

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

DATE OF DECISION: July 2, 2008

PLAT/PROJECT NAME: MIDLAND

APPLICANT/  
LANDOWNER: MHR Investment Co LLC  
3601 Colby Ave  
Everett, WA 98201

FILE NO.: 07-111564-000-00-SD

TYPE OF REQUEST: 12 lot subdivision utilizing lot size averaging on approximately 4 acres

DECISION (SUMMARY): Approved, subject to conditions.

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 8002 8th Street SE, Everett Snohomish County, Washington.

Acreage: 4

Lots: 12

Gross Density: 3.00 du/ac

Net Density: 4.19 du/ac

Avg. Lot Area: 6,041.75 square feet

Smallest Lot Area: 5,227 square feet

Lot Size Averaging: 7,885.8 square feet

ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

School District: Lake Stevens #4  
Fire District: No. 8  
Water Source: PUD #1  
Sewer Service: Lake Stevens Sewer District

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approve, with conditions

**INTRODUCTION**

The applicant filed the Master Application on September 28, 2007. (Exhibit 1A)

The Hearing Examiner (Examiner) Pro Tem made a site familiarization visit on June 24, 2008 in the morning.

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

A SEPA determination was made on April 25, 2008. (Exhibit 5B) No appeal was filed.

The Examiner held an open record hearing on June 25, 2008, the 103rd 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 June 25, 2008 at 2:03 p.m.

1. The Examiner indicated that he had read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Ed Caine, planner from Snohomish County Department of Planning and Development Services, appeared and testified under oath. He presented the county staff report.
3. Angela Jones, applicant's agent, appeared and testified under oath. She described the proposal.
4. Martha Anderson, a neighbor to the proposed development, appeared with questions and comments.

The hearing concluded at approximately 2:23 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, are hereby made a part of this file, as if set forth in full herein.
2. Nature of Request: The applicant is requesting a 12-lot subdivision on a 4.00 acre parcel using lot size averaging. Tract 996 (Open Space, 12,170 square feet) and Tract 997 (Future Development, 32,644 square feet) are reserved for future development, but the future development will not be vested until application for the future plat has been deemed complete. Access will be by a new public road off of 8<sup>th</sup> Street SE. Water will be provided by PUD #1 and sewer will be provided by Lake Stevens Sewer District.
3. Site Description: The site is developed with a single family residence with out buildings. The parcel is landscaped. There is a Category 3 wetland on the eastern border of the site.
4. Adjacent zoning: Adjoining parcels are single family residential. Adjacent zoning is R-7200.
5. Park Mitigation: The proposal is within Park District No. 306 (Centennial) and is subject to Chapter 30.66A SCC, which requires payment of \$1,037.92 per each new single-family residential unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
6. Traffic: PDS Traffic reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

1. 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 105.27 net new average daily trips (ADT) and has a road system impact fee of \$38,318.28 (\$3,193.19/lot) based on \$364/ADT, the current fee rate for residential developments inside the urban growth area, for TSA B. These figures do not 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.

2. Concurrency [SCC 30.66B.120]

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 has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of November 20, 2007. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is September 28, 2007.

The development has been deemed concurrent on the following basis:

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA B which, as of the date of submittal, had the following arterial units in arrears: AU#238. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 8.25 a.m. peak-hour trips and 11.11 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

3. 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 not impact any IRC locations identified within TSA B 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]

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.

8<sup>th</sup> St. SE and 79<sup>th</sup> Ave. SE

Per DPW Rule 4222.020(1) full urban frontage improvements are required along the subject parcel's frontage and shall consists of:

- a) Asphalt concrete pavement consisting of 23 feet width from the existing right-of-way centerline so that the road does not get push out further from the existing right-of-way centerline.
- b) Cement concrete curb and gutter
- c) Planter strip with a width of 5 feet
- d) Cement concrete sidewalk with a width of 5 feet

The roads, 8<sup>th</sup> St. SE and 79<sup>th</sup> Ave. SE, on which the development is required to construct frontage improvements, are not currently programmed for an overlay.

The roads, 8<sup>th</sup> St. SE and 79<sup>th</sup> Ave. SE, on which the development's frontage improvements are required, are 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.

#### 5. 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.

A public road is proposed from 8<sup>th</sup> St. SE for access. The new public road shall meet the following EDDS standard: Residential, design speed=25 mph, pavement width=28 ft., 5 ft. min. planter width, 5 ft. min. sidewalk width, and 51 ft. right of way width. See EDDS drawing 3-050 and 3-065. 52 ft. of right of way is shown on the plan.

A road stub is proposed at the south property line for a future road connection to the adjacent property. A 50 ft. radius cul-de-sac is proposed for a temporary turn around at the end of the road stub. The plan shows that a part of the turn around will be outside of the right of way and will take up a portion of Lot 4 – 8 and Tract 997. An easement for the turn around will be required and is shown on the plan. A minimum paved radius of 40 ft. is required for the turn around.

