

**BEFORE THE HEARINGS EXAMINER  
FOR THE CITY OF BURIEN**

In the Matter of the Application of	)	No. PLA 05-2076
	)	
<b>Tom Donnelly, Northwest Housing Guild, LLC</b>	)	Chestnut Hills Subdivision
	)	
For Approval of a Preliminary Plat	)	
	)	<b>FINDINGS, CONCLUSIONS, AND RECOMMENDATION</b>

**SUMMARY OF RECOMMENDATION**

The request for approval of a preliminary plat to subdivide 3.70 acres of land into 18 single-family residential lots should be **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

Request:

Tom Donnelly (the Applicant) requested approval of a preliminary plat to subdivide 3.70 acres of land into 18 single-family residential lots. The subject property is located at 518 S 140<sup>th</sup> Street, Burien, Washington.

Hearing Date:

The City held an open record hearing on the preliminary plat on August 22, 2006.

Testimony:

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

Chip Davis, City Planner  
 Conrad Van Beek  
 Jane Voget  
 Maurice Connon  
 Tom Donnelly, Applicant  
 Harold Duncanson, Applicant's Engineer

Exhibits:

The following exhibits were admitted into the record at the open record hearing:

1. Staff Report, dated August 22, 2006, with the following attachments:
  - A. Site and Vicinity Map
  - B. City Residential Subdivision Development Requirements
  - C. Existing Site Survey
  - D. Preliminary Plat
  - E. Preliminary Plat Conceptual Road, Drainage and Utility Plan
  - F. Preliminary Plat Tree Retention Plan

- G. Preliminary Wetland Mitigation Plan
- H. State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and Environmental Checklist
- I. Letter from Robert & Bonnie Pegnam to the City Department of Community Development (DCD), dated February 6, 2006
- J. Email from Maurice Connon to the City DCD and City Response, dated February 23, 2006 and February 27, 2006, respectively
- K. Letter from Greg D. Zatrine to the City DCD, dated March 1, 2006
- L. Letter from Kevin Alexander to the City, dated March 1, 2006
- M. Letter from Conrad Van Beek to the City, dated March 1, 2006
- N. Email from Karen Walter, Muckleshoot Indian Tribe Fisheries Division, to Chip Davis, City Planner, dated March 3, 2006
- O. City Public Works Review, dated November 23, 2004
- P. City Public Works Review, dated February 1, 2006
- Q. City Certificate of Water Availability, dated October 4, 2005
- R. Southwest Suburban Sewer District Certificate of Sewer Availability, dated September 30, 2005
- S. City Fire Hydrant Availability Form, dated December 14, 2005
- T. Preliminary Technical Information Report, dated December 22, 2005
- U. Wetland Delineation & Mitigation Report, dated November 29, 2005
- V. Geotechnical Engineering Study, dated December 23, 2005
- W. Chestnut Hills Plat Traffic Analysis, dated November 7, 2005
- X. Example Critical Areas Notice and Hold Harmless Agreement
- Y. Email from John Altmann to Tom Donnelly, dated March 28, 2006
- Z. Letter from Conrad Van Beek to the City, dated September 13, 2006

2. Affidavits of Notice of Hearing

Based upon the testimony and documents submitted at the open record hearing, the Hearings Examiner enters the following findings, conclusions and recommendation:

**FINDINGS**

1. The Applicant requested approval of a preliminary plat to subdivide 3.70 acres of land into 18 single-family residential lots. The subject property is located at 518 S 140<sup>th</sup> Street, Burien, Washington.<sup>1</sup> The subject property lies immediately to the east of State Route (SR) 509 and to the north of S 140<sup>th</sup> Street. The SR 509 right-of-way runs along the subject property's northwestern border. *Exhibit 1, Staff Report, page 1; Exhibit 1, Attachment A, Site and Vicinity Map; Testimony of Mr. Davis; Testimony of Mr. Donnelly.*

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<sup>1</sup> The legal description of the property may be found on the face of the preliminary plat application. *Exhibit 1, Attachment 4.*

2. The Applicant filed the preliminary plat application with the City on December 23, 2005. The City gave notice of the public hearing associated with the application on August 31, 2006.<sup>2</sup> The notice was posted on the proposed subdivision site, published in the *Seattle Times*, and mailed to property owners within 500 feet of the proposed subdivision site and to parties of record. *Exhibit 1, Staff Report, page 2; Exhibit 2; Testimony of Mr. Davis.*
3. At the hearing, a citizen raised a concern that the City did not complete an environmental impact statement to analyze environmental impacts of the subdivision proposal. However, the City reviewed the environmental impacts of the proposed subdivision as required by the State Environmental Policy Act. The City issued a Determination of Non-Significance (DNS) on August 22, 2006, concluding that the proposed subdivision would not have a probable significant adverse impact on the environment. The City received no public comment on the DNS and the DNS was not appealed during the 14-day appeal period following DNS issue. *Exhibit 1, Attachment H; Testimony of Mr. Davis; Testimony of Ms. Connon.*
4. The proposed subdivision would be located adjacent to critical areas, as shown by the City's Critical Areas Map and by the Applicant's studies.<sup>3</sup> A "critical area" is an aquifer recharge area, a fish and wildlife habitat conservation area, a frequently flooded area, a geologically hazardous area, a stream, or a wetland. *BMC 19.10.085.* The Critical Areas Map and the Applicant's Wetland Delineation and Mitigation Report indicate two streams (Streams 1 and 2) and three wetlands (Wetlands A, B, and C) running across or immediately adjacent to the northern end of the subject property. *Exhibit 1, Staff Report, page 5; Exhibit 1, Attachment U, Wetland Delineation and Mitigation Report; Exhibit 1, Attachment T, Preliminary Technical Information Report; Testimony of Mr. Davis; Testimony of Mr. Donnelly; Testimony of Mr. Duncanson.*
5. Wetland B, measuring 4,906 sq. ft., is located in the northwestern portion of the subject property, and is supported by seepage from the wetland's southern edge and from a spring within a pump-house in the wetland's southeastern corner. Stream 1 consists of a small channel located primarily within the SR 509 right-of-

