

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 26, 2008

PLAT/PROJECT NAME: **LIDERA**

APPLICANT/
LANDOWNER: Westcott Holdings Inc.

FILE NO.: 07-101452-000-00-SD

TYPE OF REQUEST: 85 lot subdivision of approximately 20.62 acres as a Low Impact Development Project, utilizing lot size averaging

DECISION (SUMMARY): **APPROVAL WITH CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 3905 188th St. SE, Bothell. At the NW corner of 188th St. SE and 43rd. Ave. SE.

ACREAGE: 20.62 acres Division 1: 10.24 Division 2: 10.38

NUMBER OF LOTS: 85 Division 1: 44 Division 2: 41

AVERAGE LOT SIZE: Division 1: 4792 square feet Division 2: 4792 square feet

MINIMUM LOT SIZE: Division 1: 3744 square feet Division 2: 3715 square feet

DENSITY: Division 1: 4.3 du/ac (gross) Division 2: 3.95 du/ac (gross)
9.09 du/ac (net) 9.45 du/ac (net)

ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Alderwood Water & Waste Water District
Sewer: Alderwood Water & Waste Water District

SCHOOL DISTRICT: Northshore School District

FIRE DISTRICT: FPD NO.7

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on March 26, 2007. (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 18 (Affidavit of Mailing); Exhibit 19 (Affidavit of Notification by Publication); Exhibit 20 (Posting Verification).

A SEPA determination was made on November 15, 2007. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on January 29, 2008 and March 13, 2008, the 205th 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 March 13th at 11:19 a.m.

1. Representing PDS was Erik Olson, Senior Planner.
2. The applicant was represented by Mr. Mark Lamb, attorney and Mr. Jack Molver of David Evans & Associates.

The hearing concluded at 12:26 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: The applicant has requested approval for an 85-lot subdivision utilizing the Low Impact Development and Lot Size Averaging provisions of code. The development is being proposed in two phases with Division 1 being 44 lots and 14 Tracts on the west half and Division 2 being 41 lots and 12 Tracts on the east half. Through the Low Impact Development provisions, the applicant has proposed to create Rain Gardens/Bio Retention Cells in separate tracts on one side of the right-of-way between the right-of-way and the lots. Exhibit 48A.
3. Site Description: The site is 20.62 acres in size and is rectangular in shape with an east/west dimension of 1,321-feet and a north/south dimension of 680-feet. A large Category 3 wetland is located in the middle of the site dividing the site into east and west halves. The site slopes from the east and west property boundaries to the wetland in the center of the site.

The western portion of the site is made up of 2 five-acre parcels and is developed with a very old single-family residence and out building. A majority of the western portion is in pasture and the remainder is in stands of evergreen trees. Access to these 2 parcels is from a private drive off 188th St. SE to the south. The eastern portion of the site is one 10-acre parcel and is developed with one single family home, two mobile homes and a detached garage. About 1/3 of the site is in lawn and the remainder is treed. Access is off a private drive from the east (future 43rd Ave. SE). The east 135-feet are encumbered with a Seattle City Light Transmission Line easement. Exhibit 48A.

4. Adjacent Zoning/Uses:

Location	Existing Use	Zoning
Subject property	Single family residential	R-7,200
South of subject parcel	Single family residential	R-5
North of subject parcel	Single family residential	R-7,200
East of subject parcel	Single family residential	R-7,200
West of subject parcel	Single family residential	R-7,200

B. Public Comment/Issues of Concern.

5. PDS received six comments on the subject application, (exhibits 23 – 28) of which only one (exhibit 25) expressed general concern about the projects impacts to roads and to schools. The Examiner's office received a comment from an adjacent plat applicant and contract owner regarding the issue of safe walkways for children. See Exhibit 45. The adjacent plat applicant, Cam West, is concerned that the proposed conditions set for walking conditions for this plat may affect its property interest because their plat will include residents with school children who need safe walking conditions. *Id.* This matter was also addressed at the public hearing on March 13, 2008.

C. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is Nakeeta Beach Park Service Area No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49.00 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).

