



**DECISION of the SNOHOMISH COUNTY  
HEARING EXAMINER**

**Gordon Sivley**  
Hearing Examiner

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Everett, WA 98201

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**DATE OF DECISION:** July 2, 2013

**PLAT/PROJECT NAME:** *Sierra Hills*

**APPLICANT/  
LANDOWNER:** KLN Construction Inc.  
19000 33rd Avenue West, Suite 200  
Lynnwood, WA 98036

**FILE NOS.:** 13-100807 LU; 13-100808 SD; 13-100809 LU

**TYPE OF REQUEST:** Preliminary Subdivision Approval  
PRD Official Site Plan Approval  
Rezone

**DECISION  
(SUMMARY):** **Rezone is GRANTED**  
**Preliminary subdivision approval is GRANTED, subject to conditions**  
**PRD Official Site Plan is APPROVED**

**BASIC INFORMATION**

**LOCATION:** 22504 45th Ave SE, Bothell  
**ACREAGE:** 4.77 acres

**NUMBER OF LOTS:** 30 lots

**MINIMUM LOT SIZE:** 3200 square feet  
**GROSS DENSITY:** 6.3 du/acre

**GMACP DESIGNATION:** Urban Low Density Residential (ULDR)

**ZONING:** R-9600  
**PROPOSED ZONING:** R-7200

**UTILITIES:**  
Water: Alderwood Water and Wastewater District  
Sewer: Alderwood Water and Wastewater District  
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: Snohomish County Fire Protection District No. 7

PDS STAFF RECOMMENDATION: Approve, subject to conditions.

### **A. BACKGROUND INFORMATION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through J.2), 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.

**NOTE:** For a complete record, an electronic recording of the hearing in this case and the Hearing Log 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. A public hearing was held on June 19, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits F.1, F.2 and F.3) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

Paul MacCready, Jack Hurley and Alan Murray appeared and testified on behalf of Snohomish County Department of Planning and Development Services (PDS). Appearing for the Applicant was Brian Holtzclaw of KLN Construction, Inc. and Ben Giddings, the Applicant's engineer.

In addition, one interested citizen, Jim Orrel, appeared at the public hearing.

### **B. FINDINGS OF FACT**

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. Applicant's Proposal. The Applicant requests Preliminary Plat and Official Site Plan approval for a 30 lot subdivision/Planned Residential Development (PRD), along with a rezone of the site from R-9600 to R-7200. Two existing residences on the property will be demolished and the new lots developed with single-family homes. The development will include installation of a stormwater management system incorporating an underground detention vault, right of way improvements along the property's 45<sup>th</sup> Avenue SE frontage, utilities, ornamental landscaping and recreational open space. A new public road will also be constructed within the development which will connect to 45<sup>th</sup> Avenue and to 43<sup>rd</sup> Drive SE in the adjoining plat of Hawthorne Crest. Grading for the development is estimated at 12,250 cubic yards of cut and 2,165 cubic yards of fill.

2. Site Description. The project site is comprised of two lots, each with a single-family home and associated out buildings, driveways and residential landscaping. About half of the site is forested. The site gently slopes an average of five percent. The approximate eastern 50 feet of a 200 foot wide Seattle City Light transmission line easement transects the property at the very western edge. There are no wetlands, streams or other critical areas on the site.
3. Adjacent uses. The site is in an area of single-family residences to the north, west and south. Hawthorne Crest, another Planned Unit Development is located directly to the south. The Urban Growth Area's (UGA) eastern edge lies on the eastern boundary. A regional water tower owned and operated by Alderwood Water and Wastewater District is situated northeast of the site. The rural area to the east is a Rural/Urban Transition Area (RUTA). Zoning in the surrounding areas includes LDMR, R-7200, R-9600, and R-5. The site is within the Bothell Municipal Growth Area (MUGA).
4. Project Chronology. The subject applications were submitted to PDS on January 22, 2013, and were determined to be complete as of the date of submittal. The Applicant submitted a design revision of the preliminary plat on April 22, 2013. As of the date of the hearing, 97 days of the 120 day review period had elapsed.
5. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on May 21, 2013. The DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
6. Issues of Concern.
  - A. Public Agency Review. No significant issues of concern were raised by reviewing agencies.
  - B. Citizens. One citizen, Jim Orrell, who owns property to the north of the project site, submitted oral and written comments at the hearing. (See Exhibits J.1-2) Another party, Tushar Dani, representing a local community group (see Exhibit H.1), also submitted comments prior to the hearing. The following is a summary of their concerns:
    - Opening 43<sup>rd</sup> Drive SE in the Hawthorne Crest neighborhood to vehicle and foot traffic from the newly proposed development to the north.
    - The need for an additional public hearing should the alignment of the extension of 43<sup>rd</sup> Drive SE to the north of the current proposal be changed from that currently proposed.
    - With the construction of the proposed development, 43<sup>rd</sup> Drive SE will extend in a linear alignment for nearly ¼ mile and may result in high traffic volumes and speed. Consideration should be given to requiring the installation of traffic calming devices in the design of the current proposal.
    - Drainage from the properties to the north of the current proposal could be blocked by the potential development of an additional parcel owned by the Applicant north of the current proposal and the lack of any provision in the current proposal to accommodate additional drainage.

