

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

DATE OF DECISION: August 14, 2008

PLAT/PROJECT NAME: ***Willow Springs***

APPLICANT/
LANDOWNER: Robert Nehring, RBN Investments, LLC
3216 Wetmore Avenue, Ste. 202
Everett, WA 98201

FILE NO.: 05-123399 SD

TYPE OF REQUEST: **PRELIMINARY SUBDIVISION APPROVAL USING LOT SIZE AVERAGING**

DECISION (SUMMARY): **Preliminary Subdivision Approval GRANTED** for a 13-Lot Subdivision
subject to ~~Preconditions and~~¹ Conditions

BASIC INFORMATION

GENERAL LOCATION: The subject property is located at 3115 79th Avenue N.E., Everett
Section 2, Township 29 North, Range 5 East, W.M., Snohomish County, WA

ACREAGE: 3.84 acres

NUMBER OF LOTS: 13

AVERAGE LOT SIZE: 11,410 square feet

MINIMUM LOT SIZE: 4,296 square feet

DENSITY: 6.7 du/ac

ZONING: R-9600.

GMACP

GPP Designation: Urban Low Density Residential (4-6 du/acre)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: City of Marysville

¹ Scrivener's Error – Corrected 8-18-08

SCHOOL DISTRICT: Lake Stevens School District No. 4

FIRE DISTRICT: Fire District No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services (PDS): Approve with Conditions
Department of Public Works (DPW): Approve with Conditions

INTRODUCTION

The applicant filed a Master Permit Application on July 17, 2006. (Exhibit 1A3) A second Master Permit Application was filed on September 6, 2007. (Exhibit 1A2). Finally, a Revised Master Permit Application was filed on March 18, 2008. (Exhibit 1A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the County Code. (Exhibits 6A, 6B and 6C).

A SEPA determination of nonsignificance (DNS) was issued on April 15, 2008. (Exhibit 5B). No appeal was filed.

The Examiner held an open record hearing on June 12, 2008, the 130th day of the 120-day decision-making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The Examiner stated that although she did not perform a specific site visit prior to the open record hearing, she is familiar with the site due to the fact that she resides in the vicinity.

PUBLIC HEARING

The public hearing commenced on June 12, 2008 at 10:00 a.m.

1. Representing PDS was Elbert Esparza, Senior Planner, Dwayne Overholser, Drainage Engineer and Elizabeth Larsen, Biologist.
2. Representing the Applicant was Robert Nehring, RBN Investments, LLC.
3. No other parties or members of the public were in attendance.

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

FINDINGS OF FACT

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

1. The master list of Exhibits and Witnesses are the record in this file, as well as the testimony of witnesses received at the open record hearing. The entire record was considered by the Examiner and is hereby incorporated by reference, as if set forth in full herein. No additional Exhibits were entered during the open record hearing.