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<sup>2</sup> The Applicant initially miscalculated the amount of developable land area within the proposed subdivision site. The Applicant submitted a revised preliminary plat to the City on June 27, 2006. With the correct amount of developable land area, the revised plat reduced the number of proposed lots from 21 to 18 and increased the average size of individual lots by approximately 500 sq. ft. *Exhibit 1, Attachment A, page 2.*

<sup>3</sup> The City adopted its Critical Areas Map by reference. *See BMC 19.40.040 (2) (A)* (last revised October 2003). The Map indicates potential locations of critical areas within the City. Regardless of whether a critical area appears on the map, actual presence or absence of a critical area, defined by *BMC 19.10.085*, governs. The City may require the Applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the Applicant's site. *BMC 19.40.040 (2).*

way bordering the subject property's northwestern edge. Wetland B drains through a cut ditch into Stream 1, which then drains north into Stream 2, a Miller Creek tributary. Stream 2 runs within a larger, WSDOT-constructed channel along the north property margin<sup>4</sup> then drains into Miller Creek, located east of the subject property. Runoff from Wetland C drains west into Stream 1. Wetland C, measuring 83 sq. ft., is located adjacent to the sewer manhole in the northwest corner of the subject property. Runoff from Wetland A, which has an area of 5,664 sq. ft., drains north and appears to infiltrate within the flatter far northern portion of the subject property. Wetland A is an isolated seepage area located on the subject property's north-central slope. *Exhibit 1, Staff Report, pages 18 – 20; Exhibit 1, Attachment U, Wetland Delineation and Mitigation Report; Testimony of Mr. Davis; Testimony of Mr. Duncanson.*

6. Public comment raised a concern that there was insufficient information to determine that the streams on site are Type 3 streams. The Applicant's wetland and stream consultant categorized Stream 1 and Stream 2 as Type 3 Streams pursuant to BMC 19.40.340 (3) (iii) because a Washington Trout study found no salmonids upstream of S 140<sup>th</sup> Street in Stream 1 or Stream 2.<sup>5</sup> A Type 3 stream must be protected by a 50-foot stream buffer area within a proposed development site. *BMC 19.40.350 (2) (B). Exhibit 1, Staff Report, pages 18-19; Exhibit 1, Attachment N; Exhibit 1, Attachment U; Exhibit 1, Attachment Y; Testimony of Mr. Duncanson.*
7. The Applicant's wetland and stream consultant categorized Wetlands A, B, and C as Category 3 Wetlands pursuant to BMC 19.400.300 (4) (iii) because the wetlands were larger than 1,000 sq. ft. but smaller than one acre, contained two or fewer wetland classes, and contained less than 21 Habitat Points according to the Washington Department of Ecology's Wetland Rating Form (last updated August 2004; [see http://www.ecy.wa.gov/pubs/0406025.pdf](http://www.ecy.wa.gov/pubs/0406025.pdf)).<sup>6</sup> A Category 3 wetland must be protected by a 50-foot wetland buffer area, measured from the delineated wetland edge, within a proposed development site. *BMC 19.40.310 (2) (B). Exhibit 1, Staff Report, pages 18-19; Exhibit 1, Attachment U.*

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<sup>4</sup> WSDOT created the channel to enhance drainage capacity during SR 509 construction. The channel follows an existing easement; a sewer line is buried underneath the stream's south bank. *Exhibit 1, Attachment T, Preliminary Technical Information Report; Testimony of Mr. Duncanson.*

<sup>5</sup> BMC 19.40.340 (3) (iii) defines Type 3 streams as "natural streams that have perennial flow and are not used by salmonids."

<sup>6</sup> BMC 19.40.400 (4) (A) (iii) defines a Category 3 wetland as a wetland that is either between 1,000 square feet and one acre, with two or fewer wetland classes as defined in BMC 19.10; or where the habitat score for significant habitat value is less than or equal to 21 points, according to the Washington Department of Ecology's Wetland Rating Form.

8. The critical area and buffers would be located within a proposed stormwater detention and water quality tract (Tract B) and a Critical Area Protective Tract (Tract C). Tract B would also contain a combined detention/wet pond to manage proposed subdivision stormwater runoff. The pond would have an approximate volume of 28,000 cu. ft., and would be approximately 4 feet deep. *Exhibit I, Staff Report, pages 6-8 and 19; Exhibit I, Attachment D; Exhibit I, Attachment E; Exhibit I, Attachment T; Exhibit I, Attachment U.*
  
9. Public comment expressed concern over the Applicant's proposal to fill and "relocate" areas of Wetland A. Ms. Voget stated a concern for future wetland monitoring. The Applicant proposes to fill 5,443 sq. ft. of Wetland A. As mitigation for wetland fill, the Applicant would create 9,221 sq. ft. of additional wetland along the north side of Wetland B. The Applicant would also enhance 4,906 sq. ft. of Wetland B and 221 sq. ft. of Wetland A. In addition, the Applicant would enhance on-site critical areas buffers that are currently degraded and dominated by non-native species. The Applicant would enhance wetlands and buffers according to the Applicant's wetland mitigation and buffer enhancement plans. The plans would include planting additional native plant species to increase plant species diversity, removing non-native plant species, installing snags with bird nests attached, attaching bat roosting boxes to existing conifer trees, preserving an existing red alder grove, preserving all of Wetland C, and integrating Tract B and its stormwater pond into the on-site wetland hydrological system to improve system function. The plans also include monitoring, maintenance and contingency measures. The City Planner testified that the Applicant's wetland creation and wetland enhancement proposal would meet and exceed the 2:1 replacement to loss ratio for wetland creation and the 4:1 replacement to loss ratio for wetlands enhancement required by BMC 19.40.330 (*See Conditions D (10) - (13), E (6), E (7), F (1) - (3), G (1) - (4), and H (1)*). *Exhibit I, Staff Report, pages 19-20; Exhibit I, Attachment G; Exhibit I, Attachment K; Exhibit I, Attachment U; Testimony of Mr. Davis; Testimony of Mr. Donnelly; Testimony of Mr. Duncanson.*
  
