Ordinance No. 3879
(Amending or Repealing Ordinances)

CFN=1316-Meridian Banks Preliminary Plat Appeal
Passed – 5/6/2008
ORDINANCE NO. 3879

AN ORDINANCE of the City Council of the City of Kent, Washington, relating to land use, specifically the preliminary plat of approximately 6.32 acres of property located at 25840 135th Lane Southeast. (Meridian Banks Preliminary Plat, SU-2005-11).

RECITALS

A. An application was filed on August 29, 2005, to subdivide approximately 6.32 acres of property located at 25840 135th Lane Southeast (the "Property") into 27 single family lots. (SU-2005-11).

B. An open record hearing on the preliminary plat was held before the hearing examiner on May 10, 2007; May 23, 2007, and August 15, 2007. On October 15, 2007, the hearing examiner issued his "Findings, Conclusions and Decision," approving the preliminary plat, subject to certain conditions, attached as Exhibit A.

C. The applicant filed a motion to reconsider which was denied by the Hearing Examiner in a written decision dated February 5, 2008.

D. On February 13, 2008, the applicant filed an appeal of certain provisions of the Hearing Examiner's decision.

E. The appeal was heard by the Kent City Council on April, 15, 2008. Prior to the appeal hearing, the Council was provided with the
complete record before the Hearing Examiner, the transcript of the hearing, and the briefs submitted by the applicant and the City. Both the applicant, represented by his attorney, and the city, represented by the assistant city attorney, made oral arguments and answered questions by the Council.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Appeal Denied. The City Council finds that none of the procedural or factual bases for the appeal have been established and finds there has been no substantial error. Therefore, the City Council denies the appeal and adopts the Hearing Examiner’s Findings, Conclusions and Decision dated October 15, 2007, subject to one modification. Condition A(9) set forth on page 31 of the Hearing Examiner’s decision is modified to read as follows:

After construction, the wetland and/or stream and their associated buffer areas shall be isolated from intrusion by installing a split-rail cedar fence around the entire buffer edge. Provided, however, that the fence shall include openings for any access routes subsequently approved by the City per an approved Wetland Mitigation Plan and/or Wetland Buffer Enhancement Plan. In addition, sensitive area information signs (available from the Department of Public Works for $7.50 each) shall be placed at the buffer edge to inform and educate owners and nearby residence about the value of the sensitive areas.

This modification is necessary to allow possible access to the lake and any preexisting docks by residents and their guests. The modification is based upon testimony of Ms. Fehringer that under the Kent City Code, access to the docks and lake may be allowed once a wetland delineation has been submitted and approved. See KCC 11.06.600 and 11.06.610.
SECTION 2. - **Severability.** If any one or more sections, sub-sections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 3. - **Effective Date.** This ordinance shall take effect and be in force five (5) days from and after its publication as provided by law.


Suzette Cooke
SUZETTE COOKE, MAYOR

ATTEST:

Brenda Jacob
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

Wayne Tanaka, Special Counsel to the City Council

PASSED: 6 day of May, 2008.

APPROVED: 6 day of May, 2008.

PUBLISHED: 10 day of May, 2008.

I hereby certify that this is a true copy of Ordinance No. 3879 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK

Meridian Banks
Preliminary Plat Appeal
BACKGROUND

On June 30, 2005, property owner Bill Floten submitted a rezone application requesting a change from SR-4.5 Single Family Residential to SR-6 Single Family Residential on approximately 6.32 acres located adjacent to Lake Meridian at 25840 135th Lane SE. Exhibit C-1. On August 29, 2005, Architect Ted Nixon submitted, on behalf of Bill Floten, an application to subdivide the same property into 27 single-family residential lots. The property owner and Mr. Nixon are hereafter referred to as “Applicants”. Exhibit CK-76.

On November 8, 2005, the City requested that the Applicants provide a wetland delineation for the property as part of its environmental review of the preliminary plat application. Exhibit CK-12. On November 18, 2005, the City issued a SEPA Determination of Nonsignificance (DNS) on the rezone, but not on the preliminary plat. Exhibit C-7. On December 16, 2005, James Helm appealed the DNS on the rezone to the Hearing Examiner (Exhibit A-7) and on February 1 and 15, 2006, the Hearing Examiner held consolidated SEPA appeal/rezone hearings. On March 15, 2006, the Hearing Examiner issued a decision granting the appeal of the DNS and remanding the rezone to the City for review of environmental impacts concurrent with preliminary plat application and for review with respect to wetlands, storm drainage, and traffic. Hearing Examiner’s Decision, Meridian Banks, #AP 2005-5/ #RZ 2005-7 (March 15, 2006).

On June 14, 2006, the Applicants submitted a critical areas assessment and delineation prepared by Chad Armour, LLC, in response to the City’s request for additional information on
on the preliminary plat application. Exhibit CK-3. The City did not approve this submittal and requested a revised delineation report. The Applicants submitted a “supplemental wetland assessment information” prepared by Habitat Technologies on October 23, 2006. Exhibit CK-24. The City conducted its own wetland review including a site visit. Exhibit CK-28. On November 17, 2006, the City issued a final administrative decision, finding that Category 2 wetlands exist and required the Applicants to correct the delineation boundaries. As a final critical area resource administrative decision, the City’s decision was appealable under Chapter 11.06 KCC to the Hearing Examiner. Exhibit CK-30. On December 1, 2006, the Applicants appealed the City’s administrative decision to the Hearing Examiner. Exhibit M-15.

On January 19, 2007, the City determined that, with conditions, the rezone and preliminary plat proposals together would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) with seven mitigation conditions. Exhibit B-10. On February 2, 2007, Bill Flaten and Ted Nixon appealed all the MDNS conditions. The Appellants and the City agreed that the issues raised in the appeal of the administrative decision would be addressed as part of the SEPA appeal. The Hearing Examiner issued an order dismissing the appeal of the administrative decision on May 22, 2007. On Feb. 16, 2007, Sharon Bosse appealed the MDNS conditions regarding wetland delineation and storm drainage.

The applications and appeals were referred to the Hearing Examiner for hearing and decisions. Following hearings on each of the appeals and applications, the Hearing Examiner now issues a four-part decision related to the Meridian Banks proposal. Part I is the decision on the Applicants’ Appeal of the SEPA Threshold Determination; Part II is the decision on Appellant Bosse’s Appeal of the SEPA Threshold Determination; Part III is the recommendation of the Hearing Examiner on the rezone application; and Part IV is the Hearing Examiner decision on the preliminary plat application. Attachment A is the Exhibit List; Attachment B is a Pleadings and Hearing Examiner Orders List; Attachment C is a chronology of the rezone, preliminary plat and appeals.

SUMMARY OF RECORD

Hearing:
The City of Kent Hearing Examiner held an open record hearing on the consolidated SEPA appeals/rezone/plat application on May 10, 2007, May 23, 2007 and August 15, 2007. This preliminary plat decision is Part IV of a four-part decision. At the request of the Hearing Examiner for additional time to decide these matters, and by agreement of all parties, the decisions are issued simultaneously on October 15.
**Testimony:**
The following individuals presented testimony under oath:

Lydia Moorehead, City Planner
Mike Gillespie, Development Engineering Manager, City Public Works
Department
Beth Tan, PE, City Public Works
Larry Blanchard, City Public Works Director
Teresa Vanderburg, ESA Adolfson, Wetland Scientist, for City
Erin Fehringer, City Environmental Engineer
Ted Nixon, Preliminary Plat Applicants Representative
Bill Floten, Rezone Applicants and Property Owner
Thomas Deming, Habitat Technologies, Wetland Biologist, for Applicants
Christopher Brown, Transportation Engineer, for Applicants
Paul Nitardy, Cramer Northwest, PE, for Applicants
James Tuntland
Michelle McDowell
Sally McDonough
Linda Johnson
Patricia Sjoiln


**Exhibits:**
The exhibits identified in Exhibit A were admitted into the record during the open record hearings on the consolidated applications and appeals. See Exhibit A.

