DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: August 6, 2013

PLAT/PROJECT NAME: Mayfield Estates

APPLICANT/ LANDOWNER: KLN Construction, Inc.
19000 33rd Avenue West Suite 200
Lynnwood, WA 98036

FILE NO.: 12-104232 SD

TYPE OF REQUEST: Rezone and Preliminary Subdivision Approval

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

BASIC INFORMATION

LOCATION: 13911 Seattle Hill Road, Snohomish
ACREAGE: 11.16 acres

NUMBER OF LOTS: 44 lots

MINIMUM LOT SIZE: 4454 square feet
GROSS DENSITY: 3.94 du/acre

GMACP DESIGNATION: Urban Low Density Residential

ZONING: R-9600
PROPOSED ZONING: R-7200

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

SCHOOL DISTRICT: Everett School District No. 2

12104232
FIRE DISTRICT: Snohomish County Fire Protection District No. 1

PDS STAFF RECOMMENDATION: Approve, subject to conditions.

A. BACKGROUND INFORMATION

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through M.6), as well as the testimony of witnesses received at the open record hearing. The record was left open following the July 17th hearing to permit the submission of rebuttal comments to the document submitted by Mr. Stone at the hearing, Exhibit L.5. This resulted in the submission of Exhibits M.1 through M.6. These exhibits were also added to the record. 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 and the Hearing Log 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.** A public hearing was held on July 17, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits F.1, F.2 and F.3) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

   Stacy Abbott and Mark Brown appeared and testified on behalf of Snohomish County Planning and Development Services Department (PDS). Appearing for the Applicant was Brian Holtzclaw of KLN Construction, Inc.

   In addition, several interested citizens, Don Crenshaw, Peter Klotter, Jerry Stone, Richard May, Rich Bruno and Phil Debells, appeared and testified at the public hearing.

4. **Site Visit.** The Examiner conducted a site visit to the subject property on July 12, 2013.

B. FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. **Applicant’s Proposal.** The Applicant requests approval of a rezone from R-9600 to R-7200 and a 44 lot single-family residential subdivision. The new lots would be served by new County roads, 45th Drive SE and 140th Place SE. New 45th Drive SE would intersect with 141st Street SE where it currently is blocked by bollards at the boundary with the Appletree Division 6 subdivision providing a westerly route to Seattle Hill Road. The new lots will access directly from the new road system via individual and shared driveways. Lot sizes within the development average 8,158 square feet. There are no
duplex lots proposed. The subdivision is dependent on the rezone approval. The Applicant also requests approval of an Administrative Site Plan pursuant to SCC 30.23A.100.

2. **Site Description.** The 11.16 acre site, located northeast of the intersection of Seattle Hill Road and 141st Street SE, is developed with multiple single-family detached residences and various outbuildings. The site slopes from east to west at approximately 3% to Seattle Hill Road. On-site vegetation is a combination of coniferous forest and domestic landscaping on the western portion of the property, with a mixed, non-mature deciduous and coniferous forest on the eastern portion of the subject site. Within the eastern portion of the site lies a major utility easement for Olympic Pipeline and Puget Sound Power. Two wetlands and a Type Ns stream lie within the site and onto adjacent parcels. A Category III riparian wetland associated with the Ns stream lies within the western portion of the site adjacent to Seattle Hill Road. A Category I wetland bog lies within the eastern portion of the site.

3. **Adjacent Uses.** The properties immediately adjacent to the site on the north, south and east are zoned R-9600 and R-7200 and contain residential uses. The parcel immediately adjacent to the west is also zoned R-7200 and contains a preliminarily approved subdivision which has not yet been recorded. The general area consists of a mixture of parcels zoned R-9600, R-7200 and PRD-7200. In general, as development (or redevelopment) is occurring, the parcels are being rezoned to R-7200.

4. **Project Chronology.** The subject applications were submitted to PDS on May 22, 2012, and were determined to be complete as of the date of submittal. The Applicant submitted design revisions of the preliminary plat on December 18, 2012 and March 29, 2013. As of the date of the hearing, 161 days of the 120 day review period had elapsed. The Applicant submitted a 120 Day Process Waiver Letter (Exhibit A.7).

5. **State Environmental Policy Act Compliance.** PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on June 17, 2013. The DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

6. **Issues of Concern.**

   A. **Public Agency Review.** No significant issues of concern were raised by reviewing agencies.

   B. **Citizens.** Prior to the public hearing, a good deal of correspondence from local residents was received (Exhibits I.1 - I.12) including one petition (Exhibit I.2). Additional written comments and another petition were submitted at the public hearing (Exhibits L.1, L.4 – L.6). Many of the concerns raised were also addressed in the public testimony. The concerns expressed were directed primarily to two areas: the proposed rezone to a higher density and how the proposed development would be accessed. These concerns will be addressed at some length in the discussion below.

7. **Approval Criteria.**
A. Rezone.

