RECOMMENDATION OF THE  
SNOHOMISH COUNTY HEARING EXAMINER

DECISION DATE: December 20, 2012
PROJECT NAME: Avalon Alderwood
APPLICANT/ LANDOWNER: Avalon Bay Communities, Inc. 11808 Northrup Way, Suite W-311 Bellevue, WA 98005
FILE NO.: 12-100549 LU
TYPE OF REQUEST: URBAN CENTER DEVELOPMENT
DECISION (SUMMARY): RECOMMEND APPROVAL, SUBJECT TO PRE-CONDITIONS and CONDITIONS
GENERAL LOCATION: 2514, 2532, 2618, 2702, 2724, 2728, 164th Street SW and 16411, 16515, 16523, 16531, 16533 Alderwood Mall Parkway Lynnwood, WA.
ZONING: Urban Center (UC)
COMPREHENSIVE PLAN: Urban Center

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

I. FINDINGS OF FACT

A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the exhibits set forth in the List of Exhibits and Witnesses entered into evidence (Exhibits A.1 through K.6), as well as the testimony of witnesses received at the Open Record Hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. **Public Hearing.** The Hearing Examiner held an Open Record Hearing on December 12, 2012. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F.1, F.2, F.3) Monica McLaughlin and Mark Brown appeared on behalf of Snohomish County Department of Planning and Development Services (PDS). For the Applicant, attorney Rich Hill, McCullough Hill Leary, PS, appeared along with Derek Bottles, project manager for Avalon Bay Communities, LLC, Dave Maul, Rutledge Maul Architects, Brian Kalab, P.E., Insight Engineering Company, and Brad Lincoln, P.E., Gibson Traffic Consultants, Inc. No member of the public testified at the public hearing.

4. **Application Request.** The Applicant requests that the Hearing Examiner recommend approval of the proposed Avalon Alderwood Urban Center Development to the Snohomish County Council and prepare an Ordinance adopting the Development Agreement and approving the Project for the Council’s consideration at a closed record hearing. The project is vested as to the County’s regulations that were in effect on January 27, 2012.

5. **Project Description.** The project consists of 491 multifamily units in 10 buildings, ranging from three to six stories tall, to be constructed in two phases (367 units in phase 1 and 124 units in phase 2). A fitness center with swimming pool for residents, club house/leasing offices and detached parking garage buildings are also proposed. The site is comprised of 18.7 acres and is zoned UC (Urban Center). The project will be constructed in two phases.

Phase 1 of the project will be accessed from two driveways off of 164th Street SW (one in the middle of the property and one at the east side where an existing traffic signal is located). Phase 2 will provide an additional driveway from Alderwood Mall Parkway (at the existing traffic signal used for the Fred Meyer store across the street). An internal driveway system for vehicles is proposed within the project and pedestrian walkways are provided throughout the site. A nature trail, with access points at both Alderwood Mall Parkway and 164th Street SW, is also proposed adjacent to a Native Growth Protection Area.

The Applicant will construct a stormwater management system incorporating underground detention vaults, installation of public road frontage improvements, utilities, ornamental landscaping and recreational open space. Grading for the development is estimated at 75,000 cubic yards cut and 75,000 cubic yards fill. Water and sewer service will be provided by the Alderwood Water and Wastewater District.

6. **Site Description.** The site consists of 17 tax parcels on 23 acres (which will be reduced to 18.7 acres once a Boundary Line Adjustment (BLA) is recorded to adjust the lot line at the east part of the property). It is located at the intersection of 164th Avenue SW and Alderwood Mall Parkway in Lynnwood, extending to the east and south. The north/northwest side of the site is comprised of a mixture of commercial businesses, single-family homes and a billboard (all to be removed with the development). Two prior Land Use Permit Binders (LUPBs) for two variances and a Concomitant Rezone Agreement associated with development of the commercial businesses have been recorded with the County Auditor, and must be vacated upon approval of this development in accordance with the County Code.

Swamp Creek, a Type 2 ESA Chinook salmon stream, is located approximately 250 feet east of the site. Portions of a large, riparian Category 1 wetland associated with Swamp
Creek are located on the east/southeast sides of the site. The vegetation on the site varies from parking lot landscaping on the west end of the property to third generation forest on the east end of the site.

7. **Adjacent uses.** The surrounding zoning is Urban Center (UC), and on one parcel, Business Park and Urban Center. Adjacent uses include a church, PUD substation, the Northpointe Business Park, undeveloped land, Swamp Creek, a medical clinic and the Northpointe Shopping Center and Fred Meyer store complex.

8. **State Environmental Policy Act Compliance (SEPA).** A SEPA Checklist was submitted by the Applicant on August 8, 2012. (Exhibit E.1) A Determination of Non-Significance (DNS) was issued on October 10, 2012. (Exhibit E.2) Notice of the decision was made according to the County’s regulations. (Exhibits F.1, F.2, and F.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

9. **Issues of Concern.**

A. **Public Agency Review.** There were no concerns expressed from reviewing agencies.

B. **Citizens.** The County received comments from citizens, including a neighbor, Yaw L. “Albert” Ang, who sought to understand how the project would impact his property, and Mickie Gunderson, asking that the County protect Swamp Creek and its wetlands through the provision of adequate buffers. (Exhibit K.2)

In response, the Applicant has worked with Mr. Ang’s representative and will be providing a sewer stub for future development of his parcel (which is surrounded by the project on three sides). The Applicant has also made provision to accept stormwater runoff from the Ang property and will incorporate it into the site’s drainage system. In addition, the Applicant has proposed to leave all existing critical area buffers undisturbed for the protection of Swamp Creek and its adjacent wetlands.

Thirteen people attended the neighborhood meeting on December 2, 2011 to learn more about the proposed Urban Center Development. (Exhibit A.3) No additional issues were raised before the Hearing Examiner.

**B. APPLICABLE REGULATIONS**

10. **Approval Process.** According to SCC 30.34A.180, the Applicant has two methods under which it can pursue approval of its project: (1) The Development Agreement process; or (2) the Type 2 Permit Decision Process.

The Applicant has chosen the first option and negotiated a Development Agreement with the City of Lynnwood, based on the fact that the site is within the City’s Municipal Urban Growth Area (MUGA) boundary. SCC 30.34A.180(1) That Development Agreement (hereinafter the “Municipal Agreement”) is now complete and was executed by the parties on November 16, 2012. (Exhibit G.1) The Municipal Agreement and project proposal were submitted to PDS for review and processing under Chapter 30.75 SCC. (SCC 30.34A.180(1)(b))

Under SCC 30.75.020, the Development Agreement reached between PDS and the Applicant (which incorporates the Municipal Agreement and project proposal), is reviewed in
the manner and following the procedures established in Chapters 30.70 and 30.72 SCC, except as follows:

(a) The hearing examiner’s decision, as set forth in SCC 30.72.060, shall be a recommendation to the county council instead of a decision, provided that any decision on a Type 1 appeal of a SEPA threshold determination shall be a final decision;

(b) Each hearing examiner recommendation shall include a proposed ordinance for council consideration that would adopt the hearing examiner’s recommendation as a final decision;

(c) A party of record may request review of the hearing examiner’s recommendation by the county council using the same process as required for appeal of a Type 2 decision; and

(d) If no party of record requests review of the hearing examiner’s recommendation, the department shall forward the recommendation to the county council for a closed record hearing, allowing for a presentation to the council by the Applicant and the department regarding the recommendation and the proposed ordinance.

11. Decision Criteria. According to SCC 30.75.100, in order to make a recommendation in favor of passage of an ordinance approving the Development Agreement and proposed project, the hearing examiner must find that:

(a) The proposed agreement is compatible with the goals and policies of the comprehensive plan;

(b) The proposed agreement is consistent with applicable development regulations, unless modified pursuant to SCC 30.75.130;

(c) The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided that if the development is not defined at a project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts in the future; and

(d) The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

The Hearing Examiner considers each criterion below:

12. The proposed agreement is compatible with the goals and policies of the comprehensive plan;

The Applicant’s attorney has provided significant analysis of the County’s GMA Comprehensive Plan (GMACP) and how the proposed Urban Center is compatible with its goals and policies. (See, Exhibit K.1) That analysis is incorporated herein as if set forth in full. PDS Staff have performed a similar analysis and reached the same conclusion. (Exhibit J) The Hearing Examiner takes official notice of the County’s adopted GMACP. The GMACP has recognized and supports the creation of urban centers such as the one here. (See, LU 3.A.2, 3.A.3 and 3.A.4) The proposal supports GMACP Land Use Goal LU 3: “to establish a system of compact, clearly defined mixed-use centers, linked by well-
planned transit emphasis corridors, that promote a neighborhood identification and support the County's sustainability goals." (See also, Objectives LU 3.H; LU 3.G.5, Goal TR-2, TR Policy 2.C.2, and TR Goal 3) The Hearing Examiner finds that the proposed agreement and Urban Center proposal is compatible with the goals and policies of the GMACP.