7. Applicant's testimony.

The Applicant presented testimony from Brian Holtzclaw, the project manager, who gave an overview of the project. Mr. Holtzclaw, as well as project engineer, Ben Giddings, provided responses to the concerns raised by Mr. Orrell.

8. Approval Criteria.

A. Rezone.

The Applicant is seeking a rezone of the site from R-9600 to R-7200 pursuant to Chapter 30.42A SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; (3) the proposal will not increase the density on any site where any significant trees were removed after January 7, 2009 and within six years prior to the date of application; and (4) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

(i) The proposal is consistent with the Comprehensive Plan. The proposed project seeks a rezone to R-7200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600.

The subject property is designated as ULDR on the Future Land Use Map (FLUM) of the Snohomish County Growth Management Act Comprehensive Plan (GMACP) and is located within an UGA. The ULDR designation allows mostly detached housing developments on larger lot sizes. As outlined in the comprehensive plan, allowed implementing zones for this designation are R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB. The Applicant is proposing a rezone of a portion of the site from R-9600 to R-7200, a listed implementing zone.

The Population and Employment Element of the General Policy Plan (GPP) requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). As discussed below, the project will provide adequate public facilities and service capabilities, and, therefore, meets the criteria of the Population and Employment section.

The Land Use Element - Urban Development Patterns Policy (LU-15) and Goal LU-2 (LU-16) are intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre. The existing neighborhood contains a mixture of small lots and larger lots. The large lots located within the UGA do not comply with the current urban minimum standard of 4-6 dwelling units per acre. LU Policies 2.A.1 and 2.A.3 (LU-16) require minimum densities of 4-6 du/acre. The project will result in a net density of 6.3 du/acre. This density satisfies the requirement.

The Housing Element of the GPP requires efficient infill development in urban growth areas (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the development, which is an infill development within both established and newly developed neighborhoods. Goal HO-2 of the Housing section (HO-6) requires that the vitality and character of existing residential neighborhoods should be maintained. Here, while the physical attributes of lots within the

project site will be changed by the proposed rezone, resulting in smaller lots and higher densities that will be somewhat different from some of the existing lot dimensions of the neighborhood, the overall character of the area will be the same. It will consist of single-family residential housing, with typical urban amenities such as open space, sidewalks, and the like. The rezone does not affect this. The proposed rezone will maintain a residential neighborhood and will not allow commercial agricultural uses, commercial development, and multifamily development on the site.

Based upon the foregoing discussion, the Examiner finds that the proposed rezone is consistent with the GMACP.

(ii) The proposal bears a substantial relationship to the public health, safety, and welfare. The application for the proposed rezone is concurrent with the application for a subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS and Department of Public Works (DPW) have determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, adherence to the subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. The Examiner finds that the proposed rezone, as conditioned, bears a substantial relationship to the public health, safety and welfare.

(iii) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3). No significant trees were removed after January 7, 2009 or within six years of the submittal date. The proposal includes an official site plan which includes a tree survey, a tree preservation/replacement plan and landscaping plan. Review of that plan was completed by PDS which recommends that the project be subject to conditions of approval that will ensure that the plans will be implemented.