The Applicant seeks a rezone of the site from R-9600 to R-7200 pursuant to Chapter 30.42A SCC. In order to grant a rezone, the Hearing Examiner must find that (1) the proposal is consistent with the comprehensive plan; (2) that the proposal bears a substantial relationship to the public health, safety and welfare; (3) the proposal will not increase the density on any site where any significant trees were removed after January 7, 2009 and within six years prior to the date of application; and (4) where applicable, that minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

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

The subject property is designated as Urban Low Density Residential on the Future Land Use map of the Snohomish County GMA Comprehensive Plan (GMACP) and is located within an Urban Growth Area (UGA). The Urban Low Density Residential designation allows mostly detached housing developments on larger lot sizes. As outlined in the comprehensive plan, allowed implementing zones for this designation are R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB. The Applicant proposes a rezone of the site from R-9600 to R-7200, a listed implementing zone. Many of the residents in the surrounding area indicated their objection to the rezone. For example, a petition signed by many residents in the AppleTree subdivisions south of the proposal stated opposition to the rezone asserting that the smaller lots would not "maintain the overall appearance of Apple Tree," could potentially reduce property values, increase traffic and increase crime. (Exhibit I.2). A letter from an attorney representing the Apple Tree Homeowners Association also raised objections to the rezone which it describes as putting "too much development and population into too small of a space" and asserting that the rezone will permit 11 additional lots over what could be achieved under the existing R-9600 zoning. (Exhibit L.6). This was rebutted by Mr. Holtzclaw, who represented the project proponent. In his testimony, Mr. Holtzclaw noted that the actual number of lots included in the project is only five more than could be achieved using lot size averaging under the current R-9600 zoning. He also testified that considerably more lots would be theoretically possible if a Planned Residential Development (PRD) was used under the current zoning. Importantly, because lot size averaging can be used under either the existing R-9600 zoning or the proposed R-7200 zoning, actual lot sizes can be as small as 3000 square feet in either case. Thus, retaining the existing R-9600 zoning would not provide assurance that the lots, as actually developed, would be significantly larger.

The Population and Employment Element of the GPP requires that growth be directed primarily to the urban areas (Objective PE 1.A, page PE-4) that have existing or planned public facility and service capabilities to accommodate growth (PE Policy 1.A.2., page PE-4). As discussed below, the project will provide adequate public facilities and service capabilities, and, therefore, meets the criteria of the Population and Employment section.
The Land Use Element - Urban Development Patterns Policy (LU-15) and Goal LU-2 (LU-16) are intended to improve the efficiency of urban residential land utilization and to require a minimum net density of 4-6 dwelling units per acre. LU Policies 2.A.1 and 2.A.3 (LU-16) require minimum densities of 4-6 du/acre. The project will result in a net density of 7.33 du/acre. This density satisfies the requirement. As noted in the PDS staff report, in general, in the urban area, as development (or redevelopment) is occurring, parcels are being rezoned to R-7200.

The Housing Element of the GPP requires efficient infill development in UGAs (HO Policy 1.D.3., page HO-5). The rezone is a necessary component of the proposed development, which is an infill development in an area with both established, newly developed and soon to be developed neighborhoods. Goal HO-2 of the Housing section (HO-6) requires that the vitality and character of existing residential neighborhoods should be maintained. Here, while the physical attributes of existing lots within the project site will be changed by the proposed rezone, resulting in smaller lots and higher densities that will be somewhat different from some of the existing lot dimensions of the surrounding neighborhood, the overall character of the area will be the same. It will consist of single-family residential housing, with typical urban amenities such as open space, sidewalks, and the like. The rezone does not affect this. While the petition of the Appletree residents (Exhibit I.2) asserts that Appletree, "is comprised of large-lot single family homes," that is not a completely accurate characterization of Appletree. It must be noted that Appletree Division 6 was also rezoned from R-9600 to R-7200. Division 6 was also developed using lot size averaging, with some lots as small as 5847 square feet. (See Exhibit I.11). The lot sizes in the existing Thomas Lake Estates development south of the proposal cannot be fairly used to gauge the compatibility of the proposal with the neighborhood. Those lots are considerably larger than the minimums permitted in the existing R-9600 zoning and they were not developed under the county's current GMA comprehensive plan policies. The proposed rezone will maintain a residential neighborhood and will not allow commercial agricultural uses, commercial development, or multi-family development on the site.

Based upon the foregoing discussion, the Examiner finds that the proposed rezone is consistent with the GMACP.

(ii) The proposal bears a substantial relationship to the public health, safety, and welfare. The application for the proposed rezone is concurrent with the application for a subdivision. Review of the land development proposal has been made for compliance with the relevant codes, policies, and standards of Snohomish County. PDS and the Department of Public Works (DPW) have determined that the project, as conditioned, will satisfy those requirements, including a concurrency determination for access routes to and from the development, an evaluation of the road and access routes to comply with the relevant EDDS standards and SCC 30.66B, evaluation of the adequacy of stormwater and drainage system, adherence to the subdivision codes, compliance with the fire and emergency access requirements, and provision of adequate potable water and sewage disposal. The intent of the Snohomish County codes, policies, and standards is to ensure that adequate provision has been made for the public health, safety, and welfare of the citizens. The Examiner finds that the proposed rezone, as conditioned, bears a substantial relationship to the public health, safety and welfare.
(iii) The proposal would not increase the allowed density of residential development on any site where any significant trees other than hazardous trees were removed after January 7, 2009, and within six years prior to the date of the submission of the application, pursuant to SCC 30.25.016(3). No significant trees were removed after January 7, 2009 or within six years of the submittal date. The proposal includes an administrative site plan which includes a tree survey, a tree preservation/replacement plan and landscaping plan. Review of that plan was completed by PDS which recommends that the project be subject to conditions of approval that will ensure that the plans will be implemented.

