

ITEM 1
Staff Report to Hearing Examiner
January 26, 2010

I. Application Name and Number

File Name: Preliminary Plat "Halls Lake East"

File No: 2005 PLT 0003

Owner: Frank Gillen, et al.
5525 212th St. SW
Lynnwood, WA 98026

Applicant: Shockey Brent Inc.
2716 Colby Ave.
Everett, WA 98201

II. Proposal/Request

The project is a proposed preliminary approval to subdivide two parcels totaling 455,842 square-feet (about 10.5 ac.) in the Residential Single-Family 8400 sq. ft. (RS8) zone into twenty-five (25) single-family residential building lots ranging in size from 7,560 sq. ft. to 11,605 sq. ft (Exhibit 1.2). Twelve of the lots (2, 7, 12, 14, 15, and 17 – 23) will be under the 8,400 sq. ft. minimum lot size in the RS8 zone, taking advantage of the lot size averaging provision of LMC 21.42.210. The average size of all the lots will be 8,637 sq. ft. (Exhibit 1.6). The preliminary plat includes dedications for streets and access, drainage, stormwater detention, wetlands and wetland buffers and natural growth protection areas.

Location: The property is at the east end of Halls Lake, west of 54th Ave. W, north of 212th St. SW and south of the Snohomish Public Utilities District No. 1 (PUD)/ Interurban Trail right-of-way (Exhibit 1.11).

Streets and Access: The plat provides for dedication of right of way for two 50 foot wide interior public streets (identified as Road A and Road B on the Grading and Utility Plan - Exhibit 1.4). The streets will be improved to the standards required for city streets by the City of Lynnwood with a cul-de-sac turnaround and curbs, gutters and sidewalks. All proposed lots will have direct access to one of the streets except Lots 14 and 15 which will access them indirectly via a dedicated access tract (Tract 994) and lot 24 which will have an easement across lot 25. The plat is adjacent to and will get vehicle access on the east from 54th Ave. W., which is designated as a local street in the Comprehensive Plan Transportation Element and to the south from 212th St. SW which is designated as a minor arterial. The easement for Halls Lake Way (although not improved all the way) comes right to the northwest corner of this property. However, Halls Lake Way is privately owned and maintained and no vehicular access will be permitted to Halls Lake Way from this subdivision.

Utilities and Stormwater: There are utility lines running to and within this property, but the preliminary plat proposes constructing new utility lines within the new street dedications (Exhibit 1.4). The utilities will connect to existing water and sewer lines at

54th Ave. W, 212th St. and Halls Lake Way. Stormwater detention and water quality will be provided by a stormwater detention vault in proposed Tract 998. The project also includes extensive wetlands preservation and enhancement around the shores of the lake and in a Native Growth Protection Area (NGPA - Tract 997) at the southeast corner of the site. Details are in the *Sensitive Area Study and Wetland Mitigation Plan* (Exhibit 1.19) approved for Sensitive Area Permit 2005SAP0006.

Site Description:

Topography: The site has generally even topography sloping gently from all sides toward the lake. There is a steeper embankment at the very south end of the property along 212th St. SW partly within a dedicated landscaping easement, and a small steeper area at the very southeast corner of the property within the NGPA..

Vegetation: Most of the site has been logged at some time, except for a narrow belt of trees along the lakeshore and an area on the far east side of the property adjacent to 54th Ave. W and the I-5 freeway right-of-way which is more densely forested and some of which is also in the NGPA. Most of the rest of the site has only scattered trees, is regularly mowed by the owners and kept open. There are 230 significant trees on the property outside the NGPA which may be cleared for this development. The applicants have proposed partially mitigating the impact of tree removal by planting 245 new trees in the tree replacement areas shown on the Tree Retention and Replacement Plan (Exhibit 1.3). The developer may also be required to pay tree replacement fees to the City as required by LMC 17.15.120.

Surface Water: As noted, the property is immediately adjacent to the east end of Halls Lake. However, the subject property does not include any part of the lake or lakebed, unlike the other lots around the lake which are in the (unrecorded) *Halls Lake Water Front Addition* plat and which extend to the middle of the lake. Much of area along the the lakeshore is a wetland, and the entire lakeshore within this plat will be part of a wetland buffer.

A watercourse crosses the south end of the site emptying into the lake. Persons historically familiar with the area have related to staff that this was once a natural stream draining wetlands further east, but that the drainage pattern was extensively disrupted when the I-5 freeway was constructed in 1964. In response to water quality concerns in 1995, the Washington Dept of Transportation built three small settling ponds within the I-5 right-of-way just southeast of this property to accommodate freeway runoff and also partly culverted the drainage. A 20 foot wide easement will be dedicated for this drainage as shown on the preliminary plat map. There is a small, isolated Category 3 wetland at the southeast corner of the property and it and a wetland buffer around it are also within the NGPA.

Surrounding Zoning and Land Use: The site is bordered by RS8 zoned property to the west (around Halls Lake) and to the east on both sides of 54th Ave. W (Exhibit 1.12). The *Halls Lake Water Front Addition* was platted in the 1930s. The lots are narrow, and roads and other infrastructure in this area are not always up to current City standards. To the north of the subject property is the PUD/Interurban right-of-way zoned Public (P-1) and north of that is a small area zoned Light Industrial (LI) used by an auto parts recycler and a commercial bakery. The area to the south across 212th St. SE is in the City of

Mountlake Terrace and is zoned Medium Density Multi Household by Mountlake Terrace and occupied by a number of small multi-family developments. The land south of 212th St. rises steeply, and affords some nice views of the lake. The I-5 freeway right-of-way, about 400 ft. wide at this point, is adjacent to the southeast.