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 745.50 new average daily trips (ADT) and has a road system impact fee of \$171,465.69 (\$2,017.24/lot) based on \$230/ADT, the current fee rate for residential developments inside the urban growth area, for TSA E. These figures include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. Exhibit 48A.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single Family Residential

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): 9.57 adt/lot.

Number of applicable measurement units for this development: 82 new lots

Trips	Calculations		With TDM Reductions
ADT	(85 New SFR - 3 Exist.) x (9.57 ADT/SFR) =	784.74	745.50
AM PHT	(85 New SFR - 3 Exist.) x (0.75 AM PHT/SFR) =	61.50	58.43
PM PHT	(85 New SFR - 3 Exist.) x (1.01 PM PHT/SFR) =	82.82	78.68

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (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 level-of-service A representing the best operating condition, and level-of-service F the worst.

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The subject development is located in TSA E which, as of the date of submittal, had the following arterial units in arrears: Arterial unit 209, 39th Ave SE between Grannis Road and SR-524. Based on peak-hour trip distributions, the subject development WILL add three (3) or more peak-hour trips to the following arterial units in arrears. However, the subject development has been deemed conditionally concurrent pursuant to SCC 30.66.167 as outlined in the memo from Mark Brown dated December 10, 2007(exhibit 39). The subject development generates 58.43 a.m. peak-hour trips and 78.68 p.m. peak-hour trips which is more than the threshold of 50 peak-hour trips, and thus, the development has also been evaluated under SCC 30.66.130(4).

Pursuant to SCC 30.66.167, the applicant has evaluated the future level-of-service on the road system consistent with the specific traffic study requirements imposed by the County and has found that the development will not impact or cause any additional arterial units to fall in arrears. (Exhibits 6, 7 & 8)

The following, if not completed prior to the recording of the final plat, shall be the recommended condition of approval for concurrency: and shall be shown on the face of the final plat.

Per SCC 30.66B.170(6), prior to the issuance of building permits for a single family residence on lots 10 through 13 and 17 through 40 in Division 1 and any lot in Division 2, construction of a 600 foot south bound right turn lane at the intersection of York Road/SR 524 must be completed or under contract. Prior to approval for occupancy or final inspection the improvements must be completed.

The above condition is based on the fact that the development can obtain building permits for 16 lots in Division 1 without any restriction to building permit issuance or final inspections. The 16 lots chosen by the applicant are 1-9, 14-16, and 41-44 in Division 1.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal **will impact** an IRC location identified at this time within TSA E with three or more of its p.m. peak hour trips. Improvements to remove the inadequate road condition (IRC) must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued.

The traffic study submitted with the application, (exhibits 6, 7 & 8) states that the York Road/Jewell Road intersection has been identified as an IRC and that this development will impact the IRC with more than 3 total PM peak hour trips. The study also states that this development is providing an offer to alleviate the IRC. There is a letter in the file, (exhibit 8B) dated March 23, 2007, that offers to construct the improvements deemed necessary by the Department of Public Works to eliminate the inadequate road condition at said intersection. The traffic study and letter state that 7 lots (4 new and 3 that replace the existing residences) can be developed without building permit restrictions. Subsequent lots will be issued building permits when the intersection improvements are under contract and occupancy will be allowed when the construction is complete and approved by the county.

Per SCC 30.66B.220, improvements to remove the inadequate road condition (IRC) must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued. Therefore, a restriction will appear on the face of the final plat which implements this condition.

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.

The urban roads (186th St. SE) that are on the southern boundary of the plats of Woodcross (north of Division 2) and Ferncross (north of Division 1) were built to ½ road standards with the concept that the adjoining property (i.e. the LIDERA proposal), when developed, would complete the road sections to full urban standards. This development proposes to complete the road sections to the EDDS standards.

As per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage on 186th Street SE and consist of:

- Asphalt concrete pavement consisting of 14 feet width from roadway centerline to the face of curb *completing the half road sections that currently exist.*
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 5 feet

186th Street SE, on which the frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

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

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

One access into the plat is to be provided by the extension of 188th Street SE to the west. 188th Street SW is on the south side of the Fernwood Hill Subdivision and consists of 28 feet of pavement between the curbs, a 5-foot planter and 5-foot sidewalk on the north side and a planter strip on the south side. This application will extend 188th Street SE along the southern boundary of the development to intersect with 43rd Ave SE. The western portion of 188th Street SE will be constructed with Division 1 from the subject developments west property line and extend eastward to terminate just east of the intersection with 40th Ave SE. The remaining eastern portion of 188th St SE will be constructed with Division 2 to the intersection of 43rd Ave SE.