2. Summary of the Proposal: The Applicant is requesting a 13-lot subdivision of approximately 3.84 acres utilizing lot size averaging including a modification to allow a private road (Tract 996). An existing home (to be removed), a Type 5 stream and one Category 3 wetland are located on site. A Category 3 wetland is located off site about 30 feet from the north property line.
3. Site description: The project contains approximately 3.84 acres of which 1.57 acres are streams (Type 5), a wetland (Category 3) and associated buffer. The site is currently developed with one single-family home and garage. The east portion of the site is encumbered by 150 feet of easements, the easterly easement is held by Puget Sound Energy and the west remaining 50-foot contains an easement for a gas utility. The vegetation on the site is residential landscaping and lawn located at the southwest corner of the site. The remainder portion of the site is forested land with evergreen and deciduous trees with ferns and shrubs under the canopy. Wetland areas with alder, vine maple and blackberry are located in the eastern region of the site and under the power lines and gas easements. The County's records reveal that the site has Tokul gravelly loam soils that have a hydrologic classification of Type "C". The average slopes on the site are approximately 10 percent to 15 percent.
4. Adjacent zoning and uses: The area is predominately zoned R-9600 and consists of many newer subdivisions and single-family homes located on different sized lots.
5. Neighborhood Concerns: No public letters of concern were received.
6. Park Impacts: The proposal is within Park District No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit. The applicant has proposed to pay applicable park impact fees. Such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).
 - A. Road System Capacity (SCC 30.66B.310) The density calculations on the TDM Plan indicate that the density for this development is 3.4 dwelling units per acre. The development does not qualify for TDM credit. The impact fee for this proposal is based on the new average daily trips (ADT) generated by 13 new homes, which is 9.57 ADT/home. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 114.84 new ADT and has a road system capacity impact fee of \$27,791.28, based on \$242.00 per ADT. This impact fee must be paid proportionately prior to issuance of each building permit.
 - B. Concurrency (SCC 30.66B.120) The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the DPW has made a preliminary determination that the development is concurrent as of August 31, 2006. A record of developer obligations documenting the concurrency determination will be prepared by the DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from August 31, 2006. Pursuant to SCC 30.66B.130(4), the development has been deemed concurrent because it is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 9.00 a.m. peak-hour trips and 12.12 p.m. peak-hour trips which is below the threshold of 50 peak-hour trips, which would require the development to be evaluated under SCC 30.66B.035.

- C. Inadequate Road Condition (IRC) (SCC 30.66B.210) The subject proposal will not impact any inadequate road condition locations identified at this time within TSA A 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 Ch. 30.66B SCC.
- D. Frontage Improvements (SCC 30.66B.410) The subject property frontage is located along 79th Ave. NE. Urban standard frontage improvements are required consisting of 18 feet of pavement from the centerline of right-of-way, vertical curb, 5-foot planter strip and 5-foot sidewalk. The Applicant proposes to construct a 6-foot sidewalk to meet the City of Marysville's design standards in accordance to the provisions of the County/City of Marysville Interlocal Agreement, and to match the improvements adjacent to the north. The construction of frontage improvements is required prior to recording the subdivision unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.
- E. Access and Circulation (SCC 30.66B.420) Access is proposed from a new private cul-de-sac road off of 79th Avenue NE adjacent to the north property line. Lots 1 through 7 would take access from the cul-de-sac road, Lots 8 through 10 will take access directly from 79th Avenue, and Lots 11 through 13 will have access via a stub road (labeled private Tract 996) adjacent to the south property line. Direct access to 79th Avenue via individual driveways is acceptable to the County since it is not classified as an arterial road, and adjacent developments have been approved with similar accesses.

SCC 30.41A.210(3) requires that all subdivision roads shall be dedicated public roads designed and constructed in conformance to EDDS (except Planned Residential Developments). A Design Standard Modification per SCC30.41A.215 was included with the application to request approval of the private cul-de-sac road, and the private drive Tract 996. PDS does not object to the approval of the private roads in this development because the two roads are short dead end roads serving very few homes, and cannot be extended in the future because of development adjacent to the east. PDS staff has determined that the minimum centerline offset spacing between the proposed cul-de-sac road and the public road to the north in Willow Park (32nd Place NE) meets minimum EDDS requirements for separation. Spacing between the two proposed roads in the development meet requirements as well. There are no issues with road grade, vertical or horizontal curve, or with sight distance. The plans show a right-of-way width of 41 feet for the private cul-de-sac road, because a sidewalk and planter are not proposed on the north side. There will be no homes fronting the north side of the cul-de-sac road.

