



**FINAL DECISION of the SNOHOMISH COUNTY  
HEARING EXAMINER  
REVISED ON RECONSIDERATION**

**Hearing Examiner's Office**  
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**DATE OF DECISION: May 13, 2013**

**PLAT/PROJECT NAME: GLENNWICK GROVE**

**APPLICANT/  
LANDOWNER:** Phoenix Development  
16108 Ash Way, Suite 201  
Lynnwood, WA 98087

**FILE NOS.:** 12-104437 SD, 12-104441LU

**TYPE OF REQUEST:** Preliminary Subdivision and Administrative Site Plan Approval

**DECISION  
(SUMMARY):** Preliminary Subdivision and Administrative Site Plan are  
**APPROVED WITH CONDITIONS**

**GENERAL LOCATION:** 52<sup>nd</sup> Avenue West and 164<sup>th</sup> Street SW

**ACREAGE:** 18.74 acres

**NUMBER OF LOTS:** 45 lots

**AVERAGE LOT SIZE:** 12,377 square feet

**MINIMUM LOT SIZE:** 5,000 square feet

**GROSS DENSITY:** 2.6 du/acre (6.7 du/acre net)

**GMACP DESIGNATION:** Urban Low Density Residential

**ZONING:** R-8400

**UTILITIES:**

Water: Alderwood Water and Wastewater District  
Sewer: Alderwood Water and Wastewater District  
Electricity: Snohomish County PUD No. 1

**SCHOOL DISTRICT:** Edmonds School District No. 15

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

PDS STAFF RECOMMENDATION: Approve, subject to conditions.

### **BACKGROUND INFORMATION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence at both the initial hearing on January 30, 2013 and the subsequent hearing after remand conducted on March 21, 2013 (Exhibits A.1 through O.4), as well as the testimony of witnesses received at the Open Record Hearings. The record was left open following the March 21<sup>st</sup> hearing to permit PDS to submit copies of documentation of the allowance of a 10 percent landscaping reduction under SCC 30.25.016(6)(c), a June 7, 2012 e-mail from the Washington State Department of Transportation (WSDOT), an August 7, 2009 letter from the Edmonds School District and a modification to the Department of Planning and Development Services (PDS) staff report concerning compliance with SCC 30.23A.040. These matters were addressed by Exhibits O.1 through O.4 which were received on March 22, 2013 and 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 are available at the Hearing Examiner's Office.

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 Hearings.
3. Public Hearings. A public hearing was held on January 30, 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, F.3 and F.4) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

At the hearing on January 30, 2013, Stacey Abbott and Mark Brown appeared and testified on behalf of PDS. Appearing for the Applicant was Jim Egge of Phoenix Development, Inc., Rob Long of Blueline Group and Ann Olson of Talasaea Consultants, Inc. An interested citizen, David Larson, also appeared and offered testimony on the proposal primarily raising traffic concerns.

The Examiner issued a decision dated February 12 2013 which denied the requested landscaping modification and remanded the subdivision application to PDS.

Notices of the reconvened public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits M.2, M.3 and M.4)

At the hearing on March 21, 2013, Stacey Abbott appeared and testified on behalf of PDS. Jim Egge of Phoenix Development, Inc. and Rob Long of Blueline Group offered testimony on behalf of the Applicant. A neighboring property owner, Charles (Chad) Braithwaite, also provided testimony on the proposal regarding building heights on sloped lots on the southern portion of the site as well as traffic concerns with the

intersection of 56<sup>th</sup> Avenue West and 168<sup>th</sup> Street Southwest. Mr. Braithwaite also raised a concern about landscaping for the drainage detention facility and he questioned the 10 percent reduction in tree replanting granted by PDS.

A final decision was issued on April 2, 2013. The Applicant petitioned for reconsideration on April 12, 2013. This revised decision is issued in response to the petition for reconsideration and replaces the original decision in its entirety.