13. **The proposed agreement is consistent with applicable development regulations, unless modified pursuant to SCC 30.75.130.**

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

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within the Urban Growth Area (UGA) in Transportation Service Area (TSA) "D." The proposed development is vested to the 2010 Version of the EDDS. Credit will be granted for two existing single-family residences. (Exhibit L.3)

1. **Road System Impacts [SCC 30.66B.310]** A development must mitigate its impact upon the future capacity of the Snohomish County 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 latest 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 or acceptable specific trip generation information provided by the Applicant or their Traffic Engineer.

The proposed Urban Center will generate 1,606.38 new ADT from 491 new living units. The site is currently developed with nine dwelling units that will receive credit at the SFR rate and approximately 23,500 sq ft of commercial. The rate for road system impact fees within TSA "D" is $267.00 per ADT. The total road system impact fee owed as mitigation for impacts to roads within TSA "D" is $428,903.46 (or $873.53 per living unit).

2. **Concurrence [SCC 30.66B.120]** The County makes a concurrence 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 has been evaluated for concurrence under the provisions of SCC 30.66B.120. The development is located in TSA "D" which, as of the date of submittal of the application, had no arterial units in arrears. Therefore, the project is deemed to be concurrent as of November 20, 2012. The expiration date of the concurrence determination is six years from that date on November 20, 2018.

However, the subject development generates 116.19 new AM peak-hour trips, and 157.42 new PM peak-hour trips which is more than the threshold of 50 peak-hour trips, triggering additional review under SCC 30.66B.035. Pursuant to SCC 30.66B.035, the future level-of-service (LOS) on the road system was evaluated in a specific Traffic Study. (Exhibits C.1, C.2) The Traffic Study found that the forecast LOS conditions in TSA "D" does not place any arterial units into arrears. Therefore, the project is deemed to be concurrent under SCC 30.66B.035.
Arterial Unit 219 (164th Street SW), has been determined to be at Ultimate Capacity. It will be impacted with three or more directional trips peak hour trips from the subject development. This means that Transportation Demand Management (TDM) requirements are required at a minimum of the 10 percent level. This issue is addressed below.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210] Regardless of the existing LOS, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

According to the Traffic Study, 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, 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.

4. Frontage Improvement Requirements [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 Department of Public Works (DPW) Rule 4222.020(1) requires full urban frontage improvements along the subject parcel's frontage on Alderwood Mall Parkway which consist of their portion of a five lane section with a bike lane and bus pullout. Also included in this is cement concrete curb and gutter, a five-foot planter and a seven-foot sidewalk. Sidewalks will be located such that it is 66 feet from the sidewalk on the west side of Alderwood Mall Parkway.

Along the other frontage, 164th Street SW, full frontage improvements already exist. What will be required are improvements as necessary to construct the access points. Construction of frontage improvements is required prior to any Certificate of Occupancy being issued and is included as a condition of approval.

5. Access and Transportation Circulation [SCC 30.66B.420] All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development, to design and construct such access in accordance with the EDDS, and to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430. (See, SCC 30.66B.420) Access to state highways and city streets must be in accordance with the applicable state or city standards and requirements. Additionally, 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, will be required to improve such road to bring it into compliance with the EDDS when the Director of DPW determines it necessary to provide for safety and the operational efficiency of the road.

The extent of improvements will be established by the Director of DPW in accordance with SCC 30.66B.430. PDS has shown that the requirements of that regulation are met in this case. (See, Exhibits J and H.8) The Hearing Examiner has reviewed the
analysis and finds that there is substantial evidence in the record to support the required road and transportation improvements recommended by PDS and DPW.

6. Right-of-Way Requirements [SCC 30.66B.510, and .520] A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition 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.

The roads serving this development, 164th St SE and Alderwood Mall Parkway, are designated as a Principal Arterial and a Minor Arterial, respectively, and typically require 50 feet and 40 feet of right-of-way width, respectively, on each side of the right-of-way centerline.

The existing right-of-way on 164th St SW varies from 50 to 55 feet. No additional right-of-way is needed on 164th St SW since full urban improvements exist. Additional right-of-way is needed on Alderwood Mall Parkway and this listed as a recommended condition at the end of this report. The existing right-of-way is 30 feet on the east half. The required ultimate road section is 66 feet from curb to curb. This dimension exists between the existing curbs at the north end of the subject development and south of the subject development on Alderwood Mall Parkway.

The improvement requirement on Alderwood Mall Parkway is 66 feet from curb to curb. This is shown on the site plan. It is also shown that there will be 1.5 feet of right-of-way behind the improvements. The exception piece in the center on the site on Alderwood Mall Parkway (the Ang parcel), will have a new curb that will match the rest of the frontage with no additional right-of-way to be deeded in front of that parcel.

Alderwood Mall Parkway is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore, credit towards the Applicant’s impact fee for the deeding right-of-way feet from centerline is not applicable.

7. 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 ILA between Snohomish County and the WSDOT that became effective on December 21, 1997, and as amended through the date of completeness for this application.

The Applicant’s Traffic Study indicates that since no trips from the subject development will impact any projects on the State’s exhibit “C” with three or more directional peak hour trips, no mitigation should be required for the State. Subsequent to these comments the Applicant offered to mitigate impacts to the State highways by offering to pay $36.00/ADT. In an e-mail from WSDOT dated June 28, 2012 (Exhibit H.4), the State accepted this offer. The current Traffic Impact Analysis (TIA) adjusted the impacts to the State due to the reduced number of trips. The adjusted mitigation to the State is $57.829.79 ($117.78/living unit). It will be a condition of approval that this amount is paid to WSDOT.
8. **Impacts to Roads in Other Jurisdictions. [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 a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the City of Mukilteo. The Applicant’s Traffic Study indicates that no city projects will be impacted by the subject development and argues that no mitigation is required.

The Applicant’s Traffic Study indicates that trips from the subject development will impact the City of Mukilteo to a lesser extent than what the interlocal agreement would suggest. In a letter dated November 15, 2012 (Exhibit H.2), the City accepted the Applicant’s offer to pay $13,500.00 ($27.49/living unit) as adequate mitigation for impacts to City streets. An acceptable written offer (Exhibit H.2) has been received from the Applicant. It will be a condition of approval that this amount is paid to the City of Mukilteo.

There are no other jurisdictions that have an interlocal agreement with the County that will be significantly impacted by the subject development.

9. **Transportation Demand Management (TDM) [SCC 30.66B.630]** All new developments in the urban area shall provide TDM measures. For urban centers, sufficient TDM measures shall be provided to indicate the potential for removing a minimum of 15 percent of the development’s P.M. peak hour trips from the road system. The 15 percent obligation will be met by payment of TDM fees, implementation of a TDM plan and implementation of special programmatic measures. Here the Applicant proposes to meet both requirements.

The Applicant proposes to pay an impact fee of $51,155.00 ($104.19 per living unit), which is equal to meeting five percent of their 15 percent obligation. In addition, the site plan meets the on-site TDM requirements; therefore an additional credit of five percent will be applied toward their required TDM amount. Finally, the Applicant has proposed to meet the final five percent required by implementing ongoing trip reduction programs on site. (Exhibit G.2) These TDM measures have been accepted by DPW and PDS. It is a condition of approval that the TDM agreement be signed by the County Engineer and recorded with the Auditor.

(B) **Urban Center Development Standards (Chapter 30.34A SCC)**

Development in the Urban Center (UC) Zone must comply with the standards set forth in Chapter 30.34A SCC. The standards outlined in the Chapter are meant to encourage higher density transit-oriented and pedestrian-oriented development that provides a mix of uses and encourages high quality design.

1. **Zoning – Permitted uses – SCC 30.34A.020.** Permitted uses in the UC zone are governed by the zoning matrix set forth in SCC 30.22.100 and accompanying reference notes (SCC 30.22.130).

Multi family dwelling units are an allowed use under the UC Zone in Urban Zone Categories: Use Matrix (30.22.100 SCC). No reference note listed under 30.22.130 SCC applies to this application.
2. Floor Area Ratios – SCC 30.34A.030. Floor to Area Ratios (FAR) in the UC zone are established in accordance with Table 30.34A.030(1) SCC. Additional FAR are allowed in accordance with the bonuses as set forth in SCC Table 30.34A.030(2) (FAR Bonuses) and SCC Table 30.34A.030(3) (FAR Super Bonuses).

The maximum FAR for residential use is 1.0. Therefore, the minimum allowable square footage for this project 407,755 square feet and the maximum is 815,510 square feet. The proposed square footage is 484,619 square feet. The proposal complies with this section.

