areas zoned either R-7200 or R-9600. Adjacent uses are primarily residential. A school, within the city limits of Bothell, is located northwest of the subject property.
6. Neither agency reviews nor technical reviews identified any areas of concern that were not addressed during the review process. One public comment letter was received. The writer's concern was the increase in traffic. PDS review has indicated that the project complies with the relevant codes and policies of Snohomish County. The road directly to the west is a City of Bothell street. Testimony received at the hearing was that there were going to be improvements made to city standards.
7. The proposal is within Park District No. 307 (Nakeeta Beach) and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

a. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 44 new single family lots at 9.57 adt/lot. (The traffic study says that 8 sfr's exist, however one unit is a guest home that will not receive credit as an existing sfr) This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 400.03 new ADT and has a road system capacity impact fee of \$92,005.98, based on \$230/ADT. This impact fee must be proportionally paid prior to the issuance of the building permits.

Trips
Reductions

CalculationsWith TDM

ADT
(9.57 ADT/SFR) =

(51 New SFR - 7 Exist.) x
421.08 400.03

AM PHT
(0.75 AM PHT/SFR) =

(51 New SFR - 7 Exist.) x
33.00 31.35

PM PHT
(1.01 PM PHT/SFR) =

(51 New SFR - 7 Exist.) x
44.44 42.22

The mitigation per lot distributed over 48 new lots will be $\$92,005.98/48$ lots = $\$1,916.79$ per lot.

b. Concurrency [SCC 30.66B.120]

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

The development has been deemed concurrent on the following basis: Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130(4). The subject development is located in TSA E, which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 31.35 a.m. peak-hour trips and 42.22 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

c. Inadequate Road Condition (IRC) [SCC 30.66B.210]

The subject proposal will not impact any IRC locations identified at this time within TSA E with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

d. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along 35th Ave SE, a City of Bothell Road. Urban standard frontage improvements are to the standard set by Bothell. Prior the recording of the plat, the City of Bothell shall have approved the construction of the frontage improvements to the City of Bothell standards.

e. Access and Circulation [SCC 30.66B.420]

Access is proposed from one access onto 35th Ave SE and the second access will be from the plat of Nelson Meadow (PFN 05 127253).

f. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

35th Ave SE is designated as a City of Bothell Street. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on the development's side of the right-of-way.

g. State Highway Impacts [SCC 30.66B.710]

(ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at

$$421.08 \text{ ADT} \times \$36.00/\text{ADT} = \$15,158.88$$

The applicant's traffic study and offer to the WSDOT indicate that this development will not impact WSDOT road improvement project. Therefore, no traffic mitigation payment is offered. The WSDOT comments of September 7, 2006 agree that no traffic mitigation is required.

h. Other Streets and Roads [SCC 30.66B.720]

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency.

Snohomish County and the City of Bothell currently have an interlocal agreement (effective August 9, 2006) which provides for a reciprocal payment arrangement to mitigate traffic impacts within the two jurisdictions. In accordance with the interlocal agreement transportation impacts of developments in the County can be determined and mitigated for by making a "sub area" percentage payment. The project is located in "sub area 4 which as a percentage impact of 50% (estimates 50% of the project's trips impact the City of Bothell street system). Applying the 50% impact percentage and the City of Bothell fee rate of \$2,093 per single family dwelling the total mitigation payment to the City of Bothell is \$43,743.70, (44 net lots x 50% x \$2,093 per dwelling x 95% TDM). The per lot amount distributed over 48 new lots is \$43,743.70/48 lots = \$911.33 per lot.

i. Transportation Demand Management (TDM) [SCC 30.66B.630]

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to

indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The application was submitted with an acceptable TDM plan and will therefore be granted a 5% reduction of PM peak hour trips and 5% reductions of the future capacity fee payment.

j. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children who may reside in the subject development. Comments have been received from the Northshore School District dated September 12, 2006 stating that the students will attend the following schools and will:

School Type	Elementary	Middle School	High School
School Name	Canyon Creek	Skyview	Bothell
Walk to School	Yes	Yes	No
Walk to School Bus			
Will busses pick up children within/adjacent to this project			
Bus Stop Locations			35 th Ave @212 th Street

This development will be required to provide safe walking conditions for the High School Students to the 35th Ave W/212th Street intersection. Safe walking routes for Elementary and Middle School Students will be provided to the respective schools.

9. School Mitigation (Chapter 30.66C SCC)

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with

Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Northshore School District No. 417, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 9 existing lots. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and Grading (Chapters 30.63A and 30.63B SCC)

Stormwater runoff will be captured, routed through a filter-media cartridge vault, and then passed to a detention vault. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 18,000 cubic yards of cut and 18,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations (Chapter 30.62 SCC)

There is a Type 4 stream and critical slopes in the southeastern corner of the site. PDS reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations.

12. GMA Comprehensive Plan (General Policy Plan, GPP)

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively.

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) 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-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.” PDS found the requested rezone to be consistent with the General Policy Plan’s Urban Low Density Residential designation of the property.

The 51 lots proposed thus are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

13. Rezone (Section 30.42A.100 Decision Criteria)

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.

