

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: June 28, 2012

PLAT/PROJECT NAME: *Nature's Ridge*

**APPLICANT/
LANDOWNER:** Natural 9 Holdings, LLC
10515 20th Street SW
Lake Stevens, WA 98258

FILE NO.: 09-102096

TYPE OF REQUEST: Rezone and Preliminary Subdivision Approval using Lot Size Averaging

**DECISION
(SUMMARY):** **Rezone is GRANTED;
Preliminary subdivision approval is GRANTED, subject to conditions.**

BASIC INFORMATION

LOCATION: 4010 180th Street SE, Bothell; in Section 16, Township 27 North, Range 5 East, W.M.,
Snohomish County, Washington.

ACREAGE: 19.65 acres

NUMBER OF LOTS: 72

AVERAGE LOT SIZE: 8,078 square feet

MINIMUM LOT SIZE: 3,872 square feet

GROSS DENSITY: 3.66 du/acre (6.26 du/acre net)

GMACP DESIGNATION: Urban Low Density Residential (4-6 du/acre)

ZONING: R-9600

PROPOSED ZONING: R-7200

UTILITIES:

Water: Silver Lake Water and Sewer District

Sewer: Silver Lake Water and Sewer District
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Northshore School District No. 417
FIRE DISTRICT: Snohomish County Fire District No. 7

PDS STAFF RECOMMENDATION: Approve, subject to conditions

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. Regulatory Review and Vesting. A complete application was submitted to Planning and Development Services (PDS) on May 18, 2009 for purposes of regulatory vesting. Between this date and April 4, 2012, the Applicant was required to resubmit its proposal three additional times before it was deemed to meet the County's regulations. As of the date of the public hearing, 116 days of the 120-day review period had elapsed.
2. Public Hearing. A public hearing was held on May 16, 2012. Appearing for the Applicant was Project Manager George Newman and Barry Talkington of Barghausen Consulting Engineers, Inc. and project consultants. Mr. Newman noted that all right, title and interest in the subject property had been transferred to Natural 9 Holdings LLC, from Washington Federal Bank, who took the deed to the property in lieu of foreclosure from the Olson Trust. An updated Master Application Form showing the correct owner for purposes of the "Applicant" was submitted into the record as Exhibit A.1. Stacey Abbott, Ann Goetz and Trace Justice appeared and testified on behalf of PDS. No members of the public attended the open record hearing.
3. The Record. All of the Exhibits shown on the master list of exhibits (Exhibits A.1 through J) were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The record was left open to allow PDS and the Applicant additional time to submit proposed language amending proposed "Pre-Condition A.1," shown on page 18 of the PDS Staff Recommendation. (Exhibit K) The proposed amendment is set forth in Exhibit K.1 and was received on June 20, 2012, which has been added to the record. On June 27, 2012, Stacey Abbott, PDS, sent a memo to the Hearing Examiner seeking to reopen and supplement the record to allow the inclusion of information relating to the availability of electricity to the site from Snohomish County PUD No. 1, which was inadvertently left out of the record. (Exhibit K.2) The Examiner granted the request and added the document to the record as Exhibit K.3. Notice was provided to all parties of record.

The entire record (Exhibits A through K.3) was considered by the Examiner in reaching this decision.

4. Public Notice. The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits E.1, E.2, F.1, F.2 and F.3)

A. Background Information

5. Applicant's Proposal. The Applicant is requesting a rezone from R-9600 to R-7200 to allow for a 72 lot subdivision. The initial application review proposed 83 lots, however the lot total was reduced to meet applicable stormwater control regulations. The subject site consists of approximately 19.65 acres and the proposal has been designed in accordance with the lot size averaging (LSA) provisions of SCC 30.23.210. The lots will range in size from 3,872 square feet to 6,454 square feet. Lots in the project will have access through the public road system. Water and sewer service will be provided by Silver Lake Water and Sewer District.
6. Site Description and Surrounding Uses. The site consists of 19.65 acres and is currently developed as low-density single-family residential housing. Located on the east parcel boundary is an existing 155-foot Seattle City Light easement. Additionally, there is a 35-foot underground Williams Northwest Pipeline easement on the south boundary. The site is bound by Brookfield Estates (PFN 04- 116315), an approved preliminary plat currently under construction, and 180th Street SE right-of-way to the north, private undeveloped parcels to the east, 184th Street SE right-of-way to the south and the plat of Tambark Estates to the east.

