

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

DATE OF ORDER: August 4, 2008

PLAT/PROJECT NAME: **SCHP3**

APPLICANT/  
LANDOWNER: Aveo Land Development Company

FILE NO.: 07-108638 LU

TYPE OF REQUEST: **REZONE** from Residential-9600 (R-9600) to Residential-7200 (R-7200) and a 9-lot **SHORT PLAT** of 1.93 acres utilizing lot size averaging

DECISION (SUMMARY): Rezone and preliminary approval for a 9-Lot Short Plat of 1.93 acres utilizing lot size averaging **GRANTED**.

**BASIC INFORMATION**

GENERAL LOCATION: The subject property is located at 3306 180<sup>th</sup> Street SE, Bothell, WA

ACREAGE: 1.93 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 4,288 square feet

MINIMUM LOT SIZE: 3,167 square feet

DENSITY: .466 du/ac (gross)  
5.39 du/ac (net)

ZONING:

CURRENT: R-9600  
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore School District

FIRE DISTRICT: Snohomish County Fire District No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services (PDS): Approve with conditions

**INTRODUCTION**

The Applicant filed the Master Application on July 17, 2007. (Exhibit 1A)

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

A SEPA determination was made on April 1, 2008. (Exhibits 5A and 5B). No appeal was filed.

The Examiner held an open record hearing on June 11, 2008, the 113<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The Hearing Examiner stated that although she did not perform a specific site visit prior to the open record hearing, but she is familiar with the site.

**PUBLIC HEARING**

The public hearing commenced on June 11, 2008 at 9:00 a.m.

1. Representing PDS was Planner, Michael Dobesh.
2. Representing the Applicant was Ry McDuffy, Land Resolutions and the Owner, James Funston, of Aveo Land Development Co.
3. No other parties or members of the public were in attendance.

The hearing concluded at 9:25 a.m.

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

## FINDINGS OF FACT

1. The master list of Exhibits and Witnesses are the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein. No additional Exhibits were entered during the open record hearing.

2. Summary of the Proposal:

The Applicant is requesting a rezone of a 1.93 acre site from R-9600 to R-7200 in conjunction with a request for preliminary plat approval of a 9-lot short subdivision, using lot size averaging provisions allowed pursuant to SCC 30.23.210.

Access to the subdivision is proposed through a new public road which will be constructed off of 180<sup>th</sup> Street SE. This new road (181<sup>st</sup> Street SE) will connect through the subdivision to an adjacent subdivision known as "SCHP 1." The new road will also connect to an existing road (181<sup>st</sup> Street SE) which serves an existing subdivision known as Springmill Place.

3. Site description:

The property is located inside the Urban Growth Area (UGA) in south Snohomish County between the cities of Mill Creek and Bothell at 3306 180<sup>th</sup> Street, Bothell, Washington. The property is rectangular in shape, with its longer axis running in the north-south direction. The site is currently developed with one single-family residence, detached garage, and associated improvements. There are two Category 3 riparian wetlands on the site which are associated with Tambark Creek, a fish-bearing stream which intersects the eastern edge of the subject property. Although it supports certain salmon and trout species, Tambark Creek does not serve as habitat for anadromous fish listed under the Endangered Species Act.

4. Adjacent zoning and uses:

Properties adjacent to the site are zoned and developed as follows: to the west there is an existing subdivision of Springmill Place, which is zoned R-8400; to the east the land is currently undeveloped and is zoned R-9600, however preliminary plat approval has been granted for the SCHP 1 (a 21-lot subdivision); to the north the property abuts 180<sup>th</sup> Street SE and a fire station exists across that street at the northwest corner of 180<sup>th</sup> Street SE and 35<sup>th</sup> Avenue SE; to the south, there is a pending 5-lot short subdivision (PFN 03-104214) which is zoned R-7200. Other properties in the vicinity of the site have residential zoning ranging from R-9600 to R-7200 and are predominantly either undeveloped or are developed with single-family residences.

5. Neighborhood Concerns: Prior to the open record hearing, there were three concerns raised by citizens residing adjacent to the proposed short plat and two additional concerns raised by the City of Mill Creek through letters received by the County. (Exhibit 9A-1) First, two citizens asked whether there would be homes constructed directly behind their lot (Lot 14 in Springmill Place) and whether the short plat would be a condominium. The Applicant responded that there would not be homes built directly behind the neighbor's home because Tract 999 will be placed directly on the land behind Lot 14 of Springmill Place, between the subject property and Springmill Place, which tract will be a Native Growth Protection Area (NGPA). Tract 999 will retain the existing critical areas and native vegetation in an undisturbed state. The Applicant next responded that the development is not proposed as a condominium.