A deviation request (Exhibit #7A2) was submitted requesting approval of that design, to meet the City of Marysville's design standards. The request was approved on condition that comments are received from the City indicating agreement with the proposed design; which is a 24-foot pavement width, vertical curbs, and a 6-foot sidewalk (no planter) in a 40-foot right-of-way. A memo dated December 10, 2007 was received from John Cowling, Engineering Services Manager for the City of Marysville indicating that the City's design standards for the private cul-de-sac road (Road A) are 40-foot right-of-way, two 12-foot lanes, and 6-foot sidewalks, which is shown on the plans for Road A. However; the City requires a minimum easement radius of 50 feet for the cul-de-sac, not 48 feet as shown on the plans. In addition, the City requires that an adequate curb return radius be provided on the north side of Road A at 79th Avenue NE; and since the improvements on 79th Avenue have been completed by the development adjacent to the

north, that must be shown on the plans. The curb return from Road A must tie into the existing sidewalk on 79th Avenue at an acceptable radius. The plat (Exhibit #2B) has been revised to show a 50-foot cul-de-sac easement radius and a 25-foot radius curb return at the intersection of Road A and 79th Avenue, which is acceptable to PDS. The Applicant's proposal to eliminate the planter around the cul-de-sac bulb is acceptable to the DPW and PDS, and no EDDS deviation is required for that change.

F. Dedication of Right-of-Way (SCC 30.66B.510 and 30.66B.520) The development abuts 79th Ave. NE, which is designated as a non-arterial on the County's Arterial Circulation Map. A 30-foot right-of-way presently exists on the development's side of the right-of-way, and therefore, no additional right-of-way is required.

G. State Highway Impacts (SCC 30.66B.710) This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997. Impacts to state highways were originally calculated to be 124.41 ADT x \$36.00/ADT = \$4,478.76. However, the Applicant's traffic study showed no impacts to the State Highways. WSDOT sent a letter to the County dated July 20, 2006 (Exhibit #8B) in which they indicated agreement with the Applicant's analysis and, therefore, no traffic mitigation was requested from the Applicant.

H. Other Streets and Roads [SCC 30.66B.720] Based on interlocal agreements, the County shall impose mitigation to other city road system for direct impacts caused by developments. The current development proposal causes direct impacts to road systems of the Cities of Marysville and Arlington. The Applicant's initial mitigation offers to those cities have been revised because the number of lots has decreased from 14 to 13 lots.

(a) Impacts to the City of Marysville's road system are calculated as follows:
 $12.12 \text{ pht} \times 80\% \text{ (sub area location)} \times \$3,175.00 = \$30,784.80$

(b) Impacts to the City of Arlington's road system is calculated as follows:
 $12.12 \text{ pht} \times 20\% \times \$3,355 = \$8,132.52$

PDS is recommending that payment of these amounts be imposed as a condition of preliminary plat approval.

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

A TDM Plan was submitted with the initial application, but it did not meet the requirements of SCC 30.66B.640(3)(e), which requires an overall density of at least four dwelling units per gross acre. The applicant opted to submit an offer to pay the TDM fee instead of revising their plans to meet the TDM Plan requirements, which PDS finds acceptable.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to five percent of the 12.12 new PM peak hour trips x \$1,500.00, which equals \$909.00. A written offer (Exhibit #8A1) for payment of this TDM obligation has been received from the Applicant.

8. Pedestrian Facilities [RCW 58.17.110]

In order to approve the subdivision, the Applicant is required to provide safe walking conditions for pedestrians and in particular, school children, who may reside in the subject development. Comments dated August 11, 2006 (Exhibit #8C6) have been received from the Lake Stevens School District indicating that all grade levels of public school children will be provided with bus service to school and that the bus stop would be located at the entrance of the plat road with

79th Avenue NE. With the provision of sidewalks in the interior of the development and along the frontage with 79th Avenue NE, PDS has determined that safe walking conditions will be in place prior to occupancy of the subdivision.

9. Mitigation for Impacts to Schools [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 Lake Stevens School District No. 4, 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 one existing lot.
10. Drainage and grading.

Drainage. The project contains approximately 3.84 acres of which 1.57 acres are streams (Type 5), a wetland (Category 3) and associated buffer. The proposal is to establish a 13 lot short plat and construct 12 new single-family homes, approximately 280 lineal feet access road with associated utilities and private road located at the south to access detention facility and Lots 12 & 13, approximately 240 lineal feet. The access roads to the site will be from 79th Ave. NE. The proposal also includes frontage improvements on 79th Ave. NE. The site is currently developed with one single-family home and garage. All existing structures are proposed to be removed.