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

**FINDINGS**

**Procedural**
1. Bill Floten, property owner, submitted a rezone request on June 30, 2005, to change the zoning from SR-4.5 Single Family Residential to SR-6 Single Family Residential on a 6.3 acre parcel located at 25480 135th Lane SE on the shoreline of Lake Meridian in Kent,

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2 The plat application and preliminary plat map submitted August 29, 2005, describes the property as measuring 5.8 acres. Exhibit CK-40. The King County GIS tax parcel information describes the property as measuring 275,299 square feet, or 6.32 acres. The staff reports prepared by the City of Kent describe the property as measuring 6.3 acres. Exhibit CK-62, Staff Report, page 2; Exhibit CK-63; Exhibit CK-64.

*Findings, Conclusions and Decision*

*City of Kent Hearing Examiner*

*Meridian Banks Part IV, Preliminary Plat*

*No. SU-2005-11, KIVA #RFP3-2053169*
Washington. Ted Nixon on behalf of CNA Architects filed a preliminary plat application on August 29, 2005, to subdivide this parcel and create 27 single-family residential lots with a U-shaped road curving through the property. (Mr. Flaten and Mr. Nixon are collectively referred to as 'Applicants.') The 19 existing residential units and associated outbuildings would be removed. **CK-40; Exhibit CK-62, Staff Report, pages 1 and 2; Exhibit CK-64; Exhibit CK-76; Exhibit C-1.**

2. The City of Kent (City) provided notice of the plat application on October 17, 2005 by mailing to parties of record, posting notice on-site and publishing notice in the *King County Journal*. **Exhibit CK-47; Exhibit CK-62, Staff Report, page 7.** Although the City determined that the preliminary plat application was complete on September 23, 2005 (**Exhibit CK-47**), the City had not completed its environmental review of the preliminary plat application by that date. **Hearing Examiner's Decision, Meridian Banks, #AP 2005-5/ #RZ 2005-7 (March 15, 2006), Finding 5.** According to the City's letter, "This determination of completeness does not preclude the City from requesting additional information or studies if new information is required or where there are substantial changes in the proposal." **Exhibit CK-47.** In response to public comments, the City visited the property and determined that there may be wetlands on-site. On November 8, 2005, the City requested that the Applicants provide a wetland delineation for the property (Exhibit CK-12) and on November 18, 2005, the City issued a SEPA Determination of Nonsignificance (DNS) on the rezone application, but not on the preliminary plat. **Exhibit C-7.**

3. On December 16, 2005, James Helm appealed the DNS on the rezone. After a consolidated hearing on the rezone and SEPA appeal, the Hearing Examiner issued a decision on March 15, 2006 granting the appeal of the DNS and remanding the rezone to the city to review the any rezone environmental impacts concurrent with the preliminary plat application and for further review with respect to wetlands, storm drainage, and traffic. **Hearing Examiner’s Decision, Meridian Banks, #AP 2005-5/ #RZ 2005-7 (March 15, 2006).**

4. The City and the Applicants corresponded for several months regarding wetland boundaries and status. **See, e.g., Exhibit CK-21; Exhibit CK-22; Exhibit CK-23; Exhibit CK-24; Exhibit CK-25.** On June 14, 2006, the Applicants submitted a critical areas assessment and delineation prepared by Chad Armour, LLC, in response to the City's request for additional information on the preliminary plat application. **Exhibit CK-3.** The City did not approve this submittal, but requested a revised delineation report. The Applicants submitted a "supplemental wetland assessment information" prepared by Habitat Technologies on.

5. On November 17, 2006, the City issued a final administrative decision under KCC 11.06.590.B requiring that the Habitat Technologies wetland delineation be revised as set out in the City's final decision which is paraphrased as follows:

1) The Habitat Technologies northern wetland delineation boundary shall be extended to reflect the northern wetland boundary found in the Chad Armour delineation.
2) The Habitat Technologies delineation boundaries shall be revised to show that both on-site and off-site lacustrine wetland areas extend all the way to the shoreline.
3) The Habitat Technologies delineation boundaries shall be revised to show a small scrub-shrub area to the east of the property boundary, and a palustrine emergent portion of wetlands to the west of the property boundary.
4) The Habitat Technologies delineation shall be revised to designate the wetland as Category 2, because it contains three wetland classes, as concluded by the Chad Armour delineation. A wetland greater than 1 acre is also a Category 2 wetland. With the extension of the wetland boundary to the north, the actual lacustrine wetland areas, and the off-site areas, the City finds that the entire wetland unit appears to be greater than 1 acre in size. A professional survey shall be conducted of the revised wetland boundaries to determine the wetland size.
5) The Habitat Technologies Department of Ecology Wetland Rating System form shall be corrected to show a Water Quality Functions score of 18 points, a functions score of 36, and a designation of Category III under the Department of Ecology Rating System.
6) The Habitat Technologies delineation discussion of wetland functions and values shall be revised to reflect the wetland delineation verified by the City.
7) The Habitat Technologies delineation shall be revised based on a professional survey of the wetland boundaries to determine the actual area of the entire wetland unit.

Exhibit CK-30.

6. As a final critical area resource administrative decision, the City's decision was appealable under Chapter 11.06 KCC. Exhibit CK-30. On December 1, 2006, the Applicants appealed the City's administrative decision to the Hearing Examiner. Exhibit M-15.

4 "Where the applicant has provided a delineation of the wetland boundary, the department shall verify the accuracy of, and may render adjustments to, the boundary delineation. The decision of the department may only be appealed pursuant to procedures outlined in this chapter." KCC 11.06.590.B

5 The City's final decision was accompanied by a sketch for illustration purposes of the additional wetland areas to be added. Exhibit M-26.

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7. In order to continue the environmental review process and issue a SEPA Threshold Determination, the City requested confirmation from the Applicants that no further environmental information would be provided. Exhibit CK-29; Exhibit CK-31. On December 15, 2006, the Applicants confirmed that no further environmental information would be provided, and requested that the City complete SEPA review and set a hearing date for the Applicants’ appeal of the City’s November 17, 2006, administrative decision. Exhibit CK-55. The City issued a Mitigated Determination of Nonsignificance (MDNS) with seven mitigation conditions on January 19, 2007. Exhibit B-10. The MDNS was appealed by the Applicants and separately by Sharon Bosse (Appellant Bosse), and the SEPA appeals were consolidated with the open record hearing on the preliminary plat application. After multiple continuances agreed to by all parties, the first consolidated open record hearing was held on May 10, 2007. See Administrative Appeal Pre-Hearing Order of December 2006; Administrative Appeal Order Granting Stay, January 3, 2007; Administrative Appeal Pre-Hearing Order of February 2007, setting hearing date of April 4, 2007; SEPA Appeal Pre-Hearing Order of February 26, 2007, setting hearing date of April 18, 2007; Pre-Hearing Order Revising Date, March 7, 2007; Pre-Hearing Order Revising Date, March 20, 2007.

8. Near the conclusion of the May 23 hearing, the Applicants submitted a revised preliminary plat site plan depicting a native plant area evaluation along Lake Meridian and voluntary shoreline restoration plan. Exhibit CK-74; Exhibit CK-75; Exhibit M-69; Exhibit M-73. The City requested 60 days to review and respond to the revised plat and new shoreline restoration plan. A consolidated hearing on the revised plat submittal was initially scheduled for July 25, 2007, but was re-scheduled to August 15, 2007 at the Applicants’ request. See Order of Continuance, July 13, 2007.