Next, the City of Mill Creek wrote two letters via e-mail to the County commenting on the development. In the first letter, the City reminded the County that the development is located within the City's UGA and will likely be annexed into the city at some future time. Therefore, the City has an interest in promoting development within the UGA that conforms to the City's development plans and design standards to create a single community. The City urged the County and the developer to construct residences within the subdivision that use design features similar to those required in the Mill Creek Municipal Code, such as front porches and other features which would minimize the visibility of garages and avoid a repetitive, row-house appearance. In addition, the City requested that the Applicant provide a road buffer along 180<sup>th</sup> Street SE to conform to the City's requirements for other developments within the City limits. The road buffer would provide a gateway appearance into the City limits along 180<sup>th</sup> Street and would also provide a meandering sidewalk which would enhance public safety by moving pedestrians further away from the traveled road lane on this busy arterial.

PDS responded that it cannot impose the City's design standards because the County does not have an interlocal agreement with Mill Creek that would serve as a legal basis for imposing such conditions within the Mill Creek UGA. The Applicant testified that they are aware of the requests from the City and, at this point, do not intend to follow the City's design requests or road buffer request. There was no testimony or evidence offered that the City's requests were infeasible or unreasonable.

6. Provision of Adequate Water:

The development will be served by the Alderwood Water and Sewer District. Alderwood provided preliminary comments on August 13, 2007, indicating that it has adequate capacity to serve the development, although water service will require the construction of a distribution system on the site. Alderwood calculated the rate of flow available for the development at 1000 gallons per minute for 2 hours or more. (Exhibit 8E)

7. Parks and Recreation

The proposal is within Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of park impact fees in the amount of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. There is an existing single-family residential unit on the site. The total number of new residential units subject to Park impact fees is 8 units. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. PDS has recommended that payment of park mitigation fees will be made a condition of approval.

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

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

PDS traffic reviewers have calculated the road system capacity impacts and impact fee for this proposal, based on the new average daily trips (ADT) generated by single-family residences, which is 9.57. This rate comes from the 7th Edition of the *ITE Trip Generation Report* (code 210). The number of new lots that will be created is 8 (with credit given for one existing lot). The development will generate 76.56 new ADT and has a road system capacity impact fee of \$20,441.52 (\$2,271.28/lot) based on \$267.00/ADT. Payment of the TDM fees prior to building permit issuance is a recommended condition of approval. The ADT calculation is set forth in the PDS Staff Report. (Exhibit 20)

B. Concurrency [SCC 30.66B.120]

The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: Arterial units 202, 204 and 218. Based on peak-hour trip distributions in the submitted traffic study (Exhibit 3B), the subject development will not add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 6.00 a.m. peak-hour trips and 8.08 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 with 3 or more peak hour trips, 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. A concurrency certificate was included with Public Works' final recommendation, which 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.

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

The subject proposal will not impact any IRC locations identified at this time within TSA "D" with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation is not required with respect to inadequate road conditions and restrictions to building permit issuance or certificate of occupancy/final inspection shall not be imposed under SCC 30.66B.210.

D. Frontage Improvements [SCC 30.66B.410]

The subject property's frontage is located along 180th Street SW. Urban standard frontage improvements are required consisting of 23 feet of pavement to the face of a 6-inch vertical curb, a 5-foot planter and a 5-foot sidewalk.

The subject property also has frontage located along a new north-south plat road in the proposed preliminary plat of SCHK1 (PFN 06 128063) which proposes to build a ½ road section consisting of 20 feet of pavement, a 5-foot planter and a 5-foot sidewalk. Urban standard frontage improvements are required for the subject development consisting of 8 feet of pavement to the face of a 6-inch vertical curb, a 5-foot planter and a 5-foot sidewalk. The requirement for a planter strip has been eliminated by an EDDS deviation approved by the County Engineer on November 29, 2007 (Exhibit 7) and allows the development to provide frontage improvements that are consistent with and complete the residential street that was initially set up within the plat of SCHK1. This development will complete the standard urban road section. A planter strip is required to be constructed as part of the 180<sup>th</sup> Street SE frontage improvements. PDS recommends that the Hearing Examiner impose a condition requiring the construction of frontage improvements prior to the recording of the plat, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

