

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: May 14, 2008

PLAT/PROJECT NAME: **HOLLY DIVISION 4**

APPLICANT/  
LANDOWNER: L105-1 Holly, LLC

FILE NO.: 06 129536 SD

TYPE OF REQUEST: 19-lot Subdivision of approximately 7.90 acres.

DECISION (SUMMARY): **APPROVE WITH PRECONDITION AND CONDITIONS**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the south side of South Lake Stevens Road, southeast of its intersection with 99<sup>th</sup> Avenue SE and west of 103<sup>rd</sup> Avenue SE, Everett, Washington.

ACREAGE: 7.90 acres

NUMBER OF LOTS: 19

AVERAGE LOT SIZE: 5,634 square feet

MINIMUM LOT SIZE: 3,612 square feet

DENSITY: 2.4 du/ac (gross)  
6.19 du/ac (net)

ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:  
General Policy Plan Designation: Urban Low Density Residential

UTILITIES:  
Water: Snohomish County PUD No. 1  
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

**INTRODUCTION**

The applicant filed the Master Application on September 8, 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. Exhibit 16 (Affidavit of Mailing); Exhibit 17 (Affidavit of Notification by Publication); Exhibit 18 (Posting Verification).

A SEPA determination was made on October 1, 2007. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on December 5, 2007 the 93rd day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The Examiner originally remanded the preliminary plat application on December 26, 2007 for further processing with respect to critical areas compliance. *See* Order dated December 26, 2007 in file. The applicant resubmitted information to PDS which the Examiner received on April 16, 2008. The Examiner requested and received a revised staff recommendation based on the new information on May 8, 2008. Because of newly recognized critical areas constraints, the proposal has been modified from a 22-unit development to a 19-unit development.

### **PUBLIC HEARING**

The public hearing commenced on December 5th at 3:04 p.m.

1. Representing PDS was Robert Pemberton, Senior Planner, Tom Sage, Engineer, and Patrick McGraner, Biologist.
2. The applicant, Holly, LLC, was represented by Ryan Larsen.

The hearing concluded at 4:16 p.m.

**NOTE:** The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

### **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. **Summary of Proposal:** L-105-1 Holly Division 4 is a 19-lot subdivision of 7.9 acres. The proposed single-family residential lots range in size from 3,612 square feet to 9,642 square feet with 3.7 acres of open space. Access to all lots will be by a new public road connecting to 103<sup>rd</sup> Avenue SE. Public water service will be provided by the Snohomish County PUD No.1 and public sewer service will be provided by the Lake Stevens Sewer District. Mitigation fees are to be paid in accordance with Chapters 30.66A, B, and C, SCC, for project impacts to community parks, nearby road system traffic and to the Lake Stevens School District No. 4.
3. **Project Chronology/Background:** The L105-1 Holly Division 4 application was originally submitted to PDS as a 26-lot subdivision on September 8, 2006, and was determined on September 8, 2006 to be complete as of the date of submittal for regulatory purposes, but insufficient for further review. The

application was returned to applicant on November 1, 2006 (Day 27). The proposal was reduced to 22 lots. Resubmittals and further review occurred until the resubmittal on August 27, 2007 which was determined to be sufficient for a Determination of Nonsignificance, which issued on October 1, 2007. As of the hearing date, 93 days of the 120-day review period had elapsed. Subsequent to the public hearing held on December 5, 2007, this proposal was remanded by the Hearing Examiner for more work on critical areas. A resubmittal was received on April 9, 2008 showing the current 19-lot proposal.