The intersection sight distance looking to the west from the proposed access does not meet 390 ft. as required by EDDS. A sight distance plan was received on March 27, 2008 (Exhibit 2E) along with the following comment in an email from the applicant's engineer: "The posted speed limit is 35 mph, which requires 390 ft. for the sight distance triangle. At the 338 ft., to the west the road takes a 90 degree turn (centerline radius of approx. 80 ft.). The county currently has traffic caution signs posted, warning drivers that the road does make a sharp turn and to slow down to 15 mph for east bound traffic. Since traffic has been slowed down to 15 mph around the turn, the requirement for sight distance should be far less than 390 ft. since drivers would need to accelerate after this curve to achieve the posted speed. Per the Snohomish County EDDS Table 3-9, the 338 ft. we have meets the requirements for a road with a speed limit of 30 mph. The current conditions meet the traffic safety requirements for Snohomish County."

The applicant's engineer sight distance analysis is acceptable. Therefore, 335 ft. of intersection sight distance will be required. The sight distance plan has demonstrated that the intersection sight distance looking to the west at the proposed access will meet the required 335 ft.

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

A public road is proposed from 8<sup>th</sup> St. SE for access. The public road shall meet the following EDDS standard: Residential, design speed=25 mph, pavement width=28 ft., 5 ft. min. planter width, 5 ft. min. sidewalk width, and 51 ft. right of way width. See EDDS drawing 3-050 and 3-065. 52 ft. of right of way is shown on the plan.

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#### 7. State Highway Impacts [SCC 30.66B.710]

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received as of the date of this memorandum. The applicant's financial obligation to the State is zero upon the following basis:

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT were received on October 12, 2007 (Exhibit 8B1. "This project will not have a significant adverse traffic impact upon state highways. Therefore, WSDOT does not request any traffic mitigation for state highways from the applicant."

#### 8. 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 inter-local agreements between the County and the other jurisdictions.

There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

#### 9. 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.

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.

Since a TDM plan was not submitted with the initial application, a cash payment is required. This is indicated on the presubmittal review conference form signed by the County and the applicant's representative on September 27, 2007. The TDM obligation for this development is equivalent to 5% of the 11.11 new PM peak hour trips x \$1,500.00 which equals \$833.25(\$69.44/lot). A written offer for payment of this TDM obligation was received on September 28, 2007.

10. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development.

Comment from the Lake Stevens School District was received on January 22, 2008 (Exhibit 8C6) indicating that elementary and high school students are provided with bus service to school, and their current bus stop is located at Lake Stevens Middle School on 91<sup>st</sup> Ave. SE. Revised comments were received on June 25, 2008, stating that the school bus stop for all school children would be at the intersection of 79<sup>th</sup> Ave. SE and 8<sup>th</sup> St. SE.

An offsite walkway to be constructed to the specifications of the County is required on 8<sup>th</sup> St. SE from the proposed subdivision to 79th Ave. SE, since there is no walkway. If a bus stop is created at the entrance of the development in the future by the district, then a safe place to wait for the bus shall also be provided.

7. School Impact Mitigation Fees:

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Lake Stevens School District No. 4, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

8. Critical Areas: This application avoids impacts to the critical areas and buffers as required per SCC 30.62.365 with the exception of minor fill of wetland and buffer as required for frontage improvements. A total of 791 s.f. of degraded emergent wetland dominated by reed canarygrass and 789 s.f. of buffer dominated by blackberries and upland grasses are to be impacted for frontage improvements. Mitigation for the wetland and buffer impacts is proposed in the form of wetland enhancement and additional wetland buffer via innovative development as allowed per SCC 30.62.370.

Innovative development is required because the applicant is not proposing to create additional (emergent) wetland to replace the (emergent) wetland being filled and thus the application does not meet the standard requirements per SCC 30.62.345(1)(c). Instead, the applicant is proposing to enhance 3,324 s.f. of existing degraded wetland for road fill impacts of 791 s.f. for a replacement ratio of 4.2:1. The standard requirement for emergent fill is 1:1 creation. In

addition, the applicant is proposing to replace 936 s.f. of buffer for 789 s.f. of impacted buffer (a 1.2:1 replacement ratio).

The applicant has demonstrated compliance with SCC 30.62.370(2) because the enhancement of the degraded wetland with additional buffer will improve the functions and values of this degraded wetland and buffer over that which would have occurred through the creation of emergent wetland and the expansion of buffers in existing areas. The proposed plantings will provide structure, ecological diversity and wildlife habitat in areas that otherwise may have remained relatively degraded for many years. The value of a low functioning degraded emergent wetland is minimal and the value in the construction of such a small emergent wetland to replace 791 s.f. of a reed canarygrass wetland makes less ecological sense than the enhancement that is being proposed.

An evaluation of the information submitted in the revised application (Exhibit 3E) coupled with an on-site investigation conducted by PDS has resulted in a determination that the application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

9. Drainage and Grading: Stormwater runoff will be collected and routed to a detention vault located in Tract 998. Runoff will be stored in the vault and released to the downstream drainage system after receiving water quality treatment in a filter vault.