Land Use History of the Site: A sawmill operated on the lakeshore at the south end of this property until it burned in 1917. Much logging debris, sawdust, bark, etc. was disposed of in and around the lake, and decaying organic matter gives the lake its tea color. From just before WWII until the 1970s, the subject and adjacent properties were used as a Nazerene church camp, and most structures still on the site are remnants of that use. There are 10 small cottages on the site, five at the north end near the PUD right-of-way and five on the east side, near 54th Ave. These cottages were originally used by families attending the camp but are now rental units. There are 10 more cottages, also once part of the camp on the adjacent *Hall Lake Town Site* lots, but not within this plat. The remains of the church camp assembly hall burned and were condemned in 1992, but still stand near the lakeshore toward the northwest corner of the site. The current owners acquired the site in the 1980s.

Subdivision History of this Property: The subject property was part of the 1907 *Hall Lake Tracts* subdivision, but the part of the plat including this property was vacated in 1934. The lots adjacent to the subject property to the northeast, but west of 54th Ave. W and south of the PUD right-of-way, are also owned by the Gillen family and include 15 lots of the 1907 *Hall Lake Town Site* plat (Exhibit 1.14). Originally this plat dedicated a 60 ft. wide road right-of-way (55th Ave W) down the west side of that plat, and another (210th St. SW) across the south end. These rights-of-way were vacated in 1964, (Exhibit 1.15) whereupon half their width (30 ft.) reverted to the the subject property and the other half to the adjacent *Hall Lake Town Site* lots. The City reserved a utilities easement in the vacated right-of-way and there are city water and sewer lines within them serving the houses on this property and adjacent properties. The submitted preliminary plat proposes to construct new utility lines within the new street dedications, whereupon the existing utility easement would be abandoned. The 1964 vacation (another in 1972 vacated the alley between the lots) appears to have left some of the *Hall Lake Town Site* lots landlocked.

In preparation for this plat, the owners also completed a boundary line adjustment (2009BLA0001) which transferred a 27.77 ft wide strip along the west end and a 6.5 ft strip across the south side of the adjoining *Hall Lake Town Site* lots to the subject property. The lot areas given in the opening paragraph of this report and in Exhibit 1.6 include this adjustment.

The applicants also own the adjacent property at 5525 212th St. to the southwest as well as lots 1 and 2 of the *Halls Lake Water Front Addition* plat to the west. The latter (lots 1 and 2) were the subject of lot width variances 2006VAR0001 & 2006VAR0002, approved in Dec. 2007 and extended in Aug. 2009.

II. Exhibits

- 1.1. Land Use Application; Frank Gillen; May 5, 2005
- 1.2. Revised Preliminary Plat Map; Shockey Brent Inc. Dec. 28, 2009
- 1.3. Revised Tree Retention/Replacement Plan; Shockey Brent Inc. Dec. 28, 2009

- 1.4. Revised Grading and Utility Plan; Pace Engineering; Dec. 28, 2009
- 1.5. Initial (2005) Preliminary Plat Map; Evergreen Engineering; May 5, 2005
- 1.6. Lot Areas, Unit Density and Lot Size Average Calculations; Lynnwood Community Development Dept. (CDD); Jan. 19, 2010
- 1.7. Revised Preliminary Drainage Report; Evergreen Engineering; April 4, 2006
- 1.8. Geotechnical Engineering Report; Cornerstone Geotechnical Inc. April 4, 2006
- 1.9. Notice of Complete Application; Lynnwood CDD; June 22, 2006
- 1.10. Record of Survey; Dowl Engineering; Aug. 2004
- 1.11. Site Aerial Photo; Lynnwood CDD; Jan. 18, 2010
- 1.12. Zoning Map; Lynnwood CDD; Jan. 18, 2010
- 1.13. Comprehensive Plan Map; Lynnwood CDD; Jan. 18, 2010
- 1.14. Ordinance No. 210 (street vacation); Lynnwood City Council; Aug. 24, 1964
- 1.15. Plat of Halls Lake Town Site Divs. 1 & 2; Snohomish Co. Auditor; 1907
- 1.16. Agency Referral Memo; Lynnwood CDD; July 7, 2005
- 1.17. Summary of Comments Received; Lynnwood CDD; Aug. 15, 2005
- 1.18. Referral Comments Memo; Lynnwood Public Works Dept. (PWD); July 26, 2005
- 1.19. Sensitive Area Study & Wetland Mitigation Plan for Hall Lake East; Wetland Resources Inc; Apr. 4. 2006
- 1.20. Sensitive Area Plan Approval; Lynnwood PWD; Nov. 27, 2007
- 1.21. Dept. of Ecology CSCS- Gillen Property listing; Ecology (website); Jan. 5, 2008
- 1.22. MTCA Early Notice Letter; Dept. of Ecology; Jan. 29, 2008
- 1.23. E-mail: Dept. of Ecology to Lynnwood CDD; Jan. 15, 2008
- 1.24. E-mail: Eric Laschever to Lynnwood CDD; May 21, 2008
- 1.25. SEPA Checklist; Shockey Brent Inc. May 5, 2005
- 1.26. Mitigated Determination of Non-Significance; Lynnwood Environmental Review Committee; Jun. 5, 2008
- 1.27. Posted Notice of Public Hearing, Jan. 6, 2010
- 1.28. Affidavit of Posting, Jan. 6. 2010
- 1.29. E-mail from Everett Herald re. Published Notice of Public Hearing, Jan 6, 2010
- 1.30. Mailed Notice of Hearing, Jan. 6, 2006
- 1.31. Map of Hearing Notice Mailing Area
- 1.32. Comment Letter (flooding); Bruce & Karen, Lawson; Jun. 19, 2008
- 1.33. Copy of Feb. 19, 2008 to Lynnwood PWD (encl. to Exh. 1.32)
- 1.34. Photos (5) of flooding in Hall Lake area Dec.2007-Jan. 2008 (encl. to Exh. 1.32)
- 1.35. Comment Letter (earthquake safety); Bruce & Karen Lawson; Jun. 19, 2008
- 1.36. Copy of Feb. 19, 2008 letter to Lynnwood PWD (encl. to Exh. 1.35)
- 1.37. Copy of Mar. 10, 2008 letter Lynnwood PWD to Lawson (encl. to Exh. 1.35)
- 1.38. "Quake Risk..." Seattle *P-I* article, May 14, 2008 (encl. to Exh. 1.35)
- 1.39. Comment Letter (lead contamination); Bruce & Karen Lawson, Jun. 19, 2008
- 1.40. G & O Hall Lake Water Quality Report - selected pages (att. to Exh. 1.39)
- 1.41. Letter Lynnwood CDD to Lawsons, Lynnwood CDD, Jul. 8, 2008
- 1.42. E-mail Commentd; William Green, June 20 & Jun. 23, 2008
- 1.43. Judgment: *Newton v. Ankeny*; Snohomish Co. Superior Ct; 1926 (subm. o.t.c. by William Green, Jun. 2008)
- 1.44. Letter to William Green; Lynnwood CDD; Aug. 14, 2008
- 1.45. Comment E-mail, Judy Lehman, Jun. 7, 2008

