

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 31, 2008

PLAT/PROJECT NAME: *Lundeen Parkway Estates*

APPLICANT/
LANDOWNER: Sherman Development, LLC

FILE NO.: 06-101896-000-00 SD

TYPE OF REQUEST: 21-lot subdivision utilizing lot size averaging

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

BASIC INFORMATION

GENERAL LOCATION: At the northern termini of 80th Drive NE and 82nd Drive NE (at 12th Street NE), just west of Lake Stevens, in Section 11, Township 29 North, Range 5 East, W.M., Snohomish County, Washington.

Acreage: 19.46 **Avg. Lot Area:** 11,041 square feet **Gross Density:** 1.08 du/ac

Lots: 21 **Smallest Lot Area:** 7071 square feet **Net Density:** 3.96 du/ac

Lot Size Averaging: 35,387 square feet per lot

Current Zoning: R-9600 **Proposed Zoning:** No change

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens School District No. 4

FIRE DISTRICT: FPD No. 4

PDS STAFF RECOMMENDATION: Approve preliminary subdivision with conditions

INTRODUCTION

The applicant filed the Master Application on May 8, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit 23 (Affidavit of Mailing); Exhibit 24 (Affidavit of Notification by Publication); Exhibit 25 (Posting Verification).

A SEPA determination was made on July 16, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on October 10, 2007. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. On October 25, 2007, the Hearing Examiner issued an order remanding the decision to PDS for further processing consistent with the order. Exhibit 39B.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal: Lundeen Parkway Estates is a 21-lot subdivision of 19.46 acres. Access to the lots will be provided by public roads connecting to 80th Drive NE and 82nd Drive NE extending from the plat of Valtera View Estates. Public water service will be provided by the Snohomish County PUD No. 1 and sewer service will be provided by the Lake Stevens Sewer District. Mitigation fees are to be paid in accordance with SCC Chapters 30.66A, B, and C, for project impacts to community parks, nearby road system traffic and to the Lake Stevens School District No. 4.
3. Site Description: This 19.46 acre site is rectangular in shape and is currently undeveloped; comprised of forested and shrub habitat. The site contains varied topography; sloping down from a knoll in the southeast corner to an extensive wetland area occupying the central portion of the site. In the center is a raised area, surrounded by wetlands. The site slopes up from the wetlands to higher areas along the westerly boundary of the site.
4. Adjacent Zoning/Uses: The properties to the south and southwest are zoned PRD-7,200 with an approved, undeveloped preliminary plat (Valtera View Estates PFN: 97-103274). To the west and north are large, rural residential lots zoned Rural-5. To the east are small lot developed residential subdivisions, zoned R-7,200. This site and the land to the east were annexed into the City of Lake Stevens effective December 4, 2006. Snohomish County continues to process the application through preliminary approval in accordance with the provisions of the interlocal agreement with the City.

5. Public Comment/Issues of Concern.

The Examiner listed a number of issues of concern in the October 25, 2007 order that have been addressed by the applicant and PDS, including critical areas, drainage and the Olympic Pipeline Easement that runs through the subject property. Each of these items will be addressed separately in the decision, *infra*. Other matters of concern are letters from representatives of neighboring property owners concerning access. (Exhibits 47-49)

Mr. McNaughton, representative for the property owner, states that the adjacent property owner owns a five-acre parcel to which it would like to obtain access through the subdivision. The Examiner has encouraged the applicant to speak with the property owner and to try to work the matter out. (Exhibit 50)

The Examiner has no powers beyond those granted by the county code. SCC 30.41A.210(5) does require the Examiner to consider the overall road network and access needs of lands in the area of the subdivision in determining road location within the subdivision. The Examiner has done so in requiring the applicant to communicate with the property owner and encouraging the parties to amicably solve the issue. The claim the adjacent property owner appears to make is that access through this subdivision is his sole means of access. The Examiner has no power under the code to adjudicate that claim. The applicant and the staff are both correct in pointing out that a right-of-way exists on the north side of the parcel that would at least theoretically provide access. (Exhibits 52 and 53) An easement of necessity claim must be adjudicated by a general jurisdiction Superior Court. The Examiner has neither the complete set of facts, nor the jurisdiction to adjudicate this claim. It is up to the claimant to take this matter to another forum.

C. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within the 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 either prior to plat recording or prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county code. Exhibit 36.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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

The impact fee for this proposal is based on the new average daily trips (ADT) generated by SFRs, which is 9.57 ADT/SFR. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 200.97 new ADT and has a road system capacity impact fee of \$73,153.08 (\$3,483.48/lot) based on \$364.00/ADT. These figures do not include credit for on-site TDM measures. This impact fee must be paid prior to building permit issuance. Exhibit 36.

	<i>Calculations</i>
ADT	$(21 \text{ New SFRs}) \times (9.57 \text{ ADT/SFR}) = 200.97$
AM PHT	$(21 \text{ New SFRs}) \times (0.75 \text{ AM PHT/SFR}) = 15.75$
PM PHT	$(21 \text{ New SFRs}) \times (1.01 \text{ PM PHT/SFR}) = 21.21$

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition and level-of-service F the worst.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a determination that the development is concurrent as of July 6, 2006. The expiration date of the concurrency determination is six years from July 6, 2006.

The development has been deemed concurrent on the following basis: Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160. The subject development is located in TSA B which, as of the date of submittal, had the following arterial units in arrears, 238 & 316. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a), the development is determined concurrent. The development generates 15.75 a.m. peak-hour trips and 21.21 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, in which case the development would also have to be evaluated under SCC 30.66B.035.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. This concurrency determination will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required. (Exhibit 36)

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

According to the staff report, the subject proposal will not impact any IRC locations identified at this time within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC. (Exhibit 36)

D. Frontage Improvements [SCC 30.66B.410]

The Lundeen Parkway Estates development is accessed through another new development which is still in the process of final plat approval. (Exhibit 36) Since it is accessed through new development, no right-of-way will be needed as frontage, because adequate provisions have already been made for roads through the previous preliminary plat approval and minor plat amendment in the other proposed subdivision.

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

Access is proposed through the adjoining parcel to the south. That parcel has preliminary approval for an 84-lot subdivision, Valtera View Estates, PFN 97 103274. Exhibit 42 shows the appropriate connections, as the plat is currently configured. Valtera View Estates is currently in the final stages of construction and also in final plat review as of this writing. Valtera View Estates does provide the 165-foot minimum centerline radius as shown in the approved construction plans (see Tab R12, Exhibit 43 and final plat map, Exhibit 41). The Examiner will include a condition that prior to recording the final plat of Lundeen Parkway Estates, adequate public road access be provided to all lots within the development. This is a standard condition that has been used in situations where a proposed development is dependent on access through another development.

F. Dedication of Right-of-Way [SCC 30.66B.510]

No right-of way is needed as frontage, or proposed for dedication, since the site does not currently front a public road and access will be provided by new roads constructed within the plat of Valtera View Estates to the south. The proposed Lundeen Parkway Estates internal streets of 80th Drive N.E. and 82nd Drive N.E. will be dedicated to the County as public streets upon recording of the Lundeen Parkway Estates final plat.

G. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through one of the following:

- (a) Voluntary negotiated construction of improvements,
- (b) Voluntary negotiated payment in lieu of construction,
- (c) Transfer of land from the developer to the State, or
- (d) A voluntary payment in the amount of \$36.00 per ADT

The applicant's traffic study, dated May 5, 2006, indicates that since no State projects are impacted mitigation for State highways is not required. Exhibit 43, R6 at 5. Comment from the State dated June 21, 2006, indicates that mitigation is not required. (Exhibit 26)

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

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency. There are no City jurisdictions that have an ILA with the County that will be significantly impacted by the subject development.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1). SCC 30.66B.630(1) succinctly states the basic requirements:

All new developments in the urban growth area are required to provide sufficient TDM measures to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. SCC30.66B.630. This requirement may be met by:

- (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
- (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
- (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

A TDM plan was submitted with the application for this development. (Exhibit 7) SCC 30.66B.640(3)(e) requires a minimum density of at least four dwelling units per gross acre to be eligible for on-TDM credit. The subject development does not meet this minimum; therefore a cash payment is required. (Exhibit 36)

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500.00. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500.00 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 21.21 new PM peak hour trips x \$1,500.00, which equals \$1,590.75 (\$75.75/lot). An acceptable written offer for payment of this TDM obligation has been received, and will be incorporated as a condition of approval. See Exhibit 36.

