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**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER  
REVISED ON RECONSIDERATION**

DATE OF DECISION: February 7, 2008

DATE OF DECISION  
ON RECONSIDERATION: March 31, 2008

PLAT/PROJECT NAME: ***GIBSON CROSSING***

APPLICANT/  
LANDOWNER: Gibson Crossing, LLC

FILE NO.: 07 102839 LU

TYPE OF REQUEST: Rezone from Residential-9600 (R-9600) to Low Density Multiple Residential (LDMR)

DECISION (SUMMARY): **APPROVED WITH PRECONDITION**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 2809 Gibson Road, Everett, WA

ACREAGE: 0.72 acres

ZONING: CURRENT: R-9600  
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential

UTILITIES:

Water: Alderwood Water and Wastewater District  
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo School District #6

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services:            Approve

**INTRODUCTION**

The public hearing commenced on January 17, 2007 at 11:31 a.m.

1. Michael Dobesh, Senior Planner, appeared on behalf of PDS and gave an overview of the project and answered questions from the Examiner.
2. Barry Constant appeared on behalf of the applicant.
3. No one appeared in opposition to the request.

The hearing concluded at 12:10 p.m.

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

**FINDINGS OF FACT**

1. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) was issued November 7, 2007. Exhibit 16. The DNS was not appealed.
3. Rezone Request: The applicant requests approval of a rezone from R-9600 to LDMR with an associated administrative site plan approval for an 8-unit residential development of single-family, detached structures on a .72 acre lot. Exhibit 2. There is one existing house that will remain, but is proposed to be moved to the southeast corner of the site plan as shown on Exhibit 14.
4. Site description: The subject property is a rectangular site with its longer axis running in a north-south direction, with approximately 145 feet of frontage on Gibson Road. The site slopes minimally near the center of the longer axis from the west to the east, with predominately flat “steps” on either side. The property is currently developed with one single-family residence, associated garage, gravel driveway, ornamental landscaping and mature evergreen trees. The structures appear to be abandoned at this time.

5. Adjacent zoning and uses: Adjacent properties to north, east and south across Gibson Road are zoned LDMR and developed with detached single-family residences (north: Cedar Springs LDMR, PFN 00-106979; south: Gibson Cove II LDMR, PFN 05-118804; east: Paige Place LDMR, PFN 04-116706). There is also a single-family residence directly across Gibson Road to the south, also zoned LDMR. The adjacent property to the west is zoned R-9600 and developed with single family residences, one of which is currently under construction. The general vicinity is experiencing a transition to LDMR zoning and uses. There is a mix of housing types in the vicinity consisting of stick-built and manufactured single-family residences on small to medium sized lots, detached single-family residences on a single lot, multi-unit townhouses, and a small apartment building. Exhibit 34
6. Transportation: The development is situated upon Gibson Road. The staff report contains the following information on the development's compliance with county transportation requirements, which the Examiner incorporates herein for a better understanding of the transportation impacts of the higher density development at this site:

*The PDS Traffic Review Section, in concert with the Department of Public Works (DPW) has reviewed the future development proposal for compliance with Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The review is based on a future site development plan (Exhibit 14) showing eight residential units. One unit is existing, and seven new units are proposed. The site plan (Exhibit 14) shows a total of eight units. Traffic comments are summarized below.*

1. *Road System Capacity [SCC 30.66B.310]*

*The impact fee for this proposal is based on the new average daily trips (ADT) generated by 7 new single family residences, which is 9.57/unit (This rate comes from the 6th Edition of the ITE Trip Generation Report (code 210)). The development will generate 66.99 new ADT and has a road system capacity impact fee of \$17,886.33 (\$2,238.79/unit) based on \$267.00/ADT. This impact fee must be paid prior to issuance of the building permits, and may be paid proportionally with each building permit.*

<i>Trips</i>	<i>Calculations</i>	
<i>ADT</i>	<i>(8 New SFR - 1 Exist.) x (9.57 ADT/SFR) =</i>	<i>66.9 9</i>
<i>AM PHT</i>	<i>(8 New SFR - 1 Exist.) x (0.75 AM PHT/SFR) =</i>	<i>5.25</i>
<i>PM PHT</i>	<i>(8 New SFR - 1 Exist.) x (1.01 PM PHT/SFR) =</i>	<i>7.07</i>