The site is currently vegetated with grass, pasture and second growth forest. The property contains a small isolated Category IV wetland midway along the western property boundary. A large Category II Wetland associated with Tambark Creek is located west of the subject property. Buffers from this wetland extend onto the site. A second smaller wetland is located near the southeast corner of the property. No streams were identified on the property or within 300 feet of the site.

The surrounding zoning is R-7200 on the north, south and east boundaries. The property located to the west is zoned PRD-9600. On the north side of 180th Street SE adjacent to the subject property, the land is zoned R-9600.

7. Issues of Concern:
 - A. Agency Comments. No issues were raised during agency reviews.
 - B. Citizen Comments. Two letters related to the project were received from members of the public. No issues of concern were raised.

C. Compliance with Codes and Policies

Subdivision Approval

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

8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area 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. The Examiner finds that such payment or contribution of in-kind mitigation is acceptable as mitigation for parks and recreation impacts in accordance with County policies.

9. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record, and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.

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

- i. Road System Capacity Impacts (SCC 30.66B.330) In terms of addressing the capacity issues raised by citizens, according to SCC 30.66B.330(1), a development shall mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the 8th Edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330, with a few exceptions.

The impact fee for the subject development is based on the new ADTs generated by 71 net new single-family residences. The development will generate 9.57 ADT per lot, (679.47 total new ADT) and has a road system capacity impact fee of \$156,278.10 (\$2,170.53 per SFR building permit), based on \$230.00/ADT, which is the TSA "E" amount per ADT for residential developments inside the UGA. The impact fee payments are due in accordance with the provisions of SCC 30.66B.340. Payment of such impact fees as mitigation for impacts to county roads demonstrates compliance with SCC 30.66B.330. (Exhibits C.1, C.2 and C.3)

- ii. Concurrency (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development is located in TSA E, which, as of the date of submittal, had no arterial units in arrears.

The subject development generates 53.25 new A.M. peak-hour trips and 71.71 new P.M. peak-hour trips, which is *more* than the threshold of 50 peak-hour trips, and thus, the developer was also evaluated under SCC 30.66B.035. Pursuant to 30.66B.035(1), the Applicant has evaluated the future level-of-service on the road system consistent with the specific traffic study requirements imposed by the County and has found that at the time of application submittal arterial, Units 207, 209 & 420 were on the County's Critical Arterial Unit List and would be impacted by 3 or more directional PHTs. The following are the identified improvements:

- Right-turn lanes on the WB, NB & EB approaches at the intersection of 35th Ave SE/180th St SE.

- Left-turn lanes for the WB, NB & SB approaches at the intersection of 35th Ave SE/180th St SE.
- A right-turn lane for the SB approach at the intersection of 35th Ave SE/Grannis Road.

However, the identified improvements are part of a County project that is already funded. Based on this fact, the Applicant is not required to construct these improvements.

The development was determined to be concurrent September 9, 2009. The concurrency determination expires 6 years from the date of the determination. (Exhibit J)

- iii. Inadequate Road Conditions (IRC) (SCC 30.66B.210) Regardless of the existing level of service, development which adds three or more PM peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate it. To eliminate an IRC means to make sufficient changes to the road system to allow the County engineer to determine that the location no longer constitutes an IRC. (SCC 30.66B.210(1)) An IRC means *“any road condition, whether existing on the road system or created by a new development's access or impact on the road system, which jeopardizes the safety of road users, including non-automotive users, as determined by the county engineer.”* (SCC 30.911.020)

The County Engineer determines whether or not a location constitutes an IRC in accordance with the Department of Public Works' (DPW) adopted Administrative Rule 4223, using a 3-step process. First a technical evaluation of hazards is done in accordance with the 1997 Federal Highway Administration, Department of Transportation's Report No. FHWA-RD-77-82, "Identification of Hazardous Locations." Second, a 3-person review board, consisting of DPW senior level transportation professionals, meets to confer as to whether the location constitutes an IRC. Third, the County Engineer makes a final evaluation and signs off on the IRC determination. (DPW Rule 4223) The County Engineer's determination that a location constitutes an IRC is final and is not subject to review or appeal pursuant to SCC 30.66B.820, but the effect of an IRC location determination on a development may be appealed in accordance with SCC 30.66B.820.