8. Pedestrian Facilities for Students [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority consider whether the development provides sidewalks and other planning features that assure safe walking conditions for students. RCW 58.17.110(1). The applicant has coordinated with Lake Stevens School District and determined the location of bus stops and the provision of bus waiting areas as outlined in an email dated November 6, 2007, and bus schedule from Lake Stevens School District No. 4 (see Tab R7, Exhibit 43). The existing bus stop is approximately 3,100 feet (0.6 mile) from the northern terminus of 80th Drive N.E. in the proposed plat. Once the new roadway that connects Lundeen Parkway Estates and Valtera View Estates is constructed, sidewalks will exist on both sides of the street, all the way to the existing bus stop.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

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

10. Drainage and grading.

Drainage. The site lies within two delineated drainage subbasins, Weiser Creek Basin and Hulbert Creek Basin. The majority of the site, 17.58 acres, is within Hulbert Creek basin, while the remaining 1.88 acres is in Weiser Creek basin. Hulbert Creek is a salmon bearing stream presumed to contain ESA-listed fish. Hulbert Creek is located approximately 130 feet north of the Sherman-Lundeen property when measuring at a point along the existing 100-foot wide Puget Sound Energy Easement that crosses the subject property in a north-south direction. Weiser Creek is located approximately 800 feet south of the southwest corner of the Sherman-Lundeen property, to the south of the Valtera View Estates project. Both Hulbert Creek and Weiser Creek drain in an east-to-west direction down to the valley floor into Ebey Slough, approximately 4000 feet to the west of the subject property. Exhibit 43, R1 at 2 and sheet 1.

PDS approved a modification and waiver that allowed the Applicant to redirect a portion of the drainage naturally draining into Weiser into Hulbert Creek Basin (approximately .71 acres). Exhibit 43 at R1. During the remand, the Applicant and PDS decided to reduce the redirection to .59 acre. *Id.* at 3.

The project contains 21 lots served by two urban residential streets and a joint use driveway. Post-development the drainage going into Hulbert Creek Basin is divided into three separate drainage subbasins, each with its own separate drainage facility. The details of these facilities are contained in the drainage report and additional information in the remand report. Exhibits 5C and 43 at R1. The Examiner notes that the Drainage Waiver and Modification Request, signed by Chief Engineering Officer Randolph Sleight, required as a condition of approval that "The design shall incorporate significant water quality treatment prior to discharge to Weiser Creek." The Examiner will include that condition as part of the preliminary plat approval.

Grading. Grading quantities are anticipated to be approximately 7,500 cubic yards of cut and 17,500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

During the construction plan review stage for the project, the applicant must submit a Stormwater Pollution Prevention Plan (SWPPP) per the 2005 Washington State Department of Ecology Manual Vol. 2 (DOE). The Stormwater Pollution Prevention Plan (SWPPP) will be implemented during construction of the project (see condition B.i). Temporary Erosion Control measures will ensure water leaving the site meets turbidity requirements. In addition, PDS Engineering staff prepares a lot memo for each and every subdivision before recording. The lot

memo sets special conditions for stormwater control provisions and erosion control measures which must be implemented during the building permit stage.

11. Critical Areas Regulations (Chapter 30.62 SCC)

Streams and wetlands.

Two wetlands and a stream have been identified on site. The on-site portion of Wetland A is 5.99 acres, is classified as a Category II wetland and requires a 50-foot buffer under the version of Chapter 30.62 SCC to which the subdivision is vested. It is a Palestrine forested scrub-shrub, semi-permanently flooded-to-saturated wetland system with areas of emergent habitat, and the applicant's wetland biologist has rated its function as moderate to high. Exhibit 9 at 10; Exhibit 43 at R9.