No bonuses are proposed, therefore, Tables 30.34A.030(2), (3) SCC are not applicable.

3. Building height and setbacks – SCC 30.34A.040. The maximum building height in the UC zone is 90 feet. Under certain circumstances, a building height increase up to an additional 90 feet may be approved under SCC 30.34A.180. Buildings or portions of buildings that are located within 180 feet of adjacent R-9600, R-8400, R-7200, T or LDMR zoning must be scaled down and limited in building height to a height to meet the requirements of SCC 30.34A.040(2). All ground floor residential units facing a public street must maintain a minimum structural ceiling height of 13 feet to provide the opportunity for future conversion to nonresidential use. Finally, excluding weather protection required in SCC 30.34A.150, buildings must be setback pursuant to SCC Table 30.34A.040(4).

As noted in the regulations, the maximum building height in the UC Zone is 90 feet. Here, all of the buildings comply with the building height requirements. The buildings range between 3-6 stories, with the highest portion of one of the buildings topping out at approximately 70 feet. All buildings are well within the building height requirements. For the proposed project, no front, side, or rear setbacks are required by SCC 30.34A.040(4). All structures are subject to setbacks specified in the International Building Code (Ch. 30.52A SCC).

4. Parking ratios, parking locations and parking lot and structure design – SCC 30.34A.050. Developments in the UC zone must comply with the parking ratios established in Table 30.34A.050(1) SCC. Parking must be located under, behind or to the side of buildings. Parking lots must be landscaped pursuant to SCC 30.25.022. Parking garage entrances must be minimized, and where feasible, located to the side or rear of buildings. Lighting fixtures within garages must be screened from view from the street. Exterior architectural treatments must complement or integrate with the architecture of the building through the provision of architectural details. Parking can be reduced under certain circumstances. (See, SCC 30.34A.050(5))

The minimum number of parking stalls required for the project is 607 stalls. The maximum number is 976.5 stalls. The project provides 817 on site stall, which complies with the code provision. Those stalls are located either under the buildings, in stand-alone garages, or in an outside parking lot to the side or rear of the buildings.

As proposed, the Hearing Examiner finds that the parking requirements have been met and exceeded by the site plan. (Exhibit B.1)

5. Landscaping Requirements – SCC 30.34A.060. In addition to the landscaping requirements contained in SCC 30.25.015, 30.25.017, 30.25.023, 30.25.043 and 30.25.045, requirements for developments in the UC zone are as follows:
• Where a development abuts an R-9600, R-8400, R-7200, T or LDMR zone, a Type A landscaping buffer pursuant to SCC 30.25.017 averaging 25 feet, but not less than 15 feet must be provided. Where appropriate, existing vegetation and significant trees must be retained within the landscaping buffer.

• Areas of a site not occupied by buildings, parking lots, other improvements or textured paving must be intensively planted with trees, shrubs, hedges, ground covers, and/or grasses, unless such area consists of attractive existing vegetation and significant trees to be retained. Perennials and annuals are encouraged.

• Landscaping must be integrated with other functional and ornamental site design elements, where appropriate, such as recreational facilities, ground paving materials, paths and walkways, fountains or other water features, trellises, pergolas, gazebos, fences, walls, street furniture, art, and sculpture.

• The landscape design must reinforce and support the open space design, pedestrian circulation and building architecture.

• Street trees must be planted along public and private roads and drive aisles according to the road cross section and general landscaping standards of the EDDS. Street trees are not required around turnarounds at the end of roads less than 150 feet in length. Maintenance of street trees must be provided pursuant to SCC 30.25.015(9).

• No landscape buffer is required along or from a developed railroad right-of-way.

The proposed landscaping will be as depicted in the Landscape Plan. (Exhibit B.5) The site does not abut any residential zone. Parking area landscaping has been provided throughout the parking lot and landscaping will be installed along the property frontage. The landscape plan has designed to enhance the building's curb appeal from the street and to screen the walls of the stand alone parking garages and underground parking garage grills. As designed, the proposed landscaping complies with all the additional provisions required for an Urban Center. Installation of the landscaping shall be according to the approved Urban Center plan.

6. **Open Space -- SCC 30.34A.070.** All developments in the UC zone must have a coherent integrated open space network that links together the various open spaces within the project. Open space must be provided at a rate of 150 square feet per residential unit and two percent of the floor area of non-residential development (excluding parking), and at least 50 percent of which must be accessible to the public as an active recreation area. In addition, at least 25 percent of the required active recreation area must be located on a single tract. Those portions of required sidewalks that abut an active recreation area may be counted toward the 50 percent active recreation open space requirement. On-site recreational open space for residential and non-residential developments must be designed and improved to allow one or more active uses as defined in SCC 30.34A.070(3).

Here, the proposed Urban Center provides open spaces connected by walkways. A total of 73,650 square feet of open space is required for this project (55,050 square feet for Phase 1). (See Exhibit J) The proposal provides 277,624 square feet of total open space (232,334 in Phase 1). Active recreation uses must account for 50 percent of the open space (36,825 square feet total; 27,525 in Phase 1). Here, the active open space provided by the proposed development totals 83,216 square feet. They plan to provide 66,560 square feet in Phase 1. The active open spaces in includes the nature trails adjacent to the Native Growth Protection Area (NGPA), plaza, swimming pool, open play area and barbeque/picnic-
area. The Hearing Examiner finds that the project proposes to meet or exceed the Urban Center open space requirements.

7. Circulation and Access — SCC 30.34A.080. The vehicular and pedestrian circulation system must be designed to be consistent with Ch. 30.24 SCC, the EDDS Manual, and the provisions described in the following design reports available at PDS: (a) Southwest Snohomish County Urban Centers Phase 1 Report, (February 2001), Appendix E, Street Design, at pp. 9-13; and (b) Specific road designs for public roads in urban centers that have been approved by DPW, including but not limited to Ash Way Design for the Transit/Pedestrian Village, (August 2003). Additional requirements are set forth in SCC 30.34A.080(1) through (9).

The proposed development was reviewed by the PDS Transportation Section and was found to comply with the design standards set forth in Ch. 30.24 SCC and the Southwest Snohomish County Urban Centers Phase 1 Report (February 2001), Appendix E, Street Design, at pp. 9-13, and the specific road designs for public roads in urban centers that have been approved by DPW, including but not limited to Ash Way Design for the Transit/Pedestrian Village, August 2003.

A five-foot-wide public walkway through the site connects the northern and southern boundaries to the Urban Center Development. The walkway links on-site open space activity to the new Alderwood Mall Way bus stop in front of the proposed development. Lighting is provided along the walkway for nighttime safety. The proposed development complies with Ch. 30.24 SCC and the EDDS. The other plans referenced above are not applicable to this project. The walkway will meet ADA standards. The development meets the 15 percent Transportation Demand Management (TDM) requirement. The development complies with all additional urban center standards (SCC 30.34A.080(1) through (9), and has submitted a TDM Plan as required. (See Exhibit B.1 at A.103)

8. Access to public transportation -- SCC 30.34A.085. Business or residential buildings within an urban center either: (1) Shall be constructed within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter rail lines or regional express bus routes or transit corridors that contain multiple bus routes; (2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations; or (3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

The development is located 0.4 miles from the Swamp Creek Park and Ride and 0.6 miles from the Ash Way Park and Ride. There is an existing bus stop on the 164th Street SW property frontage. Five local bus routes and five commuter routes serve that stop. The development is also proposing a stop on the Alderwood Mall Pkwy property frontage. Two local routes will serve that stop. Community Transit is in concurrence with the bus stop locations on the project frontage. The Applicant has agreed to enter into a Voluntary Trip Reduction Program which includes designation of a transportation coordinator who can provide information about ridesharing and vanpooling. Parking on site will be provided for car sharing vehicles. (Exhibit J)

9. Design standard-signs -- SCC 30.34A.090. In addition to the sign requirements contained in Chapter 30.27 SCC, signs in the UC zone must fit with the overall architectural
character, proportions, and details of the development. The base of any freestanding, pole, ground or monument sign must be planted with shrubs or seasonal flowers. No electronic signs are allowed. Freestanding or pole signs located along non-arterials may be permitted if they are approved under SCC 30.34A.180 and if they meet certain criteria. (See, SCC 30.34A.090(4)) Freestanding or pole signs located along freeways or principal arterials may be permitted if they are approved by the director and if they meet certain criteria. (See, SCC 30.34A.090(5))

Future signage applications will need to comply with the above sign regulations. The existing billboard on site will be removed to construct Building 1. (Billboards are not an allowed use in the UC zone).

10. **Design standard-screening trash/service areas and rooftop mechanical equipment – SCC 30.34A.100.** Garbage collection and service areas must be placed away from public right-of-way and screened from view on all sides with solid evergreen plant material or architectural treatments similar to those used in the design of the adjacent building. Rooftop mechanical equipment must be screened by an extended parapet wall or other roof forms that are integrated with the architecture of the building.