The subject development proposal will not impact any IRC locations identified within TSA E with three or more of its PM peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

- B. Frontage Improvements (SCC 30.66B.410) All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

Here, DPW Rule 4222.020(1) requires the construction of full urban frontage improvements along the subject property's frontage on 184th Street SE. The road is designated as a non-arterial on the County's Arterial Circulation Map. EDDS 3-030B specifies the following design for an urban collector non-arterial road:

18 feet of pavement widening on each side of the right-of-way centerline to total 36 feet, to provide for two 10-foot travel lanes, an 8-foot wide parking strip on each side, vertical curbs, 5-foot planter strips, and 5-foot sidewalks.

The current plan does not show frontage improvements within the 155-foot wide Seattle City Light transmission line easement that runs inside the subject development adjacent to and along the east boundary line. The Applicant must construct full standard urban frontage improvements along the property's frontage with 184th Street SE to the future alignment of 43rd Avenue SE. Interim frontage improvements (pavement widening for the 184th Street road section plus an interim 5-foot walkway) will be required within the future alignment of 43rd Avenue SE to the east property line. Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

- C. Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) All developments are required to: (1) Provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development; (2) Design and construct such access in accordance with the EDDS; (3) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430; (4) Access to state highways and city streets must be made in accordance with the applicable state or city standards and requirements; and (5) All developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, must improve such road to bring it into compliance with the EDDS, when the DPW Director determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements is established by the Director of the DPW in accordance with SCC 30.66B.430.

PDS staff considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown in Exhibit J (at pages 5-16), which is incorporated herein by this reference as if set forth in full.

- D. Road Classification and Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520)
The extent of right-of-way and improvements required from a developer is based on an analysis of various factors including the road classification(s) serving the development (both internally and externally), access and circulation requirements, sight distance, and the factors described below in SCC 30.66B.430, above. In the present case, there are five proposed public roads within the internal road system: 43rd Avenue SE, and Roads A, B, C and D.
- E. Extent of Improvements (SCC 30.66B.430) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). (Exhibit J) The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

It should be noted that the Applicant was granted two deviations from the EDDS by the County Engineer. (See, Exhibits G.1 and G.2) First, a request for approval of a deviation from EDDS section 3-09 D was reviewed and approved by the Snohomish County Traffic Engineer in DPW. The deviation sought approval for the proposed design of the interior public plat roads as follows: the proposed centerline separation between 43rd Avenue SE (an arterial road) and Road C/D (a residential road) would have a distance of approximately 130 feet. EDDS 3-09 D requires a 165 foot distance in that situation. The design of the intersecting residential road was revised from a 90 degree intersection elbow to an intersection in order to eliminate a short private road intersecting off the elbow. The change was made to a standard "T" intersection with a public road stub replacing the private road at DPW's request in order to improve the configuration of the intersection. In addition, the subdivision code does not allow the lots within the development to be served to be private roads.

Second, a deviation from EDDS section 3-04 for the proposed design of the arterial road, 43rd Avenue SE was reviewed and approved by the Snohomish County Traffic Engineer in DPW. The deviation asked to eliminate the planter strip and sidewalk on the west/south side between 180th Street SE and the first road intersection; also asked to approve a horizontal curve of 275 feet in the southeast area (EDDS Table 3-4 specifies a minimum radius of 415 feet for a design speed of 35 mph); and asked that the section of 43rd Avenue in the southeast corner (approximately 340 feet) not be constructed by the Applicant. The design elements requested were approved.

DPW determined that approval of the requested design will not adversely affect traffic safety and operations, maintenance, or aesthetic appearance as is required by EDDS 1-

05. The Hearing Examiner has reviewed the EDDS Deviations and reasons for granting them and concurs with the DPW determination.

- F. Impacts to State Highways (SCC 30.66B.710) When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. A provision in the ILA allows the County to proportionately adjust the WSDOT traffic mitigation fee when a development adds or eliminates lots during the review process.

Pursuant to SCC 30.66B.055 a written proposal from the Applicant proposing measures to mitigate impacts on state highways is required and has been received with the application. The Gibson traffic study dated April 2009 indicates that the proposed development will impact several WSDOT collection projects on the Exhibit C list in TSA "E" with 3 or more directional PM peak hour trips; therefore, the developer opts to pay WSDOT the proportionate share sum of \$12,893.51 for trip impacts generated by the development. The details are as follows, and the data has been proportionately adjusted to 71 net new lots from 81 net new lots;

- DOT-14: SR-9, SR-522 to 228th Street SE, 75 ADT impacting the location at \$83.96/ADT to total \$6,297.00 (\$87.46 per SFR building permit);
- DOT-15: SR-9, SR-522 to 212th Street SE, 75 ADT impacting the location at \$60.97/ADT to total \$4,572.75 (\$63.51 per SFR building permit); and
- DOT-41: SR-9 at 164th Street SE, 41 ADT impacting the location at \$49.36/ADT to total \$2,023.76 (\$28.11 per SFR building permit).

