

**DECISION of the  
SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION DATE:** October 12, 2011

**PLAT/PROJECT NAME:** ***ALBRIGHT ACRES***

**APPLICANT/  
LANDOWNER:** Farrell and Corinne Albright  
8419 82<sup>nd</sup> Street  
Mercer Island, WA 98040

**FILE NO.:** 06-130049 SD

**TYPE OF REQUEST(S):** 8-Lot Preliminary Subdivision Approval

**DECISION (SUMMARY):** **Granted subject to conditions**

**LOCATION:** 440 feet east of 114<sup>th</sup> Drive SE and 660 feet north of Brookside Place, Monroe, Washington

**TAX PARCELS:** 290633-004-001-00  
290634-003-002-00  
290634-003-011-00

**ZONING:** R-5 (Residential 5-acres)

**Comprehensive Plan:** Rural Residential-5 (1 du/5 acres)

**LOT SIZES:** Average: 217,984 square feet  
Smallest: 216,469  
Gross Density: .20/du per acre

**School District:** Snohomish School District No. 201

**Fire District:** Snohomish County Fire District No. 4

**Water Service:** Individual Exempt Wells

**Sewer:** Individual Septic Systems

**PDS STAFF  
RECOMMENDATION:** Approve subject to conditions

This matter having come before the Hearing Examiner on September 22, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

### **I. FINDINGS OF FACT**

#### **A. INTRODUCTION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through K.1), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

After the close of the record, several parties attempted to communicate additional information to the Hearing Examiner through e-mail. The Examiner cannot consider such *ex parte* communication, and the information was not considered or added to the closed record.

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

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.
3. Public Hearing. The Hearing Examiner held an open record appeal hearing on September 22, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Ed Caine appeared and testified on behalf of the Snohomish County Department of Planning and Development Services (PDS). Gene Miller, GFM Associates, appeared on behalf of the Applicant. Members of the public attended and those testifying included Nancy Shurvinton, Carol Fish, and Nicola Nation.
4. Public Notice. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F1, F2, and F3).

#### **B. BACKGROUND INFORMATION**

5. Regulatory Review and Vesting. A complete application was submitted to PDS on March 19, 2007. The application was deemed complete and the 120-day clock started on April 16, 2007. The Applicant made five re-submittals in response to PDS review comments between June 6, 2007 and July 27, 2011. As of the hearing date, 239 days of the 120-day period had expired.
6. Application Request. The Applicant is requesting an 8-lot subdivision on a 40-acre site. Each proposed lot is a minimum of five acres in size. Access will be by a new private road (46<sup>th</sup> Street SE) off of 151<sup>st</sup> Avenue SE (a private road), which is off of Brookside

Place (a public road). Each lot will be served by individual septic systems and individual wells.

7. Site description. The undeveloped site is primarily shrub areas with scattered trees. There is a Type 3 stream along the western border of the site, with an associated Category 1 wetland, two Category 3 wetlands and a Category 4 wetland on the site. A Bonneville Power transmission line crosses the northeastern corner of the property.
8. Adjacent uses. Neighboring zoning is R-5. Neighboring uses are either single-family residential or undeveloped
9. State Environmental Policy Act (SEPA) Compliance. Based on the SEPA Checklist submitted by the Applicant (Exhibit E.1), PDS issued a Determination of Nonsignificance (DNS) for the subject application on August 26, 2011 (Exhibit E.2). The DNS was not appealed. Accordingly, the requirements of SEPA have been met.
10. Issues of Concern
  - A. Public Agency Review: No issues of concern were raised by either public agencies or through the County's internal technical reviews.
  - B. Citizen Comments: Two public comments were received (Exhibits I.1 and I.2). The comments raised issues relating to access to the new subdivision, and the protection of an unnamed stream running across the western portion of the site. Access has been reviewed by PDS and determined that the public road (Brookside Place), is within an established right-of-way and that the private road connecting to the north side of Brookside Place (151<sup>st</sup> Drive SE) is within easements. PDS reviewed the design of the roads and determined that the roads would be constructed to EDDS standards. An emergency access is being provided to the north. The road to the north is a private road within recorded easements. PDS determined that access had been adequately addressed. As to the stream, PDS determined that it will not be disturbed by the development. The Applicant is providing prescriptive buffers to protect it. PDS has determined that the project has met the regulatory requirements for protection of the stream.

