

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MILL CREEK**

In the Matter of the Application of)	No. PP 13-65
)	
Seattle Hill North Coast, LLC)	
)	
For a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Planned Area Development</u>)	AND DECISION

SUMMARY OF DECISION

The Hearing Examiner **APPROVES** a Preliminary Plat and **APPROVES** a Planned Area Development to subdivide 3.917 acres into 16 lots for single-family homes located at 14616 Seattle Hill Road in Mill Creek, Washington. Conditions are necessary to mitigate impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on December 18, 2013.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Camille Chriest, Senior Planner
Gary Meek, Fire Chief, Mill Creek District 7
Toan Nguyen
Peter Furtado
Ken Jumpawong
Darren Brown
Dan Stearns
Donn Talenti
Julie Kaiser
Truman Kaiser
Paul Black
Ethan Albright
Thomas Kaiser
Ry McDuffy, Land Resolutions, Applicant's Representative
Andrew Reaves, PE, SDA, Applicant's Civil Engineer

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report to the Hearing Examiner, dated December 2013

Findings, Conclusions, and Decision
City of Mill Creek Hearing Examiner
Seattle Hill North Coast, LLC
No. PP 13-65

- a. Vicinity Map (Attachment A to the staff report), undated
- b. Preliminary Plat Map (Attachment B to the staff report), dated October 15, 2013
- c. Legal Description (Attachment C to the staff report), undated
- d. Contents of Project File (Attachment D to the staff report), undated
2. Master Land Use Application, dated April 11, 2013
3. Certificate of Formation to Seattle Hill North Coast, LLC, authorizing H. Lee Johnson to conduct business on behalf of the LLC, dated March 13, 2013
4. Project Narrative letter from Land Resolutions, dated April 15, 2013
5. Plat Certificate, dated April 4, 2013
6. Water and Sewer Availability Letter from Silver Lake Water and Sewer District, dated April 17, 2013
7. Preliminary Landscape Plan Set, dated April 15, 2013
8. Determination of Incomplete Application for PP 13-65, dated May 1, 2013
9. Revised Project Narrative letter from Land Resolutions, dated May 24, 2013
10. Letter of Complete Application for PP 13-65, dated May 30, 2013
11. Affidavit of Posting, dated June 5, 2013; Affidavit of Public Notification, dated May 30, 2013
12. Citizen comments received via email:
 - a. Toan Nguyen, dated June 8, 2013
 - b. Harold Ro, dated June 10, 2013
 - c. Kevin and Ying, dated June 10, 2013
 - d. Brian Kang, dated June 10, 2013
 - e. Steven Kim, dated June 10, 2013
 - f. Min Kwan Park, dated June 10, 2013
 - g. Ta Liu, dated June 11, 2013
 - h. Tony Laffranchi, dated June 11, 2013
 - i. Yunjoo Kim, dated June 11, 2013
 - j. Cindy Jin, dated June 12, 2013
 - k. Marlo Gola, dated June 12, 2013
 - l. Francis Wang, dated June 12, 2013
 - m. Dennis Bruns, dated June 12, 2013
 - n. Paul Black, dated June 12, 2013
 - o. Dan Stearns, dated June 13, 2013
 - p. Chandu Bhavsar, dated June 13, 2013
 - q. Peter Furtado, dated June 14, 2013
 - r. Kayo King, dated June 14, 2013
 - s. Loida Guerrero, dated June 17, 2013
 - t. Toan Nguyen, dated June 18, 2013
 - u. Zhi-Hua Cui, dated June 19, 2013
 - v. Jong Choi, dated June 20, 2013
 - w. Eddie and Chrissy Lord, dated June 29, 2013
 - x. Mingchao Shen, dated July 3, 2013

13. Snohomish County Public Works comment emails forwarded to Applicant's Engineer, Andy Reaves, dated September 12, 2013
14. Technical Review Committee Comment Letter, dated June 26, 2013, with attachments:
 - a. City of Mill Creek Public Works Department comment memo, dated June 24, 2013
 - b. Snohomish County PUD letter, dated June 24, 2013
 - c. Silver Lake Water and Sewer District - Written Comments from Rick Gilmore, dated June 20, 2013
 - d. Email from Debra Werdal regarding Snohomish County Traffic Mitigation, dated June 19, 2013
 - e. Email from Kate Tourtellot of Community Transit, dated June 19, 2013
 - f. Email from Captain Evan Adolf of Fire District No. 7, dated June 20, 2013
 - g. Preliminary Development Impact Mitigation Checklist, undated
 - h. Everett School District – Written Comments from Harold Beumel, dated June 18, 2013.
15. Gibson Traffic Consultant Study, dated April, 2013
16. Gibson Traffic Consultant Supplemental Memo, dated August 16, 2013
17. Traffic Mitigation Offer to Snohomish County, dated August 30, 2013
18. City of Mill Creek Response to Resubmittal, dated September 11, 2013
19. Revised Project Narrative letter from Land Resolutions, dated October 15, 2013
20. Resubmittal letter from SDA Engineers, dated October 14, 2013
21. City of Mill Creek Response to Resubmittal, dated October 22, 2013
22. Revised Project Narrative letter from Land Resolutions, dated October 25, 2013
23. Gibson Traffic Consultant Supplemental Memo, dated October 1, 2013
24. Gibson Traffic Consultant Supplemental Memo, dated October 23, 2013
25. SDA Engineers Targeted Drainage Report, dated April 11, 2013
26. Liu & Associates, Inc., Geotechnical Engineering Study, dated June 30, 2013
27. Preliminary Drainage Plan set, dated October 10, 2013
28. MDNS and Notice of Property Development Impact Mitigation for the Preliminary Plat/Planned Area Development of Seattle Ridge (City File PP 13-65), with attached checklist, dated October 31, 2013.
29. Mitigation Agreement between Everett School District and Seattle Hill North Coast, LLC, dated October 8, 2013, and cover letter from Everett School District, dated October 22, 2013
30. Affidavit of Public Notification and Affidavit of Posting, dated December 3, 2013
31. Letter from Fire District 7, undated, receive by the City of Mill Creed on December 4, 2013.
32. Email from Michael Hummel, dated December 11, 2013, including staff response
33. Email from Paul Black, dated December 9, 2013, including staff response
34. Staff's PowerPoint Presentation, dated December 18, 2013
35. Revised Grading Plan, dated October 10, 2013