10. The Applicant would reduce the required 50-foot wetland and stream buffer to 25-feet in some areas by employing buffer enhancement, according to the Applicant's buffer enhancement plan. Pursuant to BMC 19.40.350 (2) (H), stream buffer reduction with enhancement may be allowed by the City Planning Director if the Applicant provides additional protection to streams by implementing a buffer enhancement plan to enhance an existing degraded buffer. Under BMC 19.40.310 wetland buffer reductions are allowed in accordance with a critical area review, provided buffers are enhanced and are at least 25 feet wide. The City Planner testified that the Applicant's proposed stream and wetland buffer reduction would comply with BMC provisions because the Applicant would build structures that would increase wildlife habitat, would plant vegetation that would improve wetland functioning, and would ensure that the buffer is not less than 25 feet wide in all areas (*see Conditions C (10), C (13), E (6), G (1) -*

(4), H (1)). *Exhibit 1, Staff Report, page 19; Exhibit 1, Attachment D; Exhibit 1, Attachment G; Exhibit 1, Attachment U; Testimony of Mr. Davis; Testimony of Mr. Connelly; Testimony of Mr. Duncanson.*

11. The proposed subdivision would be located on land zoned RS-7,200 Single Family Residential. Unless a zoning code exception applies, individual lots in the RS-7,200 zone must contain a twenty-foot front setback and a five-foot interior setback. Lots must also meet the zone's 35% minimum coverage and two off-street parking space requirements. No lot within the zone may exceed 70% impervious surface coverage, or contain buildings that exceed the 35-foot maximum height threshold. *Exhibit 1, Staff Report, page 5.*
12. Public comment raised concern over the planned lot size and density within the proposed subdivision, in light of the RS-7,200 zone. The Applicant proposes development of 18 lots within the subdivision, ranging in size from 3,938 sq. ft. to 4,689 sq. ft., adhering to applicable setback requirements. With preservation of on-site critical areas, the Applicant may develop lots of less than 7,200 sq. ft. Pursuant to the clustering provisions of BMC 19.40.230, the Applicant may reduce lot area, provided that the number of proposed dwelling units does not exceed the total number of dwelling units that could be allowed if clustering were not used. Eighteen total dwelling units could be allowed without clustering.<sup>7</sup> Preservation of on-site critical areas and construction of subdivision roads and detention pond would leave 70,641 sq. ft. for subdivision lot development. Dividing that result by 18 total dwelling units would yield an average lot size of approximately 4,035 sq. ft., less than the RS-7,200 minimum lot size. The City Planner testified that the Applicant's proposed lot sizes would be permitted by BMC 19.40.230 clustering provisions. *Exhibit 1, Staff Report, pages 5, 12; Exhibit 1, Attachment D; Exhibit 1, Attachment I; Exhibit 1, Attachment J; Exhibit 1, Attachment L; Testimony of Ms. Voget; Testimony of Mr. Davis; Testimony of Mr. Donnelly.*
13. The Burien Comprehensive Plan designates the subject property as Moderate Density Residential Neighborhood. Burien Comprehensive Plan Policy EV 1.6 allows for clustering of housing units on lots designated for residential development that contain critical areas and are located adjacent to an urban development. *Exhibit 1, Staff Report, page 21.*

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<sup>7</sup> The total allowable number of lots is determined by subtracting the area of land required for subdivision roads and the subdivision stormwater detention pond from the total developable area within the proposed subdivision, then by dividing the result by the 7,200 sq. ft. minimum lot size required by the RS-7,200 zone. Critical areas are included in the total developable area figure. Here, the subdivision roads would measure 21,148 sq. ft., and the subdivision retention pond would measure 9,165 sq. ft., which subtracted from the total 3.70 acre property would leave a total developable area of 130,859 sq. ft. The total developable area divided by the 7,200 sq. ft. minimum lot size would allow 18 developable lots. *Testimony of Mr. Davis; Testimony of Mr. Donnelly.*

14. The subject property is bordered on the northwest corner by the SR 509 right-of-way and on all other sides by large lot single-family residential lots zoned RS-7,200 Single Family Residential. The Applicant testified that the proposed subdivision would be compatible with surrounding development because the subdivision would consist of a residential use consistent with surrounding residential lots, would include similarly sized and scaled housing, and would incorporate sidewalk and pedestrian path connectivity with surrounding development. The Applicant also testified that the proposed subdivision would create housing for an aging population by incorporating universal design elements, such as wide door angles and elevator construction options. *Exhibit 1, Staff Report, page 6; Exhibit 1, Attachment A; Testimony of Mr. Donnelly.*
15. The Applicant would construct 5<sup>th</sup> Place South, a private road, to access the subdivision lots. The Applicant would designate Tract A, containing 5<sup>th</sup> Place South, for access to and transportation within the proposed subdivision. 5<sup>th</sup> Place South would extend south from a proposed cul-de-sac within the subdivision to intersect with S 140<sup>th</sup> Street. The centerline of proposed 5<sup>th</sup> Place South would be 106 feet west of the centerline of existing 6<sup>th</sup> Avenue South, which runs north to intersect S 140<sup>th</sup> Street. The South 140<sup>th</sup> Street intersection with 5<sup>th</sup> Place South would operate at Level of Service (LOS) A.<sup>8</sup> *Exhibit 1, Staff Report, pages 1, 8-9, 12-15; Exhibit 1, Attachment W; Testimony of Mr. Davis; Testimony of Mr. Donnelly.*
16. Public comment raised concern about vehicle access to the proposed subdivision. Mr. Van Beek testified that the short distance between the center of 6<sup>th</sup> Avenue South and the center of 5<sup>th</sup> Place South would create a traffic hazard for vehicles entering or exiting the proposed subdivision. The 110-foot separation between the centerlines is consistent with King County Road Standards (KCRS).<sup>9</sup> The Applicant's traffic consultant found that good sight visibility and low traffic volumes at the intersection would minimize safety concerns at the intersection. *Exhibit 1, Staff Report, pages 1, 8-9, 12-15; Exhibit 1, Attachment M; Exhibit 1, Attachment W; Testimony of Mr. Davis; Testimony of Mr. Van Beek; Testimony of Mr. Donnelly.*
17. The proposed subdivision would be served by the Highline Public School District. Student residents of the proposed subdivision would attend Cedarhurst