(iv) If applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met. Here, the proposed site is located within a developing residential neighborhood. The proposed rezone is to remain a residential zone within the ULDR designated area. Therefore, the zones specified in SCC 30.31A-F are not applicable to the proposal.

Based on the foregoing analysis, the Hearing Examiner finds that proposed rezone meets the requirements of Chapter 30.41A SCC and the rezone should be granted from R-9600 to R-7200.

#### B. Subdivision Approval.

In order to grant preliminary subdivision approval, the Examiner must find that the Applicant has met the approval criteria set forth in SCC 30.41A.100 et seq. The Examiner considers each regulation in turn.

(i) Park and Recreation Impact Mitigation. (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Payment may be deferred from the time of building permit issuance, but must be paid in full either upon the closing of the sale of the property, or 18 months from the date of issuance of the original building permit, whichever is earlier, or prior to any occupancy of the structure if the property owner elects to retain ownership and not sell the property (30.66A.020(4) SCC). PDS has recommended a condition of approval for inclusion within the project decision to comply with the requirements of Chapter SCC 30.66A SCC. The Examiner finds that such payment is acceptable as mitigation for parks and recreation impacts in accordance with County codes and policies.

(ii) Traffic Mitigation and Road Design Standards. (Title 13 SCC, & Chapters 30.24 and 30.66B SCC)

(a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC).

(1) Road System Capacity Impacts. (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 impact fee for this proposal is based on the new average daily trips (ADT) generated by 28 new homes, which is 9.57 ADT/home. This rate comes from the 8<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 254.56 new ADT and has a road system capacity impact fee of \$58,549.26 (\$1,951.64/building permit) based on \$230.00/ADT, the rate for a residential development located in the UGA in TSA E. The impact fee payments are due in accordance with the provisions of SCC 30.66B.340. Payment of such impact fees as mitigation for impacts to county roads demonstrates compliance with SCC 30.66B.310.

(2) Concurrency. (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development is located in TSA E which, as of the date of submittal, had the no arterial units in arrears. Therefore, pursuant to SCC 30.66B.160(2)(a), the development was determined concurrent. The proposed development generates 19.95 new AM peak-hour trips and 26.87 new PM peak-hour trips which is less than the threshold of 50 peak-hour trips and, therefore, the development was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent as of March 27, 2013. The concurrency determination expires six years from the date of the determination, in this case March 27, 2018. (Exhibit H.8)

(3) Inadequate Road Conditions. (SCC 30.66B.210) Regardless of the existing level of service, development which adds three or more PM peak-hour trips to a location in the road system determined to have an existing 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 DPW has determined that the subject development proposal will not impact any IRC locations identified within TSA E with three or more of its PM peak hour trips, nor will it create any IRC. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under SCC 30.66B.210.

(b) Frontage Improvements (SCC 30.66B.410) All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement is to be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

Here, the construction of full urban frontage improvements along the subject property's frontage on 45<sup>th</sup> Avenue SE is required. Required improvements will consist of:

- 18 foot of asphalt concrete pavement width from right-of-way centerline to curb face
- Cement concrete curb and gutter
- Five (5) foot planter strip
- Five (5) foot cement concrete sidewalk

The existing frontage improvements on 45<sup>th</sup> Avenue SE are generally consistent with the requirements described above. However, the existing driveway curb cuts must be removed and replaced with a vertical curb and planter strip sidewalk section, prior to recording of final plat.

45<sup>th</sup> Avenue SE is not in the impact fee cost basis analysis for Chapter 30.66B SCC, therefore credit for any frontage improvements towards the Applicant's impact fee is not applicable.

A right-of-way permit will be required for construction of frontage improvements along 45<sup>th</sup> Avenue SE and to connect to 43<sup>rd</sup> Drive SE.

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

(c) Access and Circulation. (SCC 30.66B.420 and Chapter 30.24 SCC) 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.

Access to the proposed development is from 45<sup>th</sup> Avenue SE via a new newly constructed public road, 225<sup>th</sup> Place SE, and from an extension of 43<sup>rd</sup> Drive SE which will be extended to the south property line for a road connection to the development of Hawthorne Crest. 43<sup>rd</sup> Drive SE will also be extended to a stub at the north property line to provide a future connection to the parcels north of the subject site.