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Seattle Hill North Coast, LLC (Applicant), requests approval of a Preliminary Plat (PP) and a Planned Area Development (PAD) to subdivide 3.917 acres into 16 lots for single-family homes located at 14616 Seattle Hill Road in Mill Creek, Washington.¹ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 4.*
2. The City of Mill Creek (City) determined the application was complete on May 30, 2013. Camille Chriest, Senior Planner, testified that the public notice requirement was satisfied. A Notice of Development Application (NDA) for the project was posted at City Hall on June 1, 2013, and posted at the Library on May 31, 2013. An NDA was posted on the site on June 5, 2013. An NDA was published in *The Herald* on June 1, 2013. On December 3, 2013, a Public Hearing Notice (PHN) was posted at City Hall and mailed to property owners within 500 feet of the proposed project. On December 4, 2013, a PHN was posted on the property and posted at the Library on December 5, 2013. A PHN was published in *The Herald* on December 7, 2013. *Exhibit 1, Staff Report, page 2; Exhibit 11; Exhibit 30; Testimony of Ms. Chriest.*

State Environmental Policy Act (SEPA) Review

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The City determined that the proposal would not have a probable significant adverse impact on the environment with mitigation conditions, and issued a Mitigated Determination of Nonsignificance (MDNS) on October 31, 2013. Ms. Chriest testified that no public comments were received and no appeals were filed. The City's mitigation requirements include construction of an extension of 146th Street SE and payments of fees for traffic mitigation to the City and Snohomish County (County), for neighborhood park mitigation, community park mitigation, mitigation for Fire District No. 7, and Everett School District mitigation. *Exhibit 1, Staff Report, pages 2 and 9 to 12; Exhibit 28; Testimony of Ms. Chriest.*

Comprehensive Plan and Zoning

4. Ms. Chriest testified that the property is designated Low Density Residential (LDR) by the City Comprehensive Plan. Comprehensive Plan policies are relevant to the proposal. Land Use Element policies establish the City's residential character as a composition of a range of residential densities with a predominance of single-family communities,

¹ The property subject to the application is identified by Assessor's Parcel Number 28053300302500. *Exhibit 2.* A legal description of the subject property is provided in Exhibit 5.

compatibility with surrounding land uses and structures within and adjacent to the development, appropriately-sized property buffers surrounding the peripheries of residential developments, and identifiable neighborhood character. Applicable Capital Facilities Element policies require stormwater management facilities that incorporate treatment components. Utilities Element policies mandate that urban development be approved only where services are available, and where possible, all new facilities should be located underground. Transportation Element policies establish that projects shall not be approved if they reduce the level of service below established standards and require that public sidewalks be connected with other public/private trail systems where appropriate. Environmental Features Element policies encourage the use of low impact development (LID) techniques to minimize impervious surfaces and encourage the use of native plant materials and the preservation of wooded areas. Environmental Features Element policies require the inclusion of stormwater facilities that meet or exceed current requirements and minimization of erosion/sedimentation into streams and wetlands. *Exhibit 1, Staff Report, pages 1, 12 to 15; Testimony of Ms. Chriest.*

5. Ms. Chriest testified that the property is in the Low Density Residential (LDR) zoning district. The minimum lot size in the LDR zone is 8,400 square feet. The maximum allowable density is four dwelling units per gross acre under Mill Creek Municipal Code (MCMC) 16.12.050 and the requirements of the Growth Management Act (GMA). The Applicant has requested a reduction in the 8,400 square foot minimum lot size to 4,000 square feet. The Planned Area Development (PAD) process allows for modifications to zoning code requirements if the modifications further the expressed interest of the PAD chapter as established in the MCMC. The proposed lot sizes are comparable to adjacent single-family developments in the vicinity. Ms. Chriest testified that smaller lot sizes reduce impervious surfaces and encourage the provision of open spaces for common or public use. The plan for the project includes making the large frontage on Seattle Hill Road unavailable for buildable lot area, even though this area is included in the density calculation. Reduced lot sizes are also necessary to satisfy densities established in the Comprehensive Plan. Staff supports the Applicant's request and recommends that the minimum lot size be approved for 4,000 square feet. *Exhibit 1, Staff Report, pages 1 and 5; Exhibit 1b; Exhibit 35; Testimony of Ms. Chriest.*
6. The Applicant also requests modification of the following building setbacks: 15 feet front yard, 20 feet to garage, 5 feet side and rear yards, and 10 feet side yard for corner lots. LDR zoning requires setbacks to be 20 feet for front yard, with corner lots considered to have two front yards; 20 feet total for side yards, with no side yard to be less than 5 feet; and 20 feet for back yard. Darren Brown and Paul Black, residents of the neighboring Webster's Pond, testified that they are concerned about the reduced setbacks. Toan Nguyen wrote an email to the City expressing his concern for diminished privacy and space that result from these setback modifications. Ms. Chriest testified that the requested building setback reductions are consistent with the required setbacks in the adjacent neighborhoods where these residents live. Staff supports the modifications in

setbacks because these modifications allow for flexibility in the design of the homes constructed in the development. Ms. Chriest testified that Staff recommends approval of these modifications, except that the rear-yard setbacks should instead be reduced to 10 feet for most lots and allow 5 feet only for Lots 9 and 10. Lots 9 and 10 are substantially more shallow and do not abut other single-family lots. *Exhibit 1, Staff Report, pages 1 and 5; Exhibit 1b; Exhibit 12t; Exhibit 35; Testimony of Mr. Brown; Testimony of Mr. Black; Testimony of Ms. Chriest.*