Access will also be provided to the plat by 43rd Ave SE an opened and constructed public road that presently terminates at the southeastern corner of this development. 43rd Ave SE will need to be constructed to an urban collector arterial half road section along the east boundary of the development with the development of Division 2. The plans submitted with the application, (exhibit 15C), now show a cross section for the 43rd Ave SE improvements that looks to be adequate.

This development will construct the west ½ of 43rd Ave SE with the development of Division 2. The east ½ of 43rd Ave SE will be constructed by the plat of Timber Creek Ranch. Whichever of these two adjoining plats is approved and issued construction approval first will be required to build their portion of the right-of-way to a collector arterial road standard with a minimum of 20 feet of pavement, a 5-foot planter and a 5-foot sidewalk. The full standard of the said arterial road would be 44 feet of pavement, two 5-foot planters, and two 5-foot sidewalks.

The Department of Public Works received a deviation request on October 3, 2007 that would allow for the construction of the roads within a 34-foot right-of-way and would consist of the following:

- The road to be constructed within a 34-foot right-of-way.
- 28 feet of driving surface slanted to one side at a 2% cross slope
- One side of the road will have a standard vertical curb with an attached 5-foot sidewalk.
- A 1.5 foot cement concrete edge, part of the driving surface, adjacent to the biofiltration cell per the LID technical guidance manual for Puget Sound Figure 6.1.2
- An 11.5 foot wide swale 1.5 foot deep and a 5 foot sidewalk on the far side of the biofiltration cell placed in a 17 foot wide tract, not a part of the public right-of-way

The deviation was approved by the County Engineer on November 19, 2007. Exhibit 48A.

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.

The road serving this development, 43rd Ave SE, has been designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 0 feet of right-of-way exists on the development's side of the right-of-way. Seattle City Light owns a 20-foot wide strip of land along the eastern portion of the subject property and that 20-feet together with an additional 15-feet will make up the required 35-foot western section of 43rd Ave SE. Therefore the development is required to dedicate 15 feet of right-of-way. Exhibit 48A.

Another road serving this development, 188th Street SE, is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35-feet on each side of the right-of-way centerline. Currently, 0-feet of right-of-way exists on the development's side of the right-of-way, therefore the development is required to dedicate at least 35 feet of right-of-way. Additional right-of-way dedication is shown on the plat to allow for the crossing of the stream that separates Division 1 and Division 2 of this development. This is adequately shown on the preliminary plat.

Another road serving this development, 186th Street SE, is designated as a residential urban road that was constructed within the Woodcross Subdivision, constructed as a half road section with only sidewalk without accompanying planter strip on the north side of the road. This development is proposing to dedicate 16 feet of right-of-way, which would bring the total right-of-way width to 51 feet. This amount of right-of-way is adequate to complete the 186th Street SE road section.

None of the above roads are in the impact fee cost basis (Appendix D of the Transportation Needs Report) therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable. Exhibit 48A.

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 188th Street SE and 43rd Ave SE with a 35-foot radius curve is required. This radius return is shown on the preliminary plat (exhibit 15B).

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 December 21, 1997 and applications determined complete on or after December 21, 1997 and are subject to SEPA are subject to the provisions of the interlocal agreement.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through 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. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at \$36.00 per new adt.

A voluntary offer, acceptable to the State, signed the applicant indicating their chosen method of fulfilling their mitigation requirement under the ILA has been sent to the Washington State Department of Transportation. An email from WSDOT (exhibit 31), dated 4-2-07, has been received indicating that a proportionate share payment to the following projects is acceptable.