The Applicant has proposed to provide access to the plat off of 180th Street SE through the construction of a new public road (181<sup>st</sup> Street SE), part of which will be constructed for the

neighboring plat of SCHK1 (PFN 06-128063). The subject proposal will provide access and circulation through neighboring developments by completing the road section to be developed with the SCHK1 subdivision, and by providing a connection to 181<sup>st</sup> Street SE in the plat of Springmill Place. Access to Lot 1 will be provided from a shared driveway easement across Lot 2. Access to Lot 5 will be provided from a shared driveway easement across Lot 6. Finally, access to Lots 8 and 9 will be provided by Tract 998. PDS recommends that the Hearing Examiner impose a condition requiring all access roads to be constructed prior to recording of the final plat.

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

180th Street SE is designated as a Minor Arterial on the County's Arterial Circulation Map. This requires a right-of-way (r/w) width of 40 feet on each side of the r/w centerline. Forty feet of r/w presently exists on the development's side of the r/w. Therefore, no additional r/w is required along 180th Street SE. The proposed new public road (181 Street S.E.) will provide access to the short plat shall be dedicated to the County.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement, which became effective on applications determined complete on or after December 21, 1997. However, in an e-mail dated September 4, 2007, WSDOT indicated that the subject proposal will not have a significant impact on the state highway system, and no mitigation is requested or required (Exhibit 8F). As such, payment of mitigation fees to WSDOT are not required for this project.

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

Interlocal agreements (ILAs) have been executed between Snohomish County and the Cities of Mill Creek and Bothell for traffic mitigation for impacts on the cities' road system.

The subject proposal will not impact the City of Mill Creek with 3 p.m. peak hour trips and the proposal is, therefore, not subject to the mitigation requirements of the Snohomish County-Mill Creek ILA.

Snohomish County and the City of Bothell currently have an interlocal agreement (effective August 9, 2006) which provides for a reciprocal payment arrangement to mitigate traffic impacts within the two jurisdictions (Exhibit 8J). A copy of a voluntary offer to pay the City mitigation requirements signed by the Applicant was submitted with the application for the amount of \$5,023.20, and sent to the City for comment.

Section III(F)(1) of the interlocal agreement states "...for each mitigating measure requested the City shall identify the specific impacts and reference the relevant City mitigation policy. Notification of the specific mitigation measures shall be provided by the City within twenty-one (21) days of the notice of application provided in accordance with Section III(D)". Further, Section III(F)(2) states "if SnoCoPDS does not receive timely notification of the City's requested measures consistent with Section III(D) above, SnoCoPDS may assume that the City has no comments...and may not require any mitigation form the development..."(Exhibit 8J at page 4).

As of the date of this report, comments have not been received from the City. Therefore PDS has assumed that the City has no comment, and payment of traffic mitigation to the City should not be imposed on the subject development, based on the terms of the ILA. Accordingly, the

Hearing Examiner finds that no road impact mitigation fees are required to be paid to the City of Bothell.

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

All new developments in the urban area shall provide TDM. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. [SCC 30.66B.650].

The trip reduction percentage for this development is 5%. The TDM obligation for this development is therefore equivalent to 5% of the 8.08 new PM peak hour trips x \$1,500.00, which equals \$606.00. The Applicant has offered in writing to pay this amount (Exhibit 8I). PDS recommends that the Examiner impose a condition requiring payment of the TDM obligation prior to building permit issuance.

9. Pedestrian Facilities [RCW 58.17.110]

The Hearing Examiner is required to make findings regarding safe walking conditions for school children who may reside in the subject development. Public Works requests notification of any and all comments received from the local school district regarding the location of school bus stops nearest the subject property and/or if any school children will be required to walk to school.

Comments have been received from the Northshore School District dated September 14, 2006 (Exhibit 8B) stating that the students in all grades will be provided bus service to and from school. The bus stop is located at 32<sup>nd</sup> Avenue and 180<sup>th</sup> Street SE. With the completion of the subject proposal, new sidewalks within the development, and along the development's frontage on 180<sup>th</sup> Street SE, will connect to existing sidewalks on 180<sup>th</sup> Street SE and 181<sup>st</sup> Street SE. Sidewalks will be available all the way to the bus stop location. The Hearing Examiner finds that safe walking conditions for pedestrians and students will be provided by the development as designed.

