

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

DATE OF DECISION: July 2, 2008

PLAT/PROJECT NAME: **Stonewater Creek Division 3**

APPLICANT/  
LANDOWNER: Tri Star Homes, Inc.

FILE NO.: 07 111614 SD

TYPE OF REQUEST: 29 lot, two phased subdivision utilizing lot size averaging

DECISION (SUMMARY): APPROVED subject to Conditions

**BASIC INFORMATION**

GENERAL LOCATION: The project site is west of the intersection of 29th Avenue SE & 123rd Street SE, Everett in Section 29, Township 28 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 7.2 acres

ZONING: R-8400

COMPREHENSIVE PLAN DESIGNATION:  
General Policy Plan Designation: Urban Low Density Residential

UTILITIES:  
Water/Sewer: Silver Lake Water and Sewer District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:  
Department of:  
Planning and Development Services: Approve subject to conditions

## **INTRODUCTION**

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

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

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by SCC 30.72.030(4). See Exhibits 6A (mailing), 6B (publication) and 6C (posting).

A SEPA determination was made on April 21, 2008. See Exhibit 5B2. No appeal was filed.

The Examiner held an open record hearing on June 25, 2008, the 83<sup>rd</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

## **PUBLIC HEARING**

The public hearing commenced on June 25, 2008 at 9:02 a.m.

1. Paul MacCready, appeared on behalf of PDS and gave an overview of the rezone request and answered questions from the Examiner. Also testifying on behalf of PDS were Jack Hurley, drainage specialist, and Norm Storm, Traffic Reviewer
2. Don Miller appeared on behalf of the applicant, Spadafora Construction. Louis Emenhiser, biologist, also appeared and testified on behalf of the applicant.
3. Ken Finicle appeared and testified with questions and comments regarding the request.

The hearing concluded at 10:51 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. All exhibits and witnesses included on the Master Exhibit and Witness List were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. State Environmental Policy Act Compliance. A Revised Determination of Nonsignificance (DNS) was issued April 21, 2008. Exhibit 5B2. The DNS was not appealed.
3. Nature of Request: The applicant is requesting approval of a preliminary subdivision of 7.2 acres for 29 single family lots utilizing the lot size averaging (LSA) provisions as specified in Snohomish County Code (SCC) 30.23.210. The subdivision will be developed in two phases. The property is currently zoned Residential-8,400 (R-8400). No rezone is proposed. Five open

space tracts are proposed for the development to be used for stormwater detention and Native Growth Protection Area (NGPA) containing Penny Creek and its associated wetlands. The largest of the proposed building lots is 6,822 square feet; the smallest is 3,202. The average lot size is 4,142 square feet. Silver Lake Water and Sewer District will provide public water and sewer service to the proposed building lots.

Access to Phase 1 of the development will be from the west via 122nd Place SE through the preliminary plat of Stonewater Creek, Division 1 (PFN: 05-127846 SD). This plat must be recorded before Phase 1 can be recorded because no other outlet is proposed. Access to Phase 2 will be from the east via 29th Avenue SE, and south via 28th Avenue SE also through the preliminary plat of Stonewater Creek, Division 1. Phase 2 would be able to be recorded separately from Stonewater Creek, Division 1 because primary access will be from an existing County right-of-way.

4. Site description: The subject site is 7.2 acres and consists of two original parcels. It is located west of the intersection of 29th Avenue SE and 123rd Street SE in the Everett Municipal Urban Growth Area (MUGA). The undeveloped properties are forested. A Category 3 wetland surrounds Penny Creek, which flows south through the west central portion of the site, and eventually on to Ruggs Lake. The steepest slope on the site, located in the northwest corner, is approximately fifteen percent. The soils are classified as Alderwood Urban Land complex and Kitsap Silt Loam according to the Soil Survey of Snohomish County
5. Adjacent uses: The subject site is currently surrounded by R-8400 zoned property, all single family residences or vacant. The approved preliminary plat of Stonewater Creek, Division 1 (PFN: 05-127846 SD) lies to the south and west. The final plat is currently under review. Ruggs Lake is located approximately 1,000 feet to the south.
6. Issues of concern: Three comment letters were received from the public (Exhibits 9B, 9D, and 9F). Concerns expressed about the proposed project included: increased traffic impacting the capacity of existing County roads (especially 29th Ave SE), impacts to Penny Creek and the surrounding wetlands, storm water runoff, impacts to wildlife. There was an additional concern from Mary Dulin about the boundary lines of the proposed subdivision (Exhibit 9D)

The Department of Public Works (DPW) Traffic Operations Section reviewed the intersection of 29th Avenue SE and 124th Street SE for a possible inadequate road condition (IRC). After their investigation, Traffic Operations has determined that this intersection should not be classified as an Inadequate Road Condition.