WSDOT responded on May 5, 2009 (Exhibit H.3), indicating their agreement with the Traffic Study. Payment of the above-stated amounts is a condition of approval.

- G. Impacts to City Streets and Roads (SCC 30.66B.720) The DPW 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 ILA referred to in SCC 30.61.230 between the County and the other agency. An ILA has been executed between the County and the Cities of Mill Creek and Bothell for traffic mitigation for impacts on the City's road system.

With respect to the City of Mill Creek, based on the trip distribution from the Gibson traffic study dated April 2009, the development will impact city arterials with a total of 19 PM peak hour trips. That number was based on the original proposal of 81 net new lots. A total of 17 PM peak hour trips results when adjusted proportionately for 71 net new lots. The Applicant would owe Mill Creek a total of \$49,963.00, based on the current mitigation fee of \$2,939.00 per PM peak hour trip x 17 PM peak hour trips. Comments dated April 29, 2009 were received from Mill Creek indicating agreement with the previous amount. Payment of the proportionately adjusted amount of \$49,963.00 (\$693.93 per SFR building permit) is a condition of approval for this development. (Exhibits C.1, C.2, C.3 and H.1)

With respect to the City of Bothell, the traffic study indicates that the development is located within CO-3 mitigation sub area, which has been determined to impact City streets with 30% of the new trips. Therefore, the Applicant would owe the City of Bothell \$44,580.90 based on 71 new homes x 30% x \$2,093 per home. An offer for a greater amount was routed to the City of Bothell (based on the original design of 81 net new lots). Comments dated May 7, 2009 were received from Bothell indicating agreement with the offered amount, and a copy of the executed agreement was attached. Payment of the proportionately adjusted amount of \$44,580.90 (\$619.17 per SFR building permit) is a condition of approval for this development. (Exhibits C.1, C.2, C.3 and H.2)

- H. Transportation Demand Management (TDM) (SCC 30.66B.630) The County requires TDM of developments inside the Urban Growth Area (UGA) and developments that impact arterial units designated as ultimate capacity. TDM Measures shall have the potential to remove a minimum of five percent of a development's PM peak hour trips 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. (See, SCC 30.66B.650).

This development adds three or more directional peak hour trips to an arterial unit designated as ultimate capacity and is thus required to provide TDM measures sufficient to indicate the potential for removing a minimum of ten (10) percent of the development's PM peak hour trips from the road system.

Since a TDM plan was not submitted with the initial application a payment is required. This is indicated on the pre-submittal review conference form signed by the County and the Applicant's representative on April 14, 2009. The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to five percent of the 71.71 new PM peak hour trips x \$6,500.00 which equals \$23,305.75 (\$323.69/lot).

An offer dated April 20, 2009 for more than the required amount was received with the application. The offer is acceptable to Snohomish County; however payment of the correct amount (\$23,305.75) is a condition of approval for this development.

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

10. Pedestrian Facilities (RCW 58.17.110)

- A. Safe Walkways for School Children. The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments dated May 1, 2009 were received from the Northshore School District indicating that elementary school students would walk to Fernwood Elementary School, located to the south at 39th Avenue SE and Jewell Road; the middle and high school students would walk to the bus stop located at 180th Street SE and 32nd Avenue SE. However, updated comments were obtained from the Northshore School District Transportation Department by telephone on May 2nd, 2012. Based on the current location of road connections to the development (on 180th Street SE aligned with Sunset Road, and on 184th Street from 35th Avenue SE), the school bus stop locations for all grade levels was identified as 180th Street SE and Sunset Road at the north side of the development; and 184th Street SE and 35th Avenue SE from the south end, and west of the development. Elementary students will not walk to Fernwood Elementary School until the road system is constructed between the development property and the school.

After construction of the road system for the development there will be sidewalks in place along all the interior roads serving the lots, including 43rd Avenue SE, which intersects with 180th Street SE at Sunset Road. 43rd Avenue, will have a sidewalk and planter on the east/north side, not on the west/south side. No lot has direct access to 43rd Avenue SE. Residents would walk along the interior roads to 43rd Avenue and cross to the sidewalk at the intersection of Road A (if coming from the south), which is a legal pedestrian crossing according to Washington State law. The alternative route to 180th Street and Sunset Road is north via the new internal roads on sidewalks to 40th Drive SE in the newly constructed plat of Brookfield on sidewalks to 180th Street SE, and a sidewalk has been constructed along the frontage with 180th Street SE to 43rd Avenue SE/Sunset Road. Sidewalks will be in place to the bus stop at 180th Street SE and Sunset Road.