### **C. COMPLIANCE WITH CODES AND POLICIES**

11. Approval Criteria. The proposed application must meet the requirements of Title 30 SCC and in particular, the Subdivision Code set forth in Chapter 30.41A SCC. The Examiner will review each of the applicable regulations below.
  - A. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)

The proposal is within Centennial Park Service Area No. 306, and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies and is included as a recommended condition of approval.

B. Transportation and Road Design Standards (Chapter 30.66B SCC, Title 13 SCC, EDDS)

- (1) County road impacts (SCC 30.66B.330). 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 (TSA) as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. The Director of Public Works issued the following directive on July 26, 2011, which changed the road system impact fees. The new adjusted Road System Impact Fee is \$124.00 per average daily trips (ADT) for residential developments outside the Urban Growth Area (UGA) in TSA "B." The development will generate 76.56 new ADT and has a road system impact fee of \$9,493.44 (\$1,186.68/SFR) based on \$124/ADT. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. A recommended condition has been included to require the mitigation payment.
- (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 May 1, 2007. This determination expires on May 1, 2013. The development has been deemed concurrent based on the fact that it did not impact arterial unit 238 with three or more peak hour trips. The development generates 6.0 AM peak hour trips and 8.08 PM peak hour trips.
- (3) Inadequate Road Conditions (IRC) (SCC 30.66B.210) The subject proposal will not impact any IRC locations identified at this time within TSA B with three or more of its PM peak hour trips, nor will it create any. Therefore, mitigation is not 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. Since the development property does not front a public road, frontage improvements are not required. However, improvements to 151<sup>st</sup> Avenue SE and to Brookside Place are required.

Brookside Place has been classified by the Department of Public Works (DPW) as a public, non-arterial, subcollector road serving more than 90 ADT and less than 1,000 ADT. EDDS specifies a 30-foot pavement width for two 10-foot travel lanes, a 3-foot paved

shoulder on one side and a 7-foot paved shoulder for a pedestrian facility on the other side of the road for new development roads. A recommended condition has been included to require installation of those improvements.

- (5) Access, Circulation and Right-of-Way Requirements (SCC 30.66B.420, Chapter 30.24 SCC, SCC 30.66B.510 and 30.66B.520)

Access to the development is proposed by a private road extension east off of Brookside Place. A new private road, labeled as 150<sup>th</sup> Drive SE on the plans, will be named 151<sup>st</sup> Avenue SE by the County. 151<sup>st</sup> Avenue SE will intersect north off of Brookside Place along the eastern boundary of the development. Access to Lot 1 will be off of 151<sup>st</sup> Avenue SE. Access to Lots 2 through 8 is proposed by a new internal private road (labeled as 44<sup>th</sup> Place SE on the plans, but will be named 46<sup>th</sup> Street SE by the County) west off of 151<sup>st</sup> Avenue SE. 44<sup>th</sup> Place SE will terminate in a 50 foot radius cul-de-sac. The road will be a private rural road serving less than 90 ADT per EDDS 3-080. The design speed for the road is 20 mph; the required width is 20-foot with gravel surfacing for travel lanes, a drainage ditch for storm drainage and a 40-foot radius cul-de-sac at the end for a permanent turnaround per EDDS 3-10 (1).

All of the lots in the development would generate 76.56 new average daily trips onto 151<sup>st</sup> Avenue SE. Due to the potential development of adjacent properties, it is highly likely that future developments will result in more than 90 average daily trips on 151<sup>st</sup> Avenue SE. Therefore, the private section of Brookside Place and 151<sup>st</sup> Avenue SE shall be constructed in accordance with EDDS 3-060 and 3-040 to public subcollector road standards with a 25 mph design speed, and the required pavement width is 30 feet for two 10-foot travel lanes, a 7-foot paved shoulder on one side for a walkway for children walking to the bus stop, and a 3-foot paved shoulder on the other side. A recommended condition has been included to require the designated design standards for the road.