Penny Creek and the surrounding wetlands are proposed to be entirely located within Native Growth Protection Area easements (NGPA/E). A wetland mitigation plan (Exhibit 3E) was submitted and approved that includes additional buffer and tree replacement at a 3:1 ratio. See a more detailed description under Critical Areas Regulation. No protected species were noted to reside within the boundaries of the subject site. Stormwater is proposed to be detained and treated in two separate facilities.

The boundaries of the proposed subdivision were verified by the applicant. Spadafora Development has come to an agreement with the neighbors having the dispute. See discussion by applicant in Exhibit 10.

Comments raised during the public hearing included questions about the nature of the cul-de-sac within phase 2 of the project. The applicant explained there will be a temporary cul-de-sac constructed to accommodate emergency vehicle turn-around. A comment was raised about whether the property would be turned into a park. PDS notified the park district but did not

receive any comments. A neighbor asked about impacts to his septic drainfield. The applicant explained that according to the drainage studies, storm waters from the houses and roads were to be channeled into underground vaults then into Penny Creek. There should be no increase in ground water in the vicinity of the neighbor's drainfield.

7. Transportation:

PDS Traffic reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures and recommended approval.

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area (TSA) as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 263.65 new ADT and has a road system capacity impact fee of \$70,395.48 (\$2,427.43/lot) based on \$267.00/ADT. These figures include credit for on site Transportation Demand Management (TDM) measures. A condition of approval is that this impact fee be paid prior to building permit issuance.

B. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of December 15, 2007. The expiration date of the concurrency determination is December 15, 2013.

The development has been deemed concurrent on the following basis: The subject development is located in TSA D which, as of the date of submittal, had the following arterial units in arrears: Unit #202 – Seattle Hill Road between 132nd Street SE and 35th Avenue SE, Unit #204 – 35th Avenue SE between 168th Street SE and Seattle Hill Road and Unit #218 – 164th St SW/SE from the SR I-5 ramps to the City of Mill Creek city limits. Based on peak-hour trip distributions, the subject development did not add three or more peak-hour trips any arterial units in arrears. The development generates 20.66 a.m. peak-hour trips and 27.83 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.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA D 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.

D. Frontage Improvements [SCC 30.66B.410]

All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

29th Ave SE is an opened constructed and maintained County Road. Frontage improvements are required and will consist of:

- 18 foot width from roadway centerline to the face of curb with asphalt concrete pavement on each side of the subject parcel's frontage,
- Cement concrete curb and gutter,
- Five foot planter,
- Five foot cement concrete sidewalk.

29th Ave SE is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any frontage improvements towards the applicant's impact fee is not applicable.

Construction of frontage improvements on 29<sup>th</sup> Ave SE is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

All developments are required to provide for access and transportation circulation in accordance with the Comprehensive Plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access for the westerly portion of the site (Phase 1) is proposed from 122nd PI SE, 26th Ave SE, 123rd Ave SE (all proposed roads within the preliminary plat of Stonewater Creek, Division I); and from 25th Ave SE, an open and constructed County road which provides access to the existing County road system. There is a condition of approval that Stonewater Creek, Division I shall be recorded before Phase 1.

The existing opened and maintained county roads, 29th Ave SE and 123rd Street SE will provide access to the easterly portion of the site (Phase 2) with a second connection into the plat of Stonewater Creek Division I, which will provide a choice for the residents of the plat to access the existing county road system to the east or west of the proposed subdivision. A road is stubbed to the north boundary of Phase 2 which will allow for the possibility of another access into Phase 2 of the plat and will allow for the future development of the property north of this subdivision. A temporary emergency vehicle turn around paved with asphalt with a rolled edge and meeting PDS standards shall be

constructed at the end of each of the road stubs in Phase 2. No connection is proposed between the two phases.

A deviation to the design standards was submitted with the application that would allow for the modification to the standard urban road cross section. The deviation request would change the cross section by removing the planter strip where adjacent to a critical area in Phase 1. The planter would be eliminated adjacent to the wetland on the east side of the road that ends in a cul-de-sac that provides access to five lots of the phase. The deviation request was approved on December 17, 2007 (Exhibit 7A).

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

29th Ave SE is designated as non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on each side of 29th Ave SE, according to the recording of the plat of Strait's Addition to Silver Lake. No additional right-of-way dedication is required along the 29th Ave SE frontage. 29th Ave SE is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any right-of-way dedication towards the applicant impact fee is not applicable.