One detention vault is proposed to meet the detention requirements conforming to the Snohomish County standards, which has been sized to include a 30% factor of safety. The discharge and outflows from the vault will be directed into an existing storm facility along 79th Ave. NE., flow south approximately 100' until the storm water from 79th Ave. and discharge into the Type 5 stream that flows from the site. Lots 12 and 13's roof and footing drains will discharge into a level spreader trench outside of the wetland buffer. The Type 5 stream flows under the private access road; UDC Chapter 30.63A.200 (3)(C) states, "...Bridges or bottomless arch culverts shall be installed instead of culverts at stream crossings..." PDS has granted permission for the use of over size culverts with fill of gravel for approximately 1/3 of the culvert.

The undeveloped and developed runoff for this project was calculated for the 2, 10 and 100 year design storms using the Santa Barbara Unit Hydrograph method. The Stream Bank Erosion Control detention release standard as defined by the Washington State Department of Ecology (DOE) in the "1992 Stormwater Design Manual for the Puget Sound Basin" was utilized to size the detention facilities. The undeveloped flows for the 2, 10 and 100 year storms correspond to values of 0.08, 0.25 and 0.53 cfs. The developed flows from the site, prior to storm detention, correspond to values of 0.61, 1.12 and 1.78 cfs. The developed flows from the site, after storm detention, correspond to values of for 0.04, 0.25 and 0.53 cfs.

Water quality for Basin "A" will be addressed via a stormfilter manufactured by Stormwater Management, Inc. upstream of the detention vault. Water quality for Basin "B" will be addressed by a storm filter manufactured by Stormwater Management, Inc upstream of the detention vault.

The development proposes in excess of 5,000 square feet of new impervious surface which meets the definition of major development activity per SCC 30.63, and therefore a full drainage plan and report is required. No downstream flooding was reported by the Surface Water Management division of DPW. Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements of the UDC Chapters 30.63A and 30.63B.

Grading. Proposed grading is in excess of 100 cubic yards which triggers the need for a grading permit and SWPP Plan per SCC 30.63B and Rule 3044. Specifically, the applicant is proposing to cut approximately 6,200 cubic yards and fill 6,200 cubic yards. The Preliminary Grading and TESC Plan (Exhibit #2B) tried to provide building pads for each lot. The Targeted Drainage Plan shows a proposed 6 foot rock wall on the south side of buildings 2, and 3. PDS may require the applicant to provide a geotechnical engineer design at the time of construction plan review.

11. Critical Areas Regulations (Chapter 30.62 SCC)

- A. Fish and Wildlife Habitat Conservation Areas and Wetlands. A PDS Biological Technician conducted a wetland verification on September 7, 2005 (Calkins L88 Wetland Verification 05-123399PA). According to PDS, a Type 5 stream and one Category 3 wetland were accurately flagged in the field. A Category 3 wetland exists off-site about 30 feet from the north property line. According to the Critical Area Study and Wetland Mitigation Plan for Willow Springs prepared by Wetland Resources (revised December 19, 2007) (Exhibit #3E), the wetland is dominated by emergent species including creeping buttercup and reed canary grass with areas of Himalayan blackberry. Although portions of the wetland buffer contain trees, a majority of the buffer is dominated by Himalayan blackberry.

The Applicant is proposing a 13-lot subdivision. An existing wetland buffer will be reduced to a minimum of between 2 and 10 feet in certain areas for Lots 2, 3, 4, 5, and 12. The Type 5 stream and its buffer will be impacted in order to access Lots 12 and 13. The remaining critical areas and buffer will be designated NGPA/E and enhanced with native trees and shrubs. A total of 10,835 square feet of existing emergent wetland and 8,817 square feet of existing scrub-shrub wetland buffer will be enhanced. In addition, 710 square feet of additional wetland buffer will be provided and enhanced.