9. The City provided notice of the consolidated open record hearing associated with the applications and appeals by posting notice on the subject property and mailing notice to all owners of property within 300 feet of the subject property on April 27, 2007. The City published notice of the hearing in the Kent Reporter in compliance with City ordinances. Exhibit CK-62, Staff Report, Page 7; Exhibit CK-70; Exhibit CK-71.

Comprehensive Plan Designation and Zoning District Standards

10. The Comprehensive Plan Land Use Map designates the property as SF-6, Single Family Residential, allowing for six dwelling units per acre. The property is located within an Urban Growth Area. City of Kent Comprehensive Plan Land Use Element (2004), Land Use Map Figure 4.8, page 4-55; Exhibit CK-62, Staff Report, pages 2 and 3. The preliminary plat application was filed prior to the 2006 Comprehensive Plan Land Use Element revision. However, the 2006 revision did not alter the SF-6 designation of the subject property and surrounding properties under the 2004 Comprehensive Plan Land Use Map. City Comprehensive Plan Land Use Element (revised May 2006), Land Use Map, Figure 4.7, page 4-53.
Comprehensive Plan describes the Land Use Element as having "the central role of defining the direction of the Comprehensive Plan, and thereby defining the vision of the community." *City Comprehensive Plan, Land Use Element, page 4-2.* The Land Use Element contains goals and policies to ensure sufficient land to meet housing targets, encourage a variety of housing types within close proximity to employment and shopping, and promote increased community interaction. In addition, Land Use goals and policies protect natural resources and critical areas by regulating development to prevent harm to, preserve, and enhance critical areas; requiring that developers provide the City with accurate and valid site-specific environmental information; protecting wetlands as ecosystems; and promoting the creation and preservation of natural corridors adjacent to City streams and wetlands, to provide fish and wildlife habitat, open space, and passive recreation. Housing Element goals and policies promote home ownership by preserving and enhancing existing neighborhoods; encouraging a variety of housing styles and site designs; ensuring that a sufficient amount of land is appropriately zoned for current and projected housing needs; and requiring development to provide a fair share of on-site and off-site improvements. Transportation Element goals and policies ensure sufficient capacity through the coordination of development and transportation plans.\(^7\) *City Comprehensive Plan, Land Use Element (2004), pages 4-28, 4-34, 4-35, 4-50 – 4-53; Comprehensive Plan, Housing Element (2004), pages 6-11 – 6-14; Comprehensive Plan, Transportation Element (2004), page 9-40; Exhibit CK-62, pages 8 – 12.*

11. The property is currently zoned SR-4.5, Single Family Residential, allowing 4.53 dwelling units per acre. The property owner, Bill Floten, submitted a request to rezone the property from SR-4.5 to SR-6, allowing 6.05 dwelling units per acre. *Exhibit CK-62, Staff Report, pages 2, 3, 18, 22; Exhibit CK-64; Exhibit C-1.*

12. Properties to the north and east of the subject property are zoned SR-4.5, designated as SF-6 in the Comprehensive Plan, and are developed with predominately single-family residences and some multifamily development. Property to the west is zoned MHP, Mobile Home Park, and designated as such by the Comprehensive Plan Land Use Map. The subject property is bordered to the south by Lake Meridian. Lake Meridian is a 150 acre lake, developed as a primarily residential lakefront community. The lake offers active recreational opportunities such as pleasure boating, water-skiing, swimming, and fishing as well as float plane usage. *City Comprehensive Plan Land Use Element (2004), Land Use Map page 4-55; Kent Shoreline Master Program, Sec 1.3, page 4; Exhibit CK-62, page 2.*


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13. If the rezone request is approved, the property would be developed under the SR-6 zoning standards. Lot standards applicable to development in the SR-6 zone include a minimum lot size of 5,700 square feet and a minimum lot width of 50 feet. Under the SR-4.5 zone currently in effect on the northern parcel, the Kent City Code (KCC) requires minimum lot sizes of 7,600 square feet and lot width of 50 feet. KCC 15.04.170. The lots proposed by the Applicants range in size from 5,708 square feet to 13,337 square feet. The proposed development of 27 lots on 6.3 acres would result in a gross density of 4.28 dwelling units per acre. Lydia Moorehead, City Planner, testified that if the City Council denies the rezone request, the Applicants would need to reconfigure the preliminary plat to comply with the SR-4.5 zone standards. The rezone request is addressed in a separate recommendation. See Recommendation of Hearing Examiner, Meridian Banks, Part III, Rezone File No. RZ-2005-7 (KIVA# 2052281). Exhibit CK-62, Staff Report, pages 2, 10, 12, 18, and 22; Testimony of Ms. Moorehead.

Environmental Characteristics and Wetlands

14. The property slopes down toward Lake Meridian along the southern property line, with an approximately 12 percent grade. There is an easement along the western property line. An easement along the southern property boundary contains an existing sewer pipe. There are deciduous and evergreen trees located on the property, which would likely be removed with plat development. The City requires retention of all trees over six-inch caliper to the maximum extent possible. Prior to issuance of building permits, the Applicants would submit an approved tree plan depicting trees to be removed and to be retained. KCC 15.08.240; CK-40; CK-62, Staff Report, page 4.

15. After visiting the property, the City determined that there are wetlands on the property extending along the lakefront. The Applicants submitted to the City a Chad Armour, LLC critical areas assessment and delineation on June 14, 2006 and a Habitat Technologies supplemental wetland assessment information on October 23, 2006. The City marked the Chad Armour, LLC document as “NOT APPROVED” on July 19, 2006 and requested revisions to the Habitat Technologies submittal, including expansion of the wetland delineation boundary and designation as a Category 2 wetland with 50 foot-wide buffers. The Mitigated Determination of Nonsignificance (MDNS) issued by the City includes a condition requiring the Applicants to submit a wetland delineation in compliance with Chapter 11.06 KCC. The MDNS condition and wetland status are discussed more fully in the SEPA Appeal decisions. See Decision of the Hearing Examiner, Meridian Banks, Parts I and II. Exhibit CK-2; Exhibit CK-3; Exhibit CK-4; Exhibit CK-5; Exhibit CK-9; Exhibit CK-10; Exhibit CK-11; Exhibit CK-12; Exhibit CK-19; Exhibit CK-23; Exhibit CK-28; Exhibit CK-30; Exhibit B-10.

Stormwater Drainage

combined detention/wet vault, to be located within a separate Tract A in an easement along the western property boundary. The report states that water quality treatment would be provided as follows: "After the runoff has been detained it will be treated and released at the appropriate rates to a flow splitter that will route the water quality storm (on-site only) through a leaf compost filter prior to being conveyed to Lake Meridian. . . . The water quality portion of the vault has been designed to also treat the nearly 18 acres of upstream runoff that is conveyed through the proposed location of the vault." Exhibit CK-38; Exhibit CK-39, Project Overview; Exhibit CK-44.