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 has chosen option "d" by submitting an acceptable offer of \$10,335.60. The WSDOT has accepted this offer in their email dated October 12, 2007 (Exhibit 8B1). This offered amount was based on 30 new lots; however the application is for 29 new lots. It is a condition of approval that the amount of \$9,991.08 ( $\$36 \times 9.57 \text{ adt/lot} \times 29 \text{ lots}$ ) which amounts to \$344.52/lot be paid. This amount does not include TDM credit. The WSDOT in their October 2, 2007 email agreed to the \$10,335.60 mitigation offer.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

The County has an interlocal agreement ILA with the City of Mill Creek and this development is within the influence area that requires traffic mitigation be considered for the City. Comment from the City dated October 8, 2007, indicates that the applicant's obligation to the City is \$4,084.20 at \$140.83 per lot (Exhibit 8A). It is a recommended condition of approval that this amount per lot be paid.

There are no other 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]

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided 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. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

As found above an acceptable TDM plan was submitted with the initial application and that is the applicant's option to meet this obligation (Exhibit 2E). A 5% credit has been applied to the applicant's impact fee.

J. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject short subdivision. Comments have been received from the Everett School District dated December 3, 2007 (Exhibit 8C4) stating that the students will attend the following schools and will use the following methods to get to school:

School Type	Elementary	Middle School	High School
School Name	Silver Lake	Gateway	Cascade
Walk to School	No	No	No
Walk to School Bus	Yes	Yes	Yes
Will busses pick up children within/adjacent to this project	Yes	Yes	Yes
Bus Stop Locations	123rd St SE at 29th Ave SE		

Construction of the frontage improvements and internal sidewalks will provide safe walking conditions for the school children. County staff did not recommend any additional conditions. School children will wait for the bus on the sidewalks to be constructed along 29<sup>th</sup> Ave. SE

8. Environmental Impacts of the Proposed Development.

A. **Grading and drainage.**

The surface stormwater runoff from the developed site will be collected in a storm drainage system in the new county roads and conveyed to detention vaults in Tracts 998 and 996. These vaults will control the peak discharge rate from the site to levels that meet the Quantity Control requirements of SCC 30.63A.210(1).

Permanent water quality treatment is shown on the preliminary plat map in Tract 997 (Exhibit 2A) as a pond and in Tract 998 as a biofiltration swale. Both of these Best Management Practices (BMP's) are acceptable methods of addressing water quality requirements as identified in the Snohomish County Drainage Manual adopted as part of SCC 30.63A.

The detention facility on the west side of the project (Tract 998 in Phase 1) will take access over and through a drainage tract that is part of an adjacent plat of Stonewater Creek Division 1 (PFN 05-127846-SD). Rights of access should be recorded with Stonewater Creek Division 1 so legal access to the underground detention vault of Phase 1 of this development is clear. A condition is imposed to require the rights of access.

Requirements for detention facility landscaping are specified in SCC 30.25.023. Where fencing of a detention facility is required, Type A landscaping, as described in SCC 30.25.017(1), or a living fence at least three feet in height which will grow to at least eight feet in height within three years shall be installed in an area with a minimum width of six feet along the outside edge of the fence. The applicant provided a preliminary landscape plan (Exhibit 2D), which was reviewed by staff. A condition is imposed to implement the approved plan.

Planning and Development Services (Engineering) has reviewed the concept offered and recommends approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 15,000 cubic yards of cut and 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) as required by Chapter 30.63A SCC.

**B. Critical Areas.**

A Type 3 stream flows south across the western half of the property entering the north property line in a forested condition then transitions to an associated Category 3 forested riparian wetland along the length of the stream where the stream and wetland continue off-site to the south. The stream is known as Penny Creek, and in this location does not contain anadromous fish. The minimum standard buffers for the stream and wetland are proposed as 50 feet and 25 feet respectively per SCC 30.62.310 and are being permanently protected as NGPA/Es as required per SCC 30.62.320.

The applicant proposes a cul-de-sac from an adjacent preliminary plat on the west (Phase 1) where some impacts to existing forested vegetation may occur due to grading within 15 feet of the buffer boundary. The applicant has minimized the impacts as required per SCC 30.62.365 by avoiding most impacts to the standard buffer with the very minor exceptions of a temporary buffer impact that is estimated at 24 square feet in the southwestern corner adjacent to the proposed underground detention vault and two additional minor restoration areas for stormwater outfall quarry spall pads, approximately 32 square feet each in size and a small extension of a bio-swale within the buffer in the

southwest corner of the site. Mitigation for the buffer impacts is proposed in the form of restoration as required per SCC 30.62.345(1)(a) and with the addition of 370 square feet of additional buffer near Lots 1 & 2 and 6 & 7 in Phase 2. The applicant completed a detailed tree survey to locate trees that could potentially be impacted due to grading within 15 feet of the buffer. Replacement trees are proposed to be planted as mitigation for the potential loss of trees within the buffer at a 3:1 replacement ratio. These replacement trees are proposed to be installed even if it is later determined that no impacts occurred to the existing trees during the construction phase. The replacement trees will consist of both cedar and Douglas fir.