The Applicant has proposed a design that properly screens all rooftop mechanical equipment and trash/service areas in accordance with SCC 30.34A.100. The project shall comply with the Urban Center Site Plan, Exhibit B.1. Trash/service areas are proposed to be properly screened. Rooftop mechanical equipment will be screened with roof forms that are integrated into the architectural design of the building. The Examiner finds that the project design meets this requirement.

11. **Design standard-lighting – SCC 30.34A.110.** All lighting fixtures must be equipped with a "cut-off," which is either an external housing or internal optics that directs light downward. Flashing lights are prohibited, except for low wattage holiday and special occasion accent lights. Lighting directed upwards above the horizontal plane (up-lighting) is prohibited.

Lighting shall be installed as required by SCC 30.34A.110. The project narrative (Exhibit A.2) states that site lighting will be limited to down lighting on the building, the use of bollards along the pedestrian walkways and parking areas and that no up lighting on any of the buildings is planned.

12. **Design standard-step back and roof edge – SCC 30.34A.120.** The UC zone design regulation require that any parts of the building façade over 60 feet high facing a public right-of-way and those portions of buildings facing R-9600, R-8400, R-7200, T or LDMR zoning must be stepped back at least 10 feet from the first floor façade. In addition, façades of floors that are stepped back must be distinguished by a change in elements such as window design, railings, trellises, details, materials and/or color so that the result is a rich and organized combination of features that face the street. Balconies may extend into the step back areas. Buildings with pitched roofs must have a minimum slope of 4:12. Finally, an alternative step back may be approved under SCC 30.34A.180, provided the effect is that the upper floor(s) appears to recede from view.

Due to the slope of the site, a small portion of Building 1, which faces 164th Street SW, is over 60 feet if measured from that portion of the building to finished grade. However, consistent with how building height is measured in other parts of the Zoning Code, PDS
believes this Code Section needs to be interpreted in a similar fashion and measured from the averaged finished grade of the face of the building. Using this method the façade does not exceed 60 feet. The apartment buildings have pitched roofs in accordance with code. Proposed lighting will comply with these standards.

13. **Design standard-massing and articulation – SCC 30.34A.130.** Buildings over 30 feet in height must distinguish a “base” at ground level using articulation and materials such as stone, masonry, or decorative concrete. The “top” of the building must emphasize a distinct profile or outline with elements such as projecting parapet, cornice, upper-level setback or pitched roof line. For buildings over 60 feet in height, the “middle” of the building may be distinguished from the top and base by a change in materials or color, windows, balconies, step backs and signage. An alternate design for massing and articulation may be approved under SCC 30.34A.180 provided the design reduces the apparent bulk of multi-story buildings and maintains pedestrian scale.

Exhibit B.3 provides the architectural representations for the project. The buildings will have an urban, modern design. The proposal meets the design requirements for massing and articulation by providing variations in color and materials, terraced landscaping as the site allows, horizontal bay extensions with raised roof lines and covered eaves, decks and large windows. (Exhibit A.2)

14. **Design standard-ground level detail and transparency – SCC 30.34A.140.** Façades of commercial and mixed-use buildings that face the streets must be designed to be pedestrian-friendly through the inclusion of at least three design elements set forth in SCC 30.34A.140. In addition, street-facing, ground-floor façades of commercial and mixed-use buildings must incorporate glass in storefront-like windows in sufficient type and quantity to produce the following quality and dimensions: clear, transparent glass must be incorporated in at least 40 percent of the ground level façade length and the bottom of such glass must be located no higher than two feet above grade and top of such glass must be located up to at least 10 feet above grade.

The Applicant has proposed no commercial or mixed-use buildings.

15. **Design standard-weather protection – SCC 30.34A.150.** Overhead weather protection elements such as canopies must be installed on street-facing façades along County arterials and streets intended for pedestrian activity and connectivity within the Urban Center. Canopies or awnings must be a minimum of 5 feet in width. Canopies or awnings must be at least 10 feet, but not more than 13 feet, above the sidewalk.

Here, the buildings are set back from the public right-of-way with landscaping buffers proposed between the buildings and the sidewalks, so a continuous canopy along the building for pedestrians is not required. However, overhead weather protection is provided over the building entrances and will be a minimum of five feet in width.

16. **Design standard-blank walls – SCC 30.34A.160.** Blank walls longer than 20 feet must incorporate two or more of the following: (1) vegetation, such as trees, shrubs, ground cover and/or vines adjacent to the wall surface; (2) artwork, such as bas-relief sculpture, murals, or trellis structures; (3) seating area with special paving, lighting fixtures and seasonal plantings; and/or (4) architectural detailing, reveals, contrasting materials or other techniques that provide visual interest.
All buildings will have some areas of blank walls that are longer than 20 feet. Those areas where blank walls occur will be covered with vegetation, trellises and grills as necessary. As designed, the Hearing Examiner finds that the project meets this requirement.

(C) Drainage, Clearing and Grading – (Ground Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC) The existing conditions shown on Sheet 6 of 6 of the Targeted Drainage Plan and Supplemental Targeted Drainage Plan set. (See, Exhibits B.4, C.3, and C.4). The Targeted Drainage Plan and Report (Exhibit C.3) describes the general drainage conditions on the site. The property slopes from northwest to southeast with an average slope of about 8 percent. Vegetation on the undeveloped portion of the site consists of second and third growth forest and understory shrubs and groundcover. The site soils are underlain by dense, silty sand (till-like soil) under the majority of the site. Surface soils are identified as Alderwood Urban Land Complex for the most part. Mukilteo Muck and Norma Loam soils are found at the southeast corner of the site, where development is not anticipated.

It appears that some unconsolidated fill has been placed on this site in prior years as evidenced by the soil logs TP-1 through TP-4, TP-6, TP-8 and TP-10 described in the geotechnical report prepared for the by Terra Associates, Inc (located within in the Target Drainage Report, Exhibit C3). The depth of fill found on the site ranged from two and a half to nine feet. Unsuitable fill materials will require removal and replacement with new structural fill. Minor to moderate groundwater was encountered in the test pits at the time of the exploration in July 2011. Assessment of Geological Hazards on the site include the risk for liquefaction to occur during a seismic event as negligible, the erosion potential of the Alderwood Urban Complex soils is slight to moderate and the hazard for landslides is nonexistent.

More than 5,000 square feet of impervious surface is being developed or proposed on-site. Stormwater runoff will be routed to one of three underground stormwater detention facilities. The preliminary plan indicates that parking garages are proposed to be constructed on top of two of the stormwater detention vaults. A modification request at the construction plan review stage will be necessary to allow this. Water quality would be provided in biofiltration swales or a storm filter. Frontage improvements are proposed to widen Alderwood Mall Parkway. Runoff from these improvements will be directed to the stormwater facilities to be constructed within the proposed project.

A continuous runoff model WWHM3 was used to size the detention facility and the wet pond treatment facility in the preliminary design, this new model uses more storm events over a number of years to simulate or help predict statistical storm performance up to a 50 year storm event. This is consistent with the newer stormwater code that the County adopted in September of 2010. (See, Chapter 30.63A SCC) Discharge from the three detention vaults is controlled to mimic the predevelopment discharge.

The Applicant proposes greater than 5,000 square feet of new or replaced impervious surfacing. A full stormwater site plan is therefore required prior to development activity per SCC 30.63A.300 (3). The project must meet the water quality runoff treatment standards, since the project site exceeds the thresholds listed in SCC 30.63A.530. The Applicant also must meet the County’s flow control requirements, since the project exceeds the thresholds listed in SCC 30.63A.555. Special inspections will be required for construction of the stormwater detention vaults. A Certified Erosion Sediment Control Lead
(CESCL) will be involved in the inspection of the construction stormwater pollution prevention plans.

Total proposed grading includes 75,000 cubic yards of cut and 75,000 cubic yards of fill. Therefore an LDA permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual is required. The grading reflects that drainage discharges from the three detention vaults and the existing off-site run-on will be located to mimic the preexisting conditions on the site.

Based on the preliminary findings made by the staff of PDS’s Engineering Section relating to drainage and grading, this project meets the requirements the SCC 30.63A and SCC 30.63B and the Snohomish County Drainage Manual. The targeted drainage and conceptual plans for grading, SWPPP, and frontage improvements along Alderwood Mall Parkway that were reviewed, constituted what is envisioned for drainage control from the subject property. These plans will need to be fully engineered and resubmitted as a full drainage plan and calculations prior to construction plan approval for the development.

A land disturbing activity construction permit has been submitted that meets the targeted drainage plan. Grading and drainage requirements for this project will be issued with that permit after the Development Agreement is recorded.