17. Paul Nitardy, P.E., testified on behalf of the Applicants regarding the proposed stormwater system design at the preliminary plat portion of the May 10, 2007 hearing. Mr. Nitardy testified that development of the proposed plat would result in increased stormwater runoff, which would be directed to a detention vault for controlled release. Mr. Nitardy testified that the proposed detention vault was designed to provide water quality treatment to the nearly 18 acres of upstream area. At the May 10 hearing, Beth Tan, P.E., City Public Works Department, testified for the City that the stormwater proposal is still under review. She testified that the City would likely approve the proposed stormwater system with conditions, including requiring compliance with recommendations in the geotechnical report. Mike Gillespie, Development Engineering Manager, City Public Works Department, testified at the May 23, 2007 hearing that the Applicants would be required to provide an alternate stormwater runoff route during construction. In response to a public comment at the May 23 hearing, Applicant Ted Nixon testified that there would be sufficient space within the Cascade Sewer and Water easement to construct the proposed vault. Mr. Nixon confirmed that the vault would be located in a separate tract. Testimony of Mr. Nitardy; Testimony of Ms. Tan; Testimony of Mr. Gillespie; Testimony of Mr. Nixon.

18. The combination detention/wet vault would be constructed to Level 2 flow standards pursuant to the 2002 City of Kent Surface Water Design Manual (CKSWDM) and the 1998 King County Surface Water Design Manual. Sharon Bosse asserted that the proposed underground vault is prohibited by CKSWDM standards. She submitted an excerpt from the 2002 CKSWDM Section 1.2 Core Requirements, which states that "Underground vaults or tanks shall not be permitted to meet detention requirements for . . . 2) all residential developments. In addition, underground vaults or tanks shall not be permitted for redevelopments where there is an existing pond or where there is area available for an open pond, regardless of the size of the parcel area for the proposed redevelopment." The City responded that the 2002 CKSWDM authorizes the Public Works Department to grant adjustments to drainage requirements when the adjustments will "1. Produce a compensating or comparable result that is in the public interest, and 2. Meet the objectives . . .

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8 Testimony and exhibits regarding the proposed stormwater detention facilities refer to the Bergquist geotechnical report. However, the Bergquist geotechnical report was not provided to the Hearing Examiner. See, e.g., Exhibit CK-51.
of safety, function, appearance, environmental protection, and maintainability based on sound engineering judgment.” Exhibit CK-34; Exhibit CK-35; Exhibit B-2.

19. The City determined that the Conceptual Drainage Plan received December 8, 2006 adequately addressed the City’s stormwater concerns. The City approved the requested adjustment of stormwater detention requirements with conditions ensuring that the proposed underground vault would provide water quality treatment for the upstream drainage area; would implement recommendations included in the Bergquist Engineering Services geotechnical report; and would be set back a minimum of five feet from the western property line. The Applicants would provide a temporary erosion and sedimentation plan to minimize sediment in runoff during construction. Exhibit CK-38; Exhibit CK-39, Task 5; Exhibit CK-44; Exhibit CK-51; Exhibit CK-56; Exhibit CK-62, Staff Report, pages 6, 7, 15, 20.

Traffic, Streets, and Transit

20. The Applicants propose construction of a new private “U”-shaped road through the plat, connecting to SE 258th Street at both ends. SE 258th Street extends east/west for approximately one block along the property’s northern boundary, connecting 135th Avenue SE and 136th Avenue SE. The paved portion of SE 258th Street does not extend across the full property line. 135th Avenue SE extends north of SE 258th Street, connecting the property with SE 256th Street. The City classifies both SE 258th Street and 135th Avenue SE as Residential Streets within the City Comprehensive Plan. The City identified both streets as lacking in improvements; in need of an asphalt overlay/rebuild; and featuring substandard pedestrian facilities. Exhibit CK-40; Exhibit CK-62, Staff Report, pages 5 and 6.

21. The City determined that development of the proposed plat would result in 8 new PM peak hour trips. The City identified five intersections that would be impacted by the proposal with “significant and/or additional congestion”: SE 256th Street/132nd Avenue SE, SE 256th Street/124th Avenue SE, SE 256th Street/116th Avenue SE, 116th Avenue SE/Kent-Kangley Road, and 132nd Avenue SE/Kent-Kangley Road. Exhibit CK-62, Staff Report, pages 5 and 6.

22. Christopher Brown testified at the May 10, 2007 hearing that he prepared a Traffic Impact Study (TIS) on behalf of the Applicants, as described in his memo dated February 1, 2007. Mr. Brown testified that he provided the Applicants with the one-page memo summarizing the TIS, but did not submit either the TIS or memo directly to the City. At the May 10 and May 23 hearings, Mr. Gillespie testified that the City did not receive a TIS from the

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9 The Environmental Review Report states that the development would add an estimated 90 daily and 9 PM peak hour trips. Exhibit M-18, page 6. The City Staff Report states that when fully developed the proposed plat would result in 80 additional daily and 8 new PM peak hour trips. Exhibit CK-62, Staff Report, pages 12 and 22. In his testimony on May 23, 2007, Mr. Gillespie confirmed that development of the proposed plat would add eight new homes. Testimony of Mr. Gillespie.
Applicants through the plat application process, although the City acknowledged that the TIS memo was included with the Applicants' SEPA Appeal. Mr. Gillespie testified that he would need to review the TIS before he could express any opinion on potential traffic impacts. *Exhibit M-18, pages 6 and 7; Testimony of Mr. Brown; Testimony of Mr. Gillespie.*

23. The City detailed potential conditions of plat approval in its tentative plat letter dated July 11, 2005, including off-site street improvements along 135th Avenue SE; construction of SE 258th Street frontage improvements to City Residential Street standards; and construction of the new private residential streets to Private Residential Street standards. At the May 10, 2007 hearing, the Applicants’ Attorney Bill Williamson stated that the Applicants would pay traffic mitigation fees as required by MDNS Condition No. 1, and would construct street frontage improvements to the end of SE 258th Street, extending SE 258th Street to the property's northeast corner. At the August 15, 2007 hearing, Mr. Floten testified that the Applicants agreed to construct half-street improvements along SE 258th Street and a student walkway along 135th Avenue SE. Mr. Floten testified that the Applicants objected to additional street improvement requirements along 135th Avenue SE. *Exhibit M-17; Exhibit CK-62, Staff Report, pages 5 and 6; Testimony of Mr. Floten; Statement of Mr. Williamson.*

24. The King County Department of Metropolitan Services (METRO) serves the subject property with a bus stop located at SE 256th Street and 132nd Avenue SE. *Exhibit CK-62, Staff Report, page 21.*

**School Access and Impacts**

25. Students residing in the proposed plat would be served by the Kent School District. Each lot would be assessed an impact fee at the time of construct permit issuance to mitigate the impact of additional students on school district facilities, in accordance with KCC 12.13.160. At the May 10 plat hearing, Attorney Williamson stated that the Applicants would pay required school mitigation fees. To ensure safe walking conditions for students and other pedestrians, the Applicants would construct sidewalks along the internal private plat roads and the property frontage with SE 258th Street, and a six-foot wide pedestrian walkway along the east side of 135th Avenue SE from SE 258th Street to SE 256th Street, pursuant to revised MDNS Condition No. 2. Mr. Gillespie testified at the May 23 SEPA hearing that pedestrian walkways are supported by Comprehensive Plan policies H-2.5, CD-2.2, and CD-3.1. He testified that the photos in Exhibit CK-41 depict existing pedestrian conditions along 135th Avenue SE and SE 256th Street. Mr. Gillespie further testified that

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10 Community Design Policy 2.2 states "Where feasible, separate motorized vehicles, bicycles, and pedestrian traffic along busy streets." Community Design 3.1 states "Establish design standards which ensure that commercial, industrial, residential, and public building sites provide convenient, direct access for pedestrians and bicyclists." Housing Policy H-2.5 states "Require developments to provide their fair share of on-site and off-site improvements needed as a result of the development." *City Comprehensive Plan, Community Design Element (2004), pages 5-8 and 5-10; City Comprehensive Plan, Housing Element (2004), page 6-11.*
the revised MDNS Condition No. 2 is necessary to mitigate significant adverse impacts that might otherwise result from development of the proposed plat. Exhibit CK-41; Exhibit CK-62, Staff Report, pages 6, 19, 20; Testimony of Mr. Gillespie; Statement of Attorney Williamson.