The on-site portion of the other wetland in the southwestern portion of the site is classified as a Category III wetland, requiring a minimum 25-foot buffer. Known as Wetland B, it is also a Palestrine emergent wetland. Another wetland lies off-site to the south and east. The off-site wetland, known as Wetland C, is 0.46 acres in size and is a Palustrine forested scrub-shrub emergent wetland system, and is also a Category II wetland requiring a 50-foot buffer. Exhibit 9 at 11. A reach of Hulbert Creek flows off-site along the northern border in a general east-to-west direction, and is identified as a Type 1 stream with presumed presence of bull trout, a species listed as "threatened" under the Endangered Species Act. See Exhibit 17. The Preliminary Mitigation Plan (Exhibit 18) and Habitat Management Plan (Exhibit 17) address compliance with Snohomish County's "Salmonid Habitat Management Plan Administrative Rule" which requires a 150-foot buffer and a second 150-foot riparian management zone. The buffer and management zone, as well as wetlands and buffers, have been correctly identified on Exhibit 42.

In the remand order, the Examiner requested the applicant provide an avoidance analysis that described why it was necessary to extend a driveway into Wetland A to access Lots 11 and 12. The applicant did so at Exhibit 43, R9. The applicant did an excellent job responding to the Examiner's concerns and issues concerning the possibility of fitting in the lots elsewhere.

The applicant also determined that no 33% slopes extended "continuously" down to Hulbert Creek necessitating extension of the 150-foot buffer; PDS concurs. Exhibit 46 at 6. In reviewing maps submitted by the applicant, the Examiner also concurs. Exhibit 43: R8.

The Examiner's only remaining concern regarding critical areas compliance is with respect to potential thermal impacts to Hulbert Creek. The Salmonid Rule indicates that:

The temperature of stormwater discharged from a project site to a body of water containing a listed salmonid shall not exceed Washington State Quality Standards for temperature (WAC 173-201A). Project site is the entire site and is not limited to the area within 300 feet of the OHWM.

The WAC provisions indicate that bull trout need water to be in the 9-12 degrees C range. Stormwater will need to be kept cool and monitored for temperature before releasing into the environment. That is an element that will need to be addressed in final drainage review.

Slopes.

The site contains distinct topographic features that include a knoll and three northeast-to-northwest-trending ridgelines that are separated by relatively level areas that contain little discernable elevation change. The ridgelines are comprised of gradual north- to northwest-

sloping, upper benches that are bounded by steeper slopes that form the flanks of the ridgelines. The gradients of the upper benches along the ridges are typically in the range of approximately 10 to 25 percent, and the gradients of the descending steep slope areas that border the upper benches are in the approximate range of 25 to 50 percent. Exhibit 8 at 3.

The topography in the north-central portion of the site slopes to the north from the center of a topographic knoll to a broad gradual, north-facing slope at gradients in the range of 25 to 30 percent near the knoll, then decreases to 10 percent or less farther to the north. The ridge in the southeastern portion of the site is separated from the knoll by a large delineated wetland area where the site is relatively level with slope gradients of 5 percent or less. Exhibit 8 at 3.

A geotechnical report was prepared because of the steep slopes on the site. Exhibit 5D; see SCC 30.62.200 and .210. With respect to landslide hazard areas (SCC 30.62.210), the construction setbacks are based on the slope gradients and the height of descending steep slopes. Exhibit 8 at p.11. The complete recommendation is as follows:

For descending slopes within landslide hazard areas where slope gradients are greater than 33 percent but less than 100 percent, the building setback is determined in part by dividing the height of the slope by 3 (H/3). The steep slope in the northern portion of the proposed southeast-improvement area is considered a landslide hazard area as defined in SCC 30.91L.040. . . . Review of the topographic data provided by the project civil engineer indicates the descending steep slope areas that border the proposed improvement area are in the range of 60 to 75 feet in height with slope gradients in the range of approximately 25 to 50 percent. As such, a total building setback from the top of the slopes with gradients of 33 percent and greater should be maintained.

The northwestern portion of the site contains an approximately 40-foot high, steep slope area, and the knoll in the north-central portion of the site contains an approximately 25-foot-high steep slope area. Based on the results of our study, these slope areas do not meet the criteria of a landslide hazard area. In our opinion, a total buffer/building setback of 20 feet from the top of slopes with gradients of 33 percent and greater should be maintained. Exhibit 8 at 12.

A supplemental Geotechnical Report has been added to the record (see Tab R10, Exhibit 43). A special condition has been added to the end of this report which addresses the recommendations of the geotechnical engineer regarding the building foundation setbacks from descending slopes (see condition C.v.). Also a condition has been added that the applicant supply certification from the geotechnical engineer that the construction plans are in conformance with his recommendations (see condition B.iii.). The full drainage plan submitted during the construction plan review stage will be required to incorporate all the recommendations of the geotechnical engineer.