2. *Concurrency [SCC 30.66B.120]*

*The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works (DPW) has made a determination that the development is concurrent as of June 30, 2007. A record of developer obligations documenting this concurrency determination will be prepared by DPW in accordance with the provisions of SCC 30.66B.070. The expiration of the concurrency determination will be six years from July 3, 2007.*

*The development has been deemed concurrent on the following basis:*

*Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160.*  
*The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: Unit #202 – Seattle Hill Road between 132<sup>nd</sup> Street SE and 35<sup>th</sup> Avenue SE; and Unit*

#204 – 35<sup>th</sup> Avenue SE between 168<sup>th</sup> Street SE and Seattle Hill Road. Based on peak-hour trip distributions (Exhibit 7 attachments C and D), the subject development will 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 5.25 a.m. peak-hour trips (Exhibit 7 attachment C) and 7.07 p.m. peak-hour trips (Exhibit 7 attachment D) 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.

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

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

4. *Frontage Improvements [SCC 30.66B.410]*

*The subject property has frontage along Gibson Road. As per rule 4222.020(1) urban standard frontage improvements are required consisting of 18 feet of pavement from centerline of right-of-way to the face of a 6" vertical curb, a 5 foot planter, and a 7 foot sidewalk.*

*A deviation to the design standards was submitted by the applicant to allow for a 5 foot sidewalk instead of the 7 foot sidewalk required. The County Engineer approved the deviation on July 2, 2007 to allow for the construction of a 5 foot sidewalk along the development's frontage (Exhibit 21).*

*Construction of frontage improvements is required prior to any occupancy of the development.*

5. *Access and Circulation [SCC 30.66B.420]*

*Access is provided by a private drive-aisle off of Gibson Road, and is less than 150 feet in length. EDDS Section 2-03.C.2 requires a minimum access width of 35 feet. The applicant submitted a request to deviate from this standard and proposes a 25-foot wide access. The County Engineer approved the deviation on August 30, 2007 (Exhibit 20).*

*There are no issues of concern related to site distance.*

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

*Gibson Road is designated as a collector arterial on the County's Arterial Circulation Map. This requires an ultimate right-of-way width of 35 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on the development's side of the centerline. Therefore, 5 feet of additional right-of-way is required to be deeded along the entire frontage of the development. This has been adequately shown on the site plan.*

*The additional right-of-way shall be deeded to the County prior to issuance of building permits.*

7. *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. Comments from WSDOT were received via an email dated May 30, 2007 (Exhibit 22) concurring with the traffic study submitted by the applicant. Specifically, WSDOT agrees that this*

*development will not contribute three or more PM peak-hour trips to any WSDOT projects within TSA D. Therefore, WSDOT does not request any traffic mitigation from the applicant.*

8. *Other Streets and Roads [SCC 30.66B.720]*

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

*There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development. Therefore, no mitigation paid to a City or other agency will be required.*

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

*All new developments in the urban area shall provide TDM. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, 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.645. [SCC 30.66B.650].*

*It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500.00. 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 \$1,500.00 times the required trip reduction percentage times the development's peak hour trip generation.*

*The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 7.07 new PM peak hour trips x \$1,500.00, which equals \$530.25. The applicant has offered in writing to pay this amount.*

*Payment of the TDM obligation is required prior to building permit issuance, and may be paid proportionally with each building permit.*

Exhibit 34.

7. Environmental Impacts of Higher Density.

A. Critical Areas.

There are no critical areas on or within 100 feet of the project site.

B. Grading and Drainage.

According to the staff report, grading quantities are anticipated to be approximately 825 cubic yards of cut and 825 cubic yards of fill, primarily for road, drainage facilities, and home site construction. Water quality measures will be in place during construction in accordance with a Temporary Erosion and Sedimentation Control Plan required by Chapter 30.63A SCC. Exhibit 8, Section 8 and Exhibits 13B and 13C.

The stormwater flow from the site will be collected in a private drainage system and conveyed to an underground detention pipe approximately 90 feet in length. This underground pipe shown on the Road and Drainage Plan (Exhibit 13D) is provided to store stormwater runoff so that the peak release rates from this detention system can be metered to the level prescribed by SCC 30.63A.210(1) thus fulfilling the quantity control requirement of code. The submitted documents (Exhibit 8 sections 2&6, and Exhibits 13D and 13E) indicate that the permanent water quality control best management practices (BMP) will be provided in a storm filter cartridge system. This is a recognized water quality BMP and fulfills the requirements of SCC 30.63A.210(4). Treated water will ultimately be released to the existing storm system on the north side of Gibson Road.