Parks and Open Space
26. KCC 12.04.780, in effect at the time of the plat application, required developers to dedicate five percent of site area as open space for parks or pay a fee in lieu of dedication. The Applicants do not propose construction of a community park or tot lot, and would instead pay the fee-in-lieu-of dedication. KCC 12.04.780; Exhibit CK-62, Staff Report, page 19.

Water and Sewer Utilities
27. Water District #111 would provide water service to the proposed plat. Sanitary sewer service would be provided by Soos Creek Water and Sewer District. The Applicants provided Certificates of Water and Sewer Availability, signed March 15, 2005, and April 19, 2005, respectively. The certificates are valid for one year from the date of signature. The Applicants would provide current certificates prior to final plat approval. Mr. Nixon testified at the May 23 plat hearing that the sewer utility easement along the property's southern waterfront boundary could be used by the proposed plat, either as re-built or as-is if adequate for the plat's sewer needs. Exhibit CK-62, Staff Report, page 21; Exhibit CK-76; Testimony of Mr. Nixon.

Public Comment Letters and Testimony
28. The City received seven public comment letters regarding the proposed plat and rezone. Numerous public comment letters were also received with the initial rezone request. Many of the letters requested that the Applicants construct street improvements along 135th Avenue SE to address concerns regarding increased traffic and safety problems arising from the additional vehicles using the 135th Avenue SE/SE 256th Street intersection. James and Karen Tuntland expressed concern that increased use of the lake would also impact safety. Charlie and Linda Denny expressed concern about the proposed plat's impact on the community beach lot and emphasized that they would retain their community beach rights and access. Ellyn Ricker and Tim and Vicki Kress expressed concern about impacts on an already overcrowded school system. David and Deborah Herron questioned whether the requested rezone and preliminary plat would be compatible with the surrounding area, particularly in light of the Planning Service's recommendation that the Lake Meridian Comprehensive Plan designation be amended to SF-4.5. Sharon Bosse opposed any payment of fees in-lieu-of required improvements. Comment letters also expressed concern about environmental impacts; health risks from mosquitoes breeding in detention ponds; view impacts; lack of privacy; a low water table; and impacts to existing wells.

11 Since the application was filed, KCC 12.04.780 has been repealed and replaced with KCC 12.04.060 - .070; however, the proposed plat is reviewed under the code in effect at the time of completeness.
Exhibit CK-57; Exhibit CK-58; Exhibit CK-59; Exhibit CK-60; Exhibit CK-61; Exhibit CK-68; Exhibit CK-69.

29. Michelle McDowell testified at the May 10, 2007 open record hearing, expressing opposition to the proposed preliminary plat and rezone based on insufficient high school capacity within the City. She noted the City Council placed a moratorium on rezones and the Planning Department recommended amending the Comprehensive Plan Land Use Map to designate the Lake Meridian area as SF 4.5. Ms. McDowell asserted that if the preliminary plat is developed as proposed, the resulting subdivision would not be compatible with surrounding neighborhoods developed at lower densities. Sally McDonough testified expressing concern that increased impervious surfaces would lead to increased runoff, impacting shoreline wetlands necessary to protect Lake Meridian and downstream Big Soos Creek. Mr. Tuntland questioned how the proposed plat would be connected to water service. He expressed concern that the proposed stormwater detention vault would interfere with an existing easement. Linda Johnson expressed concern that the proposed plat would create more traffic and a loss of serenity. Patricia Sjoiln questioned whether the City Council had been notified of the proposed plat and rezone request. Exhibit CK-65; Exhibit CK-66; Exhibit CK-67; Testimony of Ms. McDowell; Testimony of Ms. McDonough; Testimony of Mr. Tuntland; Testimony of Ms. Sjoiln.

Revised Preliminary Plat

30. At the end of the May 23, 2007 hearing, the Applicants proposed a revised site plan that included Native Growth Protection Areas (NGPA) and a voluntary shoreline restoration plan. The City requested 60 days to review the amended plat. At the request of the Applicants, and with the agreement of the City, the hearing was continued to August 15, 2007. At the August 15, 2007, hearing on the preliminary plat, the Applicants introduced Exhibits M-66-69 and M-72-73. Exhibit 68 is a site plan depicting the location of building footprints for Lots 7-11, and showing NGPAs along the shoreline. The proposed residences would be located outside a 50-foot wide setback from the Lake Meridian Water Line, but within the 50-foot wide buffer for a Category 2 wetland. Exhibit M-68. Exhibit M-69 is a similar but smaller map depicting the Applicants' estimation of the building setback without wetland exemptions. Exhibit M-69. Exhibit M-73 is a memo prepared by Thomas Deming, the Applicants' wetland biologist, explaining the voluntary shoreline restoration plan, dated May 27, 2007. Exhibit M-73 is also marked as Exhibit CK-74. Exhibit CK-74; Exhibit M-73.

31. Erin Fehringer, City Environmental Engineer, reviewed Meridian’s revised plat layout and memo regarding the voluntary shoreline restoration plan. In her memo, dated June 15, 2007, she concluded:

...the revised plat layout is not in compliance with the requirements and standards of the Critical Areas Ordinance, Kent City Code Chapter 11.06.
Furthermore, the revised plat layout has not addressed the comments in my November 17, 2006 letter. *Exhibit CK-73.*

Ms. Fehringer stated in her memo that the Applicants have not submitted a revised wetland delineation report. She stated that the revised plat layout does not show the correct wetland boundaries; does not provide any wetland buffers; and proposes significant wetland impacts without submittal of a Conceptual Wetland Mitigation Plan. *Exhibit CK-73; Exhibit CK-74; Exhibit M-68.*

32. The City prepared an addendum to the Meridian Banks Subdivision Staff Report, for the July 25, 2007 hearing (continued to August 15, 2007). The City reviewed Mr. Deming's memo and a partial site plan titled "Voluntary Shoreline Restoration Plan" (Exhibit CK-75). The Applicants proposed specific plantings within NGPAs with protective covenants, and ending aggressive management of aquatic vegetation waterward of the shoreline. The City determined that the revised plat proposal does not address the existing Category 2 wetland along the shoreline or the required 50-foot wide buffer and associated 15-foot building setback. Based on Ms. Fehringer's June 15, 2007 memo, the City found that the proposed subdivision is not consistent with the specific approval criterion found in KCC 12.04.685.A.1.b: "Protection of environmentally sensitive lands and habitat". *Exhibit CK-72; Exhibit CK-73; Exhibit CK-74; Exhibit CK-75.*

33. Teresa Vandenburg, wetland scientist for ESA Adolfson, reviewed Exhibits CK-74 and M-68 on behalf of the City but did not provide a written report to the City prior to the hearing. She testified that the revised site plan (Exhibit M-68) would not meet the requirements of Chapter 11.06 KCC for the following reasons:

   a) the revised preliminary plat does not show the existing wetlands;
   b) the revised preliminary plat does not show the wetland buffers; and
   c) the revised preliminary plat does not show mitigation of wetlands.

She also testified that the voluntary shoreline restoration plan (Exhibit CK-74) does not meet the requirements of a wetland mitigation plan as found in KCC 11.06.550 to .570, and KCC 11.06.660, nor provide for wetland restoration, because:

   a) there is no connectivity of restoration areas, but only isolated pockets;
   b) credit inappropriately is taken for areas that do not need restoration;
   c) the plan does not reference the wetlands and mischaracterizes existing conditions from wetlands identified in Exhibit C-4; and
   d) site is not as degraded as the plan states.