12. Consistency with the GMA Comprehensive Plan.

The Lake Stevens Urban Growth Area was amended in 2005 to include this property in the UGA through Amended Ordinance No. 05-075. It was at that time re-designated to Urban Low Density Residential-4. Finding 3 at page 10 of the ordinance addresses the reason for the inclusion in the UGA:

An area of 20 acres located east of Sunnyside Blvd, west of 83rd Ave NE, north of Vernon Rd and south of 20th St NE is appropriate for addition to the Lake

Stevens UGA and re-designation from Rural Residential to Urban Low Density Residential-4 because: 1) the property is adjacent to the existing UGA boundary and provides residential capacity to meet the succeeding twenty years of growth; 2) the property can be provided with utilities; 3) the expansion is supported by the property owners and the City of Lake Stevens; and 4) zoning for the property is limited to R-9600 which limits density and environmental impacts.

Zoning was changed at the same time by Amended Ordinance No. 05-090 to R-9600, which allows four dwelling units per acre.

13. Consistency with Bulk and Performance Standards. [Subtitle 30.2 SCC]

According to the PDS staff report, this project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements. Exhibit 36 at 7-8.

PDS staff evaluated the proposal for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provides in pertinent part that:

- (1) A subdivision . . . will meet the minimum lot area of the zone in which it is located if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots equals or exceeds the minimum lot area of the zone in which the property is located. is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning.
- (2) This section shall only apply within zones having a minimum area requirement of 12, 500 square feet or less.
- (3) Each single lot must be at least 3,000 square feet in area.
- (4) Lots in subdivisions and short subdivisions created under the provisions of this section shall have a maximum lot coverage of 55%;
- (5) Lots with less than the prescribed minimum lot area for the zone in which they are located shall have a minimum lot width of at least 40 feet, and right-of-way setbacks of 15 feet, except that garages must be setback 18 feet from the right-of-way (with the exception of alleys) and corner lots may reduce one right-of-way- setback to no less than 10 feet;
- (6) Preliminary subdivisions approved utilizing lot averaging shall not be recorded by divisions unless such divisions individually or together as cumulative, contiguous parcels, satisfy the requirements of this section.

On remand, the applicant has provided a revised plat map which slightly adjusts some of the sizes of the lots and tracts and provides updated lot size averaging calculations (see Exhibit 42). PDS has determined the project complies with the lot size averaging provisions of code. Lot size averaging calculations for this proposal are as follows:

Area in Lots [231,855 square feet] + Critical Areas and Buffers [511,276 square feet] + Open Space [0 square feet] = 743,131 square feet ÷ number of proposed lots [21] = 35,387 square feet (exceeds the minimum lot size of 9,600 for the underlying zone).

14. Utilities

- A. Water. Water is available from the Snohomish County PUD No. 1. (Exhibit 31)

- B. Sewer. Sewer service is available from the Lake Stevens Sewer District. (Exhibit 34)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. (Exhibit 29)
- D. Snohomish Health District Approval- the SHD has no objections to the preliminary subdivision approval but indicates that any existing onsite septic systems must be abandoned as required by WAC 246-272-18501 and existing wells must be decommissioned pursuant to WAC 173-160-381 prior to final plat approval. The Examiner will incorporate this requirement as a condition of approval. (Exhibit 27)

15. Utility Easements Crossing the Property

A. Olympic Pipeline Easement

As requested by the Hearing Examiner, an analysis, along with supporting documents, is provided from Randolph Sleight, P.E., Chief Engineering Officer of PDS, regarding the Olympic Pipeline easement within the subject property (see Exhibit 40). Mr. Sleight provided an analysis of risk and concluded that in his professional opinion, the existence of the gas line easement in the subdivision presented a very low risk of harm to people or property.