While the residents of Hawthorne Crest expressed concerns about the connection of the proposed development to 43<sup>rd</sup> Drive SE within Hawthorne Crest, providing such a connection was obviously anticipated in the design of Hawthorne Crest and this is consistent with county road circulation policies adopted in the EDDS. In fact, providing this connection is essentially required by EDDS 3-01B.7:

7) A road connection shall be made to any road stub on an adjacent parcel that has been constructed to the shared boundary. This requirement may be waived by deviation where it can be shown that topography, critical areas or other factors make the connection impractical.

There is nothing to suggest that topography, critical areas or other factors make the connection impractical in the present circumstances. Moreover, no deviation has been granted by DPW to allow the lack of connection.

The proposed new public road, 225<sup>th</sup> Place SE, and 43<sup>rd</sup> Drive SE are classified as non-arterial local access roads and have design speeds of 25 mph. The roads as shown on the plans meet the minimum requirements of EDDS for road grades, horizontal and vertical curves.

The proposed development will take access from 45<sup>th</sup> Avenue SE. Sight distance was evaluated at the proposed access point, during a site visit on March 11, 2013. That evaluation determined that the sight distance did meet the minimum requirements of EDDS 3-08.

PDS noted that the ADA ramps at the intersections of all the roads in the development must show compliance with minimum ADA standard requirements for grades and landings as detailed in the 2013 EDDS Section 4-05 D and WSDOT Standard Plans F-40 series. A detail of each ADA ramp will be required in the construction plans.

Mr. Orrel requested that traffic calming measures be required on 43<sup>rd</sup> Drive SE. County policy on traffic calming measures does not include them in the public road design standards applicable to the proposed development. Rather, such measures are provided in response to documented needs that are determined once actual traffic patterns are established. The present development, with public roads, is distinguishable from developments that include private roads which may be designed differently, as they are not a part of the public road circulation system.

(d) Right-of-Way Requirements. (SCC 30.66B.510 and 30.66B.520) A development is required to dedicate, establish or deed right-of-way to the County for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a



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

45th Avenue SE is designated as an urban collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Thirty feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, the proposed development is required to dedicate 5-feet of additional right-of-way. This dedication is adequately shown on the Preliminary Plat Map. In addition the required dedication of right of way (typically 51' wide) for the interior road system is adequately shown on the Preliminary Plat Map.

45<sup>th</sup> Avenue SE is not in the impact fee cost basis analysis for Chapter 30.66B SCC, therefore credit for any right-of-way dedication towards the Applicant's impact fee is not applicable.

(e) 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 County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. Pursuant to SCC 30.66B.055, the Applicant prepared a written analysis which identified no impact based on trip distribution showing that no state projects will be impacted by three or more directional peak hour trips. (Exhibit C.1)

PDS received comments from WSDOT via e-mail on February 5, 2013. Those comments indicated that WSDOT agreed that the proposed development will not have significant adverse traffic impacts upon state highways. Therefore, WSDOT stated that it did not request that mitigation requirements be imposed on the development.

(f) Impacts to City Streets and Roads. (SCC 30.66B.720) An ILA has been executed between the County and the City of Bothell for traffic mitigation for impacts on the City's road system. Pursuant to the Reciprocal Traffic Mitigation ILA between the County and the City of Bothell, a written proposal from the Applicant proposing measures to mitigate impacts on city streets is required and was received by PDS on January 22, 2013. The Applicant has submitted an offer in the amount of \$ 72,897.30 as mitigation towards traffic impacts to the city generated by this development. This mitigation offer is \$2,429.91 per single-family residence. The City of Bothell commented on March 22, 2013 via e-mail that this mitigation offer is acceptable. Payment of this amount will be made a condition of approval for this development.

(g) Transportation Demand Management (TDM). (SCC 30.66B.630) The County requires all new developments in the urban area to provide TDM measures. Sufficient TDM measures are to be provided to indicate the potential for removing a minimum of

five percent of a development's P.M. peak hour trips from the road system. This requirement is to be met by site design requirements provided under SCC 30.66B.640, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 or 30.66B.625. (SCC 30.66B.630). The Applicant has submitted a TDM plan to fulfill this obligation that PDS determined to be acceptable. Credit for TDM will be applied to the road system impact fees for the development and the Applicant's mitigation obligation to the City of Bothell.