### **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 is requesting approval of a 45 lot single-family residential subdivision. The new lots in Phase I would be served by a new public road system off 56<sup>th</sup> Avenue West. The new lots in Phase II will access directly from 52<sup>nd</sup> Avenue West via shared driveways. Lot sizes within the development average 12,377 square feet. Lots 1 through 4 located in Phase II are duplex lots.

The Applicant has also requested approval of an Administrative Site Plan pursuant to SCC 30.23A.100 submitted for approval concurrently with the preliminary subdivision under SCC 30.23A.100(2)(a).

2. Site Description and Surrounding Uses. The subject site is vacant and is approximately 18.72 acres in size and largely forested. Lunds Gulch Creek flows through the subject property within a steep ravine in the eastern portion of the site adjacent to 52<sup>nd</sup> Avenue West. Slopes range from 0-20 percent along the central plateau, to greater than 33 percent along portions of the Creek.

The properties immediately adjacent to the site on the south and to the west are located within the city limits of Lynnwood. The parcels to the west and a portion of the lots to the south are single-family residential lots. A school is located on a larger parcel on the southern boundary of the subject site.

The parcels to the north and east are located within Snohomish County jurisdiction. The parcels to the north are zoned PRD-8400 and R-9600 and contain single-family residences. The parcels to the east are zoned multiple residential. The larger parcel contains a church and the smaller parcel, a single-family residence.

3. Project Chronology. The preliminary plat and landscaping modification application were originally submitted to PDS on June 1, 2012. The 120-day clock started on June 28, 2012 and then stopped on August 19, 2012 when a review packet was provided to the Applicant's contact. A resubmittal was made on November 19, 2012. The 120-day clock started on December 4, 2012 and the submitted materials were determined to meet the regulatory requirements. As of the January 30<sup>th</sup> initial hearing date, 109 days of the 120-day review period had elapsed.
4. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on January 4, 2013. The

DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

5. Issues of Concern:

A. Agency Comments. During agency reviews, the State Department of Ecology raised an initial question concerning the connectivity of Critical Area Protection Area (CAPA) tracts in order to maintain habitat function.

B. Citizen Comments. Correspondence from seven citizens was received by PDS. (Exhibits I.1-I.6 and L.1) These commenters included Cynthia Arthur, Chad Braithwaite, Randall Hashimoto, Kathy Holzschuh, Michael Knight, Kelly Stokell and Diane Murray. They expressed concerns regarding the following subjects:

Lot Size: Although the minimum lot size is 8,400 square feet in an R-8400 zone, this proposal uses Lot Size Averaging (LSA) which has resulted in some lots being 5,000 square feet or less. Questions were raised about compatibility with the surrounding area where the lot sizes are considerably larger.

Use of Duplexes: Neighbors viewed duplexes as multifamily dwellings and incompatible with the single-family homes in the area.

Traffic: Several commenters raised concerns about added traffic congestion on the area road system and whether the entrance to the development could be relocated.

Environmental Impacts: Concerns were voiced regarding tree removal and negative development impacts on Lunds Gulch and the need for stream and wildlife habitat protection and drainage control.

Landscaping and Tree Removal: Neighbors were concerned about tree removal, impacts upon privacy, property values and increased run-off.

6. Approval criteria.

A. 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) 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. 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.

(ii) 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 (IRC).

(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 49 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 468.93 new ADT and has a road system capacity impact fee of \$125,204.31 (\$2,555.19/living unit or lot) based on \$267.00/ADT; the rate for a residential development located in the urban growth area 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.130(4), the development was determined concurrent. The proposed development generates 36.75 AM peak-hour trips and 49.49 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 December 5, 2012. The concurrency determination expires six years from the date of the determination, in this case December 5, 2018. (Exhibit M.14)

(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 Department of Public Works (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 IRC. 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.