The traffic study and subsequent agreement between the WSDOT and the applicant outlines mitigation to the following projects:

WSDOT Improvement	ID#	ADT Impacting Improvement	Improvement Cost per ADT	Proportionate Share Obligation
SR 9 (SR 522 to 228 th St. SE)	DOT-14	79	\$83.96	\$6,301.20
SR 9 (SR 522 to 21 st St. SE)	DOT-15	55	\$60.67	\$3,185.68
SR 9 at 164 th Street SE)	DOT 41	55	\$49.36	\$2,579.06
Sum				\$12,065.94

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the interlocal agreement (ILA) with the following cities:

Bothell

Mill Creek

MILL CREEK

The traffic impacts to the City of Mill Creek Shown in Table 2B and Table 6 of the Traffic Study submitted with the application show that the directional PM peak hour trip (PHT) distribution within the City to be as follows:

Segment	# of Trips
Seattle Hill Road/ Mill Creek Road	0
164 th Street SE	11
Dumas Road	2
Main Street	0
North Creek Drive	0
Mill Creek Boulevard	2
Trillium Boulevard	0
Village Green Drive	0
9 th Avenue SE	1
Old Seattle Hill Road	0
148 th Street SE	0
TOTAL	16

At \$996 per PHT, this results in a Mill Creek traffic mitigation fee in the amount of \$15,936.00. Comments have been received from Mill Creek agreeing to the offer. The per lot amount distributed over the 85 lots is \$15,936.00/85 lots = \$187.48 per lot.

BOTHELL

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 CO 3 which has a percentage impact of 30% (i.e. 30% of the project’s trips impact the City of Bothell street system). Applying the 30% 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 \$51,487.80, (82 net lots x 30% x \$2,093 per dwelling.). The per lot amount distributed over 85 new lots is \$51,487.80/85 lots = \$605.74 per lot.

For impacts on the City of Bothell, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate impacts on city streets is required. The offer (exhibit 37) signed by the city of Bothell, agreeing with the \$51,487.80 offer was submitted with the July, 25th resubmittal.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the 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 SCC 30.66B.625.

An acceptable TDM plan (exhibit 15H) was submitted October 4, 2007 and therefore the development will be granted a 5% reduction of PM peak hour trips and 5% reduction of the future capacity fee payment.

8. Pedestrian Facilities for Students [RCW 58.17.110]

Comments have been received from the Northshore School District dated December 17, 2007 (Exhibit 33) stating that students will attend the following schools. The school district states that the Bus Stop information is subject to change.

School Type	Elementary	Middle School	High School
School Name	Fernwood	Skyview	Bothell
Walk to School	Yes	No	No
Walk to School Bus	Yes	Yes	Yes
Will buses pick up children within/adjacent to this project	No	No	No

The school district states that the Bus Stop information is subject to change. The school district states that other current development proposals in the area and their proximity to each other has changed the logistics of how elementary school children will get to Fernwood Elementary and/or to the secondary school children's appropriate bus stop locations. The district states, "Depending on the phasing, and assuming the connection of 35th and 43rd by 188th and the connection of 188th and 180th by 43rd, the planned stops are shown below."

Secondary Bus Stops		
Current Bus Stops	Planned (Dependent on phasing and number of students)	Plats or Developments
43 rd Ave & 196 th St SE	43 rd Ave & 196 th St SE	Timber Creek Ranch LIDERA Woodcress
4807 196 th St SE	4807 196 th St SE	
186 th PI SE & 35 th Ave SE	186 th PI SE & 35 th Ave SE	LIDERA Ferncress Fernwood Hills Alder Grove Boulders at N. Creek Camero Meadows Paloma Reinstadt Talavera Estates Sky Vista
192 nd PI SE & 35 th Ave SE	192 nd PI SE & 35 th Ave SE	
4625 196 th St SE	4625 196 th St SE	
184 th PI SE & 35 th Ave SE	184 th PI SE & 35 th Ave SE	Tambark Fernwood Hills Alder Grove Woodcress Hardy Saintz Adam Addition The McNaughton Group
	Sunset and 180 th St SE or 43 rd & 180 th St SE	Olson Timber Creek Ranch Brook Field Lane

In order to provide safe walking facilities for the schoolchildren from this development, a pedestrian walkway, constructed to the satisfaction of the Department of Public Works, shall have been constructed to Fernwood Elementary and to the 43rd Ave SE/196th Street intersection.