Based on the Findings of Fact set forth above, the Examiner finds that the proposed subdivision as conditioned, will meet the County's traffic mitigation and road design standards.

(iii) 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. Comments from the Northshore School District were received by PDS on January 22, 2013. (Exhibit G.1) Those comments indicate that the elementary, middle school and high school students will be picked up by the school bus at the intersection of 226<sup>th</sup> Place SE and 45<sup>th</sup> Avenue SE. With the improvements already existing and with the sidewalks that will be constructed along both sides of the new public roads serving the subject development; the requirement for safe walking conditions for children walking to the bus stop (and therefore to school) will be fulfilled. Based on this, no additional off-site pedestrian facilities are required.

(iv) Mitigation for Impacts to Schools. (Chapter 30.66C SCC) Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Northshore School District No. 417 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for two existing lots. Payment of school impact fees will be included as a condition of approval of the development.

(v) Drainage and Land Disturbing Activities (Clearing and Grading). (Chapters 30.63A, 30.63B and 30.63C SCC) PDS has found the targeted drainage plans (Exhibit B.6) and supplementary drainage report (Exhibit C.2) submitted with the application to be in conformance with the regulatory provisions of Chapter 30.63A SCC and the County Drainage Manual. Stormwater runoff from the site will be transported via catch basins and pipes to an underground detention vault. Water quality treatment will be provided using dead storage in the vault. Runoff from the 4.43-acre basin will be discharged from a dispersion trench near the southwest corner of the site. As part of the construction plan review process for the plat, a full drainage plan must be approved pursuant to Chapter 30.63A SCC.

Inspections of the downstream conveyance facilities were made by the Applicant's engineer. No current downstream flow path capacity or erosion problems were identified during the inspections. PDS determined that peak flow under developed conditions should be less than under existing conditions.

The development of the site will result in adding approximately 110,000 square feet of new impervious surfacing for the 30 new homes, driveways, sidewalks, patios, curb and gutter and sidewalk and street paving. Total proposed excavation includes approximately 12,250 cubic yards of cut and 2,165 cubic yards of fill. Approximately 10,085 cubic yards of strippings and excess cut may be exported from the site. Since the Applicant proposes the creation of more than 5,000 square feet of new impervious area, a full stormwater site plan is required prior to development activity under the requirements of SCC 30.63A.300(3). Also, since the Applicant proposes more than 7,000 square feet of clearing and will create more than 2,000 square feet of new and or replaced impervious surfacing and more than 100 cubic yards of grading, approval of a Land Disturbing Activity (LDA) permit in accordance with SCC 30.63B.070 will be required for the project. A Storm Water Pollution Prevention Plan (SWPP) that meets Washington Department of Ecology requirements will also be required.

Mr. Orrel raised concerns about the possibility of the proposed development blocking drainage from parcels to the north since the drainage facilities proposed are not designed to handle drainage coming from adjoining parcels on the north. The Full Stormwater Site Plan and Drainage Report for the project (Exhibit C.2) shows no, or only negligible, off-site drainage onto the subject property. Therefore, the proposed development will not block existing off-site drainage and there is no basis to require the current proposal to accommodate off-site drainage that currently drains elsewhere.

(vi) Critical Areas Regulations. (Chapter 30.62) No wetlands or streams are located on site or within 300 feet of the subject property. (Exhibit C.3)

(vii) International Fire Code. (Chapter 30.53A SCC)

The Office of the Fire Marshal determined that the project was in compliance with Chapter 30.53A SCC, provided it complies with the following conditions:

(a) Fire flow and fire hydrants must be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot or parcel more than 300 feet from a hydrant. Hydrant locations must be depicted on the face of the plat, and locations for new hydrants must be approved by the Fire Marshal. All hydrants must meet the following requirements: four inch storz-type steamer port fittings must be provided on new hydrants, the tops of the hydrants must be colored green and blue street reflectors must be installed on the hydrant side of the centerline of the streets serving the lots in the plat to indicate hydrant locations.