8. Parks and Schools Impacts of Higher Density.

A. Parks.

The staff report contains the following information on the development's compliance with county parks mitigation requirements:

*Future residential development of the subject property will be subject to Chapter 30.66A SCC for impacts to Park District No. 307, which currently requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is considered acceptable mitigation for parks and recreation impacts in accordance with county policies. Payment of parks mitigation fees consistent with chapter 30.66A SCC will be made a condition of future site development approvals.*

Exhibit 34 at 3.

B. Schools.

SCC 30.66C.100 requires payment of school impact fees by all developments as a condition of approval. The fee is calculated in accordance with a formula established in SCC 30.66C.045. SCC 30.91D.220 defines "development" as "any residential construction or expansion of a building structure or use of land or any other change of use of a building, structure, or land that creates additional dwelling units."

The staff report contains the following information on the development's compliance with county school mitigation requirements:

*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 Mukilteo School District No. 6, 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 one existing lot, and will be applied to "Unit 1" of the proposed future development. Such payment is deemed acceptable mitigation for future impacts to the Mukilteo School District No. 6.*

*Comments from the Mukilteo School District dated July 18, 2007 (Exhibit 27) indicate that all students will be provided with bus service to and from schools. The bus stop is located at Gibson Road and 28<sup>th</sup> Place W. A street light exists at the SE corner of said intersection. The District*

requests that “the project install curb, gutter and sidewalk along the property’s street frontage on Gibson Road”. The requested frontage improvements are proposed, the details of which are shown on the road and drainage plan (Exhibit 13D).

In addition, after the hearing the PDS and DPW indicated that the applicant would have no objection to the requirement of installation of an off-site walkway on the north side of Gibson Road, from the southwest corner of the development to the intersection of 28<sup>th</sup> Place West and Gibson Road. Across the street from that location is the bus stop where children are picked up to go to school. If one is not already painted on the street, a crosswalk should be provided as well. See Exhibit 35.

9. General Policy Plan Designation. In the General Policy Plan (GPP), the subject property is designated Urban Medium Density Residential (UMDR: 6-12 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 UMDR designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multi-family residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7200, PRD-7200 and WFB zones.” GPP at LU-89.
10. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. *Woods v. Kittitas County*, 130 Wn. App. 573, 584, 123 P.3d 883 (2005); see *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The county’s regulations are a direct expression of the criteria expressed by case law.
3. Chapter 30.42A SCC covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and

(3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.<sup>1</sup>

4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. RCW 36.70.040. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner’s Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) Back to the Examiner to Supplement the Record at 3* (August 8, 2007), “The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.” The Examiner interprets this language, as well as the law applicable to rezones, to mean that **the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.**
5. This rezone is a request to up-zone a property in the UMDR Designation from R-9600 to LDMR to allow 10 units on this site. Although it is clear that this request fits within the UMDR designation (which allows up to 8 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan.
6. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas are planned for and how densities are to be determined:

The GMA requires that urban growth areas (UGAs) be designated through the county’s plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.

Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

General Policy Plan at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban

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<sup>1</sup> This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.



development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:

- reduced dependence on the automobile;
- increased support for public transportation;
- improved air quality;
- increased choice of housing types;
- improved efficiency of infrastructure provision and usage; and
- reduced consumption of rural lands.

To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single family and multi-family neighborhoods while respecting the vitality and character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.

General Policy Plan at LU-15 (emphasis added).

Goal LU 2 of the GPP requires that the County “[e]stablish development patterns that use urban land more efficiently”, although Objective LU 2.A qualifies that statement by requiring the County to “[i]ncrease residential densities within UGAs by concentrating and intensifying development in **appropriate** locations.” GPP at LU-16 (emphasis added).

Specific policies under Goal LU 2 that are relevant to this development are:

- 2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.
  - 2.A.4 Any UGA shall provide opportunities for a mix of affordable housing types (e.g. small lot detached, townhouses, duplex, triplex, 6 to 8 unit apartment and small group housing units) within medium density residential areas.
  - 2.A.5 Medium and high density residential development (including elderly and disabled housing) shall be encouraged to locate, where possible, within walking distance of transit access or designated transit corridors, medical facilities, urban centers, parks, and recreational amenities.
7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be

answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

**A. Is this area already characterized by urban growth that has adequate existing facility and service capacities to serve such development for the following types of public facilities and services? Please demonstrate. (See LU-1)**

- i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
- ii. Sidewalks;
- iii. Street and road lighting systems;
- iv. Traffic signals;
- v. Domestic water systems;
- vi. Sanitary sewer systems;
- vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
- viii. Storm and sanitary sewer disposal system;
- ix. Fire and police protection suppression;
- x. Law enforcement;
- xi. Public health;
- xii. Education; and
- xiii. Other services.<sup>2</sup>

**B. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)**

**Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)**

**i. Is the development carefully sited?**

- (a) Critical areas/shorelines.
  - (i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
  - (ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
  - (iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.<sup>3</sup>

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<sup>2</sup> Taken from the GMA definitions of public facilities and services. RCW 36.70A.030(12) &(13).