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<sup>8</sup> BMC 18.70.060 requires that all new development shall be served by adequate roads. Roads are adequate if the development's traffic impacts on surrounding public roads are acceptable under the LOS standards as stated in BMC 18.70.060 and the compliance procedures established in BMC 18.70.070 and 18.70.080. Levels of service range from A, the best level of service, to E, the worst level of service. The LOS standard C is adequate for this intersection. *BMC 18.70.060.*

<sup>9</sup> The City has adopted the 1993 King County Road Standards (KCRS). *See BMC 12.05.010; see also Exhibit 1, Staff Report, page 13.*

Elementary School, Sylvester Middle School, and Highline High School. *Exhibit 1, Attachment W.*

18. The City Planner testified that he was not aware of any direct impacts proposed subdivision development would have on schools within the Highline Public School District. Student residents of the proposed subdivision would be bused to Cedarhurst Elementary School and Sylvester Middle School. According to the testimony of the Applicant's engineer, students would access the bus stop at 8<sup>th</sup> Ave S to the east of the proposed subdivision by walking on subdivision sidewalks and along the shoulders of adjacent streets. Student residents of the proposed subdivision could walk to Highline High School. *Testimony of Mr. Davis; Testimony of Mr. Donaldson; Exhibit 1, Attachment W.*
19. At the public hearing, a concern was raised whether the Highline Public School District would have capacity for additional students from the proposed subdivision and whether the Applicant would mitigate the impact of these students on the District. The City Planner testified that the District received notice of the magnitude, size and location of the proposed subdivision but did not submit any comments to the City related to the subdivision. The City Planner did not note any direct impacts on District schools from the proposed subdivision development. The City Planner stated that the City and the District do not currently require payment of school impact mitigation fees. The Applicant's Engineer noted that the proposed subdivision, once developed, would generate property taxes to fund schools. *Testimony of Mr. Davis; Testimony of Mr. Donaldson.*
20. The Burien Interim Zoning Code requires residential developments to provide on-site recreational areas. When this area is not provided on-site the applicant shall pay fees-in-lieu of actual recreational space. *BMC 18.35.170.* As proposed, subdivision development will not provide any on-site recreation or park space. *Exhibit 1, Staff Report, page 17; Testimony of Mr. Davis.*
21. Pursuant to BMC 19.25.120, the Applicant must retain a minimum of 30% of significant trees outside the critical areas and buffers for each of the proposed new lots. The Applicant submitted a significant tree retention plan showing plans to remove 22 of the 28 significant trees currently located on-site, exceeding the 30% minimum retention amount by two trees, totaling 24"-caliper of tree removal. The Applicant would plant twelve 3" caliper trees on the site to mitigate removal of these two trees, replacing significant trees by a 1.5:1 replacement ratio. *Exhibit 1, Staff Report, page 18; Exhibit 1, Attachment F; Testimony of Mr. Davis.*
22. King County Water District #20 reviewed the proposed subdivision and determined that District water service would be provided to the proposed subdivision by connection to an existing water main. The District determined that water is or will be available at a 1,000 gpm or greater rate of flow for 2 hours or

more, at no less than 20 psi measured at the fire hydrant nearest to the proposed subdivision. *Exhibit 1, Attachment Q.*

23. The Southwest Suburban Sewer District reviewed the proposed subdivision and determined sanitary sewer service would be provided to the proposed subdivision following satisfactory completion of a developer's extension, and subject to establishment of appropriate sewer easements. The Applicant's engineer testified that a sewer easement would be established on the north side of the subject property to connect to the existing sewer line buried beneath the south bank of the Stream 2 channel. A 10-foot public utility easement across proposed subdivision lots is shown on the face of the preliminary plat conceptual road, drainage and utility plan. *Exhibit 1, Attachment E; Exhibit 1, Attachment P; Testimony of Mr. Duncanson.*
24. The proposed subdivision would generate an additional 200 average weekday vehicle trips upon neighboring public roads. The City of Burien Public Works Department reviewed the proposed subdivision's preliminary plat map, traffic impact analysis, and conceptual road, drainage and utility plan for subdivision compliance with KCRS and City zoning requirements. Following review, the Public Works Department issued a February 1, 2006 memorandum indicating that the Applicant must construct 5<sup>th</sup> Place South roadway improvements, South 140<sup>th</sup> Street frontage improvements, and subdivision driveway connections to comply with the 1993 KCRS and City zoning requirements. The Department memorandum also indicated the Applicant must install street lights for the proposed development in accordance with City Public Works Department Standards. City staff proposed that there be a condition of final plat recording contingent on the Applicant's submittal of final construction plans for required improvements (*see* Condition C (4) below). *Exhibit 1, Staff Report, pages 14-15; Exhibit 1, Attachment O; Exhibit 1, Attachment P; Exhibit 1, Attachment W.*
25. The City of Burien Public Works Department reviewed the proposed subdivision's preliminary plat map and conceptual road, drainage and utility plan, for subdivision compliance with the 2005 King County Surface Water Design Manual (KCSWDM). The City noted that Applicant must complete a Full Drainage Review in conformance with KCSWDM Section 1.1.2.3. *Exhibit 1, Attachment P.*
26. At the public hearing, a neighboring property owner expressed concern that the proposed development would interfere with his use of water from an artesian well located in the northwestern portion of the subject property. At the hearing, Mr. Van Beek testified that he has piped water from the well to his property through an underground pipe for approximately ten years, pursuant to oral permission given him by the previous owner of the subject property. The Applicant and the Applicant's engineer testified that he was not aware of Mr. Van Beek's diversion from the well, and that continued diversions from the well could interfere with on-