10. 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 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. The Applicant is entitled to credit for one existing lot. Although there are two tax parcel numbers represented for the subject property, there is only one underlying legal lot. PDS has requested that the Hearing Examiner impose a condition requiring that the Applicant comply with Chapter 30.66C SCC at the time of building permit submittal and pay any applicable school impact fees prior to building permit issuance.

11. Drainage and grading.

Drainage.

Stormwater runoff from all roads, driveways and internal Lots 1 through 5 will be collected by a storm drainage system consisting of 12-inch CPEP pipe and catch basins and directed to the detention vault located within Tract 998, before being discharged via a quarry spill flow dispersal pad into the existing wetlands. Water quality is to be provided by Stormfilter 360 manhole filters. Lots 6 through 9 and their driveways will have individual dispersal trench systems located outside of the wetland buffer, but will flow into the buffer and associated wetland. (Exhibit 2C1-6 and Exhibit 3D)

The undeveloped and developed runoff for this project was calculated for the 2-year, 10-year and 100-year design storms using the Santa Barbara Unit Hydrograph method. The Stream Bank Erosion Control Detention Release Standard as defined by the Washington State Department of Ecology (DOE) in the 1992 *Stormwater Design Manual for the Puget Sound Basin* was utilized to size the detention facilities. The undeveloped flows for the 2-year, 10-year and 100-year storms correspond to values of 0.06, 0.16 and 0.29 cfs. The developed flows from the site, prior to storm detention, are as follows: 0.19, 0.32 and 0.48 cfs.

The development proposes in excess of 5,000 square feet of new impervious surfaces, which meets the definition of a "major development activity" pursuant to Chapter 30.63 SCC. Therefore, a full drainage plan and report is required for construction review. Water quality will be controlled during construction by the use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. No downstream flooding was reported by the Surface Water Management division of DPW.

Grading.

The project is proposing to cut approximately 1,100 cubic yards and fill 1,100 cubic yards. The proposed amount of grading for this project is in excess of 100 cubic yards, which triggers the need for a grading permit and Stormwater Pollution Prevention Plan (SWPP) pursuant to Chapter 30.63B SCC and Rule 3044.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, PDS has concluded that this project will meet the requirements of Chapters 30.63A and 30.63B SCC.

12. Critical Areas Regulations (Chapter 30.62 SCC)

- A. Fish and Wildlife Habitat Conservation Areas. A PDS staff biologist visited the subject property on August 21, 2007 and found Tambark Creek, a Type 3 non-ESA anadromous fish bearing stream on the site with three associated riparian Category 3 wetlands. All of the critical areas were found to be properly flagged in the field and accurately depicted on the submitted site plan. Most of the critical areas are off-site and forested along the Tambark Creek corridor. Coho salmon and cutthroat trout exist within the Tambark Creek system.

Portions of the wetland buffers are proposed to be averaged to accommodate for the proposed development. All of the mitigated critical areas and buffers are proposed to be permanently protected as a NGPA within Tract 999.



A Type 3 non-ESA anadromous stream flows south near the SE property boundary in a forested condition. An associated Category 3 forested riparian wetland lies to the east of Lot 8 and to the south of Lots 6 & 7. These two critical areas and their associated 25-foot and 100-foot buffers are proposed for permanent protection in a NGPA/E within Tract 999. A small portion of the western edge of the standard 100-foot stream buffer in the vicinity of proposed Lot 9 is being reduced through buffer averaging, which is allowed under SCC 30.62.350(1)(c). Added buffer is being proposed at a ratio of approximately 5:1. (The Applicant proposes to add 4,014 square feet of buffer to offset a buffer reduction of 817 square feet). This ratio exceeds the standard minimum mitigation ratio set forth in the County Code. Avoidance and minimization as required per SCC 30.62.365 has been demonstrated with the exception of the buffer averaging described and as allowed by the Code. No additional impacts are being proposed and no additional mitigation is required.