Planning and Development Services (Engineering) reviewed the concept offered (Exhibit 2F and Exhibit 3B) and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 2,500 cubic yards of cut and 2,500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

10. Utilities:

**Sewer**

Sanitary sewer will be supplied by the Lake Stevens Sewer District. A Certificate of Sewer Availability was received on September 24, 2007 (Exhibit 8C1).

**Electricity**

Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on November 6, 2007 (Exhibit 8C2)

**Water**

Water will be supplied by the PUD #1. A Certificate of Water Availability was received on November 6, 2007 (Exhibit 8C3).

11. Fire Code (Chapter 30.53A)

PDS sent a request for review document to Fire District # 8 on October 4, 2007. PDS did not receive a response from Fire District # 8.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on November 16, 2007. The conclusions of the review were that:

(a) Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A. 520. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.

(b) The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.520 (16), the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.

(c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access. No conditions are necessary as the requirements will be addressed through construction plan review and approval.

12. Comprehensive Plan Compliance:

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

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation "covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones."

The 12 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

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 35%.

The LSA calculation for the entire subject property is as follows:

Area in Lots (72,501 square feet) + Critical Areas and Buffers (22,129 square feet) + Open Space (32,655 + 9,294 + 12,170 square feet) = (148,738 square feet) ÷ (12 of lots proposed) = 13,024 square feet.

The LSA calculation excluding the areas for future development is as follows:

Area in Lots (72,501 square feet) + Critical Areas and Buffers (22,129 square feet) + Open Space (0 square feet) = (94,630 square feet) ÷ (12 of lots proposed) = 7,885.8 square feet.

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

14. Short Subdivision: The proposed short plat meets Chapter 30.41B SCC requirements. The proposed short plat as conditioned also meets the general requirements under Section 30.41B.200 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41B.200 design standards for roads.
15. Plats-Subdivisions-Dedications: The plat is in conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the short 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 short plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water will be provided by PUD # 1 and sewer will be provided by Lake Stevens Sewer District.

16. Issues of Concern: There are no unresolved issues that were identified by technical and agency reviews. No public comments were received by PDS for the project. One member of the public appeared and testified at the public hearing. She had questions regarding the sidewalks, which concerns are addressed in the frontage improvements section above. She also had questions regarding traffic control and a potentially dangerous curve in the road. She said there had been a few accidents there. PDS responded that there had been a traffic review conducted by the county which did not identify the curve as an inadequate road condition. The county has not included the curve in its five year program of construction.

The only unusual aspect of the project is the reservation for future development of Tracts 996 (Future Development Open Space, 12,170 square feet), 997 (Future Development, 32,644 square feet), and 998 (Detention Vault, Future Development Open Space, 9,294 square feet). The area in lots and the area in Tract 999 (Open Space – NGPA) are the areas used to compute average lot size and net density. The areas being designated for future development are not vested under the current application and any future development of Tracts 996, 997, and 998 will be required to meet the development standards that are in effect at the time of vesting. The area within Tracts 996, 997, and 998 are available to be used for future development and have not been encumbered by the current application in determining lot yield, in determining density, and in determining lot size averaging.

17. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

### **CONCLUSIONS:**

1. The Examiner has jurisdiction to hear this matter and render a decision thereon.
2. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. With the conditions below, the proposal makes adequate provisions for the public health, safety and general welfare.
5. The request should be approved as submitted, subject to the conditions contained below
6. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### **DECISION:**

APPROVAL of the proposed short plat utilizing lot size averaging is granted subject to the following CONDITIONS:

#### CONDITIONS OF APPROVAL:

- A. The preliminary plat received by PDS on March 27, 2008 (Exhibit 2A) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- ii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- iii. A final mitigation plan based on the conceptual Critical Area Study and Wetland Mitigation Plan for Midland prepared by Wetland Resources, Inc. dated Revision #1 February 1, 2009 (submitted to PDS on 02/06/08, Exhibit 3E) shall be submitted for review and approval during the construction review phase of this project.
- iv. A full drainage plan shall be submitted for review and approval prior to any ground disturbing activities.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District No. 4 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 12 shall receive credit."
- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex:

\$3,193.19 per lot for mitigation of impacts on County roads paid to the County,  
 \$69.44 per lot for Transportation Demand Management paid to the County,

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

- iv. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 (Centennial # 306) per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall have been constructed along the parcel's frontage on 8<sup>th</sup> St. SE and 79<sup>th</sup> Ave. SE to the satisfaction of the County.
- ii. An offsite walkway shall have been constructed to the satisfaction of the County on 8<sup>th</sup> St. SE from the proposed subdivision to 79<sup>th</sup> Ave. SE. If the school district agrees to pick-up children at the entrance to the plat, then the offsite walkway is not required, and a school bus waiting area shall be provided.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- iv. The final wetland mitigation plan shall be completely implemented.

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

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

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

Decision issued this 2<sup>nd</sup> day of July, 2008.

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James Densley, Hearing Examiner Pro Tem

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more Parties of Record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 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 **JULY 14, 2008**. There is no fee for filing a Petition for Reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the

Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JULY 16, 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: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.