The Applicant is proposing Innovative Development Design under SCC 30.62.370; therefore, a Critical Areas Study and Wetland Mitigation Plan was prepared by Wetland Resources (revised December 19, 2007) (Exhibit #3E) and submitted for review as required per SCC 30.62.340. A mitigation plan is required under SCC 30.62.345 to address the loss of area or functional value of wetlands, streams, and buffers.

The Applicant is proposing to mitigate for proposed impacts to wetlands, streams, and buffers using Innovative Development Design (SCC 30.62.370). Under SCC 30.62.370(1)(b) the applicant is required to demonstrate that the innovative design proposal will achieve a net improvement in the functions and values of the streams and wetlands and their buffers over that existing on the subject property and that which is achievable using the provisions of SCC 30.62.310, 30.62.320, 30.62.345, and 30.62.350. A discussion of how the project meets the requirements of Innovative Development Design has been provided on Page 7 of the Critical Areas Study and Wetland Mitigation Plan (revised December 19, 2007) (Exhibit #3E).

According to the mitigation plan, the proposal will result in the loss of 4,322 square feet of wetland buffer. The portion of the buffer which will be reduced is dominated by Himalayan blackberry, a non-native and invasive species. Mitigation for the buffer impact includes enhancing 8,718 square feet of existing wetland buffer with native trees and shrubs.

PDS staff reviewed the proposed mitigation based on a formalized administrative rule which was approved by the director of PDS in June of 1998. This administrative rule

states that by utilizing a set of prescribed replacement ratios, it will be assumed that all functions and values will be replaced and thus will be assumed to comply with SCC 30.62.345(1)(c). The replacement ratios are always expressed as replacement area to impact area with emergent conditions requiring a replacement ratio of 1:1, scrub-shrub at 1.5:1, forest at 2:1 and bogs at 3:1. The administrative rule has also been utilized by staff in the same manner for buffers because the assessment for vegetative habitat is comparable. Based on this rule, a scrub-shrub habitat, such as the one provided by the Himalayan blackberry dominated wetland buffer, could be mitigated by providing a mitigation ratio of 1.5(buffer enhancement):1(buffer impact). The mitigation plan proposes a 2(buffer enhancement):1(buffer impact) mitigation ratio and will improve the habitat over what is existing on the site by proposing to install conifer trees and provide a variety of native shrubs.

Although direct impacts to the on-site wetland are not proposed, the reduction of the wetland buffer to less than 25 feet in some areas will cause an indirect impact to the wetland. These indirect impacts are required to be addressed as “wetland designated as buffer” or “paper fill”. The Critical Areas Study and Wetland Mitigation Plan (Exhibit #3E) has addressed the proposed “paper fill” on page 6 paragraph 4. According to the mitigation plan, the development proposal will create a total of 2,965 square feet of “wetland designated as buffer”. Mitigation for the “paper fill” includes enhancing 10,835 square feet of the on-site wetland which will provide a 3.7(wetland enhancement):1(paper fill) mitigation ratio.

The Type 5 stream and its buffer will be crossed in order to access Lots 12 and 13. According to the Critical Areas Study and Wetland Mitigation Plan (Exhibit #3E) (revised December 19, 2007), a total of 705 square feet of stream buffer will be impacted. This buffer is dominated by Himalayan blackberry. Mitigation for the buffer impact includes adding 710 square feet of buffer to the existing wetland, adjacent to Lot 2. This additional buffer will be enhanced with trees and shrubs.

Pursuant to SCC 30.62.370(1)(b) the Hearing Examiner finds that the Applicant has demonstrated that the innovative design proposal will achieve a net improvement in the functions and values of the streams and wetlands and their buffers over that existing on the subject property, and that the plan is achievable using the provisions of SCC 30.62.310, 30.62.320, 30.62.345, and 30.62.350. Based on the Critical Areas Study and Wetland Mitigation Plan, prepared by Wetland Resources (revised December 19, 2007), the enhanced buffer will improve the existing functions and values of the required 25-foot standard wetland buffer, which is currently dominated by Himalayan blackberry. Also, by enhancing the wetland, the Applicant will improve the existing functions and values of the wetland which is currently dominated by emergent species. All approved critical areas and buffers will be designated NGPA/E per SCC 30.62.320. The mitigation plan has exceeded the mitigation ratios set forth under the administrative rule addressing compliance with SCC 30.62.345(1)(c), as it applies to buffers.