Physical Condition and Surrounding Property

7. There are no environmentally sensitive areas on the site. The site is situated on a gentle, northwesterly declining slope. The site slopes down westerly at about 3% to 13% grade. On the southeast side, the slope is gentler, with gradual steepening towards the western boundary. The open area of the site is mostly covered by grass, and mature and younger deciduous and evergreen trees line the site's perimeter. There is currently an existing single-family house on the property that would be removed at the time of development. *Exhibit 1, Staff Report, pages 2 and 13; Exhibit 1b; Exhibit 28; Exhibit 34; Exhibit 35.*
8. Seattle Hill Road bounds the site to the southeast. The property to the north is zoned LDR and is developed with single-family residences in the Appletree at Thomas Lake development. The property to the west is zoned LDR and is developed with single-family residences in the Webster's Pond development. The property to the south is zoned LDR and is developed with a single-family residence. The properties to the east, across Seattle Hill Road, are located in unincorporated Snohomish County and are zoned Urban Low Density Residential (ULDR) and Urban Village (UVILL). These properties are developed with single-family residences, one of which is an adult family home, and with a drive-through espresso stand. The property to the southeast, across Seattle Hill Road, is located in unincorporated Snohomish County and is zoned UVILL. This property is developed as a commercial retail and office center. *Exhibit 1, Staff Report, pages 2 to 3; Exhibit 1b; Exhibit 34; Exhibit 35.*

Landscaping and Open Space

9. MCMC 17.22.060 requires on-site open space and recreational facilities in an amount adequate to meet the recreational, health, environmental, and safety needs of the residents, occupants, guests, and visitors of the development. The amount of open space should be proportional to the density of the development and should meet the purpose and intent of the zone district. The open-space areas should be readily accessible to all residential units. These areas should be appropriately screened and proportioned, and should not have more than five percent grade. The proposal provides open space in Tracts 996, 997, 998, and 999. These tracts would be landscaped, and Tract 999 would include a detention vault. The proposal provides two private open-space areas because the development is a single-family project that is located more than one-quarter of a mile from a public park. A Homeowners Association (HOA) would be created that would

maintain open and common spaces in the development. *Exhibit 1, Staff Report, pages 7 to 8, 17 to 18, and 23; Exhibit 1b; Exhibit 7; Exhibit 34; Exhibit 35.*

10. The proposal includes a landscaped residential roadway buffer tract that has an eight-foot meandering sidewalk and streetlights along Seattle Hill Road. The interior portions of the site, including all lots, developments, and private open-space areas, are planned to be generously landscaped with the natural environment. Street trees would be provided along the public streets. Where possible and practicable, the proposed PP has been designed to retain existing mature trees. *Exhibit 1, Staff Report, pages 7 to 8 and 17 to 18; Exhibit 1b; Exhibit 7; Exhibit 34; Exhibit 35.*

Access and Traffic Impacts

11. Access to the site would be from a new roadway connection between Seattle Hill Road and the existing 146th Street SE stub in the Webster's Pond development directly west of the site. This roadway connection is necessary for a second emergency vehicle access point for both Webster's Pond and the proposed development. Webster's Pond development was designed with this connection. The new roadway connection on Seattle Hill Road, however, does not meet current sign-distance requirements due to the vertical grade of the existing roadway. Ms. Chriest testified that Snohomish County is planning a future widening project along Seattle Hill Road, which meets the sight-distance standards. The timing of this future widening project is unknown due to budget constraints. Therefore, the Applicant would construct an extension of 146th Street SE with an interim connection to Seattle Hill Road that would be for emergency vehicles only. Ms. Chriest testified that bollards would be placed at this connection to Seattle Hill Road. During this time, all new trips generated by the proposed development would utilize 146th Street SE through Webster's Pond and the existing access point on 35th Avenue SE. Once the widening project is complete and the final connection is made, there could be potential cut-through trips on 146th Street SE between Seattle Hill Road and 35th Avenue SE. *Exhibit 1, Staff Report, pages 6 to 7 and 21; Exhibit 1b; Exhibit 7; Testimony of Ms. Chriest.*
12. Gibson Traffic Consultants (GTC) performed traffic studies for the proposed development. The City and Snohomish County (County) has a Reciprocal Impact Mitigation Agreement for development impacts on interjurisdictional transportation systems and the requirement to mitigate appropriate impacts in accordance with adopted road improvement programs. Following this agreement, the project is required to comply with specific measures identified by the County that are reasonably necessary to mitigate the development's impacts on directly affected county roads in the surrounding area. Snohomish County Code (SCC), Title 26B, governs this proposed development and assesses a mitigation impact fee rate of \$267 per residential average daily trips (ADT) on county roads. The County has reviewed the analysis performed by GTC and concurs with GTC's conclusion of 143 residential ADT's for this proposal. *Exhibit 1, Staff*

Report, pages 10 to 11; Exhibit 14d; Exhibit 15; Exhibit 16; Exhibit 17; Exhibit 23; Exhibit 24.