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

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

B. Subdivision Approval.

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

(i) Access and Circulation. (SCC 30.66B.420 and Chapter 30.24 SCC) The key issue in evaluating the proposed subdivision is access. All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access is proposed from 141st Street SE which currently dead-ends at bollards where it abuts the Appletree Division 6 subdivision. Through letters, petitions and testimony at the hearing, it is clear that the current residents of the Thomas Lake Estates development, consisting of homes on large, suburban lots, object to allowing the current proposal to utilize 141st Street SE for access to Seattle Hill Road. Moreover, residents in the Appletree development to the east and south object to either opening 141st Street SE into a through street between Seattle Hill Road and 46th Avenue SE or to directing traffic from the proposed development east on 141st Street SE through Appletree instead of west to Seattle Hill Road. Many residents questioned why the existing access point on Seattle Hill Road used by the former owners, the Parkers, could not be used to access the new subdivision.
Because 141st Street SE is proposed to be used for all of the traffic generated by the proposed development, the decisions of the former Deputy Hearing Examiner and the County Council regarding the approval of the Appletree Division 6 subdivision in 2005 must be considered. It is those decisions that resulted in the current unusual blockage of 141st Street SE with bollards. The key County Council ruling, which is set forth in Council Motion 05-490 dated October 31, 2005, is the following:

Until sidewalks have been installed on both sides of 141st Street SE from the subject plat boundary to Seattle Hill Road, no through traffic shall be permitted on 141st Street SE.

It was argued by many residents that allowing the current proposal to direct all its traffic onto 141st Street SE (thereby tripling the current traffic volume) violates this County Council ruling. Both the Applicant and the PDS traffic engineer argued that the County Council’s ruling would not be violated by the current proposal. They argued that while additional traffic would be added to it, 141st Street SE would not become a through street. The current dead end sign at the intersection of 141st Street SE and Seattle Hill Road would remain. Vehicles entering 141st Street SE at that intersection would have no other exit except to return to that intersection.

To resolve the current access controversy, it is necessary to bear in mind both what the County Council said and what it did not say. Importantly, the County Council did not rule that no additional traffic could be directed onto 141st Street SE before sidewalks were installed on both sides. The prohibition was on opening the street to through traffic; at the time, traffic to and from the Appletree development to the east and south. It has been estimated that making such a through connection would increase traffic on 141st Street SE to approximately 1000 ADT. Under the current proposal, while traffic on 141st Street SE would greatly increase, it would be only a little more than half the traffic volume that would result from making the street a through connection.

It is clear that 141st Street SE is substandard under current county urban road design requirements. Under the EDDS, if the street were constructed today, it should have 28 feet of pavement width, two 10 foot travel lanes, a paved parking lane, a 5 foot planter strip and a 5 foot paved sidewalk. Nevertheless, the professional engineering evidence in the record is that this street as it currently exists, can safely carry the additional traffic proposed. As PDS Traffic Engineer Mark Brown testified,

The existing roadway (22’ wide asphalt paving) and the eight (8’) walkable gravel shoulders are typical of many County roads that carry more than the projected number of trips from this development with higher speeds without issue. From a level of service stand point 141st St SE will accommodate the additional trips as will Seattle Hill Road at 141st St SE.

(January 10, 2013 Mark Brown memo, Exhibit H.8). Mr. Brown also testified that, due to the concerns raised by residents about the use of 141st Street SE, he requested that the Traffic Operations Division of the DPW conduct an Inadequate Road Condition (IRC) analysis of both 141st Street SE itself and the intersection of 141st Street SE and Seattle Hill Road. The result of that analysis was that this road and intersection are currently
adequate, they will not become inadequate with the additional traffic proposed and they will also not become inadequate even when the bollards are eventually removed and 141st Street SE is opened to the east.

Some residents, notably Mr. Stone, advocated for simply shifting the bollards on 141st Street SE somewhat to the west and then directing the traffic from the proposed development to the east on 141st Street SE and into the road system serving the Appletree development. This of course, was uniformly opposed by Appletree residents. The Examiner asked Mr. Brown whether this means of access was considered and, if it was, whether it would be workable. Mr. Brown indicated that this access route had not been proposed but that if it had, he would have recommended against it. That route, while utilizing roadways that have been constructed to current urban standards, would have the effect of creating an extremely long dead end road that would not meet EDDS requirements. EDDS standards do not permit more than 250 ADT on a dead end road. Assuming a traffic generation rate of 9.57 ADT per single-family residence, directing the proposed development’s traffic eastward on 141st Street SE would (together with existing traffic from Appletree Division 6) create approximately 600 ADT on 46th Avenue SE at the point it reaches 42nd Place SE. Mr. Brown also noted that the route through Appletree would be much less direct and inefficient in getting traffic to Seattle Hill Road and lengthen emergency vehicle response times. It would also worsen the unusual and substandard connectivity situation created by the current blockage of 141st Street SE as ordered by the County Council. Mr. Brown testified that that blockage conflicted with County Code, the Comprehensive Plan and the County’s Design Standards. For example, EDDS 3-01 B.(7) states that,

A road connection shall be made to any road stub on an adjacent parcel that has been constructed to the shared boundary. This requirement may be waived by deviation where it can be shown that topography, critical areas or other factors make the connection impractical.