4. Site Description: Holly Division 4 extends westerly from its frontage on 103<sup>rd</sup> Avenue SE, widening out as it extends west. The site is currently undeveloped forest. Surface grades in the eastern and western portions of the site are relatively flat to rolling, with a gentle to moderate grade down to the south. The site is bisected by a broad northwest-trending wetland corridor. Surface grades adjacent to the wetland range from 25 to 37 percent. Vegetation consists generally of second growth deciduous and coniferous forest and brush undergrowth.
5. Adjacent Zoning/Uses: This site and surrounding properties to the south and west are zoned R-7,200 and are sparsely developed residential areas. To the north, across South Lake Stevens Road, lies Multiple Residential zoning and the Goodrich Mobile Home Park. To the east, the zoning is Multiple Residential but the area is sparsely developed. To the northeast is Planned Community Business zoning, currently undeveloped. Holly Division 4 abuts Holly Divisions 1, 2 and 3 along its northerly boundary.

**B. Issues of Concern.**

No public comment letters have been received in this file, nor was any public testimony taken at the hearing regarding the proposed development. The Examiner has not noted any issues of concern.

**C. Compliance with Codes and Policies.**

6. Parks Mitigation. The proposal is within Centennial Park Service Area No. 306 and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 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.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC). 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 19 Single Family Residences (SFRs), which is 9.57/SFR. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 181.83 new ADT and has a road system capacity impact fee of \$66,186.12 (\$3,483.48/lot) based on \$364/ADT. This impact fee must be paid prior to building permit issuance.

	<i>Calculations</i>
ADT	$(19 \text{ New SFRs}) \times (9.57 \text{ ADT/SFR}) = 181.83$
AM PHT	$(19 \text{ New SFRs}) \times (0.75 \text{ AM PHT/SFR}) = 14.25$
PM PHT	$(19 \text{ New SFRs}) \times (1.01 \text{ PM PHT/SFR}) = 19.19$

Note: The plans received by PDS on September 8, 2006 proposed a subdivision of 26 lots. The plans received by PDS on August 9, 2008 propose a subdivision of 19 lots. Trip generation rates and the road system impact fee have been adjusted accordingly.

B. Concurrency [SCC 30.66B.120]

"Level-of-service" (LOS) means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. LOS standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition, and LOS F the worst.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of September 19, 2007. The expiration date of the concurrency determination is six years from this date. Consistent with the Department of Public Works (DPW) rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is September 8, 2007.

The development has been deemed concurrent on the following basis:

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA B which, as of the date of submittal, had the following arterial unit in arrears: Unit 238. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 14.25 a.m. peak-hour trips and 19.19 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 B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, 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]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 103<sup>rd</sup> Ave. SE and consist of:

- Asphalt concrete pavement consisting of 18 feet in width from roadway centerline to the face of curb
- Cement concrete curb and gutter
- Planter strip with a width of five (5) feet
- Five (5) foot cement concrete sidewalk

The road section detail entitled "103<sup>rd</sup> Ave SE Half Street Road Section" on Sheet C-3.0 of the plans received by PDS on August 27, 2007, shows 17 feet of pavement from the centerline of right-of-way to the face of curb. The required finished road width between curbs for 103<sup>rd</sup> Ave SE is 36 feet. The curb location on the east side of 103<sup>rd</sup> Ave SE is not shown on the section view. The construction plans must show the curb locations on both sides of 103<sup>rd</sup> Ave SE with the required frontage improvements and 36 feet between curbs.

103<sup>rd</sup> Ave. SE is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any frontage improvements towards the applicant's impact fee is not applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

Internal access into the site is via a proposed public road that ends in a cul-de-sac. The road must cross several wetlands and steep slopes to access the lots within the subdivision. The applicants' EDDS deviation request #1 for the elimination of sidewalk and planter along the north side of the proposed access road at the location of a proposed retaining wall was denied at the deviation meeting on November 13, 2006. The applicants' EDDS deviation request #2 for the elimination of sidewalks and planters at two locations on the proposed access road was denied at the deviation meeting on November 13, 2006. EDDS deviation request #3 to allow an Intersection Sight Distance (ISD) to the right from the proposed access to 103<sup>rd</sup> Ave SE of 300 feet (EDDS requires 335 feet for a posted speed of 30 mph) was approved at the deviation meeting on November 13, 2006. EDDS deviation request #4 to allow the dead end access road length of 1000 feet (EDDS allows a maximum length of 800 feet in the UGA) was also approved at the deviation meeting on November 13, 2006.