*Testimony of Ms. Vandenburg.*

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34. At the August 15, 2007 hearing on the revised site plan and voluntary shoreline restoration plan, Mr. Nixon testified that Exhibit M-69 shows that the wetland areas identified by the City would not allow for development of Lots 7-11. He proposed a setback of 50 feet from the lake shoreline and testified that, with the setback, the shoreline restoration plan would comply with all plat requirements. He testified that the wetlands should be considered exempt because they were previously filled. *Testimony of Mr. Nixon.*

35. Mr. Deming testified that he helped prepare the revised site plan (Exhibit M-69) and Exhibit M-73 (Exhibit CK-74) for the Applicants. He clarified that the exhibits represent a shoreline restoration plan, not a wetland mitigation plan. He testified that because the wetlands should be considered exempt, they do not need to be shown on the revised site plan. *Testimony of Mr. Deming.*

36. Attorney Jamie Danielson, Attorney for Sharon Bosse, commented at the August 15 hearing that the setbacks depicted on Exhibit M-69 may not reflect the requirements found in the Kent Shoreline Master Program. *Statement of Ms. Danielson.*

37. Ms. Moorehead testified that setbacks under Kent Shoreline Master Program (KSMP) Sec. 6.12.6.a are determined by averaging the setbacks of existing dwelling units within 50 feet of the side property lines. The maximum setback would be 75 feet unless a larger buffer is required by the Kent critical areas regulations. There is a 25-foot minimum residential structure set back in the Urban-Lake Environment where only one or no dwelling units are located within 50 feet of side property lines. She testified that the City has not yet determined exact setback widths. Any such setback would be determined at the building permit stage. Ms. Moorehead testified that when reviewing a plat she references both the Shoreline Master Program and Chapter 11.06 KCC for critical areas. Ms. Moorehead explained that if there is a conflict then those regulations which provide greater protection apply under KCC 11.06.060.A. *KSMP Section 6.12.6.a; Chapter 11.06 KCC; Testimony of Ms. Moorehead.*

38. Ms. McDowell testified at the August 15 hearing that the shoreline wetlands were mowed during the summer, but would recover over the winter. Mr. Tuntland testified that the shoreline wetlands and cattails had been mowed only over the last 10-15 years. He testified that he was concerned about access to existing docks because he and others carry boats down to the community beach. Ms. Fehringer suggested that access to existing

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12 Mendian's revised site plan (Exhibit M-69) also appears to extend the wetland buffer into proposed Lot 6.

13 "No residence shall be required to be set back more than seventy-five (75) feet from the ordinary high water mark, unless a larger buffer is required by the Kent critical areas regulations (KCC 11.05). [Now Chapter 11.06 KCC.] Any further setback reduction beyond that allotted in this section shall require approval of a shoreline variance application." *KSMP Section 6.12.6.a.*
docks might be allowed through the wetland buffers. She cited KCC 11.06.600.H.3, which allows foot trails in a wetland buffer. Testimony of Ms. McDowell; Testimony of Mr. Tuntland; Testimony of Ms. Fehringer.

39. Ms. Moorehead testified at the May 10 and August 15 hearing that the City recommends denial of the proposed preliminary plat because the proposal does not meet KCC 12.04.685.A.1.b, regarding protection of environmentally sensitive lands and habitat. Exhibit CK-62, Staff Report, page 23; Testimony of Ms. Moorehead.

**SEPA Threshold Determination**

40. The City acted as lead agency for review of environmental impacts caused by the proposal as required by the State Environmental Policy Act (SEPA). Initially, the City reviewed the environmental impacts of the rezone application and preliminary plat application separately, and issued a Determination of Nonsignificance (DNS) for the rezone request on November 18, 2005. Exhibit C-7; Exhibit C-8. The DNS was appealed by James Helm on December 16, 2005. Exhibit A-7. The Hearing Examiner issued a decision on March 15, 2006, remanding the DNS to the City for review of the environmental impacts of the Applicants' proposed rezone and preliminary plat application with respect to wetlands, storm drainage, and traffic. Exhibit M-15.H. Pursuant to the Hearing Examiner's decision, the City combined review of the environmental impacts for both the rezone application and the preliminary plat application. The City determined that with conditions, the rezone and preliminary plat proposals together would not have a probable significant adverse impact on the environment, and issued a Mitigated Determination of Nonsignificance (MDNS) on January 19, 2007. Exhibit B-10. The MDNS contains seven conditions requiring that the Applicants 1) provide a Traffic Impact Study (TIS) or pay an environmental mitigation fee in lieu of submitting a TIS; 2) submit and receive approval of Pedestrian Walkway Improvement Plans from the Department of Public Works; 3) redesign the plat to comply with City of Kent Ordinance No. 3746, regarding critical area regulations, including submitting a revised Wetland Delineation Report that complies with the City's wetland decision provided in the City's November 17, 2006 letter; 4) coordinate with the King County Health Department on well protection issues; 5) utilize Low Impact Development Techniques, where determined feasible by the City; 6) be sensitive to the natural topography of the site during construction; and 7) minimize grading of the site and where done the grading shall follow the natural contours, with restrictions on retaining walls. Exhibit CK-62, Staff Report, page 3; Exhibit M-18; Exhibit B-10.

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14 The Washington Supreme Court endorsed this combined threshold review process when it found impacts of a specific development proposal can be a useful yardstick to measure rezone impacts. See Citizens Alliance v. Auburn, 126 Wn.2d 356, 365 (1995). Combined threshold review is consistent with KCC 12.01.030(D); is a more efficient use of City, applicant and public resources; and promotes SEPA policies. See 126 Wn.2d at 366 ("The SEPA rules underscore flexibility and gauge the level of detail according to the proposal at issue").

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41. The City received appeals of the SEPA MDNS from the Applicants (AP-2007-1) and from Sharon Bosse (AP-2007-2). In addition, the Applicants appealed the City's administrative decision regarding wetlands on the property (HEA-2006-2). At the May 10, 2007, consolidated hearing, the City and the Applicants agreed that the issues raised in the administrative decision appeal would be addressed as part of the SEPA appeal and the administrative decision appeal was dismissed by the Hearing Examiner on May 22, 2007. The SEPA appeals were consolidated with the preliminary plat and rezone open record hearings. Exhibit CK-62, Staff Report, page 3; Exhibit M-15; Exhibit M-23; M-27; Administrative Appeal Pre-Hearing Order of December 2006; SEPA Pre-Hearing Order of February 26, 2007, setting consolidated rezone/plat/SEPA appeal hearing date; SEPA Appeal Pre-Hearing Order Regarding Hearing Procedures, April 13, 2007; Order of Dismissal Administrative Decision Appeal of May 22, 2007.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hold a hearing on preliminary plat applications; to consider all evidence presented at the hearing; and, based on that evidence, to approve, approve with conditions, or disapprove the preliminary plat. KCC 2.32; KCC 12.04; RCW 58.17.

Criteria for Review

The decision of the Hearing Examiner must be supported by the evidence presented and must be consistent with the standards and criteria for review specified in state statutes and city ordinances.