The DPW had not approved a deviation from this connection requirement for Appletree Division 6. Nevertheless, the former Deputy Hearing Examiner imposed the restriction on the connection and that restriction was upheld by the County Council on appeal.

Use of the current access point on Seattle Hill Road serving the former Parker property for access to the proposed development is not a practical alternative. As noted in the “Applicant’s Response to Comment Letters” (Exhibit J.1) the subject site has only 80 feet of frontage on Seattle Hill Road and that is at the location of a Category III wetland and its associated buffer. There would be no way to build a subdivision access road at this point without impacting the wetland and buffer. This location also would have sight distance and intersection spacing problems.

Thus, the Examiner finds that the proposed access utilizing 141st Street SE west to Seattle Hill Road, while greatly increasing the traffic on that street from its current condition, is the best route available under the circumstances. However, as did the former Deputy Hearing Examiner and the County Council, this Examiner also finds that in order to provide for pedestrian safety, improvements must be made to 141st Street SE
before it may be used to provide access to the proposed subdivision. Those
improvements will be detailed below.

(ii) **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 $1,244.49 per each new single-family residential unit, to be
paid prior to building permit issuance for each unit. Payment may be deferred from
the time of building permit issuance, but must be paid in full either upon the closing of the
sale of the property, or 18 months from the date of issuance of the original building
permit, whichever is earlier, or prior to any occupancy of the structure if the property
owner elects to retain ownership and not sell the property (30.66A.020(4) SCC). PDS
has recommended a condition of approval for inclusion within the project decision to
comply with the requirements of Chapter SCC 30.66A SCC. The Examiner finds that
such payment is acceptable as mitigation for parks and recreation impacts in
accordance with County codes and policies.

(iii) **Traffic Mitigation and Road Design Standards.** (Title 13 SCC, & Chapters 30.24
and 30.66B SCC)

(a) **Road System Impacts, Concurrency and Inadequate Road Conditions**

(1) **Road System Capacity Impacts.** (SCC 30.66B.310) A
development must mitigate its impact upon the future capacity of the road
system by paying a road system impact fee reasonably related to the
impacts of the development on arterial roads located in the same
transportation service area as the development, at the rate identified in
SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips
(ADT) generated by 42 new homes, which is 9.57 ADT/home. This rate
comes from the 8th Edition of the ITE Trip Generation Report (Land Use
Code 210). The development will generate 401.94 new ADT and has a
road system capacity impact fee of $107,317.98 ($2439.05/building
permit) based on $267.00/ADT, the rate for a residential development
located in the UGA in TSA D. The impact fee payments are due in
accordance with the provisions of SCC 30.66B.340. Payment of such
impact fees as mitigation for impacts to county roads demonstrates
compliance with SCC 30.66B.310.

(2) **Concurrency.** (SCC 30.66B.120) The County makes a
concurrency determination for each development application to ensure the
development will not impact a county arterial unit in arrears or cause a
county arterial to go in arrears. The subject development is located in
TSA D which, as of the date of submittal, had no arterial units in arrears.
Therefore, pursuant to SCC 30.66B.160(2)(a), the development was
determined concurrent. The proposed development generates 31.50 new
AM peak-hour trips and 42.42 new PM peak-hour trips which is less than
the threshold of 50 peak-hour trips and, therefore, the development was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent as of August 1, 2012. The concurrency determination expires 6 years from the date of the determination, in this case August 1, 2018.

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

The DPW has determined that the subject development proposal will not impact any IRC locations identified within TSA D with three or more of its PM peak hour trips, nor will it create any IRCs. Also, as discussed above, an IRC review of 141st St SE and the intersection of 141st SE/Seattle Hill Road was also performed. The results of that review indicated that no IRC exists or would be caused by the proposed development. 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 SCC 30.66B.210.

(b) **Frontage Improvements** (SCC 30.66B.410) All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement is to be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

The subject development has 80 feet of frontage on Seattle Hill Road in a wetland. Access is not proposed at this location, but the development will impact this area with 270 ADT, 21 AM peak hour trips (PHTs) and 28 PM PHTs. Urban frontage improvements on Seattle Hill Road exist on the adjoining parcel to the northeast. A condition of approval will be imposed that frontage improvements be constructed across the project's frontage on Seattle Hill Road. The planter and sidewalk will be five (5) feet wide each and the curb location must match the curb location of the development to the northeast.

The site's other frontage is on 141st Street SE east of Seattle Hill Road where it is currently blocked by bollards from providing further access to the east into the Appletree Division 6 development. The width of the frontage there is approximately 52 feet. All of the access to the project is proposed to be taken from this location. A full urban access with radius returns must be constructed and the bollards relocated somewhat.

Seattle Hill Road, on which the development's frontage improvements are required, is in the impact fee cost basis (Appendix D of the Transportation Needs
Report); therefore credits towards the Applicant’s impact fee for any frontage improvements that can be used in the ultimate build-out of the road are applicable. 141st Avenue SE is not in the cost basis analysis so credit for improvements to 141st Avenue SE is not applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

(c) Road Classification. (SCC 30.66B.420) Under the authority of the County Engineer and in accordance with the EDDS, the new internal road is classified as a non-arterial local road. The road will be a public road serving approximately 421 ADT. The design speed for this road is 25 mph. The road shown on the plans meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. 141st Street SE is classified as a non-arterial local road. 141st Street SE is a dead end public road. The posted speed for the road is 25 MPH.