<sup>3</sup> Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- (b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities? **(Policy LU 2.A.5)**
  - (c) How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**
- ii. Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)**
- (a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(LU-15, Policy 2.A.4)**
  - (b) Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)**
  - (c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? **(See Policy I.C.2)**
- iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)**
- (a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See LU-15)**
  - (b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? **(LU-15)**
  - (c) If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.4)**
  - (d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**
  - (e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**
  - (f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See**

**LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. Applying this test to the Gibson Crossing LDMR project, the Examiner makes the following conclusions regarding consistency with the comprehensive plan:
- A. The area is already characterized by urban growth such that it has adequate existing public facilities and services to serve the development for the following types of facilities and services, as demonstrated below:
- i. Streets, roads and highways. The Examiner relies on Finding of Fact 6 in part to conclude that the development is adequately served by existing streets, roads and highways. There does not appear to be any major transportation issues or concurrency problems in the area. The development is located near a minor arterial that is not in arrears at present. There appear to be no local circulation issues.
  - ii. Sidewalks. Sidewalks are being provided along the frontage to Gibson Road and off-site to provide safe walking conditions for school children to the bus stop.
  - iii. Street and road lighting system. Street lighting is not required for this project.
  - iv. Traffic signals. There are no traffic signals on Gibson or Alexander Roads.
  - v. Water systems. Water will be provided by Alderwood Water and Wastewater District and the file contains a preliminary certificate of water availability. Exhibit 28.
  - vi. Sanitary Sewer Systems. Sewer will be provided by Alderwood Water and Wastewater District and the file contains a preliminary certificate of sewer availability. Exhibit 28.
  - vii. Park and recreational facilities. As stated in Finding of Fact 8.A., the developer will pay park mitigation fees as a part of the development proposal. Those fees currently are identified to support community parks and special use facilities such as golf courses that are necessary to serve new development. *See* Snohomish County Parks Plan at page 41. This criteria, however, addresses existing park and recreational facilities the inhabitants of the development may use and whether they are sufficient at this location in the county. Parks located within the general vicinity (one to two miles) include Kasch Park, Walter E. Hall Park, 92<sup>nd</sup> Street Park, Harbour Point Golf Club and Lake Serene. The Parks Plan was not altogether clear that levels of service had been adopted for every type of park, although Objective CF 7.C of the GPP states, related to parks, “[m]onitor and maintain minimum LOS standards, as defined in the Comprehensive Park and Recreation Plan and the CIP, through adequate CIP funding.”
  - viii. Storm and sanitary sewer disposal system: The development provides an on-site storm system designed by a professional engineer consistent with adopted County standards. The system includes an underground detention pipe that collects storm water from the site, detains, and then releases it into the storm system on the north side of Gibson Road, which is a public facility owned by Snohomish County.
  - ix. Fire and police suppression system: Fire protection is provided by Snohomish County Fire District No. 1. The subject rezone and proposed future development plan

has been reviewed by the County Fire Marshal's Office. The Fire Marshal's reviewer has provided the following comments:

- (a) The existing fire hydrant meets the minimum spacing requirements of Chapter 30.53A.320 SCC. Prior to combustible construction the developer shall provide this office with a final certificate of water availability stating that the required 1,000 gpm is available for a 2-hour duration. If the required flow is not available the developer will be required to make the request in writing and provide NFPA 13-D fire suppression systems in the new dwellings. You shall be required to provide a 4" Storz fitting on the existing fire hydrant;
- (b) The fire lane shall be provided with signage as indicated on the site plan;
- (c) Each building shall have an individual building address. Street signage shall be posted prior to any occupancy as indicated on the site plan;
- (d) Fire apparatus access, as depicted, meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

To clarify, the existing hydrant referenced above is shown on the site plan (Exhibit 14), and is located across Gibson Road, near the southwest corner of Gibson Road and 28<sup>th</sup> Place W.