site wetland hydrology. Because Mr. Van Beek has not acquired a Department of Ecology permit to divert water pursuant to RCW 90.03.250, and because Mr. Van Beek may not acquire a water right by prescription pursuant to RCW 90.14.220, Mr. Van Beek's diversion is permissive use only and must be discontinued at the request of the current owner of the subject property. *Testimony of Mr. Van Beek; Testimony of Mr. Donnelly; Testimony of Mr. Duncanson; Exhibit 1, Attachment M; Exhibit 1, Attachment Z.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner has jurisdiction to receive and examine available information on a preliminary plat application; conduct a public hearing on the application; prepare a record of the hearing; enter findings of fact and conclusions; and, based upon those facts, make a recommendation to the City Council to grant the application, grant the application with conditions, or deny the application. *BMC 2.15.070 (2) (a); BMC 2.15.080; BMC 17.55.040.*

### Criteria for Review

The Hearing Examiner's decision must be supported by the evidence presented and must be consistent with the objectives and goals of the comprehensive plan, zoning code, subdivision code and other City codes and ordinances. *BMC 2.15.070 (2); BMC 2.15.080 (1).*

The preliminary plat application review standards and criteria are found in BMC Title 17, BMC Title 18 and Revised Code of Washington (RCW) ch.58.17. The review standards and criteria include the following:

#### A. Pursuant to BMC Title 17:

- a. The proposed subdivision and its ultimate use shall be in the best interests of the public welfare and the neighborhood development of the area and the Subdivider shall present evidence to this effort when requested by the city of Burien;
- b. Subdivision streets shall conform in effect to the master plan as adopted and/or to the general pattern of the highway system of the city of Burien;
- c. The tract to be subdivided shall not be part of or encroach on an area or areas designated in the master plan for future public facilities;
- d. A final plat shall not be approved unless appropriate provisions have been made for:
  - i. Adequate sanitary sewer service;

- ii. Adequate water supply and service;
- iii. Adequate sewage disposal service;
- iv. Improved streets, including sidewalks or walkways, giving unobstructed access to all separate lots, tracts and subdivisions of the plat;
- v. Subdivision street connectivity to an existing dedicated highway of the City;
- vi. Street tree placement;
- vii. Private street improvements, including sidewalks or walkways, giving unobstructed access to all separate lots, tracts and subdivisions of the plat;
- viii. Continued maintenance of private streets via property owner maintenance cost assessment;
- ix. Stormwater drainage;
- x. Monument placement;
- xi. On-site open, park and recreation space, or payment of a fee in-lieu thereof; and
- xii. Compliance with the City zoning code, including provision for site utility line undergrounding, vehicle parking and storage for single detached dwelling units, and perimeter landscaping along street frontages. The City zoning code is found in BMC Title 19.<sup>10</sup>

**B. Pursuant to BMC Title 18:**

- a. A final plat shall not be approved unless appropriate provisions have been made for:
  - i. Adequate sewage disposal system service;
  - ii. Adequate water supply;
  - iii. Adequate surface water management;
  - iv. Adequate roads serving the proposed subdivision;
  - v. Adequate vehicular access to the proposed subdivision;
  - vi. Adequate fire protection service; and
  - vii. Provision of parks and open space or payment of a fee in lieu.
- b. The preliminary plat application must comply with the school concurrency standard set forth in BMC 18.70.160. Schools shall be considered to have been provided concurrently with the development which will impact the schools if:
  - i. The permanent and interim improvements necessary to serve the development are planned to be in place at the time the impacts of development are expected to occur; or

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<sup>10</sup> The City is in the process of amending the zoning provisions in their entirety. Eventually, all zoning and land use provisions will be consolidated in BMC Title 19. Interim zoning code provisions are found in BMC Title 18, and are included in subdivision approval criteria where appropriate.

- ii. The necessary financial commitments are in place to assure the completion of the needed improvements to meet the district's standard of service within three years of the time that the impacts of development are expected to occur. Necessary improvements are those identified by the district in its capital facilities plan as reviewed and adopted by the City of Burien. *BMC 18.70.160.*

The criteria and standards set forth in BMC Title 17 and Title 18 are essentially identical to those in Chapter 58.17 of the Revised Code of Washington (RCW). The application must meet the RCW criteria before a decision of approval may be made. *BMC 17.10.310.* RCW 58.17.110 requires that:

Appropriate provisions must be made for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and 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 must be served by the subdivision.

In addition, proposals to alter, use, develop or conduct activities on property within or adjacent to critical areas or their buffers must also meet applicable provisions of BMC Chapter 19.40. *BMC 19.40.040 (1).*<sup>11</sup> Applicable Critical Areas provisions include the following:

A. Pursuant to BMC 19.40.050:

- a. Any action taken pursuant to this Chapter shall result in equivalent or greater functions and value of the critical areas associated with the proposed action, as determined by the best available science.<sup>12</sup> All actions and developments shall be designed and constructed to avoid, minimize and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or value of critical areas.