13. Several residents of Webster's Pond testified of concerns about traffic and construction access through Webster's Pond. Toan Nguyen testified that he would like to have emergency access only between Webster's Pond and the new development. Peter Furtado testified that he is concerned about damage that may be caused by construction equipment and access through Webster's Pond, and resulting danger for kids in his neighborhood. Mr. Furtado testified that he prefers to limit the connection between Webster's Pond and the new Seattle Ridge development to emergency access only. Mr. Furtado testified that the 90-degree turn for the connection is a blind turn and is dangerous. Ken Jumpawong, Donn Talenti, Julie Kaiser, Dale Stearns, and Mr. Brown testified that they agree with Mr. Furtado. Mr. Jumpawong testified that 35th Avenue is being used for many other new subdivisions, and he is concerned about the cumulative impact on traffic. Julie Kaiser testified that the blind turn is additionally dangerous with the increased traffic. Ms. Kaiser testified that kids hang out in the cul-de-sac to play soccer, ride bikes, and spend time out on the streets partly because the back yards in Webster's Pond are small. Truman Kaiser, Ms. Kaiser's son, testified that he plays in the cul-de-sac. Dan Sterns testified that he opposes construction access through 146th Street SE because of the increased volume and type of traffic. Mr. Black testified that he believes the traffic studies for the proposal were inadequate. Mr. Black testified that he does not want construction access through Webster's Pond because there are inadequate traffic controls. Ethan Albright testified that he has seen accidents and near-misses at the blind curve. Thomas Kaiser testified that he wants to have flexible dividers between Webster's Pond and the new Seattle Ridge development so that only emergency vehicles can have access. Ms. Chriest testified that the Comprehensive Plan promotes connectivity between neighborhoods with road connections such as the extension proposed here.. *Testimony of Mr. Nguyen; Testimony of Mr. Furtado; Testimony of Mr. Jumpawong; Testimony of Mr. Talenti; Testimony of Ms. Kaiser; Testimony of Mr. Brown; Testimony of Truman Kaiser; Testimony of Mr. Sterns; Testimony of Mr. Black; Testimony of Mr. Albright; Testimony of Thomas Kaiser; Testimony of Ms. Chriest.*
14. Ry McDuffy, the Applicant's Representative, testified that primary construction access would be from Seattle Hill Road and 146th Street SE, rather than through Webster's Pond. Mr. McDuffy testified that 146th Street SE is a public street designed to connect to Seattle Hill Road, and that the 90-degree turn is a traffic calming device, designed to slow the flow of traffic through the Webster's Pond development. *Testimony of Mr. McDuffy.*
15. The proposal has been designed with connecting walkways to the adjacent neighborhoods for access to the site and through the site. The planned walkways are to be constructed in compliance with the American with Disabilities Act (ADA). *Exhibit 1, Staff Report, page 21; Exhibit 1b; Exhibit 7.*

16. MCMC 17.27.020 (Off-street parking and requirements) requires single-family dwellings to have two parking spaces per dwelling unit. This proposal provides parking throughout the site in garages, driveways, and on the public road where feasible. The project provides four off-street parking per residential unit, two parking spaces in the garage and two in the driveway. *Exhibit 1, Staff Report, page 21; Exhibit 1b.*

Stormwater Management

17. The Applicant has submitted a Targeted Drainage Report and Preliminary Drainage Set prepared by SDA for the proposed development. The new drainage system planned for the development must meet City standards and the new requirements of the February 2005 Department of Ecology Stormwater Management Manual for Western Washington with Appendix 1 of the City's Phase 2 NPDES permit (dated as effective September 1, 2012). *Exhibit 1, Staff Report, pages 8 to 9; Exhibit 1b; Exhibit 25; Exhibit 27.*
18. Mr. Furtado and Mr. Black testified of concerns about stormwater and drainage of the proposed development. Mr. Furtado testified that 35th Drive SE has flooded and been closed. Mr. Black testified that he is concerned about the new development's potential adverse impact on Webster's Pond. *Testimony of Mr. Furtado; Testimony of Mr. Black.*
19. Andrew Reaves, the Applicant's Civil Engineer, testified that the stormwater from the proposed development would be collected and conveyed in a closed system of catch basins and pipes towards the northwest corner. This system would maintain the existing drainage pattern. Mr. Reaves testified that the stormwater treatment facilities would primarily consist of an underground detention vault in Tract 999, for flow control, and a bioswale to provide water-quality treatment. The outfall from the vault and swale would be connected to the existing public drainage system on 146th Street SE in the Webster's Pond development, directly west of the site. In Tract 998, along Seattle Hill Road frontage, a rain garden would be constructed that would be incorporated into the future road-widening project by the County. A rain garden is also planned in the northwest corner of the parcel for on-site treatment of a portion of the roadway runoff. The open space tracts and stormwater facilities would be maintained by the Homeowner's Association for the new development. *Exhibit 1, Staff Report, pages 8 to 9; Exhibit 1b; Exhibit 25; Exhibit 27; Testimony of Mr. Reaves; Testimony of Ms. Christ.*

Utilities and Services

20. Utilities and services are available for the development. The site has water and sewer facilities adjacent to its west and east sides. These facilities could be extended through the Silver Lake Water and Sewer District Developer Extension Process to provide for on-site needs. Silver Lake Water and Sewer District (District) has provided a Water and Sewer Availability Letter dated April 17, 2013. Following a technical review committee meeting reviewing the project, the District concluded that the existing sewer and water would be extended into the plat at the 146th Street SE eastern road right-of-way. Easements would be required where sewer and water utilities are not located in the plat

right-of-way. The water main would require looping to the existing 12-inch water main located adjacent to the southern edge of the propose plat. *Exhibit 1, Staff Report, page 8; Exhibit 6; Exhibit 14c.*