(b) The minimum required fire flow for this project is to be 1000 GPM at 20 psi for a one-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of SCC 30.53A.520(16), the Applicant must provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1000 gpm at 20 psi for a 1- hour duration can be provided. If the required fire flow cannot be provided, the new dwellings must be provided with NFPA 13-D fire suppression systems. If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. This requirement must appear on the face of the final plat.

(c) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28' in width and one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.

(d) Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

(viii) Utilities. Water and sanitary sewer will be supplied by the Alderwood Water and Wastewater District. Certificates of Water and Sewer Availability were received dated February 21, 2013. (Exhibit G.1) Snohomish County Public Utility District has provided correspondence indicating that it can provide electrical service for the project. (Exhibit G.1) PDS indicated that the Snohomish Health District has no objections to the project as long as public sewer and water is provided.

(ix) Zoning. (Chapter 30.2 SCC) This project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those approved with the PRD Official Site Plan, as discussed below.

(x) As conditioned, the plat will meet 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. Accordingly, the 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.

C. Planned Residential Development Approval. (Chapter 30.42B SCC)

In addition to meeting the requirements of the County's subdivision regulations, the Applicant is seeking to develop a PRD, and must meet the additional requirements of Chapter 30.42B SCC.

(i) Unit Yield. (SCC 30.42B.040) PDS determined that the Net Development Area is 207,882 square feet yielding 28.87 units under the 7200 square foot lot size minimum. No bonus for critical areas and buffers under SCC 30.42B.040(2)(c) is available. The total unit yield calculated under SCC 30.42B.040(2)(d) is 35 units. The Applicant has proposed 30 units.

In the R-7200 zone, the maximum number of dwelling units allowed is reduced so that the maximum net density does not exceed nine dwelling units per net acre. PDS has determined that the net density for the subject application is 6.3 du/acre. Accordingly, the requirement has been met.

(ii) Design Criteria. (SCC 30.42B.100) The proposed project has been reviewed by PDS and was found to meet the requirements of the applicable zoning regulations. This PRD is accompanied by an application for a preliminary subdivision and the Applicant has appropriately proposed the construction of single-family detached residential units in the R-7200 zone.

(a) Open Space. A minimum of 20 percent of the gross site area or 41,576 square feet of open space, is required. The total open space provided is 54,197 square feet which exceeds the requirement. Total open space will be permanently established in clearly designated separate tracts. The tracts in this development will be owned by all lot owners in accordance with SCC 30.42B.115(1)(e)(iii). Required covenants, conditions and restrictions will be recorded to provide for maintenance of the total open space in a manner which will assure its continued use as approved.

(b) Usable Open Space. Total open space must contain usable open space to be developed for active and/or passive recreation purposes in the amount of 600 square feet per dwelling unit. The minimum requirement in this case is 30 units x 600 = 18,000 square feet and the Applicant has provided 24,164 square feet of the open space as usable open space. Forty percent (7200 square feet) of the required usable open space must be located in a single open space tract or permanent easement and this is provided since Tract 999 contains 10,715 square feet of usable open space. All usable open space must be accessed by all-weather pedestrian pathways or sidewalks from all lots and dwellings in the PRD and no areas of usable open space are to be less than 20 feet wide, except for segments containing trails. The analysis provided by PDS indicates that the proposed development complies with these requirements.

(c) Active Recreation Uses. Thirty percent of the required useable open space is to be developed for active recreation uses. Based upon the useable open space requirement of 18,000 square feet, 5400 square feet of active recreation area is required. The Applicant proposes 7137 square feet of active recreation area in a play area in Tract 997, which exceeds the County's requirements.

(d) Landscaping. Since the proposed single-family development is abutted by property zoned R-9600 on the north and west and R-7200 on the south and is bounded by the 45<sup>th</sup> Avenue SE right of way on the east, no site perimeter landscaping is required under SCC 30.42B.125 and 30.25.020.

Streetscape Landscaping. Landscaping has been provided that complies with the criteria for streetscape as shown on the landscape plans (see Exhibit B.1).

Drainage Detention Facility Landscaping. No man-made surface detention facilities are proposed, so the landscaping standards for such facilities are not applicable to this application.