A temporary turnaround is required and has been shown on the plans located at the end of the public right-of-way for Brookside Place at the intersection with 149<sup>th</sup> Avenue SE. Although the "eyebrow design" currently shown would not be acceptable (without a deviation request approval) because it does not have a 40-foot radius per EDDS 3-150, the plans show that the design required by EDDS 3-150 for a temporary hammerhead turnaround would fit within existing right-of-way and within the 30-foot wide "easement for road" area that was created in conjunction with the plat of Brookside Acres recorded in 1963.

SCC 30.41A.210(3)(c) states that private roads may be permitted as part of a rural cluster subdivision where specifically approved by the County engineer. The roads proposed in this development are shown as private roads. The subject property does not have

frontage on an existing public road, and does not have the legal right to construct a public road between the property and the end of Brookside Place. The DPW has determined that the road system may be private, with a “no protest” requirement to be recorded on the face of the plat, authorizing future conversion of 151<sup>st</sup> Avenue SE and the private section of Brookside Place to a public road. Consequently, the private roads need to be designed and constructed in accordance with the applicable public road standard. A recommended condition has been included to require the private roads to be built to public road standards. The roads shown on the plans meet the minimum requirements of EDDS for road grades, horizontal and vertical curves.

There were two deviation requests from the Applicant. (Exhibit G.2) They are related to the following standards:

- (i) Section 3-01 (B 4), more than 250 ADT on a dead-end road system: The road system into this development from the 44<sup>th</sup> Street SE/139<sup>th</sup> Avenue SE intersection as currently proposed is a dead end system. That design does not meet the minimum requirements of EDDS 3-01 (B.4) for road circulation, layout and design, which requires that a road serving more than 250 ADT be connected in at least two locations with another road or roads that meet the applicable standards for the resulting traffic volume. A deviation request was submitted asking that the road system be approved as proposed without a second constructed road connection and to mitigate the situation, the Applicant would provide an emergency access from the proposed interior cul-de-sac road to the adjacent existing gravel road north of the development property, which connects to 44<sup>th</sup> Street SE to the west. The deviation was approved with a condition for the reasons described in Exhibit J. The Applicant has offered to provide an emergency access (“Fire Access Easement”) that would connect Brookside Place, south of the development to 44<sup>th</sup> Street SE, northeast of the development that would allow residents or emergency vehicles and the residents of the development an alternative access route in case the road system east or south of the intersection of 44<sup>th</sup> Street SE and 144<sup>th</sup> Avenue SE was blocked. Therefore, the deviation was approved by the County Traffic Engineer. The condition of the approval is that the developer shall obtain the appropriate access easement across the off-site property adjacent to the north (tax account number 290633-004-020-00), which lies between the development property and the private access easement road. It has been shown that the access easement exists for the development property. Construction of a 20-foot wide gravel road between the cul-de-sac road and the 30-foot “Fire Access Easement” road to the north (east of the intersection of the public roads 44<sup>th</sup> Street SE and 144<sup>th</sup> Avenue SE) to minimum rural fire lane standards will be a recommended condition of approval for this development.