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 complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas.

B. Geologically Hazardous Areas:

- (1) Landslide Hazards (SCC 30.62.210 SCC) The Geotechnical Engineer found some areas of the site’s slopes are slightly steeper than 15% and contain

relatively permeable sediment overlying relatively impermeable sediment. They found no evidence of groundwater seeps or springs on the site's slopes, additionally, the weathered till soils overlying the dense tills are relatively thin and in a medium dense, generally consolidated condition. Based on these factors, and the inherently high shear strength exhibited by the site soils, PDS agrees with the Applicant's engineer's opinion that site characteristics do not meet Snohomish County criteria for landslide hazard area.

- (2) Erosion Hazards (SCC 30.62.200) The Geotechnical Engineer has reviewed the *Soil Survey of Snohomish County Area, Washington* by the Soil Conservation Service (SCS) to determine the erosion hazard of the on-site soils. The site's surface soils were classified using the SCS classification system as Tokul loam, 10% to 15% slopes (Unit 73). The erosion hazard for Unit 73 is listed as being slight to moderate.
- (3) Seismic Hazards (SCC 30.62.220) The Geotechnical Engineer evaluated the potential of ground rupture at the site resulting from a severe seismic event. Review of the Quaternary Fault and Fold Database of the United States (USGS Earthquake Hazards Program) has identified the presence of a southeast-northwest trending Quaternary fault located approximately ten miles west of the project site. Due to the absence of surficial indications of rupture in the vicinity of the site, and the distance from the site of the nearest mapped fault, it is the Geotechnical Engineer opinion the potential of ground rupture at the site resulting from a severe seismic event is low.

The Geotechnical Engineer's opinion is based on subsurface explorations and the Soil Profile in accordance with Table 1615.1.1 of the 2003 International Building Code (IBC), which is Soil Class C. Additional seismic considerations include liquefaction potential and amplification of ground motions by soft soil deposits. The liquefaction potential is highest for loose sand with a high groundwater table. The underlying dense till, drift and outwash soils are considered to have a low potential for liquefaction and amplification of ground motion.

12. Fire Code (Chapter 30.53A SCC) The Uniform Fire Code (now known as the International Fire Code or "IFC"), was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007. This application was complete as of March 26, 2007 and is therefore subject to that version of Chapter 30.53A SCC in effect prior to September 21, 2007.

The roads shown on the preliminary plat map (Exhibit #2B) meet the minimum requirements of Chapter 30.53A and the UFC for width and slope and turn around radii for the cul-de-sac shown at the end of Road A. Fire hydrants are required per SCC 30.53A.300. The location and spacing of the hydrants will be determined at the construction plan phase and are not required to be shown on the face of the preliminary plat.

The required fire flow for the fire hydrants is 1000 gpm at 20 psi for a two (2) hour duration and will be verified after construction and prior to the final plat recording. In the event the required fire flow cannot be provided, a condition will be added to the plat that requires the new dwellings in the plat to be provided with NFPA 13-D fire suppression systems. Per Section 901.4.4 of the Uniform Fire Code, the new dwellings shall be provided with approved address numbers placed in a position that is plainly legible and visible from the street or road fronting the property. The numbers shall contrast with their background.

13. Consistency with the GMA Comprehensive Plan (GMACP) 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. The 13-lot subdivision is consistent with the density provisions of Snohomish County’s GMACP, and GMA-based zoning regulations under Subtitle 30.2 SCC.