(d) Right-of-Way Requirements. (SCC 30.66B.510 and 30.66B.520) A development is required to dedicate, establish or deed right-of-way to the County for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, Seattle Hill Road, is designated as a Minor Arterial and requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development’s side of the right-of-way. Therefore, the development is required to dedicate 10 feet of additional right-of-way.

The road serving this development, 141st St SE, is designated as a nonarterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development’s side of the right-of-way. It appears that the required improvements to make the connection to 141st St SE can be accommodated in the existing right-of-way.

Seattle Hill Road is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the Applicant’s impact fee for the 10 feet of right-of-way to be dedicated is applicable.

(e) Impacts to State Highways. (SCC 30.66B.710) When a development’s road system includes a state highway, mitigation requirements will be established using the County’s SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County’s SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County’s SEPA authority.
This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the WSDOT and Snohomish County effective December 21, 1997, and as amended. The Applicant provided an offer in the amount of $10,483.56 to mitigate impacts to State Highways for State project number 11. Comment dated June 7, 2012, was received from the State indicating the acceptance of this offer. (Exhibit H.2)

This was based on 49 SFR lots (47 new). The current proposal is for 44 SFR lots (42 new). Therefore, Applicant’s obligation to the State should be proportionately reduced to $9,368.29 (42/47 x $10,483.56). This results in $212.92/lot.

(f) Impacts to City Streets and Roads. (SCC 30.66B.720) Mitigation requirements for impacts on streets inside cities and roads in other counties are to be established in a manner that is consistent with the terms of a Reciprocal Traffic Mitigation ILA between the County and the other jurisdictions. This development is subject to the ILA between Snohomish County and the City of Mill Creek.

The Applicant has offered to mitigate impacts to the City by offering to pay $71,265.60 to the City. This offer has been accepted by the City in a response dated June 13, 2012. (Exhibit H.1). This was based on 42 new SFR lots. This results in $1,619.67/lot.

(g) Transportation Demand Management (TDM). (SCC 30.66B.630) The County requires all new developments in the urban area to provide TDM measures. Sufficient TDM measures are to be provided to indicate the potential for removing a minimum of five (5) percent of a development’s PM peak hour trips from the road system. This requirement is to be met by site design requirements provided under SCC 30.66B.640, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 or 30.66B.625. (SCC 30.66B.630). The Applicant has chosen to make a voluntary payment. The TDM obligation for this development is therefore equivalent to 5% of the 42.42 new PM peak hour trips x $6,500.00 which equals $13,786.50 ($313.33/lot).

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

(iv) Pedestrian Facilities. (RCW 58.17.110) The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments signed on July 3, 2012 from the Everett School District indicate that all students will be picked up by bus at the intersection of 141st Street SE/Seattle Hill Road. Currently, only gravel shoulders exist along 141st Street SE to this location. PDS recommended that one of the shoulders be paved because all students from the subject development will use the shoulder to walk to their bus stop at Seattle
Hill Road. PDS indicated that a seven foot paved shoulder is considered an adequate pedestrian facility by the Snohomish County EDDS. However, in the circumstances presented by the current situation, the Examiner does not find that simply widening one side of this gravel shouldered street would be appropriate. RCW 58.17.110 requires that the Examiner,

[S]hall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

(Emphasis added). As discussed in a prior section of this decision, 141st Street SE does not meet current urban standards. Those standards would require wider travel lanes and paved sidewalks on both sides of the street. The lack of those improvements and the risk to pedestrian safety for students prompted the former Deputy Hearing Examiner and the County Council to significantly limit the traffic on 141st Street SE by closing the street at the Appletree Division 6 boundary. While that closure will continue indefinitely, the development of Mayfield Estates will increase the traffic on 141st Street SE threefold. Under these circumstances, a paved shoulder alone would not assure safe walking conditions for the children to reach the bus stop at the Seattle Hill Road intersection. The edge of the travel lane is not even marked with paint striping. Even with paint striping, vehicles could easily intrude onto a widened shoulder walkway. While from an engineering standpoint, an at-grade walkway may be considered "adequate," it may not be adequate in the real world. Some form of physical separation between the vehicle traffic lane and the walkway is needed. This is particularly so since the development of Mayfield Estates will render the Thomas Lakes Estates
neighborhood an archaic suburban pocket, surrounded by urban neighborhoods where residents will be accustomed to and expect separate, paved sidewalks.

The second paragraph of EDDS 4-06 A. provides as follows:

In urban areas, the preferred standard for pedestrian facilities is a sidewalk separated from the travel lanes by gutter, curb and a planter strip. However, where the ultimate urban standard improvements have not or cannot be constructed, widened paved shoulders delineated as walkways may be approved as interim improvements along roads with posted speeds of 35 mph or less. Non-separated walkways shall not be attached to roads with posted speeds greater than 35 mph. Another option for urban areas is a raised walkway, separated by an extruded curb and illuminated, that may be installed in certain circumstances as described in Section 3-14.