184th Street will have a sidewalk along the north side between access to the development and 35th Avenue SE after construction of the frontage improvements by the subject development. The interior roads will have sidewalks constructed between all of the homes and 184th Street. Sidewalks will be in place to the bus stop at 184th Street SE and 35th Avenue SE.

A requirement to construct off-site walkways is not needed because construction of frontage improvements and of the interior roads and sidewalks will provide adequate pedestrian facilities to the school bus stops identified by the school district.

- B. Bicycle Facilities. The County's current adopted Countywide Bicycle Facility System Map (Map) became effect on February 1, 2006 and is part of the County's GMA Comprehensive Plan (GMACP). The subject development borders on a right-of-way that has been identified on the adopted Map. The County's current adopted MAP became effect on February 1, 2006. The subject development borders on a right-of-way that has been identified on the adopted Map. A bicycle path is required along 180th Street SE.

However, this development will not be required to construct frontage improvements on 180th Street SE because it has no property frontage except for a 60 foot strip, and 43rd Avenue SE will be constructed at that point to intersect with 180th Street. The 180th Street SE Corridor Improvements (180th St SE from SR 527 to Broadway Ave) listed in the 6-Year TIP will include bicycle lanes. The design standard required by EDDS 3-030A and 3-030B for 43rd Avenue SE include travel lane widths of 14 feet on each side of the road centerline, which provides extra width for travel lanes to be shared by vehicles and bicycles.

11. Mitigation for Impacts to Schools (Chapter 30.66C SCC) Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Northshore School District No. 417 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibits H.6, J) Credit is to be given for two (2) existing lots. Payment of school impact fees has been included as a condition of approval of the development.
12. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC) Stormwater on site will be collected and routed through a series of catch basins and storm pipes to a detention facility. Water quality is being addressed by routing the release from the pond to a storm filter. Approximately 0.35 acres of roadway will bypass the detention system and be routed directly to the storm filter for water quality treatment. The release rate from the detention pond will be reduced to compensate for this bypass.

Approximately 10.9 acres of new impervious surfaces are being proposed. The Applicant proposes an 111,000 cubic yards balance cut and fill for this project with respect to grading activity. Since the Applicant proposes more than 100 cubic yards of grading, a grading permit and Storm Water Pollution Prevention Plan (SWPP) in accordance with Volume 2 of the 2005 DOE Stormwater Manual are required. Development activity shall comply with the Preliminary Geotechnical Report by Terra Associates, Inc. dated August 2, 2011 where applicable. (Exhibit C.4)

PDS (Engineering) has reviewed the concept offered and is recommending 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 111,000 cubic yards of cut and 111,000 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.

13. Critical Areas Regulations (CAR) (Chapter 30.62 SCC)

The subject property contains a small isolated Category IV wetland midway along the western property boundary. A large Category II Wetland associated with Tambark Creek is located west of the subject property. Buffers from this wetland extend onto the site. A second smaller wetland is located near the southeast corner of the property. This wetland was identified and recorded under a critical area site plan. (Auditor File Number 2002031810085) This wetland was identified as a Category 3 wetland with a 50-foot buffer pursuant to SCC 30.62. The prescriptive buffers from this small wetland complex extend onto the subject property. No streams were identified on the property or within 300 feet of the site.

Historic use of the property consisted of typical rural residential development. The property currently contains a single-family residence, detached garage, and various outbuildings which will be removed to facilitate the proposed subdivision. Overall vegetation on the property includes upland pasture, non-mature forested upland interspersed with a scrub-shrub layer, maintained lawn and landscaping.

Access to the parcel is along an existing paved driveway which extends from 180th Street SE to the existing residence. The driveway is contained within a panhandle along the western property boundary. The existing driveway is located within the buffer of the Category II wetland.

In 2006, a site assessment of critical area conditions was conducted by Group Four Inc. In 2009, Wetland Resources Inc. conducted an additional site assessment and concurred with the original delineation and data associated with the Group Four delineation. (Exhibit C.5)

The Applicant is proposing a 72 lot subdivision on this 19 acre site. They propose to place the critical areas in a separate tract with a two-rail fence installed along the perimeter. According to SCC 30.62A.320 (1)(e)(ii), use of a combined fence and separate tract allows for a twenty-five (25) percent reduction in the critical area buffers. Critical areas shall be placed in separate tracts pursuant to 30.62A.160(3) SCC and designated as Critical Area Protection Areas (CAPA) to be permanently protected pursuant to SCC 30.62A.160.