The applicant submitted an EDDS deviation request, received by PDS on August 27, 2007, requesting to place the sidewalk directly behind the curb on the north side of the east 450 feet of the proposed public access road. The proposed retaining wall will be placed 1 foot behind the sidewalk. This deviation request was approved by the County Engineer on September 19, 2007.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably

necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

103<sup>rd</sup> Ave. SE is designated as an urban collector arterial on the County's Arterial Circulation Map. This requires a minimum 70-foot right-of-way. Fifteen feet of right-of-way currently exists on the development's side of the right-of-way centerline. Twenty feet of additional right-of-way must therefore be dedicated to the County. This is adequately shown on the plat.

South Lake Stevens Road is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any right-of-way dedication towards the applicant impact fee is not applicable.

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.

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through one of the following:

- (a) Voluntary negotiated construction 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

Comments were received from WSDOT dated October 30, 2006, amending their previous comments dated September 15, 2006, requesting a pipeline traffic study for all Holly Divisions 1, 2, 3, and 4. (Exhibit 33) The applicant has submitted a Traffic Impact Analysis prepared by Gibson Traffic Consultants dated April 11, 2007, including a traffic mitigation offer of \$5,451.19 for Division 4 and \$9,761.40 for all four divisions of the L105-1 Holly Development. Exhibit 34 (Holly Division 4/PFN: 06-129536 SD). In comments dated May 22, 2007, WSDOT has accepted the mitigation offer of the applicant. (Exhibit 3) (Holly Division 4/PFN: 06-129536 SD). This amounts to \$247.78 per lot. (Exhibit 36) Based on the applicant's new proposed development of 19 lots, the total obligation is \$4707.85.

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

Pursuant to SCC 30.66B.720, DPW is required to recommend mitigation measures of a development's direct traffic impact on the city, town or other county roads to the Examiner, who is required to 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. There are no City jurisdictions that have an ILA with the County that will be significantly impacted by the subject development, and no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development. Hence, no conditions will be imposed on this development pursuant to this section.

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

TDM is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1). SCC 30.66B.630(1) succinctly states the basic requirements:

All new developments in the Urban Growth Area (UGA) are required to provide sufficient TDM measures 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. SCC 30.66B.630. This requirement may be met by:

- (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
- (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
- (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

A TDM plan was submitted with the application for this development. (Exhibit 27) SCC 30.66B.640(3)(e) requires a minimum density of at least four dwelling units per gross acre to be eligible for on-TDM credit. The subject development does not meet this minimum; therefore a cash payment is required. (Exhibit 36)

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 trip reduction percentage for this development is five percent. When the subdivision contained 26 lots, the TDM obligation for this development was equivalent to 5% of the 22.22 new p.m. peak hour trips x \$1,500.00 which equals \$1,666.50 (\$75.75/lot). A written TDM offer of \$1,969.25, dated September 6, 2006, was received by the DPW for payment of this TDM obligation. This offer was based on a subdivision of 26 lots as proposed on the plans received by PDS on September 8, 2006. The plans received by PDS on April 9, 2008 propose a subdivision of 19 lots. The TDM requirement has therefore been adjusted to \$1439.25 to reflect the fact that only 19.19 new p.m. peak hour trips will be generated by the development.

8. Pedestrian Facilities [RCW 58.17.110]

The County received comments from the Lake Stevens School District dated September 18, 2006. (Exhibit 30) Middle and high school students will walk to the intersection of the project access road and 103<sup>rd</sup> Ave SE, where school buses will pick them up. The school district has requested a safe bus waiting area, which the applicant shall provide in the form of a bus shelter. Sidewalks are required along both sides of the proposed access road, connecting all single-family residences in the project to the intersection of the project access road and 103<sup>rd</sup> Ave SE. Elementary school children will walk to the Glenwood Elementary School, a sidewalk already exists off-site all the way to the elementary school, according to testimony at the hearing. The Examiner notes that there is a crosswalk for children crossing the street.