(D) Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC) The site contains Swamp Creek, a Type 2 ESA Chinook salmon stream, which is located approximately 250 feet east of the site. Portions of a large riparian Category 1 wetland associated with Swamp Creek are located on the east/southeast sides of the site.

The wetland and its buffers were evaluated under previous development applications and designated as a Native Growth Protection Area (NGPA) under the former Critical Areas Regulations (Chapter 30.62 SCC). Critical area site plans (CASP) for those other development(s) have been recorded with the Auditor’s Office. However, the subject development application is vested to the newer Critical Areas Regulations that went into effect on October 1, 2007. They provide larger protective buffers (Native Growth Protection Areas or NGPAs).

However, according to SCC 30.62A.160:

(4) Previously approved critical area site plans. For any development activity, action requiring a project permit or clearing occurring consistent with a previously approved critical area site plan shall be governed according to the terms and conditions of the approved site plan, provided that all wetlands, fish and wildlife habitat conservation areas and buffers have been identified and specific permanent protection has been provided.

1 There is no information in the record describing the nature and extent of the earlier development applications that were approved in conjunction with these recorded CASPs. As such, the Examiner has no way of knowing the intensity of those projects or their likely impacts on the wetlands and critical areas adjacent to Swamp Creek, an important stream for Puget Sound Chinook Salmon. What we do know, however, is that the protections required under SCC 30.62A.310 are based on best available science and afford larger, more protective NGPAs than previously required under earlier provisions of the Code. Allowing a large, highly urbanized, intense use such as the proposed 491 unit apartment complex adjacent to the Swamp Creek wetlands without requiring the applicable (larger) protective buffers may negatively impact those wetlands.
PDS staff has interpreted this provision broadly to mean that a new development proposal is not required to comply with the new protections afforded in Chapter 30.62A.310 (e.g., larger buffers and setbacks from the wetlands), so long as they are avoiding impacts to the previously drawn CASP. This means that any future development, regardless of size or scope, can rely on a prior recorded CASP to provide protections to the critical areas, even when the buffers have increased and the project is otherwise vested to those new protections. Such an interpretation goes well beyond the vested rights granted to applicants in the *Noble Manor* decision.2

There, the Supreme Court determined that an Applicant is vested to the development regulations in effect on the date that a complete application is filed. *Id.* The Court concluded that the scope of vesting was only for the entirety of the project described in the site plan.3 Here, the site plan for which the CASP was drawn is unrelated to the new urban center site plan. As such, the vested rights doctrine as defined by our Supreme Court would not protect the Applicant from meeting the newer Code requirements because the projects are completely different. The question presented is whether SCC 30.62A.160 provides broader vesting protection to an applicant. This is a question of first impression for the Hearing Examiner. The Examiner’s role is to interpret the plain meaning of the Code, and to attempt to effectuate the County Council’s intent.

PDS believes that SCC 30.62A.160 does provide vesting to the prior CASP. They processed the project for purposes of critical areas using the older version of the Code, Chapter 30.62 SCC. Staff determined that “the application is complete and in conformance with Chapter 30.62 SCC.” (Exhibit J) No Critical Area Study meeting the requirements of SCC 30.62A.150 was provided. Instead, the Applicant provided a three-page letter dated May 14, 2012 from its consultant, Wetland Resources, Inc., justifying how the project avoids impacts to the Critical Areas in order to retain “vesting to the previously recorded critical area site plans.” (Exhibit C.5) Specifically, it only analyzed impacts to the hydrology of the wetland given the proposed project’s drainage design. Staff concluded that the proposed development will have no impact to critical areas and that no additional mitigation should be required.

The prior CASPs were recorded as part of the review and mitigation of impacts from one or more different development applications, unrelated to the large, urban center apartment complex that is proposed here. Unfortunately, neither PDS nor the Applicant

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3 The Supreme Court clarified,

Not all conceivable uses allowed by the laws in effect at the time of a short plat application are vested development rights of the applicant. However, when a developer makes an application for a specific use, then the applicant has a right to have that application considered under the zoning and land use laws existing at the time the completed plat application is submitted.

If a landowner requests only a division of land without any specified use revealed, then the county, city or town may consider the application to see if any legal use can be made of the land so divided, and no particular development rights would vest at that time. However, when an application is made for division of land for a specified use, then the applicant has the right to have that application for that use considered under the land use laws in effect on the date of the application.

*Id.* at 286.
placed any evidence in the record describing what development activity the CASP was designed to protect against.

The interpretation of SCC 30.62A.160 is important, in that the Applicant’s representative, Brian Kalab, testified that if they had to meet the critical area protection requirements of SCC 30.62A.310, they would likely lose one or more buildings from the project and possibly parking garages and structures, requiring them to redesign the project.

Given that the provision could be fairly read as PDS has provided, and the Examiner finds no Council guidance on this issue within the regulations themselves, the Examiner will give deference to PDS’s interpretation and find that proposal here meets the requirements of SCC 30.62A.160(4). To the extent that the Council disagrees, they can express their interpretation of SCC 30.62A.160(4) at the time they review this development proposal for final approval. Accordingly, the Examiner finds that the project meets the County’s critical areas regulations.

(E) **International Fire Code** (Chapter 30.53A SCC) The application was reviewed and approved by the County’s Fire Marshal’s Office on March 21, 2012. Fire apparatus access as depicted has been found by the Fire Marshal to meet the minimum requirements of SCC 30.53A.150. Ron Tangen, Senior Fire Inspector, noted that appropriate International Fire Code conditions will be included in construction permits. (Exhibit L.4) No comments were received from Snohomish County Fire District 1.

(F) **Utilities.** As indicated in correspondence received from the Alderwood Water and Wastewater District, water and sewer will be available to serve this development. (Exhibit H.6) The Snohomish Health District has no objections to the project as long as public sewer and water is provided. (Exhibit H.3) The Snohomish Health District recommends approval with the understanding that the existing/remaining onsite sewage system(s) will be abandoned by having the septic tank(s) pumped by a certified pumpers, then having the top of the tank removed or destroyed and filling the void (WAC 246-272A-0300). A condition is included to this effect. Electrical service is available from the Snohomish County PUD No. 1. (Exhibit H.5) Accordingly, the Hearing Examiner finds that adequate public facilities exist to support the proposed development.

(G) **School Impact Mitigation** (Chapter 30.66C SCC) The proposal is subject to Chapter 30.66C SCC which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to SCC 30.66C.100, school impact mitigation fees will be determined, according to the Base Fee Schedule in effect for the Edmonds School District, at the time of building permit application and collected at the time of building permit issuance for the proposed new units.

(H) **Park and Recreation Impact Mitigation** (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area and is subject to Chapter 30.66A SCC, which requires payment of $491.05 per each new multi-family residential unit, to be paid prior to building permit issuance for each building. Such payment is acceptable mitigation for parks and recreation impacts in accordance with County codes and policies. A condition is included within the project decision to comply with the requirements of Chapter SCC 30.66A SCC.

Based on the foregoing Findings of Fact, the Hearing Examiner finds that the proposed Urban Center meets the County’s development and zoning regulations.
14. The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided that if the development is not defined at a project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts in the future;

Here, the Development Agreement presents more than a conceptual plan. The development is defined at the project level. The Avalon Alderwood Urban Center Development, as conditioned, provides adequate mitigation for adverse environmental impacts pursuant to the County’s development regulations set forth in Title 30 SCC.

Based on his review of the project as conditioned and in light of the disclosures made in the SEPA Checklist, the SEPA Responsible Official issued a determined of nonsignificance (DNS). No appeal was filed. Accordingly, the Hearing Examiner finds that the third criterion for approval of the Development Agreement has been met.

15. The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

The Development Agreement contains a provision in Paragraph 5.2 which states that:

"...the proposed development shall not vest against new development regulations to the extent the application of such new regulations to the Project is specifically required by a serious threat to public health and safety."

The Hearing Examiner finds that this statement, *if amended to read as follows*, complies with this requirement:

"... the proposed development shall not vest against new or different development regulations to the extent the application of such new regulations to the Project is specifically required by a serious threat to public health and safety."

See, SCC 30.75.100(4).

16. Having reviewed the terms and conditions of the proposed Development Agreement and the provisions of SCC 30.34A.170, SCC 30.34A.180 and Chapter 30.75 SCC, the Hearing Examiner finds that the Agreement should be further amended to reflect and incorporate the approved Urban Center Plan as conditioned. Accordingly, the Examiner has included revisions to the Development Agreement to bring it into conformance with recommended final Plan, pre-conditions and conditions. (See, attached Exhibit 1). The Examiner recommends that the County Council adopt these changes to the Development Agreement as part of its approval of the Project.