Pursuant to Snohomish County's transportation improvement plans, 43rd Ave. SE is required to be extended south from 180th St SE through the existing panhandle out to 184th Street SE. The majority of the proposed road follows the existing paved driveway. Impacts to the Category II wetland buffer will be minimized to the greatest extent possible for the required road improvements. The required road improvement will impact 2,025 square feet of non-mature

forested buffer, 4,300 square feet of scrub-shrub buffer and 19,533 square feet of grass buffer. Impacts associated with the Category II wetland buffer will include additional buffer dedication and enhancement pursuant to the provisions of SCC 30.62A.320(3)-Table 3.

Road improvement grading will impact approximately 4,196 square feet of buffer. The proposal is to add an additional 8,178 square feet of buffer as mitigation. Impacts to the buffer will be fully mitigated by providing additional buffer, however these impacted areas will also be restored utilizing prescriptive ratios in accordance with SCC 30.62A.320(3). Project restoration will include a total of 16,101 square feet of enhancement (3,205 sq. ft. required and 12,896 sq. ft. additional). Sixty (60) percent of the restoration area will be planted with trees and forty (40) percent will be planted with shrubs. Tree planting will be concentrated on the inner portion of the restoration areas away from the proposed homes.

Plat approval will include County right-of-way dedication for the future extension of 43rd Ave SE to 184th Street. Future development of the County right-of-way will impact both the off-site Category 3 wetland and associated buffer. Approximately 3,030 square feet of buffer will be impacted for future County road improvement on the subject property. Even though the developer is not proposing any impacts to the on-site buffer at this time, additional buffer shall be dedicated at a ratio of 2.5:1 to mitigate for the future impacts.

Permanent buffer impacts, including indirect impacts, are proposed for this development. The project has been designed to minimize impacts to the greatest extent feasible. Buffer reduction of twenty-five (25) percent is being proposed along the Category II and Category IV buffer. The proposed reduction is consistent with SCC 30.62A.320(1)(e)(iii) which requires installation of a permanent fence along the entire length of the reduced buffer. Proposed impacts are consistent with the provisions outlined in SCC 30.62A.320(1) and (2). Mitigation is proposed on site and consists of both restoration and creation. The proposed mitigation measures are consistent with mitigation ratios established by code pursuant to SCC 30.62A.320(3) Table 3 for buffer impacts. Overall impacts for the proposed development consist of 28,888 square feet of buffer impacts. Mitigation for these impacts consists of creation of 57,840 square feet of buffer. Additionally the proposal is to restore 16,101 square feet of buffer with restoration plantings.

PDS performed an evaluation of the information submitted including, Critical Areas Study and Buffer Mitigation Plan (Exhibit C.5) prepared by Wetland Resources, Inc., with the revised application coupled with an on-site investigation, and has determined that the application is complete and in conformance with Chapter 30.62A UDC (CAR). PDS has further determined that the proposal is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

14. International Fire Code – (Chapter 30.53A SCC) PDS sent a request for review document to Fire District #7 on April 23, 2009. No comments were received. County Senior Fire Inspector Ron Tangen conducted a review of the proposed plat and concluded that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 with imposed conditions. The Inspector recommended approval on June 9, 2009, subject to the inclusion of Conditions B(vi) and C(viii). (Exhibit J; Testimony of Trace Justice)

15. Utilities.
 - A. Sewer. Sewer will be supplied by the Silver Lake Water and Sewer District (Exhibit H.8)
 - B. Electricity. Electricity to the development will be supplied by Snohomish County PUD No. 1. (Exhibit K.3)
 - C. Water. Potable water will be supplied by the Silver Lake Water and Sewer District. The District has indicated that adequate water supply is available to serve the development. (Exhibit H.8)
16. Zoning (Chapter 30.2 SCC) This project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the PRD Code, as discussed below.
17. State Environmental Policy Act (SEPA) (Chapter 30.61 SCC) The Applicant completed a Revised SEPA Checklist for the project on February 7, 2012. PDS issued a Determination of Nonsignificance (DNS) for the subject application on May 21, 2012 (Exhibit E.2). Notice of the SEPA Determination was provided by mail, posting and publication as required. (Exhibits F.1, F.2, and F.3) The DNS was not appealed. Accordingly, the Hearing Examiner finds that compliance with the procedural requirements of SEPA has been met.
18. Subdivision Code (Chapter 30.41A SCC) The proposed plat also meets Chapter 30.41A SCC requirements. As conditioned, the plat will meet all of the County's transportation and road regulations and design standards. The Examiner finds that all lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation, as amended. (Exhibits J) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.
19. Plats – Subdivisions – Dedications (Chapter 58.17 RCW) The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe pedestrian facilities for students.