- 1.46. Comment Letter; Hall Lake Community Association/Hanson; Sep. 7, 2005
- 1.47. Copy of Jan. 19, 1995 letter WSDOT to Hanson (attachment to 1.47)
- 1.48. Resume/CV, Lowell Hanson, undated (attachment to 1.47)
- 1.49. Letter; Lynnwood CDD to Lowell Hanson; Jan. 31, 2006
- 1.50. Comment Letter, Lowell Hanson, July 30, 2008
- 1.51. "History of Hall Lake"; Halls Lake Community Environmental Assoc. Aug, 7, 2007 (encl. to Exh. 1.51)
- 1.52. Comment E-mail; City of Mountlake Terrace; Jan 2010.

III. Noticing

Notice of Informal Public Meeting was mailed to property owners and residences within 600 feet of the subject property, and posted at four places on the site and at all official City posting locations on January 6, 2010 (Exhibit 1.27). The notice was published in the Everett *Herald* on January 6, 2010 (Exhibit 1.29).

IV. Background

Referrals

Referrals were sent to affected Lynnwood City departments and outside agencies on June 5, 2005 (Exhibit 1.6). These agencies were requested to provide comments on the proposed preliminary plat by June 20, 2005. Exhibits 1.17 and 1.18 summarize the comments received in response to the referrals.

Sensitive Area Permit

The presence of Halls Lake and of wetlands on the property means this property is subject to LMC Ch. 17.10 (Environmentally Sensitive Areas). The Lynnwood Public Works Dept. issued a Sensitive Area Permit (Exhibit 1.20) on November 27, 2007 approving the *Sensitive Area Study and Wetland Mitigation Plan for Hall Lake East* prepared by Wetland Resources Inc. (Exhibit 1.19) subject to compliance with the recommendations of the study. Approximately 87,600 sq. ft. (2.0 acres or about 1/5 of the site) will be in wetlands, wetland buffers or the NGPA.

Washington Dept. of Ecology CSCS Listing

This property was put on the Washington State Dept. of Ecology's Confirmed and Suspected Contaminated Sites (CSCS) list in January 2008 (Exhibit 1.21). The CSCS list is maintained by Ecology and the decision to list the site was made by Ecology (Exhibit 1.22). The owners and developers will need to follow Dept. of Ecology and Model Toxics Control Act (MTCA) procedures for determining the level and extent of contamination, if any, for site remediation and removal from the list. The City discussed with Ecology how the listing would affect the issuance of the SEPA determination for the proposal (Exhibit 1.23). The City essentially followed Option 2 outlined by Ecology. The City received a commitment (Exhibit 1.24) from a representative of the property owner to enter Ecology's Voluntary Cleanup Program (VCP), and issued a SEPA determination based on this.

Environmental Review

The Lynnwood Environmental Review Committee (SEPA Responsible Official for the City of Lynnwood) issued a Mitigated Determination of Non-Significance (MDNS) for this proposal on June 5, 2008 (Exhibit 1.26). The MDNS requires mitigation for: (1)

possible soil contamination on the site, (2) stormwater runoff, and (3) impacts of grading and excavation.

As noted, the site is on the Dept. Ecology CSCS list. The owners have entered the Dept. of Ecology, Voluntary Cleanup Program. The MDNS requires the developer obtain a “No Further Action” determination from Ecology before grading permits for subdivision construction will be issued.

The MDNS also finds there could be probable significant adverse impacts from grading activities and from stormwater runoff, and identifies measures to mitigate potential impacts. Grading shall be subject to erosion and dust control measures, and any excess material must be removed from the site. For stormwater runoff mitigation, a stormwater collection, holding and treatment system designed to meet the standards of the 2005 Dept. of Ecology, Western Washington Stormwater Manual shall be constructed.

The comment period for the SEPA determination expired on June 20, 2008. Several public comment letters were received which are discussed below. One comment letter was received after the comment period. The SEPA appeal period expired on July 7, 2008 with no appeal received.