- (ii) Section 3-01 (B 2), exceeding 1,320 feet between intersections or between an intersection and a road end in the rural area: The proposed distance between Brookside Place and the intersection of the private cul-de-sac road serving the lots in the development on 151<sup>st</sup> Avenue SE exceeds the maximum distance specified by EDDS. The deviation request was approved based on the following factors described in Exhibit J. DPW has determined that the existing pavement width of the public road system serving the development is sufficient for the current conditions after completion of eight new homes.
- (6) Extent of Improvements (SCC 30.66B.430) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record. (Exhibit J)
- (7) Impacts to State Highways (SCC 30.66B.710) When a development's road system includes a state highway, mitigation requirements will be established using the terms of the Interlocal Agreement (ILA) between the County and the Washington State Department of Transportation (WSDOT). This development is subject to an ILA between Snohomish County and the WSDOT that became effective on December 21, 1997, and as amended through the date of completeness for this application. The traffic study for this development (Exhibit C.1) indicated that no traffic mitigation is needed for the project because three or more peak hour trips would not impact any state projects listed on Exhibit C of the ILA. WSDOT was provided notice of application for this project. Comments from WSDOT (Exhibit H.1) concur that no traffic mitigation fee is required to be paid to WSDOT.
- (8) Impacts to City 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 ILAs between the County and the other jurisdictions. There are no local jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development. Therefore, this section does not apply to the subject proposal.
- (9) Transportation Demand Management (TDM) (SCC 30.66B.630) This proposal lies outside of the UGA. Therefore, the provisions of this section do not apply.
- C. School Impact Mitigation (Chapter 30.66C SCC) The proposed development is subject to the requirements of Chapter 30.66C SCC. School impact mitigation fees will be determined according to the Base Fee Schedule in effect for Snohomish School District No. 201, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the three existing lots. Payment of such impact fees is included as a condition of approval.

D. Pedestrian Facilities. (RCW 58.17.110) The Hearing Examiner is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. Comments dated October 23, 2007 were received from Snohomish School District No. 210, stating that elementary, middle, and high school students will be picked up by bus at 149<sup>th</sup> Avenue SE and Brookside Place. The 7-foot paved shoulder walkway along 151<sup>st</sup> Avenue SE from 46<sup>th</sup> Street (the private gravel road serving most of the lots in the development) to Brookside Place, and along Brookside Place to 149<sup>th</sup> Avenue SE will provide adequate pedestrian facilities for students to walk to the bus stop. Several citizens testified that during flooding events, access to the bus stop may be difficult. However, this condition is not caused by the proposed development application. The recommended condition for construction of Brookside Place and 151<sup>st</sup> Avenue SE includes the paved shoulder that addresses the pedestrian facilities, and should improve existing conditions.

E. Drainage and Grading/Land Disturbing Activities (Chapters 30.63A, 30.63B, and 30.63C SCC)

(i) Drainage. Stormwater runoff from each residence will be directed to individual infiltration systems on each lot. Stormwater runoff from the internal road will be captured and conveyed to an underground detention vault located within the private road easement in the vicinity of the cul-de-sac. Stormwater discharge will be regulated to meet the designated discharge rates and flow through a grass lined swale that terminates in a level spreader. The dispersed stormwater flows will enter into the Category 1 wetland complex associated with the unnamed stream on the west side of the property. A drainage waiver (Exhibit G.3) was approved to place the detention facilities beneath the internal private road, even though the drainage facilities will not be placed in a separate tract within the development. A second part of the drainage waiver was originally disapproved. The Applicant requested reconsideration of the denial (Exhibit A.5), and the waiver was approved upon reconsideration (Exhibit G.3), wherein water quality facilities may be placed within the public right-of-way and easement for the extension of Brookside Place. The Chief Engineering Officer of PDS determined that there was sufficient width within the right-of-way to contain the paved roadway and the water quality facilities. PDS (Engineering) has reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

(ii) Grading/Land Disturbing Activities. Grading quantities are anticipated to be approximately 500 cubic yards of cut and 500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Depending upon the total amount of impervious area and grading that is performed (determined at the construction drawing phase), a grading permit may be required. Water quality shall 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.



F. International Fire Code (Chapter 30.53A SCC)

PDS sent a request for review document to Snohomish County Fire District No. 4 on March 31, 2007. PDS did not receive a response from the District. Additionally, the County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the preliminary plat on June 6, 2007. The conclusions of the review were that: (a) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office; and (b) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150. The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access.