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

B. Geologically Hazardous Areas.

- i. **Landslide Hazards.** There is an area on the subject property that meets the definition of a landside hazard area. This area is in the southwest portion of the property, and is characterized by steep slopes associated with and next to the Type 3 stream (Tambark Creek), shown on the Preliminary Short Plat map as NGPA. The Applicant has proposed to place the entire area into an NGPA/E which will permanently protect that area. As such, no additional conditions are needed relating to protecting the area against landslide hazard.
- ii. **Erosion Hazards.** The Geotechnical Engineer has reviewed the *Soil Survey of Snohomish County Area, Washington* by the Soil Conservation Service (SCS) to determine the erosion hazard of the on-site soils. The site surface soils were classified using the SCS classification system. The soils were determined to be Alderwood gravelly sandy loam, 2% to 8% slopes (Unit 1) in the western region of the site. Again, given that this area will be permanently protected in a NGPA/E, no conditions relating to erosion hazard areas will be imposed.
- iii. **Seismic Hazards.** The Geotechnical Engineer's opinion is based on their subsurface explorations of the site. The Soil Profile, determined in accordance with Table 1613.5.2 of the *2006 International Building Code (IBC)*, is Soil Class C. Additional seismic considerations include liquefaction potential and amplification of ground motions by soft soil deposits. The liquefaction potential is highest for loose sand with a high groundwater table. The underlying dense till, drift and outwash soils are considered to have a low potential for liquefaction and amplification of ground motion. No special conditions relating to seismic hazard areas will be imposed.

13. Consistency with the GMA Comprehensive Plan.

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

The subject rezone and short plat proposal is for a 9-lot single-family residential development resulting in a density of 5.39 dwelling units per acre. The Hearing Examiner finds that the requested rezone is consistent with, and implements the General Policy Plan’s Urban Low Density Residential designation of the property.

In addition to the GPP’s direct statement that R-7200 is an appropriate implementing zone for lands designated ULDR, the following are the relevant Goals and Policies of the GPP that apply to this application.

14. Utilities

- A. Water. Water will be supplied by the Alderwood Water and Wastewater District. A Certificate of Water Availability was received on August 13, 2007 (Exhibit 8E).
- B. Sewer. Sewer will be supplied by the Alderwood Water and Wastewater District. A Certificate of Water Availability was received on August 13, 2007 (Exhibit 8E).
- C. Electricity. Snohomish County Public Utility District No. 1 provided correspondence on July 31, 2007 indicating that they can provide electrical service for the project (Exhibit 8C).
- D. Health District. Snohomish Health District recommended approval of the rezone and administrative site plan on August 6, 2007 (Exhibit 8E), on condition that the on-site sewage disposal system and well be abandoned. This will be made a condition of approval.

15. Uniform Fire Code

Chapter 30.53A SCC was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007 (which amendment adopted the International Fire Code). This application is subject to that version of Chapter 30.53A SCC that was in effect prior to September 21, 2007 (the Uniform Fire Code). The subject rezone and short plat has been reviewed by the County Fire Marshal's Office. The Fire Marshal provided the following comments and proposed conditions:

- A. Fire flow and fire hydrants shall be provided in accordance with Chapter 30.53A.310 SCC. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office. The following requirements shall apply to the installation of any required hydrant:

- Four (4) inch storz type steamer port fittings shall be provided on new hydrants.
  - The top(s) of the hydrant(s) shall be colored green.
  - Install blue street reflector(s) on the hydrant side of centerline to indicate hydrant location(s).
- B. The minimum required fire flow for this project has been determined to be 1,000 gpm at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Chapter 30.53A.300 SCC, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems;
- C. 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 road fronting the property. Numbers shall contrast with their background. Address signage for the panhandle lots that are visible from the public way shall be provided;
- D. Fire apparatus access as depicted meets the minimum requirements of Chapter 30.53A.150 SCC and we have no further requirements.

A request for review was sent to Snohomish County Fire Protection District #07 with the notice of application. The Fire District did not provide comments. No additional conditions are necessary.

A Preliminary Certificate of Water Availability from the Alderwood Water and Wastewater District (Exhibit 8E) has been provided indicating that an adequate water supply can be provided that meets the fire flow requirements of SCC 30.53A.300 and Appendix III-A of the IFC. PDS stated that a Final Certificate of Water Availability will be required prior to recording of the plat. If the required flow cannot be provided at that time, NFPA 13-D fire suppression systems must be required for the residential buildings pursuant to the County Code.

The subject rezone and short plat meets the applicable requirements of Chapter 30.53A SCC, and the Uniform Fire Code.