Landscaping Performance Bond. The submittal of a bond or other guarantee of performance, for approval by PDS prior to construction plan approval, will be required as provided in the County Code.

(e) Tree retention. The Applicant has submitted a tree preservation/replacement plan and preliminary landscape plan (Exhibit B.1) that identifies the number of significant trees to be retained and/or replaced within the open space tracts, streetscape landscaping and within lots. A total of 86 significant trees will be removed. The Applicant proposes the planting of 177 replacement trees including 157 conifers.

(f) Drainage detention facilities. The Applicant proposes an underground detention vault for detention of stormwater. Preliminary plans have been determined by PDS to conform to the provisions of Chapter 30.63A SCC, Washington Department of Ecology Drainage Manual, and the Engineering Design and Development Standards (EDDS).

(g) Roads, Access, Circulation, Pedestrian Facilities and Parking. In a PRD, roads, access, circulation, and pedestrian facilities are to be provided pursuant to Chapter 30.24 SCC. This PRD has been designed to provide adequate road access, connection and circulation to minimize traffic congestion, provide connection to adjoining neighborhoods where feasible, ensure adequate utility services, and provide emergency vehicle access. The configuration and design of the roads and access facilities in this development have been reviewed extensively and have been found to comply with Chapter 30.24 SCC, Chapter 30.66B SCC, Chapter 30.53A SCC, and the Engineering Design and Development Standards (EDDS).

Access to all dwelling units with the PRD will be by public road. The County engineer has determined the project provides adequate connection to County roads.

The PRD has been designed to provide adequate and safe pedestrian access to and circulation within the development by sidewalks.

The PRD has been designed to provide parking as required by Chapter 30.26 SCC. The code requires two spaces per dwelling unit plus ½ space per dwelling unit for guest parking. Two spaces per single-family dwelling unit (located in each home's garage) are proposed. At least one additional space per dwelling unit for guest parking is proposed in the driveways in front of the garages.

(h) Bulk Requirements. PDS determined that the proposed PRD site plan complies with the dimensional standards within Table 1 of SCC 30.42B.145 for single-family residential development, including lot width, lot area, setbacks and lot coverage. The Applicant has demonstrated that all lots meet the bulk requirements.

(i) Specific Housing Types. The Applicant proposes single-family residential structures for this development. The development plans indicate variation in modulation of the front setbacks and building envelopes of the proposed residences. Typical floor plans and street elevation drawings submitted (see Exhibit A.4) will provide for a visually diversified streetscape as shown in the plans. The use of a variety of floor plans, elevations, and product types provide the modulation and variation prescribed. No portion of any building or appurtenance may project into any open space.

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

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over rezone, subdivision and PRD applications pursuant to Chapters 30.42A, 30.41A, 30.42B, 30.72 SCC and Chapter 2.02 SCC.

2. The Applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.42A SCC and should be approved from R-9600 to R-7200.
3. 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 . . . .

The Examiner concludes that the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute.

4. The proposed subdivision also meets Chapter 30.41A SCC requirements. The proposed subdivision conforms generally with the development regulations of Title 30 SCC. There is open space provided within the subdivision in the form of active open space. The single-family homes within the subdivision will be in character with the urban 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 subdivision, 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. The proposal as conditioned meets the applicable version of the International Fire Code. Adequate drinking water and sewage disposal will be provided by the Alderwood Water and Wastewater District.
5. 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.
6. Based on Finding of Fact 8.C. and a review of the code requirements for PRDs (Chapter 30.42B SCC), the Examiner concludes that the development as designed meets the design and performance standards of the PRD regulations and the Official Site Plan should be approved.
7. The Examiner concludes that adequate public services exist to serve this proposal.
8. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
9. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

The Rezone and Preliminary Subdivision are **GRANTED** and the PRD Official Site Plan is **APPROVED**, subject to the following conditions:

**CONDITIONS:**

- A. The Preliminary Plat received by PDS on April 22, 2013 (Exhibit B.1), shall constitute the PRD Official Site Plan and shall be the approved plat configuration. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220. Changes to the approved preliminary 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 permits by the County:
  - i. A detailed landscape, tree retention and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit B.1 and with all required landscape standards for perimeter, streetscape and open space treatment and shall include a significant tree retention plan.
  - ii. A security device guaranteeing performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b) and SCC 30.42B.210(3) (PRD development and landscaping).
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions A and B above and the following requirements:
  - i. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. The approved development/construction plans shall show hydrant locations and locations for new hydrants shall be approved by the Fire Marshal. 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. The following requirements shall apply to the installation of any required hydrant:
    - Four inch storz type steamer port fittings shall be provided on new hydrants.
    - The top(s) of the hydrant(s) shall be colored green.
    - Blue street reflector(s) shall be installed on the hydrant side of centerline to indicate hydrant location(s).
  - ii. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.
  - iii. Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.



- D. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:  
  
\$1,951.64 per lot for mitigation of impacts on county roads paid to the County;  
  
\$2,429.91 per lot for mitigation of impacts on Bothell streets paid to the City. Proof of payment is required;  
  
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."
  - ii. "The dwelling units within this development are subject to park impact fees for the North Creek park and recreation impact mitigation fee area of the County parks system in accordance with SCC 30.66A which requires payment of \$1,244.49 for each new single-family residential unit. Park impact fees shall be based upon the rate in effect at the time of building permit issuance, provided that if the building permit is not issued within five years after the application is deemed complete the fee shall be based upon the rate in effect at the time of building permit issuance."
  - iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District No. 417 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for two existing lots. Lots 1 and 2 shall receive credit."
  - iv. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the PRD, to include, open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
  - v. "If there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code."
  - vi. "Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC."
- E. The final plat shall show a five-foot right-of-way dedication along the property frontage with 45th Avenue SE for a total of thirty-five feet from the right-of-way centerline.
- F. Prior to recording of the final plat:

- i. The new public roads shall have been constructed to the satisfaction of DPW.
- ii. Urban standard frontage improvements shall have been constructed along the property frontage with 45<sup>th</sup> Avenue SE to the satisfaction of DPW unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- iii. The features on the approved TDM plan shall be constructed/installed.
- iv. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125.
- v. 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 one-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. It shall be noted as a restriction in the recording of the final plat that if there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code.
- vi. The Applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.

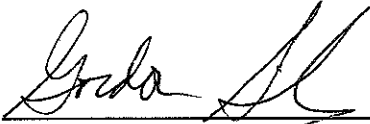
G. Prior to occupancy of the first unit:

- i. Street signage shall be in place.
- ii. Fire lane signs and/or striping shall be completed as required by the County Fire Marshal's Office.
- iii. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC.
- iv. Site improvements including landscaping, fencing, pedestrian facilities, recreational amenities and trails depicted on the approved PRD Official site plan and landscape plans shall be installed, inspected and approved.
- v. The Applicant shall provide a maintenance bond for all required landscape improvements in an amount and form satisfactory to PDS.

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 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 2<sup>nd</sup> day of July, 2013.

  
Gordon Sivley, 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 JULY 12, 2013**. 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 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before JULY 16, 2013**, 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.

### **Staff Distribution:**

Department of Planning and Development Services: Paul MacCready

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.

PARTY OF RECORDS REGISTER  
13-100807-LU+ SIERRA HILLS  
HEARING: JUNE 19, 2013  
TIME: 2:00 pm

KLN CONSTRUCTION  
CHER ANDERSON  
19000 33RD AVE W SUITE 200  
LYNNWOOD WA 98036

SNO CO PLANNING & DEV/LAND USE  
MACCREADY/ WHEELER  
3000 ROCKEFELLER AVE #604  
EVERETT WA 98201

SNO CO DEPT OF PUBLIC WORKS  
COUNTY ENGINEER  
3000 ROCKEFELLER AVE #607  
EVERETT WA 98201

THOMAS COTHRAN  
22520 45TH AVE SE  
BOTHELL WA 98021

CHARLES JACKSON  
22504 45TH AVE SE  
BOTHELL WA 98021

HAWTHORNE CREST  
HOMEOWNERS' ASSOC  
DIANE JENKINS  
22629 43RD DR SE  
BOTHELL WA 98021

SNO CO PUD NO 1  
ELISABETH TOBIN  
PO BOX 1107  
EVERETT WA 98206-1107