G. Utilities

Sewers will be supplied by individual septic systems. The Snohomish Health District (SHD) recommended approval of the preliminary plat on April 6, 2007. (Exhibit H.2) On April 4, 2007, Snohomish County Public Utility District No. 1 (PUD) indicated that they can provide electrical service for the project. (Exhibit H.4)

Water will be supplied from individual, exempt wells. The SHD recommended approval of the preliminary plat on April 6, 2007. (Exhibit H.2) The plat consists of eight lots. At 350 gallons per day (gpd) of typical domestic water usage, the plat will consume 2,800 gpd, which is less than the 5,000 gpd limit set forth in RCW 90.44.050. It should be noted that WAC 173-160-345(1) requires that wells must demonstrate a minimum of 400 gpd in order to be approved and PDS has established a value of 350 gpd for average consumption (87.5% of the minimum demonstrated capacity for approval of the wells).

In addition, the SHD requested the following condition be included in the decision:

*Well protection zones are shown in the Snohomish Health District records for Lots 1-8 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.*

H. Critical Areas Regulations (CAR) (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

There are several critical areas (fish and wildlife habitat conservation areas and wetlands) located on the proposed development site.

A Type 2 stream flows north along the western edge of the property through a forested corridor dominated by a Category 1 wetland. This stream is known to contain Coho salmon and, therefore, is presumed habitat for Bull Trout, which is listed under the Endangered Species Act as "threatened." As such, the Type 2 stream is subject to the requirements of the CAR which require the Applicant to provide a Habitat Management Plan (HMP), or meet the County's prescriptive protections set forth in Option A of the Salmonid Habitat Management Plan Administrative Rule. Here, the Applicant has chosen to meet the requirements of Option A, as show in Exhibit C.4. No impacts to the

stream, the wetland, the fish and wildlife habitat conservation area or the associated riparian management zone are proposed. No new development is proposed within 300 ft. of the OHWM of the stream.

The access road to the development is located along a private road that enters from the south and east, crossing a narrow band of wetland approximately 330 ft. from the southeast corner of the subject property. Portions of the on-site Category 4 wetlands are proposed to be enhanced through the plantings of trees and shrubs as compensation for impacts to portions of the degraded Category 4 wetland at the location of the road crossing. The Type 2 stream and Category 1 wetland and associated buffers will be avoided. All of the mitigated critical areas and buffers are proposed to be permanently protected as Native Growth Protection Areas/Easements (NGPA/Es).

Minor impacts are proposed to the Category 4 wetland, associated with the private road crossing over a narrow corridor of the wetland. The conceptual wetland mitigation plan (Exhibit C.3) uses buffer averaging and wetland enhancement as mitigation for those minor impacts. The proposed plantings will provide structure, ecological diversity and wildlife habitat in areas that otherwise may have remained relatively degraded for many years. The conceptual mitigation plan proposes greater than 1:1 buffer replacement, and proposes re-vegetation on portions of an old roadbed that runs through the Category 4 wetland at a ratio of greater than 2:1. Although PDS found that the square footage numbers for impacts and mitigation components are not correctly depicted, the application is conceptually approved because additional mitigation is feasible within the site plan, if it is determined to be necessary during the detailed review of the construction plans. Additionally, PDS found that the conceptual mitigation plan did not include the steep slope NGPA/Es that are depicted on the preliminary site plans. The steep slope NGPA/Es will also need to be provided with NGPA signs along the outer perimeters of the NGPA/Es to be dedicated. This minor oversight can also be easily addressed during the construction review phase. A recommended condition has been included to require review and approval of the mitigation plan in conjunction with the construction plan review for the project. Recommended conditions to provide the critical area protections are included.

As a result of its evaluation of the information submitted in the revised application, coupled with an on-site investigation, PDS has determined 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.

- I. Zoning and General Development Standards (Subtitle 30.2 SCC) The proposed project is for all lots to be a minimum of 200,000 square feet, which meets zoning code requirements for lot size. PDS has determined that the proposed subdivision is in compliance with the requirements contained in Chapter 30.2 SCC.