The Olympic Pipe Line Company maintains the existing 50-foot-wide gas pipeline easement that crosses the westerly margin of the property in a diagonal northeast to southwest direction near proposed Lots 1 and 5 through 9. Within the easement are two parallel gas pipelines that are 16-inch and 20-inch in diameter. The applicant has coordinated with Olympic Pipe Line Company to field locate the existing pipelines using pothole exposure and survey of location and depth as well as surface field locates and existing locator signs. The Olympic Pipe Line Company has reviewed the preliminary road, grading, and drainage plan and prepared a letter dated December 28, 2007, that is attached as Tab R3, Exhibit 43. To protect the public safety, the Olympic Pipe Line Company requires a 25-foot building setback from the pipe for all homes adjacent to their easement, which affects proposed Lots 1 and 9 as shown on the revised preliminary plat drawings. Additional comments, dated June 13, 2008, were received from Olympic Pipeline Company (see Exhibit 44) stating that they have been working with the applicant on the adjoining plat of Valtera View Estates and wish to be kept informed regarding Lundeen Parkway Estates. The Examiner has added two conditions to assure that any work taking place within the Olympic Pipeline Easement be done in accordance with the requirements of Olympic Pipeline Company (see proposed conditions B. v. and C.vi.).

B. Puget Sound Energy Easement

There is a 100-foot-wide Puget Sound Energy power transmission line easement that bisects the property in a north-to-south direction across proposed Tract B. A drainage dispersion trench is proposed to be constructed within this easement, as well as a segment of the proposed new plat road (80th Drive N.E.). The Examiner will impose a condition to ensure that any construction within the easement meets with the approval of Puget Sound Energy (see condition B.vi.).

C. Lake Stevens Sewer District Easements

There are existing 10-foot-wide and 15-foot-wide public sanitary sewer easements crossing the property with an irregular alignment crossing proposed Tracts A, B, C, and D and running along the edge of Lot 15 as shown on the preliminary plat maps. The Lake Stevens Sewer District operates existing 8-inch and 15-inch sanitary sewer mains within the existing easements and currently gains maintenance access driving along the easement, including vehicular access through Wetland A.

Driveways to Lots 11 and 12 will cross the sewer easement. Also, a detention pond on Tract D is proposed to be constructed above the existing sewer line. The applicant submitted new

correspondence from Lake Stevens Sewer District (see TabR4, Exhibit 43) which states that the proposed layout of the plat is desirable because it will improve access to their manholes and eliminate vehicular intrusion into wetlands to perform maintenance duties.

The access driveway to Lots 11 and 12 will provide access to an existing manhole. Another manhole is located near the north end of proposed Tract D and the sewer district could use the Tract D pond maintenance access road to double for access to that sanitary sewer manhole. Also, the Tract B maintenance road could be utilized to access other nearby manholes. The Examiner will include a condition to ensure that any construction within the sewer easement meets with the approval of the Lake Stevens Sewer District (see condition B.vii.).

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on July 16, 2007 (Exhibit 14). The DNS was not appealed.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on September 6, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. Specifically, the following are met:

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. Finding of Fact 7; see SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. Exhibit 2; See 30.41A.110.
- C. Fire Code/Fire District Requirements. Fire apparatus access as depicted on the preliminary plat has been found by the Fire Marshall's Office to meet the minimum requirements of SCC 30.53A.150. Prior to the start of combustible construction, fire hydrants will need to be installed and operational. Approved addresses are required to be placed on all new buildings and signage or pavement striping denoting fire lanes placed on proposed roads as necessary (to be determined by the county Fire Marshall's Office during the construction plan review stage) to ensure access by emergency vehicles is not impeded.

The Lake Stevens Fire District provided two letters; one to PDS and one to one of the applicant's representatives, both dated February 22, 2008, along with an attached Mitigation Agreement (Exhibit 45). The letter to PDS states that the plat design meets its requirements with respect to road grades, turning radii, pavement width and cul-de-sac size and that there is no need for the project to set aside any property for the potential future purchase by the Lake Stevens Fire District. However, the letter to the applicant states that the Lake Stevens Fire District does not have the needed resources to protect the proposed development and could only recommend approval if the developer enters into an agreement with the District whereby the applicant would need to pay the fire department a per lot fee to provide service. The letter to PDS also requests that the county impose the following condition:

The developer or the developer's assignees shall, as condition precedent to the issuance of final approval of the Lundeen Parkway Estates Plat, negotiate and enter into a voluntary agreement with Lake Stevens Fire pursuant to RCW 82.02.020 and the District's currently adopted Level of Service Contribution Policy.

The Examiner will impose this condition as a condition of final plat approval.