B. Pursuant to BMC 19.40.160, a final plat shall not be approved unless appropriate provisions have been made for:

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<sup>11</sup> When any provision of the BMC conflicts with a Chapter 19.40 provision, the provision that provides more protection to critical areas shall apply, unless specifically provided otherwise. *BMC 19.40.030 (1).*

<sup>12</sup> "Best available science" means that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925, as amended. *BMC 19.40.060 (1).*

- a. Retention of existing vegetation on all lots until building permits are approved for development on individual lots;
- b. Filing of a Critical Areas Hold Harmless Agreement;
- c. Critical area and buffer boundary delineation and temporary fencing;
- d. Public notice of on-site critical areas;
- e. Permanent protection of critical areas and their buffers by tracts or easements;
- f. Building setback from critical area or critical area buffer edge, shown on the face of the plat;
- g. Mitigation for wetland or wetland buffer alteration, as required by BMC 19.40.330; and
- h. Establishment of appropriate buffer areas on-site adjacent to wetlands and streams, pursuant to BMC Chapter 19.40.

Conclusions Based on Findings

**1. With conditions, the proposed development is consistent with BMC Title 17 provisions.**

- A. The Applicant presented evidence that the proposed development would be in the best interests of the public welfare, as the development would protect on-site critical areas and buffers, provide housing compatible with surrounding residential development, and accommodate older City residents. Construction of 5<sup>th</sup> Place South would connect the proposed subdivision to SR 509 via the intersection of 5<sup>th</sup> Place South with South 140<sup>th</sup> Street. The proposed subdivision would lie on land the City Comprehensive Plan designates for residential development. The proposed subdivision would meet City zoning code requirements by adhering to BMC Chapter 19.40 clustering provisions. Adequate sewer, water, and sewage disposal service will be provided to the proposed subdivision. The proposed subdivision would be supplied with adequate water supply. The new on-site detention pond and water quality facility would provide adequate stormwater drainage of the proposed subdivision site. Payment will be made in lieu of providing on-site recreation, park or open space. *Findings 1 – 10, 12, 13, 14, 15, 20, 22, 23.*
- B. Conditions of approval are necessary to ensure that the proposed subdivision includes improved streets, including sidewalks or walkways; street trees; private street improvements, including sidewalks or walkways; continued maintenance of private streets via property owner maintenance cost assessment; monument placement; and adequate stormwater drainage. *Findings 24 and 25.*
- C. Conditions of approval are necessary to ensure that the proposed subdivision complies with the City zoning code, including provision for site utility line undergrounding, vehicle parking and storage for single

detached dwelling units, and perimeter landscaping along street frontages.  
*Finding 24.*

**2. With conditions, the proposed development is consistent with BMC Title 18 provisions.**

A. The Applicant would provide for adequate sewage disposal system service and adequate water supply to serve the proposed subdivision. The Applicant would provide for adequate vehicular access to the proposed subdivision via 5<sup>th</sup> Place South, from South 140<sup>th</sup> Street. South 140<sup>th</sup> Street and neighboring public roads would accommodate additional vehicle trips generated by the proposed subdivision. The City has indicated water service to the proposed subdivision would provide adequate flow for fire protection. The City Planner did not note any direct impacts that proposed subdivision development would have on District schools. Prior to final plat recording, Applicant will submit final construction plans for permanent and interim improvements necessary to serve the proposed development, to comply with the school concurrency standard. *Findings 15- 19, 22, 23, 24.*

B. Conditions of approval are necessary to ensure that surface water would be adequately managed throughout the proposed subdivision. *Finding 25.*

**3. With conditions, the proposed development is consistent with BMC Chapter 19.40.**

A. Using information provided by the Washington Department of Ecology, the Applicant's wetland consultant developed a wetland and buffer creation and enhancement plan to mitigate impacts of the proposed development on on-site critical areas. Use of BMC Chapter 19.40 clustering provisions, as allowed by the BMC zoning code, would ensure subdivision development will not occur in on-site critical areas. The City's DNS indicated there were no significant adverse environmental impacts associated with proposed subdivision development. Critical areas would be protected through creation of Tract C, a critical areas tract. Wetland hydrology would be restored and protected by implementation of the Applicant's wetland and buffer creation and enhancement plan, which includes allowing the on-site artesian well to run freely through Wetland B. Appropriate buffer areas surrounding critical areas would be established on the subject property pursuant to BMC Chapter 19.40.  
*Findings 3 – 10.*

B. Conditions of approval are necessary to ensure that the proposed subdivision is designed and constructed to avoid, minimize and restore all adverse impacts of subdivision development on critical areas, and to ensure development shall not result in a net loss of the functions or value of critical areas. *Findings 4 – 10.*

- C. Conditions of approval are necessary to ensure that there is retention of existing vegetation on all lots until building permits are approved for development on individual lots; filing of a Critical Areas Hold Harmless Agreement; installation of critical area and buffer boundary delineation and temporary fencing; public notice of on-site critical areas; building setback from critical area or critical area buffer edge, shown on the face of the plat; and mitigation for wetland or wetland buffer alteration, as required by BMC 19.40.330. *Findings 9 and 10.*

### **RECOMMENDATION**

Based on the preceding Findings and Conclusions, the request for approval of a preliminary plat to subdivide 3.70 acres into 18 single-family residential lots should be APPROVED, subject to the following conditions:<sup>13</sup>

#### **A. GENERAL CONDITIONS OF APPROVAL:**

1. This application is subject to the applicable requirements contained in the Burien Municipal Code (including but not limited to the Zoning Code, Building Code and Fire Code), the 1998 King County Surface Water Design Manual (KCSWDM) and the 1993 King County Road Standards (KCRS). It is the responsibility of the applicant to ensure compliance with the Burien Municipal Code, the 1998 King County Surface Water Design Manual and the 1993 King County Road Standards. If a condition of approval conflicts with a requirement, the Applicant shall follow the condition of approval.