## 16. Zoning (Chapter 30.2 SCC) and Rezone Request

### 1. Rezone

Under SCC 30.42A.100, the hearing examiner may approve a rezone only when all the following decision criteria are met: (a) The proposal is consistent with the comprehensive plan; (b) The proposal bears a substantial relationship to the public health, safety, and welfare; and (c) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

#### A. The rezone proposal is consistent with the Comprehensive Plan.

The subject property is located within an Urban Growth Area (UGA) and is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map. The GPP states that R-7200 is an implementing zone for

lands designated ULDR and that housing of various types should be directed to the UGA. Therefore, based on the finding that the subject property is designated ULDR on the GPP Future Land Use map, the requested rezone is consistent with the adopted comprehensive plan.

- B. The requested rezone bears a substantial relationship to the public health, safety, and welfare.

The requested rezone conforms to the Comprehensive Plan, and as shown by the detailed review provided in the PDS Staff Report, adequate provisions have been made to ensure compliance with the County's development regulations. Therefore, the rezone implements public policy and advances the public health, safety and welfare.

- C. The minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are NOT applicable to this application.

In the context of the GMA, development regulations, and therefore rezones, must be consistent with and implement the comprehensive plan [RCW 36.70.040]. But in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan.

The proposed future development plans submitted for the project have been deemed to be in compliance with County GMA development regulations relating to traffic, drainage, project density and zoning, parks and school mitigation and critical areas protection.

Based on the finding above, the proposed rezone bears a substantial relationship to the public health, safety and welfare.

## 2. Zoning.

Upon approval of the rezone, the Hearing Examiner finds that this project meets the requirements of the Zoning Code for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

Lot Size Averaging. The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots, plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and r/w setbacks of 15 feet, except that garages must be setback 18 feet from the r/w (except alleys) and corner lots may reduce one r/w setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%. In the present case, the LSA calculation is as follows:

Area in Lots (38,594 square feet) + Critical Areas and Buffers (28,556 square feet) + Open Space (0 square feet) = (67,150 square feet) ÷ (9 lots proposed) = (7,461) square feet

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

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on April 1, 2008 (Exhibit 5B). The DNS was not appealed.

18. Subdivision Code (Chapter 30.41A SCC)

The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. These 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 plat conforms to applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland and buffer areas, and the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B, and 30.66C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and sewer are to be provided by the Alderwood Water and Wastewater District (Exhibit 8E).

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

The new access road to be known as 181<sup>st</sup> Street S.E. shall be dedicated to Snohomish County for public use.

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

## CONCLUSIONS OF LAW

1. The proposal is consistent with the GMACP; GMA-based County codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
2. Adequate public services exist to serve the proposal.
3. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
4. The rezone request meets the requirements of the County Code, and the proposed rezone bears a substantial relationship to the public health, safety and welfare.
5. Any Conclusion in this Order, which should be deemed a Finding of Fact, is hereby adopted as such.

## DECISION

The requests for a **REZONE** from Residential-9600 to Residential-7200 and a 9-Lot **SHORT PLAT** are hereby **GRANTED** subject to the following **CONDITIONS**:

### CONDITIONS

- A. The preliminary plat received by PDS on March 4, 2008 (Exhibit 2B) shall be the approved short plat configuration. Changes to the approved short plat are governed by SCC 30.41B.310.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The 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.
- 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 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 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:

\$2,157.72 per lot for mitigation of impacts on county roads paid to the County,  
\$67.33 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 payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments 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 \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

D. Prior to recording of the final plat:

- i. Construction of urban standard frontage improvements on 180<sup>th</sup> Street SE shall have been completed.
- ii. Adequate public road access shall be provided to the satisfaction of the County.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iv. The onsite sewage system shall be abandoned by having the septic tank(s) pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272-18501). Documentation demonstrating completion of this work must be submitted prior to final plat approval.

- v. The existing well shall be decommissioned in accordance with WAC 173-160-381-. A copy of the well contractor's decommissioning report(s) must be submitted prior to final plat approval.

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

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 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.

Order issued this 4<sup>th</sup> day of August, 2008.

\_\_\_\_\_  
Millie M. Judge, Hearing Examiner, Pro Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
---

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

**Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **August 14, 2008**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:



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

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

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **AUGUST 18, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Michael Dobesh

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