The proposed subdivision conforms generally with the development regulations of Title 30 SCC. There is open space provided within the subdivision in the form of active open space, wetland, stream and buffer areas. The single-family homes within the subdivision will be in character with the urban area. Provisions for adequate drainage have been made in the conceptual plat

design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The 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. The proposal, as conditioned, meets the applicable version of the International Fire Code. Adequate drinking water and sewage disposal will be provided by the Silver Lake Water and Sewer District.

20. Lot Size Averaging Regulations (SCC 30.23.210)

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 right-of-way setbacks of 15 feet, except that garages must be setback 18 feet from the right-of-way (except alleys) and corner lots may reduce one right-of-way setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%. The LSA calculation is as follows:

Area in Lots (336,749 square feet) + Critical Areas and Buffers (47,911 square feet) + Open Space (161,566 square feet) = (546,226 square feet) ÷ 72 of lots proposed) = (7,586) square feet

The minimum zoning requirement is 7200 square feet. No lot is less than 3000 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. Accordingly, the Hearing Examiner finds that the proposal is consistent with the LSA provisions of SCC 30.23.210.

21. Rezone Request (Ch. 30.41C SCC)

The Applicant is seeking a rezone from R-9600 to R-7200 pursuant to Chapter 30.42C SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; and (3) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

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

The proposed project seeks a rezone to R-7200. The rezone will allow higher densities than would be allowed under the existing zoning of R-9600. The request is in conformance with the applicable components of the General Policy Plan elements as discussed below.

- i. The Population and Employment Element of the GPP requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). As demonstrated above, the project will provide adequate public facilities and service capabilities, and, therefore, meets the criteria of the Population and Employment section.
- ii. The Land Use Element - Urban Development Patterns (LU-15) and Goal LU-2 (LU-16) are intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre (4-6 du/ac). The existing neighborhood contains a mixture of small lots and large lots. The large lots located within the UGA do not comply with the current standard of 4-6 du/ac. Land division is required to meet the 4-6 du/ac standard, or the land cannot be developed. LU Policies 2.A.1 and 2.A.3 (LU-16) require densities of 4-6 du/acre. The project will result in a net density of 6.26 du/acre. This density satisfies the requirement.
- iii. The Housing Element of the GPP requires efficient infill development in UGAs (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the development, which is an infill development within both established and newly developed neighborhoods. However, Goal HO-2 of the Housing section (HO-6), also requires that the vitality and character of existing residential neighborhoods should be maintained. Here, while the physical attributes of lots within the neighborhood will be changed by the proposed rezone, and smaller lots and higher densities, relative to the existing conditions, will be different from the existing lot dimensions of the neighborhood, the overall character of the area will be the same. It will consist of single-family residential housing, with typical urban amenities such as open space, sidewalks, and the like. The rezone does not affect this. The proposed rezone will maintain a residential neighborhood and will not allow commercial agricultural uses, commercial development, and multi-family development on the site.

Based upon the discussion of the applicable GPP above, the Hearing Examiner finds that the proposed rezone is consistent with the GMACP.

- B. The proposal bears a substantial relationship to the public health, safety, and welfare. Application for the proposed rezone is concurrent with the application for a subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS and DPW have determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road

and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, evaluation of critical areas, adherence to the short subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. The Hearing Examiner finds that the proposed rezone and subdivision, as conditioned, bears a substantial relationship to the public health, safety and welfare.

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

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

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

CONCLUSIONS OF LAW

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

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

RCW 58.17.110.

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

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.
4. The Hearing Examiner has reviewed the requirements for LSA and concludes that the development as designed meets the design and performance standards of the LSA regulations.
5. The Examiner concludes that adequate public services exist to serve this proposal.
6. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
7. The Applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.41C SCC and should be approved from R-9600 to R-7200.
8. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

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

CONDITIONS

- A. The preliminary plat received by PDS on April 4, 2012 (Exhibit B2) 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 Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Buffer Mitigation Plan – Nature’s Ridge prepared by Wetland Resources, Inc. dated April 2, 2012, dated stamped received by PDS on April 4,

2012 shall be submitted for review and approval during the construction review phase of this project.