Criteria for the review of rezone applications are established in SCC 30.42A.100. Rezone proposals are also addressed by case law:

The following general rules apply to rezone applications: (1) there is no presumption of validity favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have changed since the original zoning; and (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare.

[*Citizens v. Mount Vernon (Mount Vernon)*, 133 Wn.2d 861, 874-75, 947 P.2d 1208 (1997), citing *Parkridge v. Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978)] The courts have also held that a rezone which serves to implement the adopted comprehensive plan need not meet the “changed circumstances” portion of the *Parkridge* test. [*SORE v. Snohomish County*, 99 Wn.2d 363, 370-371, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995)]

The 1996 urban growth area, area-wide rezone ordinance, which served to implement the GPP initially, expressly contemplates individual rezones within UGAs “within the density ranges of the Future Land Use Map urban residential designations...” (Ordinance No. 96-071, § 2.M, effective December 12, 1996)

Motion 06-229 of Snohomish County Council, dated May 24, 2006, included Finding 20, which states: “The Growth Management Act, chapter 36.70A RCW, specifically recognizes that the intent of the Act is to provide for the public health, safety, and welfare. Snohomish County’s GMA Comprehensive Plan (“GMACP”) provides specific policies concerning land use, housing, and urban residential density.”

“The proposed rezone implements the County’s GMACP.”

Motion 06-229 of Snohomish County Council, dated May 24, 2006, included conclusion 7, which states: “In general, conformity of a rezone to the applicable comprehensive plan is tantamount to its bearing a substantial relationship to the public welfare, since the comprehensive plan is the most direct expression of public policy in the topical area of land use.”

If it did not conform to the comprehensive plan, the requested R-7,200 zoning would have to be examined as a possibly illegal “spot zone.” Spot zoning has been defined by the Washington Supreme Court, such as in the case of *SORE v. Snohomish County* [99 Wn.2d 363, 368 (1983)]:

“Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, *and not in accordance with the comprehensive plan*. [citations omitted; emphasis added]” Not all “spot zoning” is illegal. “Only where the spot zone grants a discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification will the county's rezone be overturned. [citations omitted]” [SORE at 368] The requested R-7,200 zoning would not technically be a spot zone because it would be in conformity with the comprehensive plan.

The zoning requested will be in conformity with the comprehensive plan and will not be an illegal spot zone and will not be counter to the public health, safety and welfare.

14. Zoning (Chapter 30.2 SCC)

PDS evaluated the proposal for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 35% or 5%.

The LSA calculation is as follows:

Area in Lots (300,672 square feet) + Critical Areas and Buffers (55,607 square feet) + Open Space (12,464 square feet) = (368,743 square feet) ÷ (51 of lots proposed) = (7,230) square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. Thus, based upon PDS's evaluation, the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

15. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on August 31, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

16. Plats – Subdivisions - Dedications (Chapter 58.17 RCW)

The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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.

The proposed plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. As was previously indicated in this decision, water and sewer are to be provided by Alderwood Water and Wastewater District.

17. 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 no changes to the recommendations of the staff report.
2. The Examiner has jurisdiction to hear this case and render this decision
3. The request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP). 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.
4. The request would allow for a rezone from R - 9600 to R -7200 and the preliminary plat approval of a 51-lot subdivision
5. The request should be approved as submitted.
6. 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 for this property is hereby APPROVED.

The request for approval of a 51 lot **PRELIMINARY SUBDIVISION** is hereby APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

- A. The preliminary plat received by PDS on March 15, 2007 (Exhibits 16A and 16B) shall be the approved plat configuration. 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 plattor 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 Phoenix Development -- Aristata Critical Areas Report prepared by Sewall Wetland Consulting, Inc. and dated August 24, 2006 (Exhibit 7), shall be submitted for review and approval during the construction review phase of this project. The final mitigation plan is required to address the restoration of the disturbance area following construction of the stormwater outfall.
- 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 9 existing parcels. Lots 1 through 9 shall receive credit."
 - ii. "Chapter 30.66B SCC requires traffic impact mitigation payments in the amounts shown below for a single-family residence (or twice the amount for a duplex):

\$1,916.79 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.

\$911.33 per lot to the City of Bothell as mitigation for project impacts to City of Bothell streets paid to the City of Bothell. Proof of payment required.

“These payments are due prior to or at the time of individual building permit issuance for each residence. Notice of these mitigation payments/obligations shall be contained in any deeds involving this subdivision or any of the lots therein. Once a residential building permit(s) has been issued all mitigation payments shall be deemed paid for the respective lot.”

- iii. 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.”

- iv. The developer shall pay the County \$1,244.49 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.

D. Prior to recording of the final plat:

- i. Construction of urban standard frontage improvements on 35th Ave SE Street SE shall have been constructed to the City of Bothell Standards and construction of the frontage improvements shall have been approved by the City of Bothell.
- ii. This development will be required to provide safe walking conditions for the High School Students to the 35th Ave W/212th Street intersection by construction of an pedestrian walkway constructed to the EDDS in those locations where sidewalks do not presently exist. Safe walking routes for school children to the Elementary and Middle Schools are required.
- iii. 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 plattor 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.

E. 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.

Decision issued this 21st day of May, 2007.

James Densley, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **May 31, 2007**. 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **June 4, 2007** 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 this case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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.