(Emphasis added). It would be a disproportionate burden to require the current Applicant to install full urban standard improvements (with a curb, 5 foot planter strip and 5 foot paved sidewalk) along 141st Street SE. However, a middle ground is available and is appropriate. EDDS 3-14 A. sets out several pedestrian facility options. Under the unique circumstances presented here, the Examiner finds that a raised walkway separated from the vehicle travel lane by an extruded curb should be installed along one side of 141st Street SE. Table 3-12 lists this improvement as an interim off-site improvement in the urban area. Although there is not a limited right-of-way along 141st Street SE, because only a physically separate pedestrian walkway would provide assurance of pedestrian safety in the present, unique circumstances, the raised walkway must be used. The Applicant has indicated that it would be willing to work with the residents of Thomas Lake Estates in addressing their request that the walkway be located on the south side of 141st Street SE. (Exhibit M.5). The Examiner applauds this cooperative attitude and will leave it to the Applicant, DPW and the neighborhood residents to determine the best location of the walkway.

(v) Bicycle Facilities. The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development borders on a right-of-way (Seattle Hill Road) that has been identified on the adopted Bicycle Facility System Map. A bicycle path is part of the required frontage improvements.

(vi) Mitigation for Impacts to Schools. (Chapter 30.66C SCC) Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Everett School District No. 2 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for three existing lots. Payment of school impact fees will be included as a condition of approval of the development.

(vii) Drainage and Land Disturbing Activities (Clearing and Grading). (Chapters 30.63A, 30.63B and 30.63C SCC). The site slopes to the west at approximately 3%
from east to west to Seattle Hill Road. The soils are classified as Alderwood Gravelly Sandy Loam (2%-8%). A Category III wetland exists in the northwest corner of the proposal. A Category I wetland exists in the northeast corner of the proposal. Buffers are proposed to protect these areas.

The Applicant’s engineer reports the downstream drainage is a tributary to Thomas Lake which lies approximately 2,000 feet to the southwest of the project. Stormwater generally sheet flows or moves via interflow to the west to the on-site stream located along the east margin of Seattle Hill Road. It is reported that there are no indications of scour, erosion or other inadequacies within the downstream system.

The Applicant proposes a 44 lot subdivision. The area of new plus replaced impervious surface proposed is 165,528 square feet. The project is located within two separate drainage basins but the actual development area lies within the western drainage basin. An internal public road system together with pedestrian facilities is proposed together with improvements to Seattle Hill Road consisting of shoulder widening and a sidewalk along the site’s frontage.

Total proposed excavation includes 12,000 cubic yards of cut and 12,000 cubic yards of fill.

Drainage from any new impervious surface that is proposed on lots 17-20 will be dispersed toward the east, to Tracts 995 and 996 to provide hydrology for the wetland. The remainder of the proposal does not hydrologically contribute to the wetland based on topography and soil type.

The Applicant proposes greater than 5,000 square feet of new impervious surface. A full stormwater site plan is therefore required prior to development activity under the provisions of SCC 30.63A.300(3). The Applicant proposes greater than 7,000 square feet of clearing, will create more than 2,000 square feet of new and or replaced impervious surfacing and more than 100 cubic yards of grading. Therefore, an LDA permit in accordance with SCC 30.63B.070 will be required for the subject proposal. A Storm Water Pollution Prevention Plan (SWPP) that meets Washington State Department of Ecology (WDOE) requirements will also be required.

The Applicant’s engineer proposes to meet water quality treatment (Minimum Requirement 6) by installing a biofilter swale in the southwest corner of the site in Tract 999. A stormwater vault is proposed preceding the swale to meet flow control (Minimum Requirement 7). The swale discharges to an existing stream.

Based on the preliminary findings made by the staff of PDS’s Engineering Section relating to drainage and grading, this project will meet the requirements of SCC 30.63A and SCC 30.63B and the Drainage Manual (Version adopted September 30, 2010).

(viii) **Critical Areas Regulations.** (Chapter 30.62) Two wetlands and a Type Ns stream lie within the site and onto adjacent parcels. A Category III riparian wetland (Wetland B) associated with the Ns stream lies within the western portion of the site adjacent to Seattle Hill Road. A Category I wetland bog (Wetland A) lies within the
eastern portion of the site. PDS staff reviewed and concurred with the critical area assessment and rating provided by Wetland Resources, Inc. in its Revision 3 Critical Area Study and Buffer Mitigation Plan dated May 21, 2013 (Exhibit C.3).

The Applicant formally requested review under the Innovative Development Design (IDD) provisions of SCC 30.62A.350 since buffer mitigation that is offered is not to the standards of SCC 30.62A.300. PDS staff concurred with the opinion of Wetland Resources, Inc. that the functions and values of the critical areas will be protected beyond the standard code requirements established in Part 300 of the Critical Area Regulations given the proposed buffering provisions.

An evaluation of the information submitted has resulted in a determination that the application complies with Chapter 30.62A SCC (Critical Areas Regulation/Wetlands and Fish & Wildlife Habitat Conservation Areas) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

(ix) **International Fire Code.** (Chapter 30.53A SCC) The Office of the Fire Marshal determined that the project was in compliance with Chapter 30.53A SCC, provided it complies with the following conditions:

(a) Fire flow and fire hydrants must be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot or parcel more than 300 feet from a hydrant. Hydrant locations must be depicted on the face of the plat, and locations for new hydrants must be approved by the Fire Marshal. All hydrants must meet the following requirements: four (4) inch storz-type steamer port fittings must be provided on new hydrants, the tops of the hydrants must be colored green and blue street reflectors must be installed on the hydrant side of the centerline of the streets serving the lots in the plat to indicate hydrant locations.