- D. As indicated earlier in this decision, applicant has met the requirements of the health district, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. Density for Sloping Land. The applicant has provided a slope map and calculations in accordance with SCC 30.41A.250, which indicate that the maximum number of dwelling units allowed on the site would be 66 (Exhibit 42, page 1). PDS staff concurs with the applicant's analysis. The project is only proposing 21 lots.
- F. Safe Walking Conditions to School. The Applicant will be providing safe walking conditions to the bus stop as discussed in Finding of Fact 8.

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

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

The proposed preliminary subdivision conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. A public water supply will be provided by and public sewer service will be provided by the Snohomish County PUD No. 1 and Lake Stevens Sewer District, respectively.

19. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to chapter 30.72 SCC and chapter 2.02 SCC.
2. The legal standard the Examiner must review a preliminary subdivision under the state subdivision code, Chapter 58.17 RCW, is:

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

RCW 58.17.110.

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

DECISION

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

The request for a 21-lot subdivision on 19.46 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on August 20, 2008 (Exhibit 42) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. A detailed Stormwater Pollution Prevention Plan (SWPPP) meeting the requirements of the 2005 Washington State Department of Ecology Manual Vol. 2 (DOE) shall be submitted to PDS.
 - ii. The final design of the drainage system shall incorporate significant water quality treatment for all stormwater prior to discharge to Weiser Creek. Stormwater will need to be released at a temperature in compliance with WAC 173-201A to avoid thermal impacts to bull trout in accordance with "Salmonid Habitat Management Plan

Administrative Rule. The applicant must set up a monitoring system approved by PDS biologists to assure continued compliance with this provision.

- iii. Construction plan documents shall include a typical single family SWPP plan and report for implementation during single family home construction.
- iv. The applicant shall supply certification from the geotechnical engineer of record that the construction plans are in conformance with his recommendations.
- v. Documentation of approval from Olympic Pipeline for the construction/uses proposed within their gas pipeline easement shall be submitted to the county.
- vi. Documentation of approval from Puget Sound Energy for the construction/uses proposed within their transmission line easement shall be submitted to the county.
- vii. Documentation of approval from the Lake Stevens Sewer District for the construction/uses proposed within their sewer line easement shall be submitted to the county.
- viii. The plattor 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.
- ix. A final mitigation plan based on the Preliminary Mitigation Plan prepared by Barghausen Consulting Engineers dated revised March 12, 2007 (Exhibit 18) shall be submitted for review and approval during the construction review phase of this project.
- x. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 42, page 7.

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

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

\$3,483.48 per lot for mitigation of impacts on county roads paid to the county,
\$75.75 per lot for transportation demand management paid to the county,

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued on a lot, all mitigation payments for that lot shall be deemed paid.
- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

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

- iv. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per newly approved dwelling unit, as mitigation for impacts to the Centennial park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by May 8, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- v. The foundations of the proposed residences on Lots 3-6, 9-10 and 13-17 shall be set back from the face of the constructed descending slopes a horizontal distance of 10 feet, as per the Supplemental Geotechnical Report by Earth Consulting Incorporated, dated January 29, 2008.
- vi. All homes adjacent to the Olympic Pipe Line Easement shall be set back a minimum of 25 feet from the edge of the pipeline.

D. Prior to recording of the final plat:

- i. Adequate public road access shall be provided to all lots within the development.
- ii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iii. The final wetland mitigation plan (additional buffer, wetland and buffer enhancement) shall be completely implemented.
- iv. The developer or the developer's assignees shall negotiate and enter into a voluntary agreement with Lake Stevens Fire pursuant to RCW 82.02.020 and the District's currently adopted Level of Service Contribution Policy.
- v. The detention pond landscaping shall be installed, inspected and approved.

- vi. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.
- vii. The applicant will abandon any existing onsite septic systems by having the septic tank(s) removed by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272-18501). Existing wells must be decommissioned pursuant to WAC 173-160-381. Documentation demonstrating completion of this work must be submitted to Snohomish Health District prior to final plat approval.

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

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

Decision issued this 31st day of December, 2008.

Barbara Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JANUARY 12, 2009**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, Robert J. Drewel Building (Admin-East), 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JANUARY 15, 2009** 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: Bob Pemberton

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.