17. Based on a preponderance of the evidence in the record and the foregoing Findings of Fact, the Hearing Examiner finds that the proposal meets all of the requirements of Title 30 SCC and, in particular, finds the Development Agreement meets the requirements of SCC 30.75.100, and should be approved, subject to the recommended conditions.

18. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.
CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this Urban Center project application pursuant to Chapter 30.34A SCC, 30.75.020 and SCC 30.72.020.

2. Pursuant to SCC 30.75.100, the Hearing Examiner concludes that, the Urban Center Plan as conditioned and the Development Agreement, as amended, is compatible with the goals and policies of the comprehensive plan; is consistent with applicable development regulations; provides for adequate mitigation of adverse environmental impacts; and if amended as described in attached Exhibit 1, reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

3. Adequate public and/or private services and utilities exist to serve the proposal.

4. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for an Urban Center Development.

5. The Urban Center Development application should be granted by the Council.

6. If approved with the recommended pre-conditions and conditions, the proposal will make adequate provisions for the public health, safety and general welfare.

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

DECISION AND ORDER

The proposed Urban Center Development Agreement is RECOMMENDED FOR APPROVAL by the County Council, subject to the following PRE-CONDITIONS and CONDITIONS:

PRE-CONDITIONS

A. The Development Agreement shall be amended as shown in Exhibit 1. The Pre-Conditions and Conditions of Approval shall become part of the Development Agreement. The Development Agreement shall be executed by the parties and recorded with the Auditor.

B. A Record of Developer’s Chapter 30.66B SCC Mitigation Obligations shall have been recorded with the County Auditor.

C. The Voluntary Trip Reduction Program Agreement shall be approved by the County Engineer and recorded with the County Auditor pursuant to SCC 30.66B.070.

CONDITIONS

A. The Urban Center Development plan received by PDS on November 20, 2012 (Exhibit B.1), shall be the official Urban Center Development plan. SCC 30.34A.180(3)(b) governs changes to the Urban Center Development plans.
B. The Urban Center Development shall comply with all agreed conditions of the proposed Development Agreement (Exhibit G.3), as amended by this Recommendation, and shall be signed by the Applicant and the County and recorded with the County Auditor.

C. Prior to issuance of a Land Disturbing Activities (LDA) permit for the project:
   i. An application for Boundary Line Adjustment to the lot line at the east side of the site shall be submitted to and approved by PDS and recorded with the County Auditor.
   ii. The developer shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA), or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the County.

D. Prior to building permit issuance:
   i. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of $428,904.26 ($873.53/living unit). This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.
   ii. The Applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area D in the amount of $51,155.00 ($104.19/living unit). This payment may be made proportionately with each building permit.
   iii. The Applicant shall make a payment to Snohomish County for the WSDOT in the amount of $57,829.79 ($117.78/living unit) for mitigation of traffic impacts to State highways. This payment may be made proportionately with each building permit.
   iv. The amount of $13,500.00 ($27.49/living unit) shall be paid to the City of Mukilteo for traffic impacts to projects within the City. Proof of payment of the above amount shall be provided to the County. This payment may be made proportionately with each building permit.
   v. Sufficient right-of-way shall have been deeded along the parcel’s frontage on Alderwood Mall Parkway such that 1.5 feet exists back of sidewalk or as determined by the DPW.
   vi. The developer shall pay the County $491.05 per multi-family unit as mitigation for parks or recreation impacts within the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by January 27, 2017 (five years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
vii. The multi-family units within this development will be subject to school impact mitigation fees for the Edmonds School District 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. Credit shall be given for the eleven (11) pre-existing lots within the subject Urban Center plan boundaries.

E. Prior to the issuance of certificate of occupancy:

i. Urban frontage improvements shall be constructed along the parcel’s frontage on 164th Street SW and Alderwood Mall Parkway to the satisfaction of Snohomish County.

ii. The features on the approved TDM plan shall be constructed/installed.

iii. Proof of compliance with the developer’s Transportation Demand Management obligation shall have been provided to the Snohomish County DPW.

iv. A right-of-way use permit shall be obtained for the plaza in the NW corner of the site.

v. 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 developer 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, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

vi. Site improvements, fencing, open space and landscaping depicted on the approved plans shall be installed, inspected and approved.

vii. Documentation demonstrating that the existing onsite sewage systems have been abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void, must be provided to the PDS inspector and to the Snohomish Health District.

viii. The zoning code variances granted for the property recorded under Land Use Permit Binders AF#9807300653 and AF#9801200433 shall be vacated by filing Notice of Land Use Permit Vacation forms with the County Auditor on a form provided by PDS.

ix. A document extinguishing the Concomitant Zoning Agreement previously recorded for the property under AF #800826028 shall be recorded with the County Auditor.
F. This Urban Center Development will expire six years after recording of the Development Agreement unless a complete application for construction of the project has been submitted to PDS.

Nothing in this permit shall excuse the Applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

Issued this 20th day of December, 2012.

[Signature]

Millie M. Judge, Hearing Examiner

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**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 DECEMBER 31, 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.

**Review/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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before January 3, 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.

**COUNTY COUNCIL APPROVAL**
If no review of the Hearing Examiner’s recommendation is filed, PDS shall forward the Hearing Examiner’s Recommendation and proposed Ordinance to the County Council for a closed record hearing. The Department and Applicant may make a presentation to the Council about the Recommendation and proposed Ordinance to the Council. However, no new evidence or testimony may be introduced at a closed record hearing. (SCC 30.75.020)

In accordance with SCC 30.75.100, the County Council may adopt a development agreement upon passage of an ordinance with findings that:

(a) The proposed Development Agreement is compatible with the goals and policies of the comprehensive plan;
(b) The proposed Development Agreement is consistent with applicable development regulations;
(c) The proposed Development Agreement provides for adequate mitigation of adverse environmental impacts; and
(d) The proposed Development Agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin, Howard Knight, and Tom Rowe

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.
PRECONDITION NOTICE

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed with PDS within one calendar year from the date the Development Agreement is executed and recorded.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).

2. One six-month period will be allowed for resubmittal of any required document(s) which is (are) returned to the Applicant for correction.

3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:

   A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and

   B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the Applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of ____________________. _____

Certified by:

__________________________________________
(Name)

__________________________________________
(Title)

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.
PARTY OF RECORDS REGISTER
12-100549-LU AVALON ALDERWOOD
HEARING: DECEMBER 12, 2012, @
1:00 PM
12-100549-LU

WA ST DEPT OF TRANSPORTATION
SCOTT RODMAN
PO BOX 330310
SEATTLE WA 98133-9710

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

MANOR BELL PROPERTIES, LLC
C/O EMERALD PROPERTIES
18023 HIGHWAY 99, SUITE I
LYNNWOOD WA 98037

EMERALD PROPERTIES
MARGARET IANNONE
18023 HIGHWAY 99, SUITE I
LYNNWOOD WA 98037

JERRY BURTENSHAW
PO BOX 777
MERCER ISLAND WA 98040-0777

CITY OF MUKILTEO
LARRY WATERS
11930 CYRUS WAY
MUKILTEO WA 98275

MICKIE GUINDESEN
1126 LAWTON ROAD
LYNNWOOD WA 98036

INSIGHT ENGINEERING
BRIAN R KALAB
P O BOX 1478
EVERETT WA 98206

AVALONBAY COMMUNITIES, INC.
DEREK BOTTLES
11808 NORTHUP WAY, SUITE W311
BELLEVUE WA 98005

SNO CO PLANNING & DEVEL LAND USE
M MCLAUGHLIN/R TANGEN/M BROWN/KAY WHEELER
3000 ROCKEFELLER AVE # 604
EVERETT WA 98201

GIBSON TRAFFIC CONSULTANTS
2802 WETMORE AVE SUITE 220
EVERETT WA 98201

AMP CORNER PROPERTY, LLC
C/O EMERALD PROPERTIES
18023 HIGHWAY 99, SUITE I
LYNNWOOD WA 98037

YAW L. ANG
16527 ALDERWOOD MALL PARKWAY
LYNNWOOD WA 98037

ALDERWOOD WATER &
wastewater district
Dan Scheil
3626 156 st sw
LYNNWOOD WA 98036

WETLAND RESOURCES
SCOTT BRAINARD
9505 19TH AVE SE, STE106
EVERETT WA 98208

MCCULLOUGH HILL LEARY PS
G. RICHARD HILL
701 FIFTH AVENUESUITE 6600
SEATTLE WA 98104

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

SNOHOMISH HEALTH DISTRICT
BRENT RAASINA
3020 RUCKER AVE SUITE 104
EVERETT WA 98201-3900

CRUTCHLOW INVESTMENTS
LARRY INGRAHAM
18023 HIGHWAY 99, SUITE I
LYNNWOOD WA 98037

EMERALD PROPERTIES
EVAN MCCALLISTER
18023 HIGHWAY 99, SUITE I
LYNNWOOD WA 98037

R.W. THORPE & ASSOCIATES
LEE A. MICHAELIS
7438 SE 27TH STREET
MERCER ISLAND WA 98040

CITY OF LYNNWOOD/PLANNING
LAUREN BALISKY
PO BOX 5008
LYNNWOOD WA 98046

B EVAN/JANIS McALISTER
3715 92ND PLACE NE
MARYSVILLE WA 98270

DAVID MAUL
NO ADDRESS PROVIDED
DEVELOPMENT AGREEMENT

AVALONBAY COMMUNITIES, INC. AND SNOHOMISH COUNTY

This DEVELOPMENT AGREEMENT ("Agreement") between AVALONBAY COMMUNITIES, INC., a Washington corporation ("Owner") and SNOHOMISH COUNTY, WASHINGTON ("County"), a political subdivision of the State of Washington, is entered into pursuant to the authority of RCW 36.70B.170 through .210, under which a local government may enter into a development agreement with an entity having ownership or control of real property within its jurisdiction.