- iv. Construction plans for this development shall show the two high-pressure natural gas transmission pipelines and the 35-foot pipeline easement. No buildings or engineered structures shall be located within the easement and the proposed road crossing must cross the easement at an angle between 45 and 90 degrees and maintain 60 inches of cover between the top of the shallowest height and the surface of the pavement unless otherwise approved by Williams Northwest Pipeline or its successor in interest, if any. A copy of the encroachment permit shall be provided prior to issuance of the Land Disturbing Activity Permit.
- v. Development activity shall comply with the Preliminary Geotechnical Report by Terra Associates, Inc. dated August 2, 2011 where applicable.
- vi. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28' in width one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.
- vii. Prior to submittal of the road and drainage infrastructure construction plans, County Council approval must have been obtained by the Applicant for the sections of 43rd Avenue SE proposed to be less than sixty (60) feet in width.

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

- i. The following language shall be indicated on the face of the final plat.

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 SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.

- ii. The following language shall be indicated on the face of the final plat.

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

\$2,170.53 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$87.46 per lot for mitigation of impacts on state highways paid to the County, WSDOT ID #DOT-14: SR-9; SR-522 to 228th Street SE

\$63.51 per lot for mitigation of impacts on state highways paid to the County, WSDOT ID #DOT-15: SR-9; SR-522 to 212th Street SE

\$28.11 per lot for mitigation of impacts on state highways paid to the County, WSDOT ID #DOT-41: SR-9 at 164th Street SE

\$693.93 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.

\$619.17 per lot for mitigation of impacts on City streets for the City of Bothell paid to the City. Proof of payment shall be provided.

\$323.69 per lot for transportation demand management paid to the county.

These payments are due in accordance with the provisions of SCC 30.66B.340 for each single family residence.

- iii. The following language shall be indicated on the face of the final plat.

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 2 existing parcels. Lots 1 and 2 shall receive credit.

- iv. All critical areas shall be designated Critical Area Protection Areas (CAPA) with the following language indicated on the face of the plat;

In consideration of Snohomish County Code requirements, except as otherwise provided herein, the CAPA (Critical Area Protection Area) 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 within said CAPA, except the allowed activities set forth in Snohomish County Code (30.62A.010(2), 30.62A.510, 30.62A.530) when approved by the County.

- v. The following shall be shown on the face of the final plat.

25 feet of property, parallel and adjacent to the existing right-of-way for 184th Street SE shall be dedicated to the County along the development's frontage to total 30 feet of right-of-way from the centerline of the right-of-way.

52 feet of right-of-way shall be dedicated to the County for 43rd Avenue SE in the section to be constructed in the future, between 184th Street SE and Road A.

60 feet of right-of-way shall be dedicated to the County for 43rd Avenue SE from 180th Street SE for a minimum of 250 feet south to accommodate turn lanes.

The fire flow for any dwelling that exceeds 3600 square feet shall be determined using Appendix B of the 2009 edition of the International Fire Code. If the dwellings that exceed 3600 square feet cannot meet the required fire flow of Appendix B those dwellings shall be provided with NFPA 13D fire suppression systems.

- D. Prior to recording of the final plat:
- i. Construction of full urban standard frontage improvements on 184th Street SE shall have been completed to the future alignment of 43rd Avenue SE. Interim frontage improvements (pavement widening for the 184th Street road section plus an interim 5-foot walkway) will be required within the future alignment of 43rd Avenue SE to the east property line to the satisfaction of the County.
 - ii. If Nature's Ridge records prior to Timber Creek Ranch (PFN 06-131306) a minimum of 20 feet of pavement will be required for the frontage improvements on 184th Street SE (not including the interim walkway) to connect with 42nd Avenue SE, to the satisfaction of the County.
 - iii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The Applicant may use other permanent methods and materials provided they are first approved by the County. Where a CAPA 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.
 - iv. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per critical area feature, and at least one Type 1 sign shall be placed in any lot that borders CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to the Land Use Division for review and approval prior to installation.
 - v. The final mitigation shall have been implemented, completed and inspected by PDS.
- 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 seven (7) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300

Decision issued this 28th day of June, 2012.



Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before JULY 9, 2012**. There is no fee for filing a petition for reconsideration. “The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]

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

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before JULY 12, 2012**, 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: Stacey Abbott

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.