9. Mitigation for Impacts to Schools [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 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. 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.

Drainage. Stormwater runoff from the proposed impervious surfaces will be collected by a system of curbs, catch basins and underground pipes and directed to an underground vault in Tract 994 for stormwater detention. Water quality treatment will be provided by filter cartridges. This vault facility is sized to provide stormwater management for Holly Divisions 1, 2 and 4. To promote the recharge of existing wetlands, portions of home sites that are not subject to pollutants from vehicular traffic will release dispersed stormwater via sheet flow. PDS (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. Grading quantities are anticipated to be approximately 20,600 cubic yards of cut and 1,070 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)

Five wetlands and two streams have been identified on site. These are described in the Critical Areas Study and Conceptual Mitigation Report (Exhibit 14) and are accurately shown on the submitted preliminary subdivision. (Exhibit 20) The project involves crossing parts of two wetlands, impacting 11,925 square feet of wetland and 10,207 square feet of buffer. Kuhlman's Creek, presumed habitat for bull trout, crosses the southwest corner of the site. It will be protected with a minimum 150 foot wide Native Growth Protection Area (NGPA) buffer with no effective impervious surfaces within 300 feet of the stream. Except for the road crossing, the wetlands will be preserved with minimum 25 foot wide NGPA buffers. PDS has reviewed the Critical Areas Study and Conceptual Mitigation Report and determined that the project complies with the critical areas regulations. Under the Salmonid Habitat Management Plan Administrative Rule, where lands adjacent to a listed salmonid bearing water display a continuous slope of 33% or greater, the FWHCA must include the sloping area. The revision received on April 9, 2008 extends the NGPA to designate and protect additional Fish and Wildlife Habitat Conservation Area (FWHCA) for Kuhlman's Creek. In addition, the required top of slope setback is included within the FWHCA. (Exhibits 45 and 46)



12. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the UGAs of the county respectively. This application was complete on September 6, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

The subject property is designated Urban Low Density Residential (ULDR-L (6) 6 Dwelling Units/Acre Lake Stevens UGA Only) on the GPP Future Land Use map, and is located within a UGA. It is not located within a mapped Growth Phasing Overlay. According to the GPP, the ULDR-L (6) “designation allows mostly detached housing developments on larger lot sizes. It is applied to most of the non-constrained ULDR land in the Lake Stevens UGA. Land in this category may be developed at a density of six dwelling units per acre. Implementing zones: include R-7,200 and PRD-7,200.”

13. Zoning.

This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

The proposal has been evaluated 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 set back 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 55%.

The LSA calculation is as follows:

Area in Lots (107,046 square feet) + Critical Areas and Buffers (168,082 square feet) + Open Space (6,974 square feet) = 282,102 (square feet) ÷ 19 (lots proposed) = 14,847 square feet per lot

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. The proposal as currently configured is consistent with the LSA provisions of SCC 30.23.210.

14. Utilities

- A. Water. Applicant provided a letter of water availability from Snohomish County PUD No. 1, but it is now expired. Applicant must provide an updated letter as a pre-condition of approval. (Exhibit 26)
- B. Sewer. Sewer service is available from the Lake Stevens Sewer District. (Exhibit 29)
- C. Electricity. Snohomish County PUD No. 1 submitted a letter stating that electricity is available, but that existing facilities may need upgrading. (Exhibit 32)
- D. Snohomish Health District (SHD) Approval. The SHD has no objections to the preliminary subdivision approval but indicates that any existing on-site septic systems must be abandoned as required by WAC 246-272-18501 prior to final plat approval. The Examiner will incorporate this requirement as a condition of approval. (Exhibit 31)

15. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on October 1, 2007. (Exhibit 15). The DNS was not appealed.