A development agreement must be approved by ordinance or resolution after a public hearing. A public hearing for this Development Agreement was held on December 12, 2012. The County Council approved this Development Agreement by Ordinance [___] on [___], 2012.

This Agreement constitutes a final land use action pursuant to RCW 36.70C.020.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to both the County and Owner, the parties hereby agree as follows:

1. **Property.** The property subject to this Agreement (the "Property") is that certain property located in Snohomish County, Washington, and more particularly described in Exhibit A attached hereto. The Property, at the southeast corner of Alderwood Mall Parkway and 164th Street SW is an 18.71 acre site within the Lynnwood Municipal Urban Growth Area (MUGA) and has been designated on Snohomish County's Future Land Use and current zoning maps as Urban Center.

2. **Project.** The Project consists of 491 multifamily units in 10 buildings, ranging from three to six stories tall, to be constructed in two phases (367 units in Phase I and 124 units in Phase II). A fitness center with swimming pool for residents, club house/leasing offices and detached parking garage buildings are also proposed. As shown on the approved Project Urban Center Development Plan attached as Exhibit B, Owner intends to develop the Project in two phases, Phase I and Phase II. Phase I, and the on-site and off-site improvements associated with Phase I, will be the first to be developed. Phase II, and the on-site and off-site improvements associated with Phase II, will be the second to be developed. The on-site and off-site improvements associated with Phase II will become obligations of Owner only in the event Phase II is developed, except that the Phase II trail and open space improvements shown on the Approved Urban Center Site Plan Application Open Space Plan page A1.02 shall be constructed as part of Phase I.

3. **Land Use Approvals.** The following land use approvals and reviews have been issued and completed for the Project by the County. The following represent all discretionary land use reviews and approvals by the County necessary for construction, development and operation of the Project:
3.1 Urban Center Development Plan. Owner has filed an application (the "Application") for approval of an Urban Center Development Plan for the Project, pursuant to SCC 30.34A.170 (county file number 12-100549 LU). The County has reviewed the Application under the relevant Code criteria, and has approved the Urban Center Development Plan (the "Plan") for the Project subject to preconditions and conditions. (see Exhibit B). The Plan includes the Application, site plan and other supporting documents and reports set forth in Exhibits A.1 through K.2 entered into the record in this matter before the Hearing Examiner, as well as the Hearing Examiner's Recommendation set forth therein. The revised urban center development plan received by PDS on 11/20/12 (Exhibit B.1 in the record before the Hearing Examiner), shall be the official urban center development site plan. The Plan is incorporated herein and made a part hereof by this reference. The site plan is set forth in Exhibit B. Revisions to the Plan shall be processed in accordance with SCC 30.34A.180(3)(b). Any such revision may be administratively approved subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210 without the need to amend this Agreement. The County has imposed preconditions and conditions of approval upon the Plan. Those conditions are set forth on Exhibit D.

3.2 SEPA Review. The County has reviewed the environmental impacts of the Project and has issued a Determination of Nonsignificance dated October 10, 2012 (the "DNS") in accordance with the requirements of the State Environmental Policy Act, Chapter 43.21C RCW. The DNS was not appealed.

3.3 Municipal Agreement. Pursuant to SCC 30.34A.180(1)(a), Owner has negotiated and entered into a Municipal Agreement with the City of Lynnwood, Washington, the city in whose MUGA the Project is located. A true and correct copy of the Municipal Agreement is set forth in Exhibit C.

4. Allowable Development. The maximum allowable development for the Project shall be as set forth in Chapter 30.34A SCC ("Allowable Development"). The Project (and its Plan) may be revised after the Effective Date in accordance with the Development Regulations to which the Project is vested up to the Allowable Development, subject to Paragraph 5 of this Agreement. Any such revision not requiring a re-submittal may be approved by the Director of the Department of Planning and Development Services, subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210, without the need to amend this Agreement. Upon any revision to the Project and its Plan, the parties hereto may record a document updating this Agreement to reflect such amendment. No approval of the County Council shall be required for a revision to the Project and its Plan not requiring re-submittal, subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210.

5. Vesting.

5.1 Vesting of Development Regulations. Pursuant to RCW 36.70B.180, the Property is hereby vested to all development regulations (as that term is defined in RCW 36.70A.030(7)) in effect on the Vesting Date (the "Development Regulations"). Except as set forth in Section 6.1 below, the Vesting Date is January 27, 2012, the date of submittal of the complete Application, consistent with SCC 30.34A.170(6). Development of the Property shall not be subject, during the Term of this Agreement, to any amendments or replacements of the
Development Regulations, except as set forth herein. These are rights vested under state law for purposes of RCW 36.70B.180. Notwithstanding the foregoing, the International Building Code, International Fire Code, and other construction codes in effect in the County as of the date of the filing of a complete application for a building permit shall apply to all construction of buildings on the Property.

5.2 Police Power. Nothing herein relieves Owner of any obligations it may have during the Term to comply with state or federal laws or regulations of any kind. As provided by RCW 36.70B.170(4), the proposed development shall not vest against new or different development regulations to the extent the application of such new or different regulations to the Project are specifically required by a serious threat to public health and safety.

5.3 Term of Vesting. Pursuant to SCC 30.34A.180(3)(c), the vesting described herein shall apply for six (6) years from the Effective Date of this Agreement (the “Term” of the Agreement).

5.4 Stormwater Regulations. The Project is vested to the stormwater regulations of the County in effect as of the date of application for the Urban Center approval for the Project, which date of vesting is January 27, 2012.

5.5 Effective Date. The Effective Date of this Agreement shall be the date on which this Agreement has been executed by both parties, unless an appeal of this Agreement is filed. If an appeal of this Agreement is filed, then the Effective Date shall be that date on which all such appeals have been fully and finally resolved.

6. Project Mitigation. Compliance by Owner with the following obligations shall constitute full and complete mitigation of all impacts related to the Project.

6.1 Transportation. The County has issued a concurrency determination for the Project dated November 20, 2012. This Project is vested to the requirements of the version and Chapter 30.66B SCC that were in effect as of January 27, 2012. As a precondition to development of the Project, Owner agrees to implement the following transportation mitigation:

   a. A Record of Developer’s Chapter 30.66B SCC Mitigation Obligations shall have been recorded with the County Auditor.

   b. The Voluntary Trip Reduction Program Agreement shall be approved by the County Engineer and recorded with the County Auditor pursuant to SCC 30.66B.070.

As a condition of development of the Project, Owner agrees to implement the following transportation mitigation:

Prior to building permit issuance, the Owner shall:
pay transportation mitigation fees pursuant to Chapter 30.66B SCC.
c. Pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of $428,904.26 ($873.53/living unit). This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.

d. The applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area D in the amount of $51,155.00 ($104.19/living unit). This payment may be made proportionately with each building permit.

e. The applicant shall make a payment to Snohomish County for the WSDOT in the amount of $57,829.79 ($117.78/living unit) for mitigation of traffic impacts to State highways. This payment may be made proportionately with each building permit.

f. The amount of $13,500.00 ($27.49/living unit) shall be paid to the City of Mukilteo for traffic impacts to projects within the City. Proof of payment of the above amount shall be provided to the County. This payment may be made proportionately with each building permit.

g. Sufficient right-of-way shall have been deeded along the parcel's frontage on Alderwood Mall Parkway such that 1.5 feet exists back of sidewalk or as determined by the DPW.