In their December 19, 2007 letter (exhibit 33) the district indicates "Temporary busing may be utilized by the District while sidewalks and curbs are being completed". Based on this language, and that the school district does not indicate they will unconditionally commit to busing the students from either Division, until safe walking facilities for the schoolchildren are in place, PDS will require a condition that will require the following language be placed on the face of the final plat of whichever division records first:

"Prior to the final occupancy of the first unit in either Phase 1 or Phase 2 (whichever records first), construction of a pedestrian walkway for the schoolchildren from this development, shall have been completed to Fernwood Elementary and to the 43rd Ave SE/196th Street intersection to the satisfaction of the Department of Public Works."

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 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 three (3) existing lot(s), 2 in Division 1 and 1 in Division 2. 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. The site is 20.62 acres in size. A large Category 3 wetland is located in the middle of the site dividing the site into east and west halves. The entire site drains into the wetland, which conveys runoff to the south central property line. The site is relatively flat with slopes ranging from zero to eight percent. Soils have been classified by the National Resources Conservation Service as Alderwood Gravelly Sandy Loam. Exhibit 48A.

The western portion of the site is made up of 2 five-acre parcels and is developed with a very old single-family residence and out building. A majority of the western portion is in pasture and the remainder is in stands of evergreen trees. The eastern portion of the site is one 10-acre parcel and is developed with one single family home, two mobile homes and a detached garage. About 1/3 of the site is in lawn and the remainder is treed. The east 135-foot are encumbered with a Seattle City Light Transmission Line easement that will remain undeveloped except for the power lines.

As mandated by the SCC 30.63C.020, all new development projects within any portion of a Southwest UGA expansion area located in the Little Bear Creek Watershed shall use low impact development techniques. The subject site is within the Southwest UGA expansion area located in the Little Bear Creek Watershed and is required to utilize low impact development techniques. The applicant has provided a preliminary design and report (exhibits 14 & 15C) in accordance with requirements of the LID ordinance, chapter 30.63C SCC.

The proposed drainage system for detention, retention, infiltration and water quality treatment of storm water is approximately 41 bio-retention rain gardens with piped overflow to two separate open detention ponds. The ponds will complement the detention, infiltration and treatment afforded by the rain gardens. Final design will be to the 2005 Department of Ecology Storm Water Management Manual, and the drainage model is WWHM3, as required under the chapter 30.63C SCC.

No water quality treatment facilities will be located within public roads. The detention wet-pond will water quality treatment and detention of public road drainage, and be located within a separate tract as required by code. The applicant has proposed to develop the project in two divisions, one east and one west of the central wetland, and the drainage for each of the divisions can be developed independently.

Covenants and restrictions will be placed upon homeowners to maintain and protect the design intent and function of the rain gardens. A standard drainage facility maintenance covenant will be included on the face of the plat requiring maintenance of the open detention ponds in perpetuity.

Surface Water Management has stated they know of no drainage problems downstream of this project within ¼ mile. No public drainage concerns were received in writing by PDS. During public testimony, one neighbor voiced some concern about drainage in the area. The applicant's representative, Mark Lamb, assured the citizen that all wetland mitigation for both phases shall be satisfactorily implemented prior to the recording of the final plat for whichever phase is recorded first. March 13 Hearing Testimony.

The primary stated purpose of low impact design is to better replicate forested conditions by allowing alternative drainage designs that more readily infiltrate storm water back into the soil near the source, as opposed to conveying all drainage to one pond downstream. The preliminary drainage plan provided clearly shows an effort to provide a design intended to achieve this goal. The drainage plan and report provided clearly indicate an intimate familiarity with and compliance with both the LID ordinance, the LID Technical Guidance Manual for Puget Sound and the 2005 DOE storm water manual.

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. Grading quantities are anticipated to be approximately 46,000 cubic yards of cut and 46,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Even though quantities would suggest no offsite hauling of dirt, a haul route agreement may be required prior to permit approval. Water quality would be controlled during construction by use of such methods as 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)

The 20.62 acre site contains two Category 3 wetlands. The larger wetland (Wetland "B" as referred to in exhibits 5 & 16A & 16B) bisects the central portion of the site extending off-site to the adjacent north and south. Wetland B is an immature forested wetland containing two man-made farm ponds and disturbed pasture areas. Wetland "A" (exhibits 5 & 16A & 16B) is a scrub-shrub wetland located along the southern site boundary east of Wetland "B". Wetland "A" (782 square feet) is contained within a small depression and dominated by creeping buttercup and Himalayan blackberry.