V. Relevant Legal Citations

A. City of Lynnwood Comprehensive Plan and Municipal Code: Comprehensive Plan

The following goals and policies in the Comprehensive Plan are relevant to this subdivision:

1. Land Use Category Description:

The subject property is classified as Low Density Single Family Residential (SF-1) on the City’s Comprehensive Plan Map.

“Purpose: This Plan category is intended to provide for standard suburban style housing and will be the majority of residential land use in the City.

“Principal Use: Detached single-family residences at a minimum density of four dwelling units per net acre.”

Note: The Glossary in the Comprehensive Plan’s Background/Technical Support Document defines: “Density, net:” as “Density measured after excluding streets, easements, water, open space, sensitive areas and other unbuildable land” which definition is used to calculate densities given elsewhere in this report.

“Subordinate Uses: Institutional, educational or cultural, as long as such use supports the residential use and that this use would not significantly impact nearby residences in a negative way.”

“Locational Criteria: Areas designated for this use should be well separated or buffered from incompatible or disruptive land uses and should not be subject to higher volumes of vehicular traffic.”

“Site Design: Lot sizes within subdivisions shall comply with the City’s minimum development code requirements and, in no case, shall cause the overall density to be

less than four dwelling units per net acre. Some lots smaller than 8400 square feet may be allowed through lot size averaging within subdivisions, and through the planned unit development process. Lot coverage by structures shall be limited so as to provide substantial yard space around the residence.”

“Building Design: Either one or two stories high with an additional story permitted if located partially below ground in a basement.”

“Other Provisions: One accessory dwelling unit may be added to a lot in this category, provided that the accessory unit is attached to the primary residence and the single family character of the property and the neighborhood is not impaired. An accessory unit shall not be included in the calculation of allowable density.”

2. Land Use Element Goal:

“A balanced land use pattern that prevents urban sprawl, preserves and enhances residential neighborhoods, protects environmentally sensitive areas, protects people and property from environmental hazards, promotes economic development, and encourages community redevelopment at appropriate locations, resulting in a high quality physical environment for residents, workers and visitors.”

Subgoal: Density

"Assure that the density of development is consistent with the local and regional development patterns, with available and planned infrastructure, with Growth Management Act requirements, and with surrounding land uses."

Subgoal: Single-Family Housing Retention

"Assure retention of existing single-family housing, and areas of such housing, through protection from conflict or encroachment of incompatible land uses or activities, and attempt to reach 60% single-family and 40% multi-family units in the area of the City outside of the City Center Study Area."

Land Use: Policy LU 1.9

“Fill in development of vacant parcels which were passed over by earlier development, but which are served by utilities and streets that meet current standards should be encouraged in order to maximize efficiency of existing capital improvements.”

Residential Uses: Policy LU-2.1:

“Land use regulations shall encourage infill housing and redevelopment of underutilized housing sites.”

Residential Uses: Policy LU-2.11

“Subdivision regulations and standards shall promote public health, safety, aesthetics, and general welfare. Such regulations and standards shall allow for efficient use of land, minimize adverse impacts on surrounding development, provide adequate public utilities, proper access and traffic circulation, streets, sidewalks and other public facilities.”

3. Transportation Element Goal:

“To provide mobility for residents, visitors and commuters through a balanced system of transportation alternatives that supports the City’s land use vision, protects

neighborhoods from transportation impacts and minimizes adverse impacts on the environment.”

Subgoal: Non-motorized Transportation System

“Strive to complete an integrated safety-orientated pedestrian, school walkway and bicycle system to provide mobility choices, reduce reliance on vehicular travel and provide convenient access to schools, recreational facilities, services, transit and businesses.”

Policy T-17.1:

“Public sidewalks shall be required of new development, including residential subdivisions.”

Policy T-17.7:

“At appropriate locations, walkways should be extended to the edge of development sites to connect to existing walkways on adjacent property or allow for future connections when adjacent property is developed or redeveloped.”

Policy T-17.8:

“Street right of way adjacent to development sites should be fully improved to current City standards, including provision of sidewalks, to reduce traffic impacts.”

Subgoal: Transportation Functionality and Safety

“Maximize the functionality and safety of the local circulation system to guide the design of all transportation facilities, incorporating new materials and technology and responding to the needs of neighborhoods, visitors, and businesses.”

Objective T-24

“Enhance the safety of residential streets and the livability of neighborhoods”

Objective T-25

“Existing curb cuts and parking areas shall be consolidated during development and redevelopment to the greatest extent possible.”

4. Environmental Resources Element:

Subgoal ER-3 Natural Landscape and Vegetation

Policy ER-3.5

"Encourage the incorporation of open space into development through setbacks, view corridors and recreation areas. Preserve areas with natural or scenic value within development sites to achieve open space amenities"

Subgoal ER-5 Water Resources

Policy ER-5.2

“Seek to retain and designate significant areas of wetlands as open space.”

Policy ER 5.8

"Conserve and protect environmentally sensitive areas from loss or degradation following the requirements of the Sensitive Areas Ordinance. In areas planned for substantial urban development, sensitive areas may be modified where they have low ecological value, and the function and values will be fully replaced."

Policy ER-5.15"Restore, where feasible, natural drainage channels that have been placed within culverts and have had their capacity or habitat value reduced as development or redevelopment occurs."

Subgoal ER-6: Fish and Wildlife

Policy ER-6.3

"Protect the habitat of native and migratory wildlife by acquiring open space, encouraging the conservation of beneficial habitat, and providing for the growth of native species of trees and other native vegetation."