16. 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 September 6, 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. Specifically, the following are met:

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. *See* SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. *See* 30.41A.110.
- C. Fire Code. Exhibit 38 provides comments from the Fire Marshall's office of issues that will have to be addressed during construction review.
- D. As indicated earlier in this decision, the applicant has met the requirements of the SHD, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. The applicant has mapped sloping land as required by SCC 30.41A.250 and has calculated densities as required by that section. *See* Exhibit 10.

17. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision 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 applicant must provide a new, updated letter of water availability from Snohomish County PUD No. 1 to demonstrate that adequate potable water supply is available.

18. Any finding of fact in this order which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to chapter 30.72 SCC and Chapter 2.02 SCC.
2. The legal standard the Examiner must review a preliminary subdivision under the state subdivision code, chapter 58.17 RCW, is:

whether 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...

RCW 58.17.110.

3. The applicant has met its burden in all respects of showing that the preliminary plat should be approved, except that it has not yet provided an updated letter demonstrating water availability. The Examiner will make demonstration of adequate potable water supply a pre-condition of preliminary plat approval.
4. Any conclusion in this order, 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 request for a 19-lot **SUBDIVISION** on 7.90 acres is hereby **CONDITIONALLY APPROVED**, subject to the following pre-condition and conditions:

#### **PRECONDITION:**

Applicant must supply a new, updated letter of water availability from Snohomish County P.U.D. No. 1. See Finding of Fact 14 and Exhibit 26. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner's Rules of Procedure.

#### **CONDITIONS**

- A. The preliminary plat received by PDS on April 9, 2008 (Exhibit 45) 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 and this decision.
- 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 revised final mitigation plan based on the Critical Area Study & Conceptual Mitigation Report for L-105-4 Holly - Division 4 prepared by Altmann Oliver Associates, LLC dated May 8, 2007 (Exhibit 46) and the submittals of the applicant on April 9, and April 16, 2008 (see Exhibits 45 and 46) shall be submitted for review and approval during the construction review phase of this project. The recommendations found in the Supplemental Hydrogeologic Evaluation by Terra Associates, Inc. dated April 11, 2007 shall be integrated into the design during the construction review phase.

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 one existing parcel. Lot one shall receive credit."
- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

- \$3,483.48 per lot for mitigation of impacts on county roads paid to the county,
- \$75.75 per lot for transportation demand management paid to the county,
- \$247.78 per lot for mitigation of impacts on state highways paid to the county.

(WSDOT ID#DOT-8-SR2/SR9 Interchange)

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued for a lot, all mitigation payments for that lot shall be deemed paid.

- iii. Right-of-way shall have been dedicated to the County along the development's entire easterly frontage such that a minimum of 35 feet of right-of-way exists from centerline of the 103<sup>rd</sup> Avenue SE projected centerline.
- iv. 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."

- v. The developer shall pay the County \$1,361.22 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. Urban frontage improvements, including pedestrian facilities, shall be constructed along the parcel's frontage on 103<sup>rd</sup> Ave. SE to the satisfaction of the County.
- ii. The applicant shall construct a safe bus waiting area, including a rain shelter at the area designated by the school district for the middle school and high school children to wait for the bus.
- iii. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
- iv. 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.
- v. Existing on-site septic systems must be abandoned as required by WAC 246-272-18501 and existing wells must be decommissioned pursuant to WAC 173-160-381 prior to final plat approval.
- vi. Meet all Fire Marshall requirements as set out in Exhibit 38.
- vii. 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 14<sup>th</sup> day of May, 2008.

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Barbara Dykes, 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 **MAY 26, 2008**. 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 **MAY 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.

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### Staff Distribution:

Department of Planning and Development Services: Robert Pemberton

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.
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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the**

**instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than May 13, 2009.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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### **ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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