21. Snohomish County PUD No. 1 would provide electrical service to the development. The PUD has reviewed the application and indicated that there is capacity to serve the proposed development. Frontier Communications would provide telephone communication services. Puget Sound Energy would provide natural gas service. *Exhibit 1, Staff Report, page 8; Exhibit 14b.*
22. The City and County Fire District No. 7 have executed an Interlocal Agreement for mitigation of development impacts on fire facilities and services. Captain Evan Adolf of Fire District No. 7 has reviewed the project and requested several plat improvements, which have been included in the conditions for the project. In accordance with the Interlocal Agreement, the developer is also required to pay mitigation fees for development impacts prior to approval of the final plat. Fire Chief Gary Meek testified of his concerns with having only a single access point for the development. Mr. Meek testified that the limited access would result in longer response time. Although Mr. Meek finds a second access point only for emergency vehicles to be an acceptable solution, he notes that this is an interim solution that should not be considered permanent. *Exhibit 1, Staff Report, page 11; Exhibit 14f; Exhibit 31; Testimony of Mr. Meek.*
23. Ms. Chriest testified that Community Transit has reviewed the project and requests consideration of pedestrian improvements, including a painted crossing (crosswalk) on the south side of 148th Street SE, and pedestrian access between Tract 995 and Seattle Hill Road. Staff does not recommend that the crosswalk be required because such addition would require substantial upgrades to the signal infrastructure. In addition, the signal would be in the County's jurisdiction and the County did not request the crossing. Ms. Chriest testified that pedestrian access between Tract 995 and Seattle Hill Road is noted as optional because of the proximity of the plat's primary access point to the intersection of Seattle Hill Road and 148th Street SE. *Exhibit 1, Staff Report, page 11; Exhibit 1b; Exhibit 14e; Testimony of Ms. Chriest.*
24. This proposal would increase the demand for the City's park and recreation facilities through the addition of sixteen single-family residential units. Fees are required to mitigate the project's impacts on park and recreation facilities. Mitigation fees to offset impacts are calculated in accordance with City Resolution 2011-477. *Exhibit 1, Staff Report, page 10.*
25. The Everett School District has reviewed the proposal. The City and the Everett School District have executed an Interlocal Agreement for mitigation of development impacts on district facilities. Mitigation fees are calculated per the Interlocal Agreement. The proposed development would be serviced by Penny Creek Elementary School, Gateway

Middle School, and H.M. Jackson High School. According to the Everett School District, the elementary and high schools are over capacity, and thus mitigation is required. The Applicant has signed a voluntary mitigation agreement to pay mitigation fees totaling \$22,347.60 for the development impacts. In addition, the Everett School District has determined that students would be picked up and dropped off at the entrance along Seattle Hill Road. The District has requested one hard surfaced student waiting area be located at the entrance. The hard surfaced waiting area would be approximately ten feet by fifteen feet in size, located behind the sidewalk. The waiting area would be connected to the housing units in the development with safe student walkways. *Exhibit 1, Staff Report, page 11 to 12; Exhibit 14h; Exhibit 28; Exhibit 29.*

Planned Area Development Permit

26. The Applicant has requested a minimum lot size of 4,000 square feet instead of the required 8,400 square feet. The lot sizes proposed for this development are comparable to the adjacent single-family developments. In Webster's Pond, the development directly to the west, the minimum lot size is 3,938 square feet, the average lot size is 4,786 square feet, and the maximum lot size is 8,677 square feet. In Appletree at Thomas Lake, the development directly to the north, the minimum lot size is 5,146 square feet, the average lot size is 7,768 square feet, and the maximum lot size is 13,705 square feet. The proposed development has a minimum lot size of 4,009 square feet, an average lot size of 4,650 square feet, and a maximum lot size of 7,341 square feet. The City has permitted smaller lot sizes to encourage the provision of additional common and/or public open spaces. Ms. Chriest testified that the lot sizes are needed to meet density targets established in the Comprehensive Plan. Staff supports the Applicant's request for the minimum lot size to be 4,000 square feet. *Exhibit 1, Staff Report, pages 4 to 5; Exhibit 1b; Testimony of Ms. Chriest.*
27. The Applicant has requested setback modifications. The requested setback modifications are consistent with the required setbacks in the adjacent neighborhoods. Staff recommends, however, that the rear-yard setback be reduced only to 10 feet instead of 5 feet, except for Lots 9 and 10. Because these two lots are substantially more shallow and do not abut other single-family homes, Staff recommends that Lots 9 and 10 be reduced to the requested 5 feet. Ms. Chriest testified that the proposed setback modifications allow more flexibility in the design of the homes and result in increased open spaces, which in turn reduce the amount of impervious surfaces, and provide for additional open space beyond the required 50-foot roadway buffer. The setback modifications would not alter the 35 percent maximum lot coverage standard. The setback modifications also further the policies of the Comprehensive Plan by meeting density allowances for the land-use zone and providing a roadway buffer that is consistent with the Comprehensive Plan's Streetscape Element. *Exhibit 1, Staff Report, page 6; Exhibit 1b; Testimony of Ms. Chriest.*

Staff Recommendation

28. Ms. Chriest testified that City staff recommends approval of the PP request and the PAD permit, with conditions. Mr. McDuffy testified that he agrees with Staff's findings and conditions. *Exhibit 1, Staff Report, pages 22 to 26; Testimony of Ms. Chriest; Testimony of Mr. McDuffy.*

CONCLUSIONS

Jurisdiction

The City of Mill Creek Hearing Examiner is authorized to hear and decide preliminary plat applications and development permits, including planned area development applications. The Hearing Examiner may grant, deny, modify, or grant with conditions, modifications, or restrictions. *Chapter 4.34 Mill Creek Municipal Code (MCMC); MCMC 14.03.080.A-C.*

Criteria for Review

The application shall be compatible with the City code, Comprehensive Plan, and other regulations, laws, policies, goals, and objectives of the City and shall be compatible with applicable state laws and regulations. *Mill Creek Municipal Code (MCMC) 14.03.080.C.*

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Preliminary Plat

MCMC 16.04.020.A and MCMC 16.04.020.B set forth information and submittal requirements, survey, studies, and other elements required for preliminary plat review.