The majority of the site was historically used as pastureland for livestock. There are two occupied mobile homes and a barn located within the eastern portion of the site. The western portion contains 2 very old structures. Topography throughout the site is variable, but primarily consists of gently rolling slopes from east and west down to a large wetland in the center of the property.

The applicant proposes a two-phase residential development. The development plan will include a total of 85 lots, associated infrastructure, a low impact development (LID) stormwater management plan, and a pedestrian path through the on-site wetlands and buffers connecting Division 1 to Division 2. Construction of 188th Street SE will require crossing over Wetland "A", Wetland "B" and its associated buffer. Utility placement within the right-of-way of 188th Street SE will temporarily impact wetland and buffer that is currently composed of degraded pasture. Restoration following installation is proposed. A 10-foot wide pedestrian trail is proposed through Wetland "B" and its buffer. The trail is designed as part of the overall site development plan to facilitate movement of pedestrian traffic

between the two phases of development while providing a common use critical area access for passive recreation. The trail is designed utilizing an elevated boardwalk structure and wood chips. No significant vegetation will be removed as part of constructing the elevated boardwalk. Permanent critical area and buffer impacts are proposed to be mitigated through wetland creation, enhancement and additional buffer area beyond the required standard, as detailed in Exhibit 16B. Implementation of the mitigation program is expected to result in an overall net increase in the functions and values of critical areas.

Wetland "A" will be filled in accordance with the Best Management Practices (BMP) provisions of SCC 30.62.360(6). Mitigation for impacting this wetland will be via dedication of additional buffer along Wetland "B" at a 1:1 additional buffer to BMP wetland impact ratio (Exhibit 16B).

Wetland "B" and its associated buffer will be temporarily impacted from the placement of utilities within the right-of-way of 188th Street SE. The areas to be temporarily impacted are composed of degraded pasture. Restoration is proposed in accordance with the requirements of SCC 30.62.345(1) (a) – reference Exhibit 16 B.

Construction of 188th Street SE will permanently impact Wetland "A" and a portion of Wetland "B" and its associated buffer. SCC 30.62.350(1)(b)(ii) and SCC 30.62.350(1)(d)(vi) allows public and private roadways to be constructed in a wetland and wetland buffer if the impact is unavoidable, minimized and mitigated in accordance with the review criteria for development activities (SCC 30.62.365). Mitigation is proposed consisting of a combination of wetland creation, enhancement and additional buffer area beyond the required standard, as detailed in Exhibit 16B.

A 10-foot wide pedestrian trail is proposed through Wetland "B" and its buffer. The trail is designed as part of the overall site development plan to facilitate movement of pedestrian traffic between the two phases of development while providing a common use critical area access for passive recreation. The trail is designed utilizing an elevated boardwalk structure over the wetland and wood chips. No significant vegetation will be removed as part of constructing the elevated boardwalk. The trail as proposed is in accordance with the provisions of SCC 30.62.350(1) (b) and SCC 30.62.350(1) (d) and the review criteria for development activities (SCC 30.62.365). Staff considers the trail favorable in terms of a planned pedestrian link between phases to provide common access across the wetland/buffer and critical area recreational viewing opportunities. Mitigation is being provided in accordance with code and as detailed in Exhibit 16B.

Implementation of the mitigation program is expected to result in an overall net increase in the functions and values of critical areas. An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application complies 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 to safeguard the public health, safety and welfare.

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 Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. 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. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject

application has been evaluated for consistency with the version of the GMA Comprehensive Plan which became effective on February 1, 2006, and as revised through the completeness date of the application.

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.”.

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 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 55%.