DPW Rule 4222.020(1) requires full urban frontage improvements along the subject property's frontage on 52<sup>nd</sup> Avenue West. These improvements will consist of:

- 23 foot of asphalt concrete pavement width from right-of-way centerline to curb face (to accommodate 1.5 travel lanes and a bicycle lane)
- Cement concrete curb and gutter
- Five (5) foot planter strip
- Five (5) foot cement concrete sidewalk

Through a coordination meeting between DPW Design Section, PDS and the Applicant, it was determined that the proposed bus stop on 52<sup>nd</sup> Avenue West would be relocated to the south to a location satisfactory to Community Transit and the Applicant and that the Applicant would construct urban standard improvements along the parcel's frontage on 52<sup>nd</sup> Avenue West, including the bus stop. DPW approved a deviation to permit the Applicant to eliminate or relocate the planter strip in the vicinity of Lunds Gulch Creek.

52<sup>nd</sup> Avenue West is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any frontage improvements towards the Applicant's impact fee is not applicable.

56<sup>th</sup> Avenue West is in the City limits of Lynnwood. Any improvements to 56<sup>th</sup> Avenue necessitated by the proposed development must be determined by the City. However, because the City and the County have not entered into an interlocal agreement (ILA) regarding traffic mitigation, the County cannot impose such improvement requirements as a condition of development approval.

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

(c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) All developments are required to 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 to city streets is to be in accordance with the applicable city standards and requirements.

The four duplex lots in Phase II will take access from 52<sup>nd</sup> Avenue West. The remaining 41 lots will access from a new public road that accesses directly to 56<sup>th</sup> Avenue West, a City of Lynnwood street. The Applicant requested and was granted a deviation from the EDDS to allow more than 250 ADT on a dead end road. This deviation was approved by DPW. (Exhibit G.1) Access to 52<sup>nd</sup> Avenue West meets EDDS 3-08 requirements for sight distance.

The proposed internal public road is classified as a non-arterial local road. The road will be a public road serving 392.37 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 and horizontal alignment.

(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.

52<sup>nd</sup> Avenue West 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 to 50 feet of right-of-way exists on the development's side of the right-of-way centerline. Therefore, the development will be required to dedicate up to 10 feet of additional right-of-way. Additional right-of-way may also need to be dedicated to accommodate the bus pullout. A condition of approval should be imposed to require that the Applicant dedicate adequate additional right-of-way so that there is 40 feet from the right-of-way centerline on the project's frontage on 52<sup>nd</sup> Avenue West. In addition, the Applicant will be required to dedicate an additional amount of right-of-way as necessary to provide at least 1.5 of right-of-way feet behind the public improvements for the bus pull-out.

52<sup>nd</sup> Avenue West is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any right-of-way dedication towards the Applicant's impact fee is not 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 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.

The Applicant's traffic study (Exhibit C.1) indicates that no State improvement projects will be impacted by trips from the subject development and, therefore, no mitigation for the State should be required under the terms of the interlocal agreement. An e-mail from the State dated June 7, 2012, indicates concurrence with this finding. (Exhibit O.4)

(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 consistent with the terms of a Reciprocal Traffic Mitigation ILA between the County and the other jurisdictions.

An ILA has been executed between the County and the City of Mukilteo for traffic mitigation for impacts on the City's road system. The Applicant's traffic study indicates that mitigation for the City should not be required. (Exhibit C.1) The study indicates that one City project will be impacted with three or more directional peak hour trips, but because that City has indicated no costs associated with that project in its Comprehensive Plan, no mitigation fees are required for that project. PDS requested comment from the City on the subject development in a document dated June 4, 2012. However, the City provided no comment on this development. Under the terms of the ILA between the County and the City, since 21 days have passed without comment from the City, it can be assumed that the City has no comment.

Regarding traffic impact to the City of Lynnwood, the traffic study prepared by the Applicant's consultant, Blueline Group, did not indicate that the current proposal will generate enough traffic to justify revisions to the 56<sup>th</sup> Avenue West/168<sup>th</sup> Street SW intersection and that following the City's review of the project, the City did not request traffic mitigation. (Exhibit C.1 and testimony of Rob Long).

(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 P.M. 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).

This project will add three or more directional peak hour trips to an arterial unit designated as ultimate capacity, 164<sup>th</sup> Street SW, and is thus required to provide TDM measures sufficient to indicate the potential for removing a minimum of ten (10) percent of the project's PM peak hour trips from the road system.