Policy ER-6.7

"Land use plans and developments should avoid impacts on critical wildlife habitats and restore and enhance degraded or lower quality critical wildlife habitats where possible."

5. Housing Element Goal:

"Provide for sufficient availability and a variety of opportunities for safe, decent and affordable housing in strong, cohesive neighborhoods to meet the needs of present and future residents of Lynnwood."

Subgoal: Housing Opportunities

"Provide for diverse safe and decent housing opportunities that meet local housing needs without encroachment into established single-family neighborhoods."

Objective H-6:

"Allow developers the use of the most efficient state-of-the art design and development tools to produce new homes and neighborhoods that are consistent with regional housing market trends."

6. Economic Development Element

Goal 1. Urban Growth – Encourage development in urban areas where adequate public facilities/services exist or can be provided in an efficient manner.

LMC Chapter 1.35 (Application Processing and Review)

LMC Section 1.35.025 requires the city to make a decision on a permit application and issue a notice of decision within 120 calendar days of active processing after the city notifies the applicant that the application is complete. The subject application was submitted May 5, 2005. However, responses to the referral memo indicated that multiple documents would be required before a determination could be made including a revised drainage plan, a geotechnical report, and an approved sensitive area mitigation plan. The sensitive area plan was approved in November 2007. However, in January 2008, the City learned the site was on the CSCS list and processing stopped again pending provision of information on the implications of that for the SEPA determination and applicant agreement to enter the VCP. The SEPA determination was issued in June 2008.

In the meantime, the owners applied for permits (including variances 2006VAR0001 & 0002) to develop Lots 1 and 2 of the *Halls Lake Water Front Addition* immediately adjacent to the west side of the subject property. (The Hearing Examiner held a hearing on these variances in November 2007). Although it did not bear directly on the variance, the owners were advised in the course of variance processing that the private 15 ft. wide Halls Lake Way was not adequate fire access to allow development of Lots 1 and 2. Therefore, in July 2008,

the applicants submitted a new preliminary plat map substantially revising the original proposal (Exhibit 1.5) by extending the northern cul-de-sac close enough to Lots 1 and 2 so fire access could be provided via this subdivision.

The revised plat layout, however, required a boundary line adjustment between the subject parcels and the immediately adjacent lots of the *Hall Lake Town Site* plat to the east. The CDD required the boundary line adjustment to be complete before the plat could be approved. Boundary Line Adjustment No. 2009BLA0001 was submitted in January 2009, and approved in April, but not completed until October 13, 2009. It has been 104 days since the BLA was completed. In some cases, formal written notice stopping the processing period was not given, rather the applicants were told either in face-to-face meetings or telephone conversations required documents or materials would have to be submitted before processing could continue. The CDD has requested the applicant waive the 120 day timeline and the applicant has indicated that they will do so by letter at the Hearing Examiner public meeting.

LMC Title 17.15 (Tree Regulations)

Exhibit 1.3 is the preliminary Tree Replacement Removal Plan for this development. The plan shows there are 230 “significant” trees on the site outside the tree retention area/NGPA at the southeast corner of the property. Depending on size and/or species many trees are not considered “significant” for the purposes of LMC 17.15. Trees may also be exempt if they are diseased or dying or a safety hazard as determined by a licensed arborist. Depending on its size, each removed “significant” tree is debited at a value of between one and four “tree units”.

The plan shows a debit of 690 “tree units” if all the subject trees are removed. The plan proposes planting 245 replacement trees and crediting the remaining “tree units” through payment of fees to the City tree replacement fund. The tree plan is preliminary. The actual number of trees it is necessary to remove, and number of replacement trees planted could vary depending on, for example, engineering considerations encountered during construction, therefore the numbers given in the plan are subject to change. However, all removed trees will be subject to either planting of replacement trees or fee payment according to the calculations of Ch. 17.15. Replacement trees must be of designated minimum size, and species, and are subject to tree planting and care guidelines (e.g. minimum distances between trees, mulching etc.)

LMC Title 19 (Subdivisions)

Section 19.20.035 of the Lynnwood Municipal Code contains the following factors for consideration in the preliminary plat (subdivision) process:

- A. The preliminary plat shall conform to and it shall be the applicant’s burden to demonstrate conformance to the following factors as they now exist or as they may be amended:
 1. The goals, policies and objectives of the Lynnwood Comprehensive Plan;
 2. The Lynnwood Comprehensive Parks and Recreation Plan;
 3. The Lynnwood Zoning Code;
 4. The standards of this Ordinance (Title 19) and Chapter 58.17 RCW;
 5. The Lynnwood Comprehensive Street and Arterial Plan;
 6. The Environmentally Sensitive Areas map and the City’s Environmental Policies;

7. The Lynnwood Water System Comprehensive Plan;
 8. The Lynnwood Comprehensive Trunk Storm Drainage Plan, and CH. 13.40 LMC Drainage Plans;
 9. The compatibility of the plat to the existing neighborhoods;
 10. Other plans and programs as the City of Lynnwood may adopt.
- B. A proposed subdivision and dedication shall not be approved unless the City Council makes written findings that:
1. Appropriate provisions are made for, but not limited to:
 - a. the public health, safety, and general welfare;
 - b. open spaces, drainage ways, streets, roads, alleys, other public ways and transit stops;
 - c. potable water supplies, and sanitary wastes;
 - d. parks and recreation, playgrounds, schools and school grounds;
 - e. all other relevant facts, including sidewalks and other planning features that assure safe walking conditions.
 2. The public use and interest will be served by the platting of such subdivision and dedication.