The revised preliminary site plan map failed to correctly depict one of the small areas of added buffer to the west of Lots 6 & 7, Phase 2. At the public hearing the applicant filed the corrected maps, Exhibits 21 and 22.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is 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.

**C. Parks impacts.**

The proposal is within Nakeeta Beach District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. Payment is a condition of approval in order to comply with the requirements of Chapter 30.66A SCC

**D. Schools.**

Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Everett School District No. 2, 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 two existing lots.

**E. Uniform Fire Code.**

PDS sent a request for review document to Fire District # 7 on October 4, 2007. PDS did not receive a response from the Fire District.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the preliminary plat on November 30, 2007. The conclusions of the review were that:

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

- b) The minimum required fire flow for this project has been determined to be 750 gallons per minute (GPM) at 20 psi for a 2-hour duration. It is a recommended condition of approval that prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.520 (16), the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 GPM at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.
- c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150. No further requirements are necessary for the preliminary plat.

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

9. General Policy Plan Designation.

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

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). 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 29 lots in two phases proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

10. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

11. Subdivision Code(Chapter 30.41B SCC)

The proposed short subdivision also meets Chapter 30.41B SCC requirements. A complete application for the proposed short plat was received by PDS on April 11, 2007. The proposed short plat as conditioned also meets the general requirements under Section 30.41B.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41B.200 design standards for roads.

12. PLATS – SUBDIVISIONS – DEDICATIONS:

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

The proposed plat 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 on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water and sewer are to be provided by Silver Lake Water & Sewer District.

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

**CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).
2. 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.
3. Adequate public services exist to serve the proposal.
4. If approved with conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
5. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

**DECISION**

The request for approval of the proposed preliminary plat of Stonewater Creek, Division 3 in two phases is APPROVED subject to the following and CONDITIONS:

## **CONDITIONS**

- A. The revised preliminary plat filed at the public hearing on June 25, 2008 (Exhibit 22) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The 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.
  - iii. A final mitigation plan based on the conceptual Critical Area Study and Buffer Mitigation Plan for Stonewater Creek III, Revision #1, prepared by Wetland Resources, dated February 28, 2008 (Exhibit 3E) shall be submitted for review and approval during the construction review phase of this project. Note, however that the replanted trees shall consist of an equal mix of Red Cedar and Douglas Fir.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The dwelling units within this development are subject to park impact fees 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."
  - ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District No. 1 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for two existing parcels. Lot 1 of Phase 1 and Lot 1 of Phase 2 shall receive credit."
  - iii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$2,427.43 per lot to Snohomish County as mitigation for project impacts on County road system capacity within Transportation Service Area F. Credits for certain expenditures may be allowed against said payment to the extent authorized by County code.  
\$344.52 per lot to Snohomish County for the Washington State Department of Transportation (WSDOT) as fee mitigation of project impacts on State highways.  
\$140.83 per lot for mitigation of impacts on City streets for the City of Mill Creek paid to the City. Proof of payment shall be provided.  
These payments are due 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.”

- iv. 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.”

- v. Fire hydrant locations shall be depicted on the face of the plat, and locations for the new hydrants shall be approved by PDS.

D. Prior to recording of Phase 1 of the final plat:

- i. Stonewater Creek, Division 1 (PFN: 05-127846 SD) shall have been recorded granting vehicular access via 122nd Place SE to Phase 1 of Stonewater Creek, Division 3. In addition, vehicular rights of access shall be granted to the underground detention vault in Tract 998, Phase 1, Stonewater Creek, Division 3 via the Open Space/Detention Tract 998 of Stonewater Creek, Division 1.

Prior to recording of Phase 2 of the final plat:

- ii. Construction of urban standard frontage improvements on 29th Ave SE shall have been completed to the satisfaction of the County.

Prior to recording of both phases of the final plat:

- 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 Planning and Development Services for review and approval prior to installation.

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

- v. The developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 GPM at 20 psi for a 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.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 2D) shall be implemented. Final plans for the detention facility landscaping shall be submitted for review and approval during the construction review phase of the project and installed in accordance with the approved landscape plan.
- F. 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.

Decision issued July 2, 2008.

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James A. Densley, Hearing Examiner Pro Tem

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

**Reconsideration**

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

A Petition for Reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the

petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

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

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

### **Appeal**

An appeal to the County Council may be filed by any aggrieved Party of Record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a Petition for Reconsideration but may file an appeal directly to the County Council. If a Petition for Reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JULY 16, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Paul MacCready

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