Under the TDM code applicable to this project, it was determined that the cost of removing one peak hour trip from the road system is \$6,500.00. For a development required to provide TDM, the development's TDM obligation will equal \$6,500.00 times the required trip reduction percentage times the development's peak hour trip generation. (SCC 30.66B.615). The trip reduction percentage for this development is ten percent. The TDM obligation for this development is therefore equivalent to 10 percent of the 49.49 new PM peak hour trips x \$6,500.00 which equals \$32,168.50. This is equivalent to \$656.50 per lot/living unit for the 49 units proposed.

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.

(iii) 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. In a letter dated August 7, 2009 from the Edmonds School District (Exhibit O.3), the District indicated that its web site is to be used to determine where bus stops are located or if students will walk to school. On July 27, 2012, the District's web site indicated that all students from the proposed development will walk to school. PDS has indicated that adequate off-site pedestrian facilities already exist to these schools. Based on this, no additional off-site pedestrian facilities are required.

(iv) Bicycle Facilities. The County's currently adopted County Wide Bicycle Facility System Map became effective on February 1, 2006. The subject development does border on a right-of-way, 52<sup>nd</sup> Avenue West, which has been identified on the adopted Bicycle Facility System Map. Therefore, a bicycle path is required along the development's frontage on 52<sup>nd</sup> Avenue West. This will be incorporated into the required frontage improvements.

(v) 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 Edmonds School District No. 15 at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit K) Credit is to be given for two (2) existing lots. Payment of school impact fees has been included as a condition of approval of the development.

(vi) Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A, 30.63B and 30.63C SCC)

All site drainage discharges to Lunds Gulch Creek from four onsite sub-basins which combine within a quarter mile within the creek. PDS indicated that DPW Surface Water Management Division reported no downstream flooding issues and the Targeted Storm Drainage Report (Exhibit C.2) states that outside of typical channel and bank erosion of the stream, there were no signs of adverse erosion or flooding problems noted during the downstream analysis.

The Applicant is proposing to construct bio-retention facilities to infiltrate individual lot drainage for Lots 1-15. Dry wells are proposed for the remainder of the lots to infiltrate the lots' non-pollution generating impervious surface drainage. A project specific geotechnical report indicates the existing onsite soils are adequate for infiltration. These BMP's are considered low impact development mitigation to recharge groundwater and attenuate storm water runoff. The geotechnical engineering study states the individual lot infiltration systems will not adversely impact site stability.

The East Basin and West Basin flow control (detention vaults) and water quality treatment (storm filters) facilities will collect and detain impervious surface run-off from the road improvements and driveway areas. The impervious area tributary to the proposed flow control and water quality treatment facilities for the West Basin (Phase I) is 1.76 acres and 0.29 acres for the East Basin (Phase II). The discharge for the East Basin vault is directly to Lunds Gulch Creek. The discharge for the West Basin vault is to the storm system in 52<sup>nd</sup> Avenue West, which discharges to Lunds Gulch Creek. PDS indicates that geotechnical recommendations for construction of the outfall on the steep slopes will be required at the Full Stormwater Site Plan phase. The geotechnical Addendum dated December 10, 2012 states "excavations for the proposed vault structures will effectively unload the areas of vault construction, resulting in a reduced soil overburden condition for the post-construction case."

The Applicant proposes greater than 5,000 square feet of new impervious surface. Therefore, a Full Stormwater Site Plan will be required and will be subject to Minimum Requirements 1-9 of Chapter 30.63A SCC and the Snohomish County Drainage Manual (2010). The Applicant's engineer proposes to meet water quality treatment requirements (Minimum Requirement 6) by installing a storm filter vault in the East Basin and a detention/water quality vault in the West Basin. A stormwater vault is proposed in both basins to meet flow control requirements (Minimum Requirement 7).