#### **B. PRIOR TO APPROVAL OF THE FINAL PLAT, THE APPLICANT SHALL:**

1. Provide water and sewer service to each lot, or a bond submitted in lieu of provision, consistent with the requirements of the serving utility and the Subdivision Code. All utilities located on 5<sup>th</sup> Place South and serving individual lots shall be installed underground in accordance with BMC 19.17.050.
2. Obtain City acceptance of and install storm-water improvements as required by preliminary plat approval, and provide approved performance and maintenance security bonds or other security method as required by the Public Works Department;

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<sup>13</sup> This recommendation includes conditions required to reduce project impacts as well as conditions required to meet City Code standards. Pursuant to BMC 17.15.240, variations and exceptions from the dimensional standards and improvement requirements, as set forth in BMC Title 17, may be made by the hearing examiner in those instances where it is deemed that hardship, topography or other factual deterrent conditions prevail, and in such manner as the hearing examiner considers necessary to maintain the intent and purpose of the regulations and requirements.

3. Submit a report to the City indicating the Applicant's progress toward compliance with BMC 19.40.330 replacement to loss ratios for wetland creation and for wetland enhancement;
4. Explore eliminating a sidewalk along one side of 5<sup>th</sup> Place South and replace it with a pedestrian pathway to allow for connectivity with existing pedestrian pathways adjacent to the proposed subdivision site and to allow for a five-foot wide planting strip. Should adjacent properties develop, the Applicant shall enter into a concomitant agreement to contribute to pathway and frontage improvements along 8<sup>th</sup> Avenue SW ensuring connectivity with adjacent properties, if such improvements are needed;
5. Explore revising Tract A to ensure side slopes of the new storm water detention pond are gentle enough to eliminate fencing around detention pond, to permit further integration of the pond into the on-site wetland system, and to ensure wildlife access to the pond;
6. Request City approval to design and use created wetland to treat stormwater; and
7. Ensure that housing planned for the proposed subdivision lots is of universal design, including wide doors and potential for elevator construction, to meet the needs of an aging population.

**C. PRIOR TO RECORDING THE FINAL PLAT, THE APPLICANT SHALL:**

1. Submit detailed street and access improvement plans for City Public Works Department review that include the design of the new public roadway and a Cul-de-sac designed in accordance with the requirements of the KCRS, addressing concerns expressed by the Fire Marshal, and in conformance with conditions listed within the City Department of Public Works February 1, 2006 Memorandum (RE: PROJECT REVIEW FOR FILE #PLA 05-2076, Public Works Recommended Conditions of Preliminary Land Use Approval), except that project water quality treatment shall meet the Core Requirement 8 standard. Plans for this work shall be prepared by a Civil Engineer, licensed in the State of Washington;
2. Submit detailed storm water improvement plans for City Public Works Department review that include the design of the new storm water detention and treatment facilities for proposed Tract B. The design shall conform to conditions listed within the City Department of Public Works February 1, 2006 Memorandum (RE: PROJECT REVIEW FOR FILE #PLA 05-2076, Public Works Recommended Conditions of Preliminary Land Use Approval), except that project water quality treatment shall meet the Core Requirement 8 standard. Provide a corrected Technical Information Report which includes the corrections outlined in the February 1, 2006 Public Works review memorandum. Plans for

this work shall be prepared by a Civil Engineer, licensed in the State of Washington;

3. Submit a revised plat map with the following changes:
  - a. Show any utility easements, including side sewer and water utility, necessary to provide service to the referenced lots;
  - b. Add the plat number: PLA 05-2076;
  - c. Show the name of the new public roadway;
  - d. Show the boundary lines and zoning for adjacent parcels, on all sides of the subject property for a distance of at least 100 feet. Show current ownerships of these properties;
  - e. Provide signature lines for all persons having an ownership interest in the property, City Engineer's approval, county assessor's approval, the City's Director of Community Development's approval, Mayor's approval, county finance department's approval and other signatures as required by City ordinance or State law;
  - f. Obtain signatures of all persons having an interest in the property; and
  - g. Reformat the final plat map to required size and scale and include required title block, north arrow, appropriate jurats, legal descriptions, survey data and signature blocks;
  
4. Submit final construction plans, which shall include, but not be limited to the following modifications and corrections:
  - a. Indicate required frontage improvements along South 140<sup>th</sup> Street to the standards identified by the Public Works Department within the City Department of Public Works February 1, 2006 Memorandum (RE: PROJECT REVIEW FOR FILE #PLA 05-2076, Public Works Recommended Conditions of Preliminary Land Use Approval), except that project water quality treatment shall meet the Core Requirement 8 standard;
  - b. Indicate a new public roadway (5<sup>th</sup> Place South) to be improved to the standards identified by the Public Works Department within the City Department of Public Works February 1, 2006 Memorandum (RE: PROJECT REVIEW FOR FILE #PLA 05-2076, Public Works Recommended Conditions of Preliminary Land Use Approval), except that project water quality treatment shall meet the Core Requirement 8 standard; and
  - c. Indicate that the cul de sac, located on the northern portion of the development, has been designed to accommodate public safety and fire access concerns according to the requirements listed in the December 14, 2005 Certificate of Fire Hydrant Availability issued by the City of Burien;