In addition, RCW 58.17.110(1) provides that a proposed subdivision shall not be approved unless:

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 . . . the public interest will be served by the platting of such subdivision and dedication.

The criteria for review adopted by the Mill Creek City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency

with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. RCW 36.70B.040.

Planned Area Development

MCMC 16.12.010 defines a planned area development as an alternate form of development regulation that allows for a more flexible method of developing land. Binding site plans are not required for planned residential developments approved in conjunction with a preliminary plat.

MCMC 16.12.020 describes the purposes for planned area development, including:

- A. To allow for creative development equal to or superior to traditional lot-by-lot development.
- B. To preserve open space, natural vegetation, watercourses, wetlands, historic buildings and places, and other community values.
- C. To provide more efficient street and utility systems and retain existing vegetation by clustering buildings.
- D. To provide for a variety of housing types in one development with architectural design compatibility.
- E. To provide integrated landscape development.
- F. To provide for the integration of new development into the existing community while protecting and preserving the values of the surrounding neighborhood.
- G. To provide for the site planning and regulation of nonresidential sites not requiring a subdivision for development.
- H. To manage stormwater through a land development strategy that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic conditions.
- I. To minimize impervious surfaces and effective impervious surfaces.
- J. To encourage infiltration as a preferred method of stormwater drainage, when feasible.
- K. To encourage development of residential environments that is harmonious with on-site and off-site natural and built environments.
- L. To further the goals and the implementation of the policies of the comprehensive land use plan. (Ord. 2009-702 § 2 (Exh. C))

MCMC 16.12.040 permits modification to all zoning and subdivision requirements in a planned area development in the interest of the expressed purposes above, except:

- A. Permitted uses;
- B. Street setbacks on exterior streets in residential zones;
- C. Surveying standards;
- D. Engineering design and construction standards of public improvements but not including street right-of-way width; and
- E. Roadway buffer/cutting preserves consistent with the streetscape element of the comprehensive plan. (Ord. 2009-702 § 2 (Exh. C))

The number of dwelling units permitted in a planned residential development shall not exceed the density of the comprehensive plan land use designation and the zone district in which the project is located. *MCMC 16.12.050*. Under *MCMC 16.12.060*, in planned residential developments, open space and community recreation facilities shall be provided pursuant to *MCMC 17.22.060*. Upon approval of the Hearing Examiner, unbuildable land may be considered for inclusion in the required open-space land upon a showing that such lands can and will be used for specified recreational or community purposes.

MCMC 16.12.090 - 140 set forth requirements for planned area developments for project descriptions; owners' association documents; separate approvals for phased development, if applicable; other certificates and approvals; recordings; and time limits.

Conclusions Based on Findings

- 1. With conditions, the proposed preliminary plat would be consistent with the City code, Comprehensive Plan, and other City policies, goals, and objectives.** The proposed subdivision is consistent with City Comprehensive Land Use Plan goals and policies because it would convert a single-family home on 3.917 acres into a subdivision of 16 single-family homes. The proposed subdivision would have a density consistent with the City's LDR zoning criteria, which is the same zoning as the adjacent existing subdivision. The proposal includes tree protection on-site and proposed landscaping. There would be peripheral boundaries of appropriately sized vegetated buffers between residential developments. The development would accomplish identifiable neighborhood character by employing building mass that is proportional to the site through lot coverage and setback restrictions. Sewer, water, telephone, gas, and power services are available to the site. Two access points are proposed for the site, one through 146th Street SE in Webster's Pond, an adjacent subdivision, and another only for emergency vehicles from Seattle Hill Road. Upon completion of a planned widening of Seattle Hill Road, which would alleviate sight-line problems, access from Seattle Hill Road would be for all traffic. Sidewalks are proposed to connect to existing sidewalks where possible. Safe student walkways from housing units to a hard surfaced bus waiting area would be built. The project incorporates stormwater management facilities that comply with the Department of Ecology Stormwater Manual for Western Washington and City requirements. The proposal provides sufficient open space to meet MCMC requirements. Conditions are necessary to ensure that the Applicant follows setback requirements; establishes an HOA to maintain common areas and stormwater facilities; preserves trees as appropriate, and follows landscaping and buffer requirements; builds the sidewalks and waiting area pad to allow for safe walking conditions for students; constructs the required stormwater system; and pays mitigation fees for traffic, parks, fire district, and school impacts; and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1, 3 to 25, 28.*