Grading to accommodate site development is estimated at 19,000 cubic yards cut and 19,000 cubic yards fill. Approval of a Land Disturbing Activity (LDA) permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual and Chapter 30.63B SCC will be required prior to construction.

PDS determined that, 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 the SCC 30.63A and SCC 30.63B and the Drainage Manual.

(vii) Critical Areas Regulations (Chapter 30.62) Lunds Gulch Creek flows through the subject property within a steep ravine in the eastern portion of the site adjacent to 52<sup>nd</sup> Avenue West. Four wetlands were identified within the Lunds Gulch Creek corridor within the eastern portion of the site. Lunds Gulch is rated as a Type F stream with salmonid use including ESA listed species (i.e. Bull Trout and Steelhead). Of the four wetlands located in the Lunds Gulch Creek corridor, one was rated as a Category 4 slope wetland. The other three wetlands within the creek corridor are rated Category 3. The only other wetland located on the subject property lies within the south-central portion of the site bordering Beverly Elementary School and was rated as a

depressional Category 3 wetland (Wetland E), approximately 2,687 square feet in area. PDS indicates that the revised February 25, 2013 Critical Areas Study and Habitat Management Plan by Talasaea Consultants, Inc. (Exhibit M.10) is accurate with regard to the presence and classification of the critical areas and PDS concurs with the critical area evaluation conducted by Talasaea Consultants, Inc.

The subject proposal was reviewed under the standard critical area provisions of Chapter 30.62A SCC. The proposed project will impact Wetland E under the allowed provisions of SCC 30.62A.510(3)(g). Both BMP & AKART measures will be utilized in accordance with the requirements of SCC 30.62A.510(1). The mitigation measures incorporated into the Mitigation Plan by Talasaea Consultants, Inc. exceed the measures necessary to replace lost wetland functions and values. (Exhibit M.10)

The plat design has been revised so that Tract 998 only includes a Critical Area Protection Area (CAPA). This has allowed for tree replanting to be located in Tract 997, outside the CAPA and its buffers. CAPA's are depicted on the preliminary plat and should be permanently protected in accordance with Chapter 30.62A and 30.62B SCC.

An evaluation by PDS of the information submitted in the revised application 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.

(viii) International Fire Code (Chapter 30.53A SCC) The Fire Marshal's Office determined that the preliminary plat can comply the provisions of SCC 30.53A.150 for emergency fire access. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot more than 300 feet from a hydrant. The Fire Marshal determined that the minimum required fire flow for this project is 1,000 GPM at 20 psi for a one-hour duration. (Exhibit L.2) The Fire Marshal also required that a restriction be included on 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 and that 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. The Fire Marshall also indicated that all hydrants must meet the following requirements: four (4) inch storz-type steamer port fittings shall be provided, the tops of the hydrants shall be colored green and blue street reflectors must be installed on the hydrant side of the centerline of the street serving the lots in the plat to indicate hydrant locations. Snohomish County Fire Protection District No. 1 requested that in addition to the foregoing, that striping and/or signage for parking restrictions/limitations be provided along the plat street in accordance with DPW engineering standards. (Exhibit H.8)

(ix) Utilities. Water and sanitary sewer will be supplied by the Alderwood Water and Wastewater District. Certificates of Sewer and Water Availability were received dated June 22, 2012. (Exhibits H.6, H.7) Snohomish County Public Utility District has provided correspondence indicating that it can provide electrical service for the project.

(Exhibit H.5) Finally, Snohomish Health District has no objections to the project as long as public sewer and water is provided. (Exhibit H.9)

(x) 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.