The LSA calculation is as follows:

Division 1

Area in Lots + Critical Areas and Buffers + Open Space = 361,801 square feet ÷ 44 lots proposed = 8,223 square foot average lots size

Division 2

Area in Lots + Critical Areas and Buffers + Open Space = 342,385 square feet ÷ 41 lots proposed = 8,351 square foot average lots size

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. PDS concludes that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

14. Utilities

- A. Water. Water is available from Alderwood Water & Waste Water District. Exhibit 35.
- B. Sewer. Sewer service is available Alderwood Water & Waste Water District. Exhibit 35.
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. Exhibit 34.
- D. Snohomish Health District Approval- the SHD has no objections to the preliminary subdivision approval but indicates that any existing onsite 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. The Examiner will incorporate this requirement as a condition of approval. Exhibit 38.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 15, 2007 (Exhibit 17). 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. Finding of Fact 7; 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. Exhibit 2; See 30.41A.110.
- C. Fire Code/Fire District Requirements. Exhibit 36 provides comments from Fire District #7 will have to be addressed during construction review and made a condition of approval, since they do not appear on the preliminary plat (at least the Examiner could not find them). Specifically, they are:
 - 1. Ensure adequate fire flow/hydrants.
 - 2. Ensure all road signs are posted prior to construction.
 - 3. Ensure all building addresses are clearly marked.

For placement on the final plat: Do not allow secondary egress window from upper level rooms to be between structures with less than 10' building setbacks (firefighters cannot meet minimum climbing angles in these reduced setback developments). Place windows front and rear).

- D. As indicated earlier in this decision, applicant has met the requirements of the health district, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. This application is exempt from the provisions of SCC 30.41A.250, since all lands within both divisions of the subdivision are between 0-8% slope. See Exhibit 2.

- F. Safe Walking Conditions to School. A major focus of the proceedings before the Examiner was the issue of the provision of safe walking conditions for students to school. The area is one that is quickly developing with over 700 new homes slated for development. Because timing of these developments is somewhat unclear, it is also unclear when the street and sidewalk connections might be completed. The Northshore School District has attempted to accommodate this, but will not commit to the busing to Fernwood Elementary (which is in walking distance of the development) for whatever amount of time it might take to accomplish all these sidewalk connections. See Exhibit 41. The Deputy Examiner had held the record open from January 29, 2008, urging the parties to find a solution to this problem. Another developer, Cam West, with a plat application adjacent to Lidera, requested further hearing on the matter, which Deputy Examiner Good granted. See Exhibit 46.

At the hearing held March 13, 2008, applicants and staff revealed that although it was not yet clear which roadway, 39th Ave SE or 43rd Ave SE, will be used for a walkway, applicant will provide pedestrian walkway to the elementary school. The controversial issue that arose at the hearing was whether or not Division 2 would be developed (due to the fact it was to be sold off) and how that might affect other future developments in the area who were depending on the built sidewalks. Cam West's representative testified that a condition requiring an easement over that sidewalk area should remain, due to the uncertainty of whether it would develop.

The Examiner has no authority to condition a plat for the benefit of other developers. It may work out that the applicant provides pedestrian facilities down 43rd Ave South, in which case it will have to develop sidewalks across Division 2. If it works out that 39th Avenue South is the route, the sidewalk will have to be developed, either by the new owners of Division 2 or by another developer who needs to provide safe walking conditions.

In any event, this subdivision has met the requirement to provide safe walking conditions for students and will be conditioned accordingly.

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 proposed preliminary subdivision 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 30.63C 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. A public water supply will be provided by and public sewer service will be provided by the Alderwood Water and Wastewater District.

18. Any finding of fact in this decision 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. Given the information provided in the record and the findings of fact made above, the Examiner concludes that the applicant has met its burden in showing that the preliminary subdivision application should be approved.
4. Any conclusion in this decision, which should be deemed a finding of fact, is hereby adopted as such.

DECISION

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

The request for an 85-lot subdivision on 20.62 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on October 4, 2007 (Exhibit 15A-G) shall be the approved plat configuration and phasing plan. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above 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 final mitigation plan shall be submitted to Planning and Development Services for review and approval, based on the March 22, 2007 Critical Areas Study (Exhibit 5) and Revised October 3, 2007 Wetland Mitigation Plan (Exhibit 16A & 16B).