2. **With conditions, the proposed preliminary plat would make appropriate provision for all elements identified within RCW 58.17.110, and would serve the public use and interest.** The City provided adequate notice and opportunity to comment on the proposal. Proposed development density is consistent with density allowed within the City's LDR. Public services, including water, sewer, and fire protection, are available. Surrounding properties to the west and north have been developed within the same zoning criteria, consistent with the City Comprehensive Plan. Open space would be provided within the proposed development. The City determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment. MDNS conditions include payment of traffic, parks, fire district, and school impact fees. Sidewalks are planned within the subdivision and to connect to existing sidewalks where possible. Safe student walkways from housing units to a hard surfaced bus waiting area would be built. Roads would be constructed to serve subdivision lots and provide two points of access, one as emergency access only until the County completes a road-widening project. Stormwater facilities are proposed including an underground detention vault for flow control and a bioswale to provide water-quality treatment. A PAD is part of this application to reduce the minimum lot size to 4,000 square feet and to obtain modifications in setback requirements. Conditions are necessary to ensure that the Applicant follows setback requirements; establishes an HOA to maintain common areas and stormwater facilities; preserves trees as appropriate, and follows landscaping and buffer requirements; builds the sidewalks and waiting area pad to allow for safe walking conditions for students; constructs the required stormwater system; pays mitigation fees for traffic, parks, fire district, and school impacts; and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1 – 28.*
3. **With conditions, the preliminary plat application would comply with MCMC 16.04.020 submittal requirements.** The PP application includes, among other things, the name of the project, the location of all proposed structures, and a general landscape plan. A condition is necessary to ensure development as depicted on the PP. *Findings 1, 3 to 12, 14 to 17, 19 to 25, 28.*
4. **With conditions, the planned area development would comply with the requirements set forth in chapter 16.12 MCMC.** The Applicant has submitted a PAD permit application in order to obtain a reduced minimum lot size to 4,000 square feet and to obtain modifications in setback requirements. The proposed lot-size reduction is consistent with adjacent single-family developments. The smaller lot sizes achieve additional open spaces that meet the density targets established in the Comprehensive Plan. Modifications in setback requirements are also consistent with the required setbacks in the adjacent neighborhoods. The modifications allow for flexibility in the designs of homes to be constructed in the development. The modifications do not reduce the 35% maximum lot coverage standard. The minimum lot-size reduction and the setback modifications result in furthering the purposes of the PAD through additional

open space beyond the required 50-foot roadway buffer, reduction in impervious surface, flexibility in home types while maintaining 35% lot coverage, integration of new development similar to type and value of surrounding development, and furthering the goals and policies of the Comprehensive Plan. Conditions are necessary to ensure that the Applicant follows setback requirements, preserves trees as appropriate, and follows landscaping and buffer requirements, and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1, 3 to 10, 26 to 28.*

DECISION

Based upon the preceding Findings and Conclusions, the request for the Preliminary Plat and the Planned Area Development to subdivide 3.917 acres into 16 lots for single-family homes located at 14616 Seattle Hill Road in Mill Creek, Washington, is **APPROVED** subject to the following conditions:²

Preliminary Plat

1. Development shall occur as portrayed on the Preliminary Plat Map, except as may be modified by the Hearing Examiner following the open record hearing, per chapter 4.34 MCMC.
2. Building setbacks on the lots shall be as follows:

Front yard setbacks: Minimum of 15 feet to the house, 20 feet to the garage. Corner lots would have a 10-foot minimum setback on the second front yard;
Rear yard setbacks: 10 feet for Lots 1-8 and 11-16; 5 feet for Lots 9 and 10;
Side yard setbacks: 5 feet.
3. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together with attendant restrictions and conditions, shall be portrayed on the final plat.
4. In accordance with MCMC 16.04.100, the Preliminary Plat approval shall expire and become void if the final plat is not submitted for approval in accordance with the time frames set forth in RCW 58.17.140.
5. The subdivision shall be incorporated into a Homeowners Association, which will be responsible for the maintenance of all privately owned common areas and facilities. Homeowner's Association documents in accordance with MCMC 16.12.100 shall be submitted with the final plat application and recorded at the time of final plat recording.

² This decision includes conditions required to reduce project impacts as well as conditions required to meet City code standards.

6. The Developer may assign its rights and obligations under this development approval upon prior written notice to the City identifying the new entity and evidencing the transfer of obligations to the new entity.

Landscaping

7. Existing mature trees shall be preserved within the roadway buffer where possible and practical. In addition, existing mature trees shall be preserved on individual residential lots where possible and practical. The trees to be preserved shall be determined after a review of the tree survey on file with the City and on-site identification by City staff. Where trees are to be retained on individual lots, a tree preservation site plan shall be prepared for the lot and submitted with the building permit.
8. Barrier fencing shall be placed around the drip lines of the trees to be retained and construction limits prior to commencing clearing and grading, and shall be maintained until construction is completed or as determined by the City Engineer or Director of Community Development in accordance with MCMC 15.10.045.
9. Trees designated for preservation that are damaged or removed shall be replaced at a ratio of 3:1. The replacement trees shall be a coniferous species and have a minimum height at planting of 10 feet. In addition, a penalty of \$1,000.00 per tree may be assessed for any trees that are removed or destroyed by the Applicant or the Applicant's agent without the express approval of the City. The City may, at its discretion, issue a stop work order for the construction on the subject lots until the penalty is paid.
10. Landscaping plans for Tracts 996, 997, 998, 999 and the street trees shall be submitted to the Design Review Board for review and approval in accordance with chapters 4.18 and 17.34 MCMC. The landscape plan shall complement the retention of the existing trees. All landscaped areas shall be amended with a minimum thickness of four inches of compost mixed to a minimum depth of six inches.
11. The developer and the City shall enter into an agreement for implementation of the approved landscape plan and enter into a secured performance bond equal to 125 percent of the cost of labor and materials, in accordance with MCMC 16.16.040, posted prior to issuance of building permits.
12. Once the developer has fulfilled the obligations of the landscape performance bond, the Applicant shall enter into a two-year maintenance agreement for the approved and installed landscaping in accordance with MCMC 16.16.090.

Engineering and Site Work

13. Grading, roadway, stormwater, and erosion control plans shall be approved by the Directors of Public Works and Community Development prior to any clearing or grading work on the site, chapter 15.12 MCMC.