(xi) Landscaping Standards (Chapter 30.25 SCC) PDS evaluated the proposal for compliance with SCC 30.25.015. All residential developments located within Urban Growth Areas (UGAs) are required to landscape a minimum of 10 percent of the total gross area of the site to the standards unless exempted otherwise. The 10 percent requirement may include perimeter landscaping, parking lot and detention facility landscaping, tree retention areas and street trees not in a public right-of-way. In the instant case, the gross site area is 816,107 square feet. Therefore, 81,610 square feet must be landscaped. However, SCC 30.25.016(6)(c) authorizes the Director of PDS to apply a 10 percent reduction in the required landscaping if at least 10 percent of the existing significant trees are retained. The total percentage of significant trees being retained is 10.7 percent or 150 trees of 1405 total significant trees onsite. The Director of PDS therefore allowed the 10 percent reduction in required landscaping, thereby requiring 73,450 square feet of landscaping. (Exhibit O.1) However, due to tree retention and other requirements, the Applicant has proposed 117,345 square feet of landscaping, exceeding the minimum requirement. (See Exhibit M.7)

(xii) Tree Retention. (Chapter 30.25 SCC). As originally proposed, the Applicant sought a landscape modification to enable it to obtain the 30 percent reduction in replacement trees provided by SCC 30.25.016(5). However, because the Examiner determined that the modification request did not satisfy code requirements under SCC 30.25.040, the landscape modification was denied. (Exhibit M.1) Following the remand of the proposal to PDS, the Applicant modified it somewhat; submitting a modified Landscape Plan that added additional replacement trees in open space tracts 995, 997 and 998 and in the rear yards of most of the lots. The Applicant also sought and obtained application of the 10 percent reduction in landscaping under SCC 30.25.016(6)(c) to the tree replacement requirement. (Exhibit O.1) The total percentage of significant trees being retained is 62.8 percent (883 trees) of 1,405 total significant trees onsite. Under the requirements of SCC 30.25.016(3), 804 replacement trees would be required. With the 10 percent reduction approved by the Director of PDS, the number of required replacement trees was reduced to 724, which is the number of replacement trees the Applicant indicates it will provide. (Exhibit M.7) In the original request for landscaping modification, the Applicant stated that, "there is insufficient room for healthy tree replanting" in either the CAPA and open space tracts or the yard areas of individual lots for more than the 564 replacement trees it then proposed. (Exhibit A.4) However, at the March 21, 2013 hearing the Applicant stated that after the remand, the landscape architect was able to find space in CAPA tracts, non-CAPA tracts, backs of lots and buffers to place 160 additional replacement trees over the number proposed when the landscape modification was requested.

(xiii) Lot Size Averaging Regulations (SCC 30.23.210) The proposal has been evaluated for compliance with the 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 percent 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 percent. The LSA calculation is as follows:

Phase I. Area in Lots (274,030 square feet) + 50 percent of Critical Areas and Buffers (82,391 square feet) + Open Space (63,987 square feet) = (420,408 square feet) ÷ (41 lots proposed) = 10,254 square feet. The calculations on the proposed preliminary plat (Exhibit M.5) contain arithmetic errors and must be revised.

Phase II. Area in Lots (42,689 square feet) + 50 percent of Critical Areas and Buffers (99,546 square feet) + Open Space (4069 square feet) = (146,304 square feet) ÷ (4 lots proposed) = 36,576 square feet.

Phases I and II Combined. Area in Lots (316,719 square feet) + 50 percent of Critical Areas and Buffers (181,937 square feet) + Open Space (68,056 square feet) = (566,712 square feet) ÷ (45 lots proposed) = 12,593 square feet.

The minimum zoning requirement is 8,400 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. Accordingly, the Examiner finds that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

(xiv) 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.

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

(i) Urban residential design standards apply to new residential development located within urban growth areas including subdivisions regulated under SCC 30.41A. 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. The administrative site plan must be reviewed to assure that it meets code requirements and that there are no conflicts with the preliminary plat.

(ii) Because the proposal will result in only 2.6 dwelling units per gross acre, the compatibility design standards of SCC 30.23A.030 do not apply.

(iii) The design standards for detached single-family dwellings in SCC 30.23A.040 apply to the proposal. These requirements will be implemented with a condition of approval.

(iv) The requirements for on-site recreation space in SCC 30.23A.080 also apply to the proposal. These require at least 7,350 square feet of recreation space and the Applicant has provided 27,054 square feet of space that meets the qualifications for consideration as on-site recreation space.