The proposed subdivision and dedication is in conformity with the Lynnwood Zoning Code and land use controls.

LMC Title 21 (Zoning)

Chapter 21.42 of the Lynnwood Municipal Code (LMC) lists the permitted uses within the RS8 zone and the development standards to which all proposed subdivisions in that zone must comply.

VI. Analysis and Comment

It is the applicant's burden to demonstrate conformance to the factors to be considered in the preliminary plat process.

A. Consistency Analysis

Comprehensive Plan

The proposed subdivision is consistent with the Comprehensive Plan's Future Land Use designation of "Low Density Single Family Residential" (SF-1) that provides for a minimum density of four units per net acre (Exhibit 1.13). The net area of the development (exclusive of street dedications, wetland and buffer dedications, the NGPA etc.) is 226,400 sq. ft. (5.2 acres). As shown in Exhibit 1.6, this results in a net density of 4.8 units per acre.

The proposed development will increase the number of single-family detached residences in Lynnwood by 25 units. This will help meet the housing balance goal of the Land Use Element for 60% single family and 40% multi-family units. The housing ratio in the city is currently approximately 54% single family and 46% multiple family.

LMC Title 19 (Subdivisions)

LMC 19.35 Subdivision Design

The proposed plat meets the requirements of the Lynnwood Comprehensive Plan and LMC Title 21 as discussed elsewhere in this report. Copies of the proposed plat have

been provided to the Lynnwood Public Works Department, Fire Department, and Building Division who have recommended preliminary approval.

Lot and block design: The proposed lot and block layout meets the requirements of the Subdivision Design chapter: all lots meet the dimensional requirements of LMC Title 21 (see Exhibit 1.6); all lots have access to the internal public streets of this subdivision directly or via a private road; no lot is more than double the minimum lot size required in the RS8 zone or more than 2.5 times as deep as it is wide; the lot areas given on the plat map are net of access easements; no block is more than 1,320 ft. (1/4 mile) long. Lot 24 is accessed via an 85 ft. long 20 ft. wide private access easement across the north side of Lot 25. Lots 14 and 15 will be accessed via a 185 ft. long 20 ft. wide private access easement across the east sides of Lots 13 and 14. These private easements will be improved with minimum 20 ft. wide paved roads and may also serve as utility easements. However, LMC 21.19.50 states that a private road shall serve no more than four lots. The private road is acceptable for purposes of this plat, but the owners have been advised that the adjacent *Hall Lake Town Site* lots may not all be allowed to use this private road for access.

Street design: The cul-de-sac street is 485 ft. from the center of the intersection to the west edge of the cul-de-sac and has a 52 ft. radius right-of-way for the turning area. All streets proposed by this plat are classified as neighborhood streets and meet the 50 ft. minimum right-of-way and curve and grade requirements of this section. The streets will be required to be paved at least 36 ft. wide, 45 ft. wide in the cul-de-sac, and be provided with sidewalks and curbs and gutters. Rolled curbs are acceptable on neighborhood streets. All properties adjacent to this development that are likely to be developed are already developed, so no stub-outs are required. All proposed internal intersections and intersections with existing streets are at right angles. The developer will be required to provide and maintain street trees in conformance with the street tree guidelines published by the Lynnwood Public Works Dept.

LMC 19.20 Preliminary Plat Requirements:

The following is staff's analysis of the proposal with respect to these factors:

1. *Public Health, Safety and Welfare:* The plat meets the minimum requirements of the Lynnwood Municipal Code, which are the official City standards and regulations regarding health, safety and welfare. This proposal was routed to the Public Works and Fire Departments, which returned their comments and requirements for ensuring public health and safety. The developer will be required to conform to these requirements and to all City policies and ordinances for public safety.
2. *Open spaces, drainage ways, streets, roads, alleys, and other public ways and transit stops:* The City currently has no requirements for open space or park mitigation. The proposed storm drainage collection, detention and water quality treatment system will be designed to meet the 2005 Washington State Department of Ecology Stormwater Manual standards.
3. *Potable water supplies and sanitary wastes:* Public water and sewer services for the plat will be provided by the City of Lynnwood. The applicants will be required to install water and sewer mains for all lots in accordance with City of Lynnwood

standards. There is currently a privately maintained water line and a city maintained sewer line within the old 210th St./55th Ave. right of way (vacated for access purposes, but retained as a utility easement - Exhibit 1.15). It is proposed to build new water and sewer lines within the internal plat street rights of way. The new sewer and water lines will be connected to City sewer and water lines at 212th St, 54th Ave. W and Halls Lake Way. The existing (inadequate) water line in Halls Lake Way is in the process of being upgraded. It is expected the old utility easement may be vacated once the replacement water main is constructed and in service.

4. *Parks and recreation, playgrounds, schools and school grounds:* The nearest Lynnwood public park to this development is the South Lynnwood Community Park about 1,500 ft. to the west, but the Interurban hiking/biking/recreation trail runs immediately adjacent to the north boundary of the plat. There is access to the trail at the 54th Ave. W/208th St. SW intersection. The City of Lynnwood does not require park or school impact fees. The Lynnwood Parks and Recreation Dept. and Edmonds School District were provided with information regarding this proposal and indicated no concerns to the City.
4. *5. Sidewalks and safe walking conditions:* All internal plat streets and the west side of 54th Ave. to the plat's north boundary, will be improved with curbs, gutters and sidewalks. 212th St. is already improved with curbs and sidewalks. Curbs on local streets may be rolled.
6. *Serving the public use and interest:* The City has designated the property for Low-Density Single-Family use in the Future Land Use Plan of the Comprehensive Plan and zoned the site RS-8. These designations indicate that it will serve the public interest to develop the property as a single family detached subdivision in conformance with adopted land use and zoning standards.
7. *Subdivision and dedication in conformity with the Lynnwood Subdivision Code and land use controls:* This criterion is met as demonstrated above, and also in the **Zoning Analysis** section (below). It is the applicant's burden to demonstrate conformance to the factors to be considered in the preliminary plat process.