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 three (3) existing parcel(s). Lot(s) 1 & 2 in Division 1 and lot 1 in Division 2 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:
 - \$2,017.24 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.
 - \$187.48 per lot shall have been paid to the City of Mill Creek for project impact to the City. Proof of payment is required.
 - \$605.74 per lot shall have been paid to the City of Bothell for project impact to the City. Proof of payment is required.
 - \$74.13 per lot for mitigation of impacts on state highways paid to the County towards the SR 9 (SR 522 to 228th St. SE) (1B) project. (DOT-14)
 - \$37.48 per lot for mitigation of impacts on state highways paid to the County towards the SR 9 (SR 522 to 112th St. SE) project (DOT-15).
 - \$30.34 per lot for mitigation of impacts on state highways paid to the County towards the SR 9 (SR-522 to 21st St SE) project (DOT-41).

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. Per SCC 30.66B.170(6), prior to the issuance of building permits for a single family residence on lots 10 through 13 and 17 through 40 in Division 1 and any lot in Division 2, construction of a 600 foot south bound right turn lane at the intersection of York Road/SR 524 must be completed or under contract. Prior to approval for occupancy or final inspection the improvements must be completed.

- iv. Per SCC 30.66B.220, improvements to remove the Inadequate Road Condition (IRC) must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued.
- v. 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 43rd Avenue SE projected centerline.
- vi. Additional right-of-way connecting the intersecting right-of-way lines of 43rd Ave SE Ave. SE and 188th Street SE with a thirty- five (35) foot radius curve shall have been dedicated to the County.
- vii. 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."
- viii. 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.
- ix. Covenants shall be created and placed on the face of the final plat that indicate that a Homeowners Association be created and that the maintenance of the drainage tracts and walkways within any drainage tract is the responsibility of the Homeowners Association.
- x. An easement for drainage, utilities and public walkway shall be created in Division 1 over the front portion of lots 13 – 16, 34 – 44, Tract 987 and the portion of Tract 999 that fronts on 40th Ave SE and in Division 2 over the front portion of lots 1 – 10, 39 & 40 along the 187th PI SE frontage, lot 41 along the 187th PI SE and 42nd Dr. SE frontages and Tract 995. Said easements shall be as shown on the preliminary plat map, exhibit 15B, and depicted on the face of the final plat.
- xi. Prior to the final or occupancy of the first unit in either Phase 1 or Phase 2 (whichever records first), construction of a pedestrian walkway for the schoolchildren from this development, shall have been completed to Fernwood Elementary and to the 43rd Ave SE/196th Street intersection to the satisfaction of the Department of Public Works.
- xii. Fire District requirements for structures: Do not allow secondary egress window from upper level rooms to be between structures with less than 10' building setbacks (firefighters cannot meet minimum climbing angles in these reduced setback developments). Place windows front and rear).

D. Prior to recording of the final plat:

i. All wetland mitigation for both phases shall be satisfactorily implemented prior to the recording of the final plat for whichever phase is recorded first.

ii. Prior to recording of the final plat for Division 1:

In conformity with applicable standards and timing requirements:

1. Construction of urban standard frontage improvements on 186th Street SE shall have been completed.
2. That portion of Division One's 188th Street SE frontage shall have been constructed to the standards and specifications of the Department of Public Works.
3. Existing onsite 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.
4. The plattor must meet the following Fire District requirements:
 - a. Ensure adequate fire flow/hydrants.
 - b. Ensure all road signs are posted prior to construction.
 - c. Ensure all building addresses are clearly marked.

iii. Prior to recording of the final plat for Division 2:

1. 43rd Ave SE adjacent to the east boundary of the plat shall have been constructed to the standards and specifications of the Department of Public Works.
2. That portion of Division Two's 188th Street SE frontage shall have been constructed to the standards and specifications of the Department of Public Works.
3. 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.

4. Existing onsite 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.

5. The plat must meet the following Fire District requirements:
 - a. Ensure adequate fire flow/hydrants.
 - b. Ensure all road signs are posted prior to construction.
 - c. Ensure all building addresses are clearly marked.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 15G) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

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

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

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

Decision issued this 26th day of March, 2008.

Barbara Dykes, Hearing Examiner

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 **APRIL 7, 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, 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 **APRIL 9, 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: Erik Olson

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.