5. Pay a fee in lieu of providing 390 square feet of recreation space on the property for each of the 17 new lots. The fee shall be 390 multiplied by the current assessed value per square foot of the property;
6. Install new fire hydrants and modify the existing hydrant to service the development and impose parking restrictions on the access road as required by the Fire Marshal;
7. Install and underground all utilities as required by the appropriate District, including compliance with requirements listed in the City of Burien Certificate of Water Availability issued October 4, 2005, and the Southwest Suburban Sewer District, issued September 30, 2005. Water and sewer service should be provided to each lot, or a bond submitted, consistent with the requirements of the serving utility and the City Subdivision Code. All utilities located on 5<sup>th</sup> Place South and serving individual lots shall be installed underground in accordance with BMC 19.17.050;
8. Submit final storm water plans designed according to the KCSWM to the Public Works Department for review and approval;
9. Install the surface water facilities as required and provide approved performance and maintenance bonds or other security methods as required by the Public Works Department;
10. Provide for the permanent protection of the critical area and buffers within the project in conformance with provisions of BMC 19.40.220;
11. Ensure that the new detention pond will drain to the existing City stormwater system, not on-site or neighboring wetlands or streams;
12. Ensure the on-site artesian well will run freely into on-site wetlands to support on-site wetland hydrology;
13. Install signs on wetland buffer boundaries indicating that the use of hazardous substances, pesticides and fertilizers in wetlands and in associated buffers is prohibited by the City unless approved by the City Planning Director;
14. Install the frontage improvements and street improvements as required and provide approved performance and maintenance bonds or other security methods as required by the Public Works Department and consistent with Subdivision Code Sections 17.25.010 and 17.30.040;
15. Ensure that all water quality and flow control facilities are located within the public right-of-way or located in a tract dedicated to the City of Burien; and

16. Establish utility and sidewalk easements for South 140<sup>th</sup> Street and 5<sup>th</sup> Place South as required by the Public Works Department within the City Department of Public Works February 1, 2006 Memorandum (RE: PROJECT REVIEW FOR FILE #PLA 05-2076, Public Works Recommended Conditions of Preliminary Land Use Approval), except that project water quality treatment shall meet the Core Requirement 8 standard).

**D. PRIOR TO BEGINNING ANY WORK IN THE PUBLIC RIGHT-OF-WAY, THE APPLICANT SHALL:**

1. Apply for and obtain a Right-of-Way Construction Permit for all work to be completed in the public right-of-way.

**E. PRIOR TO THE ISSUANCE OF DEVELOPMENT PERMITS FOR ANY DEVELOPMENT ON ANY LOT, THE APPLICANT SHALL:**

1. Submit a revised Technical Information report, including a Full Drainage Review, and submit erosion control plans for City review and approval;
2. Submit a significant tree retention plan identifying trees to remain and protective measures for review and approval by the Department of Community Development. Protective measures shall comply with the requirements of the BMC Chapter 19.25 (see Development Regulations, Attachment 2) which requires a minimum of 30% of the significant trees to be retained for each of the proposed new lots. Site plans shall indicate those significant trees to be preserved and locations for planting of additional trees providing screening for adjacent residences and protection for Tract C. The developer shall also provide a plan and assurance that new trees and landscaping will be privately maintained for a period of at least two years following installation;
3. Protect all significant trees identified in the tree retention plan at the drip line by a temporary five-foot high chain link or plastic net fence prior to grading of the site. Tree protection measures as outlined in BMC Section 19.25 shall be followed prior to and during construction;
4. All development activities on platted lots, as well as, on Tracts B and C shall comply with the requirements of BMC 19.40 Critical Areas;
5. Provide an approved JARPA which addresses the Resource Stream Protection Standards for water quality treatment that are required for all tributaries of Miller Creek;
6. Demonstrate compliance with all of the requirements of the Fire Marshal relating to access and fire safety;

7. Relocate the existing power pole located on the South 140<sup>th</sup> Street frontage in accordance with the standards identified by the Public Works Department; and
8. Install street lights for the proposed development in accordance with the standards identified by the Public Works Department.

**F. PRIOR TO ANY DEVELOPMENT OR CONSTRUCTION ACTIVITIES ON THE SUBJECT PARCEL, THE APPLICANT SHALL:**

1. Install a temporary construction fence of chain link or orange plastic fencing of at least 4' high to delineate the outer edge of the critical area protective tract and buffer;
2. Stake site clearing limits, clearly mark any existing vegetation to be saved, and hold a pre-construction meeting at the site to review and discuss all aspects of the project with the landscape contractor and owner, in accordance with the Applicant's Chestnut Hills Wetland Delineation and Mitigation Report, dated November 29, 2005;
3. Submit for review and recording a signed and notarized Critical Area Notice and Hold Harmless Agreement.

**G. DURING AND AFTER COMPLETION OF CONSTRUCTION ACTIVITIES ON THE SUBJECT PARCEL, THE APPLICANT SHALL:**

1. Provide for wetland consultant supervision of the Applicant's Chestnut Hills Wetland and Buffer Mitigation and Enhancement Plan during construction on the subject parcel, to ensure that objectives and specifications of the Plan are met. Any necessary significant modifications to Plan design that occur as a result of unforeseen site conditions shall be jointly approved by the City of Burien and the consultant prior to their implementation;
2. Conduct a monitoring program for five years on the subject parcel in conformance with the monitoring required by the Applicant's Chestnut Hills Wetland and Buffer Mitigation and Enhancement Plan and BMC Chapter 19.40 Critical Areas. Applicant shall submit annual monitoring reports to the City;
3. Conduct wetland and buffer maintenance on the subject parcel in conformance with the maintenance required by the Applicant's Chestnut Hills Wetland and Buffer Mitigation and Enhancement Plan and BMC Chapter 19.40 Critical Areas; and
4. Implement the Contingency Plan as required by the Applicant's Chestnut Hills Wetland and Buffer Mitigation and Enhancement Plan.

**H. PRIOR TO FINAL INSPECTION OF THE STORM WATER DETENTION AND WATER QUALITY FACILITY, THE APPLICANT SHALL:**

1. Install a permanent split rail or solid wood fence with appropriate notices to delineate the upland boundary of the critical area buffer in conformance with BMC 19.40.200 (2).

DATED this 27<sup>th</sup> day of September 2006.

  
THEODORE PAUL HUNTER  
Hearing Examiner