LMC Title 21 (Zoning)

The proposed preliminary plat meets the development standards for the RS8 zone as follows:

Standard	Required Minimum or Maximum	Proposed
Lot Area	8,400 sq. ft. minimum (7560 sq. ft. if using lot size averaging)	7,563 s.f. (Lot 20) to 11,605 s.f. (Lot3)
Lot width	70 ft. minimum (65 ft. for lots using lot size averaging provision)	65 ft. (Lot 12) to 105 ft. (Lot 13)
Frontage	30 ft. minimum	30 ft. (Lot 19) to 122 ft. (Lot 13)
Front Yard Setback	25 ft. minimum	Setback line shown on plat map - setbacks confirmed with bldg. permit.
Side Yard Setback	Interior Lots: Total 15 ft. with neither side less than 5 ft. Corner Lot (Lot 7): 15 ft. on street side.	” ”

Rear Yard Setback	25 ft. minimum	” ”
Lot Coverage	35% maximum	” ”
Building Height	35 ft. maximum	” ”

Eleven of the proposed lots are smaller than 8,400 square feet, but the plat meets the minimum requirements of LMC 21.42.210(C). In accordance with Subsection (1) no lot is less than 7,560 sq. ft., and computed in accordance with Subsection (2) the average for all lots is 8,634 sq. ft. (Exhibit 1.6)

VII. Public Comment Received: Most of the public comment received by the CDD for this project came in response to the SEPA determination. At the time of this report’s preparation only one comment has been received in response to the January 26, 2010 public meeting notice.

Comments from Bruce & Karen Lawson:

In response to the SEPA determination, the Lawsons wrote three letters to the CDD all dated June 19, 2008, one each concerning flooding (Exhibit 1.32), seismic safety/liquefaction (Exhibit 1.35), and lead contamination (Exhibit 1.39).

Flooding: The MDNS for this project requires stormwater detention and water quality facilities in accordance with the 2005 Washington Dept. of Ecology, Stormwater Manual (vs. the 2001 manual required previously). The storm of December 3, 2007 was an extraordinary (possibly 100 year) event, and storms of this magnitude can cause flooding irrespective of the level of development and can cause detention facilities to release water through the overflow conveyance outlet or become completely inundated.

Seismic Safety: As noted in the Public Works Dept. letter (Exhibit 1.37), International Building Code standards take soil and groundwater conditions into account. Applicants for permits to build structures on the proposed lots may be required to produce geotechnical reports detailing conditions on those individual lots, and then will be required to observe building code standards appropriate to those conditions and to seismic hazard conditions present. The buildings cited in the Seattle *Post-Intelligencer* article (Exhibit 1.38) are older un-reinforced masonry buildings built before modern building codes were instituted (mostly since the 1970s).

Lead Contamination: Based on the Grey & Osborne Water Quality study showing elevated levels of heavy metals in some lakebed sediments, in January 2008 the Washington State Department of Ecology added the subject property to their Confirmed and Suspected Contaminated Sites (CSCS) list (Exhibits 1.22 & 1.22). Toxics contamination in Washington is regulated by the Washington Model Toxics Control Act (MTCA) administered by Ecology. The SEPA Mitigated Determination of Non-Significance (MDNS) issued by the City, requires the site be removed from the CSCS list and a “No Further Action” determination be made before the final plat is approved or grading permits are issued for any purpose except site remediation. Ecology will require the hazard be assessed, and, if necessary remediated, in accordance with MTCA before removing the site from their list.

Comments from William Green:

Mr. Green was under the impression that a 1926 court ruling had restricted the rights of the owners of the subject property to use the lake, and wanted to know if restrictions could be included in the plat reflecting this (Exhibits 1.42). At staff's request Mr. Green provided a copy of the court judgment (Exhibit 1.43), which staff then asked the City Attorney's office to review. The City Attorney's office indicated they did not see anything in the ruling that restricted the ordinary riparian rights of the subject property.

Comments from Judy Lehman:

Ms. Lehman's e-mail (Exhibit 1.45) concerned the condition of and activities at the rental units (formerly church camp cottages) on this property, the possibility of acquiring some of this property for a park, and a four-way stop at 54th Ave. W & 201th St. SW, also a problem with students waiting for school busses.

New homes/condition of cabins: There are a total of 21 small cottages in this area previously used by the church camp, however, only 10 are on the subject property. The rest are on the *Hall Lake Town Site* lots just north and east of the boundaries of this plat. The CDD is aware of no plans to remove them.

Public Park on Lake: According to the City of Lynnwood Parks Recreation & Cultural Arts Dept., the City approached the owners about obtaining part of this property for a park several years ago, but the price they wanted for the land was more than the City could consider.

Four-way stop at 208th & 54th: According to the Lynnwood PWD this subdivision will add at most about 13 more peak-hour trips through this intersection. This by itself is unlikely to warrant a four-way stop.

Staff informed Ms. Lehman that Edmonds School District determines school bus route and stops with reference to the City. Staff forwarded her e-mail to ESD.

Comments from Lowell Hanson:

Mr. Hanson wrote comment letters in response to the initial Notice of Application for this project in 2005 (Exhibit 1.46) and again in response to the Notice of Environmental Determination in 2008 (Exhibit 1.50) and has submitted other documents as well.