Snohomish County Fire Protection District #1 provided comments dated June 15, 2007 (Exhibit 26). The Fire District's comments are consistent with the County's code requirements, and they do not request any additional conditions, restrictions or revisions to be imposed on the proposed future development.

Police protection is provided by the Snohomish County Sheriff.

- x. Public health: Public health issues are addressed by the Snohomish Health District. See Exhibit 27.
  - xi. Education: The site is served by the Mukilteo School District. Exhibit 30.
  - xii. Other services: The Examiner is not aware of any other services that are available that should be discussed in the decision.
- B. The Examiner concludes that the rezone will accomplish GPP Goal LU-2 of helping to establish development patterns by using urban land more efficiently by intensifying and concentrating development at an appropriate location, in furtherance of Objective LU2-A. The Examiner's conclusion relies on the following analysis:
- i. The development is carefully sited.
    - (a) Critical Areas/Shorelines. There are no critical areas or shorelines on the site or within close proximity to the site. **(Policy LU 2.A.3)**<sup>4</sup>
    - (b) Transit Access. The rezone or development is proposed in an area that is within walking distance of transit access. The nearest transit is at the northwest side of the intersection of SR 99 and Gibson Road which is approximately ½ mile. **(Policy LU 2.A.5)**

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<sup>4</sup> Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. See RCW 36.70A.480.

- (c) Lessen Dependence on Private Auto. The development made possible by the requested rezone may tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation. It is .5 miles from SR 99, a major transportation corridor with express busses to points north and south; and one to two miles to major park and ride centers on the Interstate 5 transportation corridor. There are no medical facilities in the immediate area. **(Policy LU 2.A.5)(Page LU-15)**
- ii. The rezone proposal is adequately integrated into the neighborhood. (See LU-15)
- (a) Character of the Existing Neighborhood. This neighborhood is quickly changing and there are many LDMR developments springing up in this neighborhood. Many large lots with small older homes are being redeveloped into high density LDMR developments. The project will provide new single-family housing which will match the recent developments of the adjacent properties to the east and north of the site. The project will also match current construction of single-family detached units located directly to the south and southeast of the site. Exhibit 3C **(LU-15, Policy HO 2.B.1)**
  - (b) Allowing for a Mix of Housing Types. See above. **(Policy HO 2.B.1)** The proposed housing for the project is planned to match the adjacent uses in the area, which include the upper end of low income to medium income families. Exhibit 3C.
  - (c) City Comments. This area is approximately ½ mile from the City of Mukilteo. PDS has received a copy of the “South Mukilteo Annexation Notice of Intent” document, dated December 10, 2007. The subject property is within the intended South Mukilteo Annexation area (Exhibit 23, pages 55-59).

Addendum No. 2 to Interlocal Agreement Between Snohomish County and City of Mukilteo for Interim Land Use Permit and Enforcement Services states “As the agent of the City, the County shall continue to administer the plans, ordinance, regulations and contracts listed in Section 1 above, within the Annexation Area as it did prior to the effective date of the City’s annexation, with the following exceptions:...” (Exhibit 22 Section 2 at page 3). Note that none of the exceptions listed apply to the subject proposal.

Per conversations with PDS Long Range Planning staff, a new Master Annexation Interlocal Agreement with the City of Mukilteo could be approved early in 2008. Thus, the County will continue to review the subject application even if the “South Mukilteo Annexation” becomes effective prior to project completion, unless the new Master Agreement is approved and directs the County to do otherwise.

PDS sent a request for comments to the City of Mukilteo on May 23, 2007. No reply has been received; therefore PDS assumes that the City has no comment. **(See Policy I.C.2)**

iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)

- (a) Density of Surrounding Neighborhood and How the Development Will Help Maintain Existing Character. The proposed density fits well into this neighborhood, which can be fairly characterized as a transitioning neighborhood. **(See Policy HO 2.A.1)**
- (b) Integration of Building Design into the Existing Neighborhood. The one existing house is to remain on site, allowing a bit of buffering between the existing and new development in the neighborhood. The seven new residences on-site are planned to be two story and approximately 1050 square feet of area per floor. This is consistent with old and new development in the neighborhood.