(b) The minimum required fire flow for this project is to be 1000 gpm at 20 psi for a 1-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of SCC 30.53A.520(16), the Applicant must provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1000 gpm at 20 psi for a 1-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings must be provided with NFPA 13-D fire suppression systems. If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. This requirement must appear on the face of the final plat.

(c) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28' in width and one side of the road if it is 28' wide but less than 36' wide stating “NO PARKING – FIRE LANE” to ensure
access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.

(d) Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

(x) **Utilities.** Water and sanitary sewer will be supplied by the Silver Lake Water and Sewer District. Certificates of Water and Sewer Availability were received dated June 19, 2012 (Exhibit H.6) and were confirmed on July 10, 2013 (Exhibit L.2). The Snohomish Health District provided correspondence dated June 6, 2012 indicating that it has no objections to the proposal provided any existing/remaining on-site sewage system(s) will be abandoned by having the septic tank(s) pumped by a certified pumper, then having the top of the tank removed or destroyed and the void filled. (Exhibit H.3). The Snohomish County Public Utility District provided correspondence dated June 14, 2012 indicating that it can provide electrical service for the project (Exhibit H.4).

(xi) **Zoning.** (Chapter 30.2 SCC) This project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the Lot Size Averaging Code, as discussed below.

(xii) **Landscaping Standards.** (Chapter 30.25 SCC) PDS evaluated the proposal for compliance with SCC 30.25.015. All residential developments located within UGAs are required to landscape a minimum of 10 percent of the total gross area of the site to the standards unless otherwise exempted. The gross site area is 486,363 square feet. Based on this, 48,636 square feet of landscaping is required. The Applicant has exceeded the required percentage by providing 126,584 square feet of landscaping in Tracts 991, 994, 996, 997, and 999.

(xiii) **Tree Retention.** (Chapter 30.25 SCC). There are 532 significant trees on the subject site. Of these 532 significant trees, 242 will remain. A total of 290 significant trees are to be removed. Due to the caliper of each tree to be removed, 576 replacement trees are required. The landscape plan shows 641 replacement trees to be planted. A condition of approval will require implementation of the preliminary landscape plan (Exhibit B.4). A final landscape plan will be required when construction plans are submitted.

(xiv) **Lot Size Averaging Regulations.** (SCC 30.23.210). The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus 50% of critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case will the density achieved be greater than the gross site area divided by the underlying zoning.
In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%. The LSA calculation is as follows:

Area in Lots (220,520 square feet) + 50% of Critical Areas and Buffers (53,546 square feet) + Open Space (84,886 square feet) = (138,432 square feet) ÷ (44 lots proposed) = 8,158 square feet.

The minimum zoning requirement of the requested R-7200 zone is 7200 square feet. No lot is less than 3000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. Accordingly, the Examiner finds that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

(xv) As conditioned, the plat will meet all of the County’s transportation and road regulations and design standards. The Examiner finds that all lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County’s fire regulations subject to the proposed conditions. Accordingly, the Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.

C. Administrative Site Plan Approval. (Ch. 30.23A SCC).

Urban residential design standards apply to new residential development located within UGAs including subdivisions regulated under Chapter 30.41A SCC. Under the requirements of SCC 30.23A.100, an administrative site development plan is required for all residential development that is subject to the requirements of Chapter 30.23A SCC. When residential development requires both an administrative site plan approval and a Type 2 decision issued by the Hearing Examiner after an open record hearing (as in the present case), the administrative site plan may not be approved until the Examiner’s decision has been issued. Under SCC 30.23A100(2)(c), the Director of PDS must find that the administrative site plan is consistent with the applicable requirements of Subtitle 30.2 and the Director’s decision must be consistent with the Examiner’s decision issued for the residential development. These requirements will be implemented with a condition of approval.

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

CONCLUSIONS OF LAW
1. The Examiner has original jurisdiction over rezone and subdivision applications pursuant to Chapters 30.42A, 30.41A, 30.72 SCC and Chapter 2.02 SCC.

2. The Applicant has met its burden of proof to show that the rezone meets the requirements of Chapter 30.42A SCC and should be approved from R-9600 to R-7200.

3. The Examiner must review the proposed subdivision application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

The Examiner concludes that if the conditions of approval established herein are complied with, the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute.

4. The proposed subdivision also meets Chapter 30.41A SCC requirements. The proposed subdivision conforms generally with the development regulations of Title 30 SCC. There is open space provided within the subdivision in the form of active open space. The single-family homes within the subdivision will be in character with the urban area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The subdivision, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. The proposal as conditioned meets the applicable version of the International Fire Code. Adequate drinking water and sewage disposal will be provided by the Silver Lake Water and Sewer District.

5. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.

6. The Examiner concludes that adequate public services exist to serve this proposal.

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

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

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

1. The application for a **REZONE** of the subject property from R-9600 to R-7200 is **GRANTED**.

2. The approval of a **PRELIMINARY SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

**CONDITIONS**

A. The Preliminary Plat received by PDS on March 29, 2013 (Exhibit B.1), shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330.