(v) SCC 30.23A.080 indicates that landscaping (including tree retention and replanting) is to be provided in accordance with Chapter 30.25 SCC. The Applicant's compliance with this requirement is discussed above.

(vi) SCC 30.23A.110 imposes undergrounding requirements for utilities. These requirements will be implemented with a condition of approval.

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

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over subdivision and administrative site plan applications pursuant to Chapter 30.41A SCC, Chapter 30.23A SCC, Chapter 30.72 SCC and Chapter 2.02 SCC.

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

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

The Examiner concludes that the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute

3. 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, wetland, stream and buffer areas. The single-family homes within the subdivision will be in character with the urban area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The 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 Alderwood Water and Wastewater District.
4. Regarding the tree retention and replacement requirements of Chapter 30.25 SCC, the Examiner concludes that the code requirements are met, given that the Director of PDS approved a 10 percent reduction in tree replacement under SCC 30.25.016(6). While it is not clear to the Examiner how permitting a reduction in replacement trees, "assists in the preservation and retention of significant trees," as contemplated by SCC 30.25.016(6), the authority to make that determination is vested in the Director and not the Examiner.
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, conditioned as provided in this decision, the development meets the design and performance standards of both the Urban Residential Design Standards and the Lot Size Averaging regulations.
7. The Examiner concludes that adequate public services exist to serve this proposal.
8. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
9. 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:

The Preliminary Subdivision is APPROVED, subject to the following conditions:

- A. The Preliminary Plat received by PDS on March 13, 2013 (Exhibit M.5), shall be the approved plat configuration PROVIDED, that it is revised to correct the arithmetic errors

in the lot size averaging calculations for Phase I. Changes to the approved preliminary plat are governed by SCC 30.41A.330.

The Administrative Site Development Plan received by PDS on March 13, 2013 (Exhibit M.5) shall be the approved site development plan.

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

i. The platlor 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.

ii. A Final Mitigation Plan shall be submitted for review and approval during the construction review phase of this project based on the revised February 25, 2013 Critical Areas Study and Habitat Management Plan by Talasaea Consultants, Inc. (Exhibits M.10 and M.11)

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

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:

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

(b) The tops of the hydrants shall be colored green.

(c) Blue street reflectors shall be installed on the hydrant side of centerline to indicate hydrant locations.

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.

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:



\$2555.19 per single-family lot and \$5110.38 for each duplex lot for mitigation of impacts on County roads paid to the County.

\$656.50 per single-family lot and \$1313.00 for each duplex lot for transportation demand management shall be paid to the County for TSA D.

These payments are due in accordance with the provisions of SCC 30.66B.340. 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 Service Area of the County parks system in the amount of \$1244.49 per each newly approved dwelling unit in accordance with Chapter 30.66A SCC. 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 Edmonds School District No. 15 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for two existing lots. Lots 1 and 2 located in Phase I shall receive credit.”

iv. “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.”

v. “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 right-of-way dedication sufficient to bring the total right-of-way width to 40 feet from the centerline along the property frontage on 52<sup>nd</sup> Avenue West, unless otherwise adjusted as allowed by County Code. The final plat shall also include additional right of way dedication behind the bus pull-out such that 1.5 feet of right-of-way exists behind the public improvements west of the bus pull-out.

F. All critical areas and buffers shall be designated Critical Area Protection Areas (CAPA). The following restrictive language shall be indicated on the face of the final plat:

“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.”

- G. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- H. Prior to the issuance of each building permit for single-family dwellings and duplexes, the Urban Residential Design Standards of SCC 30.23A.040 shall be met and approved by the County building official.
- I. In conformity with applicable standards and timing requirements, including phasing and necessary building permits:
  - i. The preliminary landscape plan (Exhibit M.7) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
  - ii. All water, sewer, electrical and communication distribution and service lines shall be underground.
  - iii. On-site recreation open space shall be designed~~—and~~<sup>1</sup> developed in compliance with the requirements of SCC 30.23A.080.
- J. Prior to recording of the final plat:
  - i. The new public road shall have been constructed to the satisfaction of DPW.
  - ii. Prior to recording of the final plat of Phase II, urban frontage improvements shall be constructed along the parcel's frontage on 52<sup>nd</sup> Avenue West to the satisfaction of the County.
  - iii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat~~tor~~ may use other permanent methods and materials provided they are first approved by the County. Where a CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
  - iv. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per 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.