14. Utilities

- A. Water - Water service to the subdivision will be provided by Snohomish County PUD No 1. (Exhibit 8C5)
- B. Sewer - The City of Marysville has stated that adequate capacity exists to serve the proposed subdivision through its sewer utility. (Exhibit 8A2)
- C. Electricity – The Snohomish County PUD No. 1 has stated that there is adequate electrical capacity to serve the proposed subdivision. (Exhibit 8C2)

15. Zoning (Chapter 30.2 SCC). This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

Lot Size Averaging (LSA) The proposal has been evaluated for compliance with the 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. Lot coverage for this proposed subdivision is a maximum of 35%. The LSA calculation is as follows:

Area in Lots 76,751 square feet + Critical Areas and Buffers 59,050 square feet + Open Space (9,526 square feet = 145,327 square feet ÷ 13 of lots proposed = 11,020 square feet

The minimum zoning requirement is 9,600 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. PDS has concluded that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

16. State Environmental Policy Act Determination (Chapter 30.61 SCC). SEPA analysis was performed for this subdivision project and a DNS was issued on April 15, 2008. (Exhibit 5B) No appeal of the DNS was filed.

17. Subdivision Code (Chapter 30.41A SCC). The proposed plat, as conditioned, meets the general requirements of SCC 30.41A.100 with respect to providing for the public health, safety and general welfare. 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 and modified, the plat will meet all SCC 30.41A.210 design standards for roads.

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 to all applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetlands, 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 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. Water and electricity will be provided by Snohomish Public Utility District No. 1 (Exhibits # 8C2 & 8C5), and sewer will be provided by the City of Marysville (Exhibit # 8A2).

18. Plats – Subdivisions – Dedications (Chapter 58.17 RCW) The County does not require the dedication of any land for right-of-way purposes or other public uses as a result of impacts from the proposed subdivision. However, the City of Marysville has requested that Tract 996 be dedicated to the City of Marysville as a condition of plat approval for future use as a pedestrian/multi-purpose trail. (Exhibit 8A2) The record shows that the Applicant has refused to comply with the City’s request because of the conditions of a purchase and sale agreement which require the Tract to remain in private ownership. The PDS Staff Report does not address this issue, nor was it discussed as an issue at the public hearing. No other information was provided by the City of Marysville to justify the request or show that such a dedication is required pursuant to an interlocal agreement with the County. Accordingly, the Hearing Examiner is unable to determine whether such a request is legally justified based on the record and therefore does not find that sufficient evidence exists to grant the City’s request.
19. Any Finding of Fact in this Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The proposal is consistent with the GMACP, GMA-based County Codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
2. Adequate public services exist to serve the proposed subdivision.
3. The subdivision application, with the recommended conditions, makes adequate provisions for the public health, safety and general welfare.
4. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The request for a **13-LOT SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary plat received by PDS on March 18, 2008 (Exhibit #2B) shall be the approved plat configuration.
- 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 Critical Areas Study and Wetland Mitigation Plan, prepared by Wetland Resources (revised December 19, 2007) shall be submitted for review and approval during the construction review phase of this project.
- 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 Lake Stevens School District No. 4 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 1 existing parcel. Lot 1 shall receive credit."
 - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or double the amount for a duplex:
 - \$2,137.79 per lot for mitigation of impacts on County roads paid to the County,
 - \$69.92 per lot for transportation demand management paid to the County for TSA A,
 - \$2,368.06 per lot for mitigation of impacts on Marysville streets paid to the City.
 - \$625.58 per lot for mitigation of impacts on Arlington streets paid to the City.These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid.
 - 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 dwelling units within this development are subject to park impact fees in the amount of \$48.82 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.”

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property’s frontage with 79th Avenue NE unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.
- ii. The following additional restrictions and/or items shall be indicated on the face of the final plat:
All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);
"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.”
- iii. The final mitigation plan shall be completely implemented (additional buffer, wetland and buffer enhancement).

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.

Order issued this 14th day of August, 2008.

Millie M. Judge, 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) within 10 days of the date of this decision (which is on or before **August 25, 2008**). There is no fee for filing a petition for reconsideration.

Note: "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 within 14 days of the date of this decision. 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 **August 28, 2008** 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.

Staff Distribution:

Department of Planning and Development Services: Elbert Esparza

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.