The standards and criteria for review of preliminary plat applications are found in Chapter 12.04, KCC and Chapter 58.17, Revised Code of Washington (RCW). The review criteria include the following:

A. Under KCC 12.04.635:

No subdivision shall be approved unless the following principles of acceptability are met; the subdivision shall:

1. Create legal building sites which comply with all provisions of KCC Title 15, Zoning, and health regulations;
2. Establish access to a public road for each segregated parcel;
3. Have suitable physical characteristics; a proposed plat may be denied because of flood, inundation or wetland conditions; slope, soil stability and/or capabilities; or the construction of protective improvements may be required as a condition of approval;

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4. If adjacent to another municipality or King County, take into consideration the subdivision standards of that jurisdiction as well as the requirements of this chapter;

5. Make adequate provision for stormwater detention, drainageways, water supplies, sanitary wastes, and other public utilities and services, as deemed necessary;

6. Make adequate provision for the connectivity of streets, alleys, pedestrian accessways and other public ways.

B. Under KCC 12.04.685.A, a proposed subdivision and dedication shall not be approved unless the city finds that:

1. Appropriate provisions have been made for:
   a. The public health, safety and general welfare of the community;
   b. Protection of environmentally sensitive lands and habitat;
   c. Open spaces;
   d. Community parks and recreation;
   e. Neighborhood tot lots and play areas;
   f. Schools and school grounds;
   g. Drainageways;
   h. Stormwater detention;
   i. Connectivity of sidewalks, pedestrian pathways, traffic calming features and devices, and other planning features that assure safe walking conditions within and between subdivisions and neighborhoods for residents and students who walk to and from schools, parks, transit stops and other neighborhood services;
   j. Connectivity of streets or roads, alleys, pedestrian accessways, and other public ways within and between subdivisions and neighborhoods;
   k. Transit stops;
   l. Potable water supplies;
   m. Sanitary wastes;
   n. Other public utilities and services, as deemed necessary; and

2. The city has considered all other relevant facts; and

3. The public use and interest will be served by the platting of such subdivision and dedication; and

4. The city has considered the physical characteristics of a proposed subdivision site and may deny a proposed plat because of flood, inundation, or wetland conditions, slope, or soil stability and/or capabilities. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.
The criteria set forth in the Kent City Code are essentially identical to those in the Revised Code of Washington (RCW). The following subdivision criteria described in the RCW must also be met by the application before a decision of approval can be made:

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.

RCW 58.17.110

Conclusions Based on Findings

1. With conditions, the proposed plat satisfies the requirements of KCC 12.04.635.

The property is currently zoned SR-4.5. The Applicants requested a rezone to SR-6. The proposed lots would comply with the size and density standards of the SR-6 zone. A condition of plat approval is necessary to ensure that if the associated rezone request is denied by City Council, the Applicants would amend the proposed plat to comply with the SR-4.5 zone standards. The existing residence and associated cabins and outbuildings would be removed prior to plat development. All lots would have access to SE 258th Street through a new private road that would loop through the subdivision. There are no further opportunities for street connectivity. Conditions of approval are necessary to ensure that the Applicants construct the new private road to the City's Private Residential Street standards. The Applicants would construct street frontage improvements along SE 258th Street. The Applicants would construct sidewalks along the new private road, along SE 258th Street, and along the east side of 135th Avenue SE. Conditions of approval are necessary to ensure that the Applicants provide the City with a copy of the Traffic Impact Study, which the City shall review to determine whether off-site street improvements are warranted. The property's physical characteristics are generally suitable for development. There is a wetland along the southern property boundary with Lake Meridian. Conditions of approval are necessary to ensure that the Applicants provide an approved wetland delineation and approved final mitigation plan; that the Applicants set aside the wetlands and associated buffers in a sensitive areas tract; and that the Applicants follow the City's mitigation sequence to mitigate any impacts to the wetlands and associated buffers. With wetland delineation and mitigation, the sensitive areas tract may extend across portions of proposed lots 6, 7, 8, 9, 10, and 11, rendering them unbuildable. Conditions of approval are necessary to ensure that any development restrictions are included on the face of the plat. The Applicants propose construction of an underground combined detention/wet...
vault system to treat surface water runoff from the proposed plat and upstream areas. Treated surface water would be discharged into Lake Meridian. The Public Works Department authorized the proposed underground stormwater detention system as an adjustment to surface water design manual requirements. Conditions of approval are necessary to ensure that the Applicants obtain HPA approval or a written waiver from the Washington State Department of Fish and Wildlife, and that the stormwater facilities are constructed in compliance with the 2002 City of Kent Surface Water Design Manual and the 1998 King County Surface Water Design Manual. Water District #111 would provide water service to the proposed plat. Sanitary sewer service would be provided by Soos Creek Water and Sewer District. Findings 1-41.

2. With conditions, the proposed plat satisfies the requirements of KCC 12.04.685.A. The City provided adequate notice of the plat application and associated open record hearing. The City evaluated the environmental impact of the proposed plat and rezone based on documents provided by the Applicants and its own study, as authorized by SEPA. There are wetlands and associated buffers located along the southern property boundary with Lake Meridian. Conditions of plat approval are necessary to ensure that the Applicants provide an approved wetland delineation and a final mitigation plan, including sensitive areas tract, in compliance with the City Critical Areas Ordinance, Chapter 11.06 KCC. Proposed lots 6 through 11 may be unbuildable as a result of wetland delineation and mitigation. Conditions of plat approval are necessary to ensure that the wetlands and associated buffers are protected in a sensitive areas tract and that any building restrictions are identified on the final plat. Because the City objected to approval of the preliminary plat for the sole reason that the Applicants had failed to provide a corrected wetland and buffer delineation for lots 6 through 11, the preliminary plat is approved subject to the Applicants’ compliance with Chapter 11.06 KCC. The proposed plat makes adequate provision for open spaces, community parks and recreation, tot lots, and play areas through the payment of impact fees to the City of Kent. Pursuant to Chapter 12.13 KCC, each lot would be assessed an impact fee at the time of construction permit issuance to mitigate the impact of additional students on the Kent School District facilities. All stormwater runoff would be managed through construction of an underground stormwater detention/wet pond to be located in a separate tract along the property’s western boundary. On-site surface water runoff and upstream runoff would be treated and discharged into Lake Meridian. Conditions of approval are necessary to ensure that the proposed stormwater facilities are constructed to City of Kent Construction Standards and 2002 City of Kent Surface Water Design Manual (CKSWDM) Level 2 standards. The proposed new looped private road would connect the plat to SE 258th Street, through which the plat would be connected to 135th Avenue SE and SE 256th Street. Conditions of approval are necessary to ensure that the Applicants construct the new private roads and SE 258th Street frontage improvements to City standards. The proposed
plat would be served by METRO transit service with a bus located at the intersection of 132nd Avenue SE and SE 256th Street. Traffic impacts on area streets and intersections would be mitigated pursuant to MDNS conditions. Conditions of approval are necessary to ensure that the Applicants construct sidewalks to provide safe walking for students and other pedestrians, including sidewalks along the new private road, SE 258th Street, and one side of 135th Avenue SE. Water District #111 would provide water service to the proposed plat. Sewer service would be provided by Soos Creek Water and Sewer District. The Applicants would obtain current certificates of water and sewer availability prior to final plat approval. The proposed plat would allow a mix of housing and site designs consistent with Comprehensive Plan goals and policies. Conditions of approval are necessary to ensure that the Applicants provide the City with accurate and valid site-specific environmental information, in the form of an approved wetland delineation and a final mitigation plan, consistent with Comprehensive Plan Land Use Element goals and policies and Chapter 11.06 KCC. The development density within the proposed plat would be consistent with the SF-6 Comprehensive Plan designation. A condition of approval is necessary to ensure that if the rezone request associated with the proposed plat is denied, the Applicants would revise the proposed plat to comply with the SR-4.5 zone standards. The public use and interest would be served by development of additional housing and construction of new sidewalks and street frontage improvements, consistent with City Code. Conditions of approval are necessary to ensure that the site's physical characteristics, including wetlands, are adequately protected in compliance with Chapter 11.06 KCC. Findings 1-41.