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<sup>1</sup> Scrivener's Error corrected May 16, 2013  
12104437b

v. The Final Mitigation Plan shall have been satisfactorily implemented and a mitigation maintenance and warranty security posted equivalent to 55 percent of the fair market value of the cost of labor, construction and installation for a minimum term of five years, or until the mitigation meets its performance requirement targets, whichever comes first.

vi. An ongoing analysis of tree risk shall be performed by a Certified Arborist for the leave tree strategy when construction is underway to allow for adaptive management. The final wetland mitigation plan shall be completely implemented.

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.

In accordance with SCC 30.23A.100(6), this administrative site development plan approval shall expire five (5) years from the date the administrative site development plan approval becomes final if construction has not commenced. Construction shall mean actual construction begun on some permanent structure, utility or facility on the site. An Applicant may request an extension of an approved administrative site development plan pursuant to the procedures established for extension of applications in SCC 30.70.140(2) and (3).

DATED this 13<sup>th</sup> day of May, 2013.

  
Gordon Sivley, Hearing Examiner

<b>EXPLANATION OF APPEAL PROCEDURES</b>
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The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. The following paragraphs summarize the reconsideration and appeal processes. For more information about appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

**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, 2<sup>nd</sup> 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 MAY 28, 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.

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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.

PARTY OF RECORDS REGISTER  
12-104437-SD GLENNWICK GROVE  
HEARING: JAN 30, 2013  
1/9/2012 karnett

PHOENIX DEVELOPMENT, LLC  
LOREE QUADE & JIM EGGE  
16108 ASH WAY, SUITE 201  
LYNNWOOD WA 98087

SNO CO PLANNING & DEV/LAND USE  
STACEY ABBOTT  
3000 ROCKEFELLER AVE #604  
EVERETT WA 98201

GIBSON TRAFFIC CONSULTANTS  
2802 WETMORE AVE SUITE 220  
EVERETT WA 98201

WA STATE DEPT OF ECOLOGY  
PAUL ANDERSON  
3190 160TH AVE SE  
BELLEVUE WA 98008

CYNTHIA ARTHUR  
5419 166TH PL SW  
LYNNWOOD WA 98037

CHAD BRAITHWAITE  
5429 166TH PL SW  
LYNNWOOD WA 98037

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

RANDAL HASHIMOTO  
16513 HILLPOINTE CIRCLE  
LYNNWOOD WA 98037

KATHY HOLZSCHUH  
5621 HILLPOINTE CIRCLE  
LYNNWOOD WA 98037

CITIZENS FOR MEADOWDALE  
COUNTY PARK \*Mail returned  
MICHAEL KNIGHT  
PO BOX 1902  
LYNNWOOD WA 98046

DAVID LARSON  
david\_s\_larson@msn.com

CITY OF LYNNWOOD  
CORBITT LOCH  
NO ADDRESS GIVEN

FRED & DIANNE MURRAY  
5519 166TH PL SW  
LYNNWOOD WA 98037

SNOHOMISH HEALTH DISTRICT  
BRENT RAASINA  
NO ADDRESS GIVEN

ALDERWOOD WATER &  
WASTEWATER DISTRICT  
DAN SCHEIL  
3626 156TH ST SW  
LYNNWOOD WA 98087

KELLY STOKELL  
16503 HILLPOINTE CIRCLE  
LYNNWOOD WA 98037

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

ADELE IRENE VAN BUSKIRK  
13018 PUGET SOUND BLVD  
EDMONDS WA 98026

SNO CO FIRE DISTRICT #1  
JOHN WESTFALL  
NO ADDRESS GIVEN