14. All public improvement work shall be adequately guaranteed through an agreement and security mechanism acceptable to the Public Works Director prior to beginning construction in accordance with chapters 16.16 and 16.20 MCMC.
15. In accordance with chapter 16.16 MCMC, the developer shall construct frontage improvements along Seattle Hill Road to accommodate Snohomish County's future planned road widening project. All work done by the developer within the County's right-of-way shall be in accordance with EDDS standards and require construction plan approval by the County. The developer is also required to obtain Title 13 permits from the County for any access onto county roads and any work within County right-of-way. The required frontage improvements shall consist of: (i) Construction of a rain garden in Tract 998; (ii) Dedication of public right-of-way and drainage easements as needed to Snohomish County on the Final Plat; (iii) Construction of a meandering five-foot wide concrete sidewalk in Tract 997.
16. The developer shall submit engineering design plans and documentation to address all required public and private drainage improvements. The approved stormwater system shall include the following elements and conditions per chapter 15.14 MCMC:
 - A. Stormwater facilities that meet the requirements of the City of Mill Creek, the February 2005 edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, and Appendix 1 of the City's Phase 2 NPDES Permit (dated as effective September 1, 2012).
 - B. A geotechnical report shall be submitted to the City Engineer to address the feasibility and design of the proposed rain garden facilities.
 - C. An overflow conveyance system that will adequately function in the event of a failure of the proposed rain garden facilities.
 - D. A final stormwater drainage report signed and stamped by a licensed professional engineer shall be submitted to the City Engineer for review and approval.
 - E. The property owners shall be obligated to own, maintain and operate the stormwater system outside the public right-of-way to the satisfaction of the City Engineer. Specific maintenance measures for rain garden facilities shall be indicated on the approved engineering plans and in the final drainage report.
 - F. Provisions shall be included with the Final Plat for maintenance of the stormwater system outside the public right-of-way, including, but not limited to, adequate access to maintenance locations, provisions and easements that allow the City to inspect and maintain the system at its discretion, and adequate provisions to ensure uninterrupted function of the facilities for the proposed development.

17. Dust and erosion shall be controlled by promptly covering exposed stockpiles, watering areas of soil disturbance, using a street sweeper on adjacent roads, and other Best Management Practices as directed by the City Engineer, chapter 15.12 MCMC.
18. There shall be no idling of construction vehicles and equipment on-site.
19. All new utilities within the project shall be placed underground in accordance with MCMC 17.22.110. The Applicant shall be responsible for all costs associated with undergrounding the utilities. Appropriate easements or right-of-way for all utilities shall be provided by the Applicant and shown on the face of the Final Plat.
20. The developer shall install a mailbox structure and covered stand for the proposed development in accordance with City standards. The location of the mailboxes shall be approved in writing by both the City and Post Office prior to installation.

SEPA Mitigation

21. The developer shall pay mitigation to the City of Mill Creek in the amount of \$45,000.00 for impacts to the City roadway system. Payment of traffic mitigation fees to the City is required prior to approval of the Final Plat.
22. The developer shall construct an extension of 146th Street SE as a public road from the existing roadway stub in Webster's Pond development to Seattle Hill Road, as well as a new cul-de-sac for 39th Place SE. These public improvements shall consist of: (i) Full width of the street and sidewalk cross section, including concrete curb and gutter, a five-foot wide concrete sidewalk and five-foot wide planter strip; (ii) Street lighting; (iv) Stormwater and drainage facilities; (v) Street trees and landscaping; (vi) Striping and signage; (vii) In the interim period before construction of the road widening project planned by Snohomish County, the new access point on Seattle Hill Road shall be designed and designated for emergency vehicles only. Removable bollards with KNOX locks or other approved devices shall be installed to prevent unauthorized use.
23. The developer shall pay mitigation to Snohomish County in the amount of \$26,689.32 for impacts to roads within the TSA D subarea. Payment of traffic mitigation fees to the County is required prior to the approval of the Final Plat.
24. Pursuant to chapter 17.48 MCMC, the developer shall pay neighborhood park mitigation fees in the amount of \$43,433.70 prior to approval of the Final Plat.
25. Pursuant to chapter 17.48 MCMC, the developer shall pay community park mitigation fees in the amount of \$26,369.70 prior to approval of the Final Plat.
26. Proof of payment of mitigation fees totaling \$22,347.60 as stated in the voluntary mitigation agreement with the Everett School District shall be submitted to the City prior to issuance of the first building permit.

27. In accordance with the Interlocal Agreement between the City of Mill Creek and Snohomish County Fire District No. 7, proof of payment of mitigation fees totaling \$5,475.00 shall be provided to the City prior to approval of the Final Plat.

Public Services

28. The Applicant shall provide one hard surfaced student waiting area be located within the roadway buffer. The hard surfaced waiting area should be approximately 10' x 15' in size, linked to the housing units in the development with safe student walkways, and located behind the sidewalk.
29. Ensure adequate fire flow/hydrants and 4" STORTZ adaptors on all hydrants. Ensure floor plans allow for second egress (windows) from rooms on either the front or rear of the structure. No-parking signs shall be posted in the cul-de-sac to allow emergency vehicle access.

Decided this 31st day of December 2013.



KIMBERLY A. ALLEN
City of Mill Creek Hearing Examiner
Sound Law Center

This decision is final and effective as of the date of this decision. The Applicant, a Party of Record, and/or the City of Mill Creek may appeal this decision only as specifically allowed for in the applicable sections of the Mill Creek Municipal Code (MCMC), including but not limited to chapter 14.11 MCMC.