B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the County:

   i. A detailed landscape and tree retention/replacement plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit B.4 and with all required landscape standards.

   ii. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval, subject to Minimum Requirements 1-9.

   iii. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).

   iv. The platter shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.

   v. A Final Buffer Mitigation Plan shall be submitted for review and approval during the construction review phase of this project based on the revised May 21, 2013 Critical Areas Study and Buffer Mitigation Plan by Wetland Resources, Inc.

C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions A and B above and the following requirements:

   i. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. The approved development/construction plans shall show hydrant locations and locations for new hydrants shall be approved by the Fire Marshal. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no
lot or parcel in excess of 300 feet from a hydrant. The following requirements shall apply to the installation of any required hydrant:

Four (4) inch storz type steamer port fittings shall be provided on new hydrants.

The top(s) of the hydrant(s) shall be colored green.

Blue street reflector(s) shall be installed on the hydrant side of centerline to indicate hydrant location(s).

ii. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided stating “NO PARKING – FIRE LANE” to ensure access availability. If pavement striping is used the curbs shall be painted yellow with black lettering.

iii. Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

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

i. “SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit or twice the amount shown for a duplex:

$2,439.05 per lot for mitigation of impacts on county roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per-lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

$212.92 per lot for mitigation of impacts on state highways paid to the County.

$1,619.67/per lot for mitigation of impacts on City streets for the City of Mill Creek paid to the City. Proof of payment of the above amount shall be provided to the County.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Payment of mitigation for impacts on county roads is due in accordance with the payment timing provisions of Chapter 30.66B SCC. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein.”

ii. “The dwelling units within this development are subject to park impact fees for the Nakeeta Beach park and recreation impact mitigation fee area of the County parks system in accordance with SCC 30.66A which requires payment of
$1244.49 for each new single-family residential unit. Park impact fees shall be based upon the rate in effect at the time of building permit issuance, provided that if the building permit is not issued within five years after the application is deemed complete, the fee shall be based upon the rate in effect at the time of building permit issuance."

iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District No. 2 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 3 existing parcels. Lots 1, 2 and 3 shall receive credit."

iv. "All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."

v. "If there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. If the dwellings that exceed 3,600 square feet cannot meet the required fire flow of Appendix B, the dwellings shall be provided with NFPA 13D fire suppression systems."

vi. "Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC."

E. The final plat shall show a ten-foot (10’) right-of-way dedication along the property’s frontage on Seattle Hill Road.

F. Prior to recording of the final plat:

i. The new public roads shall have been constructed to the satisfaction of DPW.

ii. Urban standard frontage improvements shall have been constructed along the property’s frontage on Seattle Hill Road to the satisfaction of DPW unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

iii. Pedestrian facilities consisting of a raised walkway separated from the vehicle travel lane by an extruded curb shall be constructed to the satisfaction of the County from the subject development’s access on 141st St SE to Seattle Hill Road.

iv. The administrative site plan required by Chapter 30.23A SCC (Urban Residential Design Standards) shall be approved.
v. Documentation demonstrating that any existing on-site 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 the void filled (WAC 246-272A-0300) shall be provided to the PDS inspector and to the Snohomish Health District.

vi. The developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 1-hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems. It shall be noted as a restriction in the recording of the final plat that if there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 Edition of the International Fire Code.

vii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where a CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

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

ix. The Final Buffer Mitigation Plan shall have been satisfactorily implemented.

G. In conformity with applicable standards and timing requirements:

i. The final approved landscape plan shall be implemented. All required landscaping (including planting of replacement trees) shall be installed in accordance with the approved landscape plan prior to recording unless a security device is approved pursuant to Chapter 30.84 SCC

ii. Fire lane signs and/or striping shall be completed as required by the County Fire Marshal’s Office.

iii. All water, sewer, electrical and communication distribution and service lines shall be underground.

iv. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or
access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC.

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

Preliminary plats which are approved by the county are valid for seven (7) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

DATED this 6th day of August, 2013.

Gordon Sivley, 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 calendar 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 AUGUST 16, 2013.** There is no fee for filing a petition for reconsideration. “The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]

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

The grounds for seeking reconsideration are limited to the following:

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

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

**Appeal**

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

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before AUGUST 19, 2013**, and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.
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<tr>
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<td>CHER ANDERSON &amp; BRIAN HOLTZCLAW</td>
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<td>19000 33RD AVE W SUITE 200 LYNWOOD WA 98036-4753</td>
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<td>SNO CO DEPT OF PUBLIC WORKS COUNTY ENGINEER</td>
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<td>3000 ROCKEFELLER AVE M/S 607 EVERETT WA 98201</td>
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<td>SNO CO PUD NO 1 ELISABETH TOBIN</td>
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<td>SNOHOMISH HEALTH DISTRICT</td>
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<td>STEVE BENENATI</td>
<td>BRENT RAASINA</td>
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<td>CITY OF MILL CREEK</td>
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<td>CHRISTI AMRINE &amp; SCOTT SMITH</td>
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<td>JAMES &amp; MARY CHURCH</td>
<td>DON &amp; DE ANN CRENSHAW</td>
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<td>JERRY STONE</td>
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<tr>
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