The site slopes to the east ranging from 0-15%. All existing views on-site are territorial. No existing adjacent or on-site views will be altered by the development. **(See Policy HO 2.A.1; LU-15)**

- (c) Other Selective and Innovative Land Use Measures Used to Preserve the Character of the Existing Neighborhood. The Examiner is not aware of any “selective and innovative land use measures” that will be used to preserve the character of the stable residential neighborhood. **(See Policy HO 2.A.4)** In this case, this policy is not applicable because the Examiner would not characterize this neighborhood as a “stable residential neighborhood”.
- (d) Mitigation of Negative Impacts through Landscaping, Fencing and other Design Features. There is some landscaping provided in the front of the property. **(Policy HO 2.A.1)**
- (e) Adequate Fire and Medical Emergency Access. The development appears to be designed to provide for adequate fire and medical emergency access. Since the access drive aisle is less than 150-feet in length, there are no cul-de sac or turnaround areas required for emergency access. The Fire Marshal’s Office has indicated that the project meets all hydrant spacing requirements so no new hydrants are required for the site.

Off-street parking will be provided through attached garages as well as within driveway aprons for each unit. This results in two to four parking stalls per unit for existing residences and guests. Also “no parking- fire lane” signs are to be placed along both sides of the drive aisle to maintain emergency access flow through the private road. Exhibit 3C. **(LU-15)**

- (f) Adequate Provision for Public Health, Safety and Welfare. The Examiner concludes that the public health, safety and welfare are adequately provided for by this development. **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

9. The other criteria in SCC 30.42A.100 is whether the proposal bears a substantial relationship to public health, safety, and welfare. *See* SCC 30.42A.100(2). Returning to Council Motion 07-447, the Council clarified the proper role of the Examiner in reviewing this criteria:

Although consistency with the Comprehensive Plan is a significant factor in determining whether a proposed rezone bears a substantial relationship to the public health, safety and welfare, in some cases, there may be other factors outside the Comprehensive Plan policies that may be relevant to that issue and which may be considered. If there are such factors apparent from the application documents or otherwise known to PDS, they must be identified and discussed both in the written PDS staff report and by the Examiner in his decision. The written PDS staff report and the Examiner's decision should specify if any of these other factors are related to the rezone or should be considered at the project level with the specific development proposal being made. PDS staff is not required to anticipate opposition or to consider factors or issues outside of the Comprehensive Plan or not required by the Snohomish County Code. However, this does not limit the Hearing Examiner's ability to consider testimony at the public hearing concerning whether the proposed rezone bears a substantial relationship to the public health, safety and welfare.

Motion 07-447 at 3.

The Examiner interprets this language to mean that most of the time, analysis of whether the rezone is consistent with the Comprehensive Plan should suffice for review of a rezone proposal because in most cases, analysis of the comprehensive plan policies is analysis of whether the proposal bears a substantial relationship to the public health, safety and welfare. However, the Examiner and PDS may use this second criteria to analyze other issues of concern that may be raised outside of the scope of the Comprehensive Plan.

10. In this case, the Examiner concludes that there are no issues of concern that warrant analysis under SCC 30.42B.100(2). No issues of concern were identified in the PDS staff report (*See* Exhibit 34) and no one except the applicant and PDS staff testified at the hearing. The Examiner identified no issues of concern in reviewing the file.
11. Since this request involves rezoning only, any details or conditions which would normally appear as conditions of the development in the Examiner's decision will be issued as a part of the administrative plan approval by PDS.
12. The request for a rezone was based upon the information and impacts submitted in the Determination of Nonsignificance.
13. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION:**

The request for a Rezone from Residential-9600 to Low Density Multiple Residential for this property is hereby **APPROVED SUBJECT TO** the following **PRECONDITION:**



## **Precondition**

Applicant agrees to provide an offsite walkway on the north side of Gibson Road from the development's southwest corner to the intersection of 28<sup>th</sup> Place W and Gibson Road as a part of construction approval. Further, applicant will provide ~~crosswalk striping if none presently exists at the crosswalk. See Exhibit 35:~~ a safe method to allow children and pedestrians to cross Gibson Road, which is a minor collector arterial on the county transportation plan, so that the children may catch the bus on the opposite side of the street at the intersection of 28<sup>th</sup> Place W and Gibson Road. The Department of Public Works must determine the appropriate pedestrian facility and traffic control devices to assure safe crossing. The lack of provision of any pedestrian facility or safety device is not an option.<sup>5</sup>

Dated this 7<sup>th</sup> day of February, 2008.

Decision on Reconsideration issued March 31, 2008

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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, 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 **FEBRUARY 19, 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]**

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<sup>5</sup> Revised on Reconsideration  
07102839a.doc

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 **FEBRUARY 21, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Michael Dobesh

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.

**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 February 7, 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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