Prior to the issuance of certificate of occupancy:

h. Urban frontage improvements shall be constructed along the parcel's frontage on 164th St SW and Alderwood Mall Parkway to the satisfaction of Snohomish County.

i. The features on the approved TDM plan shall be constructed/installed.

j. Proof of compliance with the developer's Transportation Demand Management obligation shall have been provided to the Snohomish County Department of Public Works.

k. A right-of-way permit shall be obtained for the plaza in the NW corner of the site.

l. Owner shall enter into a Voluntary Developer Trip Reduction Program Agreement in the form approved under the Application.

m. Owner shall construct the frontage improvements along the frontage of the Project as required by the County for Phases I and II of the Project at the time that Phases I and II, respectively, are constructed.
6. Owner shall deed sufficient right-of-way along the parcel’s frontage on Alderwood Mall Parkway such that 1.5 feet exists in back of the sidewalk or as determined by the DPW.

6.2 Open Space. Open Space will be provided in accordance with the applicable provisions of the Urban Center zone, SCC 30.34A.070.

6.3 Stormwater. Owner shall install stormwater quantity and quality control facilities in accordance with the provisions of the 2010 Snohomish County Drainage Manual, to which the Project is vested.

6.4 Critical Areas. The County has determined that the Plan as conditioned, fully conforms to the provisions of Chapter 30.62A SCC and other relevant Code provisions with respect to critical areas on the Property. As a condition of development of the Project, Owner agrees to implement the following critical areas protection and mitigation:

Prior to issuance of a Land Disturbing Activities (LDA) permit for the project:

a. The developer shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA), or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

Prior to the issuance of certificate of occupancy:

b. 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 developer 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.

c. 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, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

6.5 Schools. The multi-family units within this development will be subject to school impact mitigation fees for the Edmonds School District 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 eleven pre-existing lots within the subject urban center plan boundaries.

6.6 Parks. The dwelling units within this development are subject to park impact fees in the amount of $491.05 per multi-family unit as mitigation for parks or recreation impacts within the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by January 27, 2017 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.

6.7 Other Requirements. The Owner agrees to implement the following actions:

Prior to issuance of a Land Disturbing Activities (LDA) permit for the project:

a. An application for boundary line adjustment to the lot line at the east side of the site shall be submitted to and approved by PDS and recorded with the county Auditor.

Prior to the issuance of certificate of occupancy:

b. Site improvements, fencing, open space and landscaping depicted on the approved plans shall be installed, inspected and approved.

c. The zoning code variances granted for the property recorded under Land Use Permit Binders AF#9807300653 and AF#9801200433 shall be vacated by filing Notice of Land Use Permit Vacation forms with the County Auditor on a form provided by PDS.

d. A document extinguishing the Concomitant Zoning Agreement previously recorded for the property under AF #800826028 shall be recorded with the County Auditor.

7. Utilities.

7.1 Sanitary Sewer System. Sanitary sewer service for the Project shall be provided by the Alderwood Water & Sewer District (the “District”). The District has certified the availability of adequate sanitary sewer service for the Project by certificate dated February 12, 2012 (the “Sewer Certificate”). For as long as the Sewer Certificate remains valid and in force, the County shall not deny the issuance of any permits or approvals related to the Project by reason of lack of adequate sanitary sewer capacity. Prior to the issuance of certificate of occupancy, the Owner shall provide documentation demonstrating that the existing onsite sewage systems have been abandoned by having the septic tank pumped by a certified pumper.
then having the top of the tank removed or destroyed and filling the void, must be provided to the PDS inspector and to the Snohomish Health District.

7.2 Water Service. Water service for the Project shall be provided by the District. The District has certified the availability of adequate domestic water service for the Project by certificate dated February 12, 2012 (the “Water Certificate”). For as long as the Water Certificate remains valid and in force, the County shall not deny the issuance of any permits or approvals related to the Project by reason of lack of adequate domestic water flow or capacity.


8.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

8.2 Binding on Successors; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Owner and upon the County. The parties acknowledge that development of the Property may involve sale and assignment of all or portions of the Property to other parties who will, subject to this Agreement, own, develop and/or occupy portions of the Property and buildings thereon. Upon such assignment, the assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owner shall thereafter be released of liability hereunder as to that portion of the Property so transferred. This Agreement shall be recorded against the Property as a covenant running with the land and shall be binding on Owner, its successors and assigns.

8.3 Interpretation; Severability. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the County’s authority to enter into such agreements, and this Agreement shall be construed to reserve to the County only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. If any provisions of this Agreement are determined to be unenforceable or invalid by a court of competent jurisdiction, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If a court finds any portion of this Agreement unenforceable or invalid, the parties agree to seek diligently to modify the Agreement consistent with the court decision, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed. To provide an expeditious and fair process, the parties shall meet in good faith to settle the dispute within 45 days after such a court ruling. The parties during said meeting will also seek to agree upon a single arbitrator if the parties do not voluntarily settle the dispute. If the parties cannot agree on a single arbitrator, then the arbitration will be referred to the Judicial Dispute Resolution (JDR) in Seattle, WA, but if JDR is not in existence or not able to hear the matter, then either the County or Owner may apply to the Washington Superior Court for appointment of a single arbitrator pursuant to RCW 7.04A.050. If the parties do not mutually agree to modifications within forty-five (45) days after the court ruling, then either party may initiate the dispute resolution proceedings for determination of the modifications which implement the intent of this Agreement and the court decision. The parties agree to settle the
dispute over these matters by arbitration by a single arbitrator, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall establish the procedures and allow presentation of written and oral information, but shall render its final decision within thirty (30) days after the matter is referred to arbitration. The parties shall pay equally the cost of the arbitration, but each party shall pay its own attorney’s fees. The arbitrator’s decision shall be in writing and specifically set forth those modifications necessary to implement the parties’ intent consistent with the court invalidation or unenforceability decision. Dispute resolution on the subjects covered by this Section 8.3 is the exclusive remedy of the parties. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

8.4 Authority. The County and Owner each represent and warrant it has the respective power and authority, and is duly authorized, to execute, deliver and perform its obligations under this Agreement.

8.5 Time of Essence. Time is of the essence of this Agreement in every provision hereof, subject to the provisions of state and local laws.

8.6 Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended except by an instrument in writing executed by the parties hereto.

8.7 Default and Remedies. No party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after receipt of written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. Any party not in default under this Agreement shall have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party (or the substantially prevailing party if no one party prevails entirely) shall be entitled to reasonable attorneys’ fees and costs.

8.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

8.10 Recording. This Agreement, upon execution by the parties and approval of the Agreement by ordinance of the County Council, shall be recorded with the Real Property Records Division of the Snohomish County Auditor.

8.11 Notice. All notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i)
delivered personally, (ii) sent by reputable overnight courier delivery service, such as Federal Express, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the County: Snohomish County
Director, Department of Planning and Development Services
3000 Rockefeller Avenue, M/S 604
Everett, Washington 98201
Attn: Clay White
with copy to: Office of the Prosecuting Attorney
Snohomish County, Washington
Robert J. Drewell Building
6th Floor – M/S 504
3000 Rockefeller Avenue
Everett, Washington 98201-4060

If to Owner: AvalonBay Communities, Inc.

with a copy to: McCullough Hill, PS
701 Fifth Avenue
Suite 7220
Seattle, WA 98104
Attn: G. Richard Hill

Notice by hand delivery shall be effective upon receipt. If sent by overnight courier service, notice shall be deemed delivered one (1) business day after sent. If deposited in the mail, notice shall be deemed delivered three (3) business days after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

DATED this ___ day of ____________________, 2012.

[Signatures are provided on the following pages.]
COUNTY:

SNOHOMISH COUNTY,
a political subdivision of the State of Washington

By: Aaron G. Reardon
Its: County Executive

Approved as to Form:

By: ____________________________
Deputy Prosecuting Attorney

OWNER:

AVALONBAY COMMUNITIES, INC.,
a Washington Corporation

By: ____________________________
Its: ____________________________
STATE OF WASHINGTON )
  } ss.
COUNTY OF SNOHOMISH )

On this _____ day of ________, 2012, before me, a Notary Public in and for the State of Washington, personally appeared __________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ______ was authorized to execute the instrument, and acknowledged it as the __________________ of the Snohomish County, to be the free and voluntary act and deed of said county for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington, residing at __________________________
My appointment expires __________________________
Print Name __________________________

STATE OF WASHINGTON )
  } ss.
COUNTY OF KING )

On this _____ day of ________, 2012, before me, a Notary Public in and for the State of Washington, personally appeared __________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ______ was authorized to execute the instrument, and acknowledged it as the __________________ of AVALONBAY COMMUNITIES, INC., to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington, residing at __________________________
My appointment expires __________________________
Print Name __________________________
**LIST OF EXHIBITS**

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Exhibit A</td>
<td>Legal Description of Property</td>
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<tr>
<td>Exhibit B</td>
<td>Urban Center Development Site Plan</td>
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<tr>
<td>Exhibit C</td>
<td>Municipal Agreement</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Conditions of Approval</td>
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