Mr. Hanson's concern is primarily with the water quality of the lake including a wide variety of pollutants, but particularly lead. Mr. Hanson specifically refers to the Grey & Osborne Hall Lake Water Quality report, but that report specifically recommends against trying to remove the contaminated lakebed sediments. As discussed above, the subject property, also possibly affected by soil contamination, has been placed on the Dept. of Ecology CSCS list and will be remediated as appropriate. Mr. Hanson also refers to the lake having low oxygen levels (anoxia). This appears to refer to scientific studies done in the 1970s that indicate the lake has at times been meromictic (i.e. the upper and lower water layers do not mix thus the lower layers become anoxic). The problem can be aggravated by siltation or other pollution sources. However, documented periods of anoxia occurred in the 1950s and about 1969-71 before adoption of the Clean Water Act and SEPA and the more stringent runoff and erosion control requirements now required of construction sites. Mr. Hanson also has concerns with the water level of the lake, but

the Grey & Osborne report also concludes the lake level is not significantly higher than it has been historically.

It should be noted that all the concerns in these comment letters, except Ms. Lehman's and Mr. Green's, concern environmental issues which should have been addressed at the time the SEPA determination was issued. The writers were notified of the determination, had an opportunity to appeal it and did not.

VII. Conclusions and Recommendation

A. Conclusion

Staff concludes that subject to the following recommended conditions, and subject to the approval by the Lynnwood City Council, the proposed preliminary plat fulfills the decision criteria for preliminary plats in the LMC and RCW (stated above). The proposed plat is compatible with the surrounding neighborhood, which also consists of low-density single-family residences. The development will result in a net increase of 25 dwelling units, which is unlikely to have a significant impact on City services. The applicant has met the burden of proof for the proposed subdivision by addressing subdivision criteria and preliminary plat requirements.

B. Recommendation

Staff recommends the Hearing Examiner recommend the City Council approval of the preliminary plat with the following conditions:

1. The document entitled "Preliminary Plat: Halls Lake East" prepared by Shockey Brent Inc. and accompanying documents, and submitted to the City of Lynnwood on January 19, 2010 (Exhibits 1.2 – 1.4) shall be the approved preliminary plat map. Minor revisions are allowed to the preliminary plat pursuant to LMC 19.25.005(B).
2. The developer shall comply with all conditions of the SEPA Mitigated Determination of Non-Significance issued by the Lynnwood Environmental Review Committee for this project on June 5, 2008. (Exhibit 1.26)
3. The developer shall meet all conditions and requirements and provide all improvements identified in the referral process (Exhibits 1.17 and 1.18) prior to final plat submittal. The stormwater detention/retention system referenced in Exhibit 1.18 must be designed to meet the requirements of the 2005 Dept. of Ecology Stormwater Manual.
4. If the developers/owners elect to provide the fire access required for development of the adjacent Lots 1 and 2 of *Halls Lake Water Front Addition* through this subdivision as proposed on the submitted preliminary plat map, then the developer will be required to install and maintain a gate at the northwest corner of this property across the east end of the Hall Lake Way access easement. The gate will prevent vehicular through traffic from this property to Halls Lake Way, but still allow for fire vehicle access to Lots 1 and 2. The design and installation of the gate shall be approved by the Lynnwood Fire and Public Works Departments.
5. A note shall be placed on the final plat stating that any residence built on Lot 15 of this plat shall be provided with an automatic fire sprinkler system approved by the Lynnwood Fire Dept.

6. Stormwater quality facilities (swales, vaults and ponds) shall be provided as required by the Public Works Dept. The stormwater detention system for the proposed plat shall be designed to meet the requirements of the 2005 Washington State Department of Ecology *Stormwater Management Manual for Western Washington*.
7. City of Lynnwood public water service shall be used to serve all lots of this subdivision. A water main extension will be provided if necessary to meet flow requirements. The developer may be required to dedicate easements for access to and maintenance of public utility lines.
8. City of Lynnwood sanitary sewer service is available and shall be used to serve all lots in this subdivision. There is an existing sewer line across the north part of this property and use, reuse or alteration of any part of this line is subject to reassessment and approval by the Lynnwood Public Works Dept. All structures connected to the sanitary sewer shall be fitted with backwater check valves.
9. The following note shall be placed on the face of the plat: "The City of Lynnwood has no responsibility to build, improve, maintain or otherwise service the private roads contained within or providing service to the plat." No parking shall be permitted on private roads within this plat, and "No Parking" signs meeting city standards shall be posted at locations identified by the City at the owner/developer's expense.
10. The final plat shall note that Tract 994 on this plat is dedicated for a private road serving Lots 14 and 15 of the plat. Under LMC 19.50.050.6 a private road may not serve more than four residential lots, therefore, the lots adjacent to the east side of this tract (*Hall Lake Town Site Divisions 1 and 2*, Block R, Lots 2, 3, 6, 7 and 10) may not be allowed to use this tract for access.
11. The final plat shall note that the access easement on Lot 18 of this plat was dedicated for the sole purpose of proving fire access to Lots 1 and 2 of Halls Lake Water Front Addition. No vehicular or other access to Lots 1 and 2 or to Halls Lake Way is hereby granted to the owners of Lot 18 or to any other persons.
12. A Class II tree permit calculation sheet shall be completed and submitted with grading and construction permits. The trees shall be replaced or a fee paid in accordance with the requirements of LMC §17.15.090. The Lynnwood *Tree Preservation and Protection Guidelines* shall be observed during all construction phases.