## 12. Subdivision Code (30.41A.SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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 30.41A.210 design standards for roads. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. The Examiner finds that all lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the

proposed conditions included in the PDS Staff Recommendation. (Exhibit 38) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.

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

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of NGPA/Es to protect a stream, wetlands, and buffer areas. The 8 single-family homes within the subdivision will be in character with the surrounding rural area. 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 Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided using on-site wells and sanitary wastes will be disposed of using on-site septic systems.

14. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

## **II. CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed subdivision application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . .

RCW 58.17.110.

The Examiner concludes the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based County codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Based on the Findings of Fact, the Hearing Examiner concludes that the proposed development meets the requirements of Title 30 SCC, therefore, the subdivision should be approved.
7. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

### **III. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the **PRELIMINARY PLAT** approval is hereby **GRANTED** subject to the following **CONDITIONS**:

#### **CONDITIONS**

- A. The preliminary plat received by PDS on July 27, 2011 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any 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 Wetland Mitigation/Buffer Averaging Plan for Albright Acres, LLC (Exhibit C.3) shall be submitted for review and approval during the construction review phase of this project.
  - iv. Construction plans, including a Stormwater Pollution Prevention Plan (SWPP) shall be submitted for review and approval. The plans shall identify the septic drainfield line crossing the north emergency access road to the plat.
  - v. The temporary turnaround and easement shall be shown on the construction plans, and on the final plat document at the east end of the public section of Brookside Place; as determined by the County. [SCC 30.66B.420]

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

i. "The dwelling units within this development are subject to park impact fees (Centennial # 306) in the amount of \$1,361.22 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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."

ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$9,493.44 (\$1,186.68 per SFR building permit) for mitigation of impacts on county roads 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 payment obligations shall be contained in any deeds involving this subdivision or the lots therein."

iii. "In consideration of the access approval, the owners of the lots in the development, their heirs, successors, and assigns; covenant and agree not to protest the conversion of the sixty (60) foot access easement and private road, 151<sup>st</sup> Avenue SE and the private section of Brookside Place, to a public road at any time the County determines a public road is necessary, or a public road is required for further development of any lots that have access to or abut on said road. The owners of the lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the County, to accomplish the dedication and/or conversion of the private road to the County for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road."

iv. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for three existing parcels. Lots 1 through 3 shall receive credit."

v. All critical areas shall be designated Native Growth Protection Areas (NGPA) with the following language indicated 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."

vi. Areas with slopes in excess of 33% shall be designated as NGPA.

- vii. “Well protection zones are shown in the Snohomish Health District records for Lots 1-8 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”

D. Prior to recording of the final plat:

- i. The private roads shall be constructed in accordance with the EDDS, or as determined by the County. [SCC 30.66B.420]
- ii. The private section of Brookside Place shall be improved to the standard specified by EDDS 3-060/3-040 for a rural public subcollector road between 151<sup>st</sup> Avenue SE and 149<sup>th</sup> Avenue SE.
- iii. 151<sup>st</sup> Avenue SE shall be improved to the standard specified by EDDS 3-060/3-040 for a rural public subcollector road. The road will be constructed to that standard inside the development boundaries, and improved to that standard offsite between the south boundary line and the private section of Brookside Place to the satisfaction of the County.
- iv. A 20-foot wide gravel road shall have been constructed between the cul-de-sac road (46<sup>th</sup> Street SE) and the 30-foot “Fire Access Easement” road off-site to the north (east of the intersection of the public roads 44<sup>th</sup> Street SE and 144<sup>th</sup> Avenue SE) to minimum rural fire lane standards to the satisfaction of the County.
- v. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the County, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the County. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

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 PDS for review and approval prior to installation.

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

Nothing in this 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 seven (7) 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.

Dated this 12th day of October, 2011.



Millie M. Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before OCTOBER 24, 2011**. 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 **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing at the Public Assistance Counter of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before OCTOBER 27, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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**Staff Distribution:** Department of Planning and Development Services: Ed Caine

<p>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.</p>
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