3. Based upon the above conclusions, the requirements of RCW 58.17.110 have been satisfied.

DECISION

Based on the preceding Findings and Conclusions, the request to subdivide a 6.3 acre parcel into 27 single-family residential lots is APPROVED, subject to the following conditions:\textsuperscript{15}

A. Prior to Recording the plat for this subdivision:

1. The Owner/Subdivider shall pay all Charges in Lieu of Assessments and/or Latecomer Fees, if any, prior to scheduling the Pre-Construction Conference and/or prior to recording this plat, whichever comes first.

\textsuperscript{15} This decision includes conditions required to meet City Code standards as well as conditions required to reduce unique project impacts.

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2. The Owner/Subdivider shall provide Public Works with a digital plat map prepared with a CAD program. The digital information can be formatted in either *.DWG (AutoCad) or *.DXF (Drawing Exchange File), but must be based upon State Plane coordinates: an assumed coordinate system is not permitted. The State Plane Coordinates shall be on the NAD 83/91 datum and must relate to at least two City of Kent reference points within one half mile of the subdivision. In addition, the project shall be tied into at least two City of Kent NAD 88 vertical benchmarks and two additional permanent benchmarks shall be established within the project. The locations, descriptions and elevations of these benchmarks will be reported at the time as-built drawings are submitted along with field notes sufficient to verify the required precision.

3. The Owner/Subdivider shall submit and receive City approval for engineering drawings from the Department of Public Works, and shall then either construct or bond for the following:

   a. A public gravity sanitary sewer system to serve all lots.

      This development will be served by the Soos Creek Water & Sewer District and will be constructed to Soos Creek Water & Sewer District standards and specifications.

      The public sanitary sewer system shall be extended from the existing public sanitary sewer system and shall be sized to serve all off-site properties within the same service area. In addition, the sanitary sewer system shall be extended across the entire subdivision as needed to serve adjacent properties within the same service area, unless otherwise determined by the sanitary sewer purveyor.

      The septic system serving the existing home(s) within the proposed subdivision - if any - shall be abandoned in accordance with King County Health Department Regulations.

   b. A public water system meeting domestic and fire flow requirements for all lots.

      This development will be served by Water District #111 and will be constructed to Water District #111 standards and specifications.

      The public water system shall be extended and shall be sized to serve all off-site properties within the same service area. In addition, the water main extension shall be extended across the entire subdivision as needed to serve adjacent properties.
properties within the same service area, unless otherwise determined by the water purveyor.

Existing wells – if any - shall be decommissioned in accordance with the requirements of the Department of Ecology.

c. A stormwater system. The Engineering Plans must meet the minimum requirements of the City of Kent Construction Standards and 2002 City of Kent Surface Water Design Manual (KSWDM). Initial guidance for the Engineering Plans is given below (See Chapter 2 of KSWDM for detailed submittal requirements):

(1) The Engineering Plans will include at a minimum: Site improvement plans which include all plans, details, notes and specifications necessary to construct road, drainage, and other related improvements. The engineering plans shall include a technical information report (TIR) which contains all the technical information and analysis to develop the site improvement plans.

(2) An erosion and sedimentation control (ESC) plan shall be included in the engineering plans. The ESC shall meet the requirements of the City of Kent Construction Standards, and the 2002 City of Kent Surface Water Design Manual. These plans must reflect the Detailed Grading Plan discussed below, and the Planning Services approved Detailed Tree Plan.

(3) The retention/detention and release standard that will be met by the subdivision is Level Two. The water quality menu that will be met by the subdivision is the Resource Stream Protection Menu.

(4) The site improvement plans and technical information report will contain drainage calculations and a drawing of the retention/detention pond tract at an appropriate engineering scale. The site improvement plans will also show that all required stormwater management facilities will be outside of delineated wetlands and their buffers, as well as outside of creeks and rivers and their buffers.

(5) A downstream analysis is required for this development, and it will include an analysis for capacity, erosion potential, and water quality. Refer to the requirements of Technical Information Reports in Section 3: “Offsite Analysis”, of the 2002 City of Kent Surface Water Design Manual for the specific information required for downstream analyses.
(6) Roof downspouts for each roofed structure (house, garage, carport, etc.) shall be diverted to a Roof Downspout Infiltration System meeting the requirements of section 5.4.5, Infiltration Trenches, of the 1998 Surface Water Design Manual. These roof downspout conveyance and infiltration systems shall include overflow pipes connected to an approved dispersion system. The drainage plans shall include an approved detail for the roof downspout infiltration system. The face of the recorded plat shall contain the following restriction:

AS A CONDITION OF BUILDING PERMIT ISSUANCE, RESIDENCES CONSTRUCTED ON LOTS OF THIS SUBDIVISION MUST PROVIDE ROOF DOWNSPOUT INFILTRATION SYSTEMS PER DETAILS SHOWN ON THE APPROVED PLANS.

(7) If determined necessary by the Public Works Department following review and approval of the required downstream analysis, the Owner/Subdivider shall provide public drainage easements meeting the requirements of the City of Kent Construction Standards for the specified downstream reach where adequate public drainage easements do not currently exist.

(8) The Owner/Subdivider shall submit Landscape Plans for within and surrounding the retention/detention facility to the Planning Department and to the Department of Public Works for concurrent review and approval prior to, or in conjunction with, the approval of the Engineering Plans. These Landscape Plans shall meet the minimum requirements of the City of Kent Construction Standards, and the stormwater management landscaping requirements contained within the 1998 King County Surface Water Design Manual. Landscape Plans are required to show adjacent Street Trees so that the City arborist can assess potential adverse stress upon all types of vegetation.

(9) The Owner/Subdivider shall execute Declaration of Stormwater Facility Maintenance Covenants for the private portions of the drainage system prepared by the Property Management Section of the Department of Public Works. See Reference 8-F, Declaration of Stormwater Facility Maintenance Covenant, to the 2002 City of Kent Surface Water Design Manual for information on what is contained within this document.

d. A Detailed Grading Plan for the entire subdivision meeting the requirements of the City of Kent Construction Standards, and City of Kent Development
Assistance Brochure #1-3, Excavation and Grading Permits & Grading Plans.
Initial guidance for these plans is given below:

(1) These plans will include provisions for utilities, roadways, retention / detention ponds, stormwater treatment facilities, and a building footpad for every lot.

(2) These plans shall be designed to eliminate the need for processing several individual Grading Permits upon application for Building Permits: phasing of grading on a lot-by-lot basis will not be considered.

(3) These plans will use a 2-foot maximum contour interval, and every fifth contour line will be darker, wider and labeled in conformance to standard drafting practice.

e. A Temporary Erosion/Sedimentation Control Plan for the entire subdivision meeting the requirements of the City of Kent Construction Standards, and the most recent adopted version of the Stormwater Management Manual for the Puget Sound Basin. These plans must reflect the Detailed Grading Plan discussed above, and the Planning Department approved Detailed Tree Plan.

f. The Owner/Subdivider shall comply with the City letter dated November 17, 2006 (Exhibit CK-30) requiring revisions to the wetland delineation report as set out in Finding 5. The preliminary plat map shall be revised to depict the wetland and buffer boundaries and this area shall be designated as a sensitive area tract. If the revised wetland delineation allows for a buildable footprint on any of the proposed Lots 6-11, the preliminary plat map shall be revised to show the buildable area on each lot and the area to be protected on each lot. Should the revised wetland delineation report conclude that any of proposed Lots 6-11 are not buildable, the preliminary plat map shall be revised to delete any such lots.

g. Interim Street Improvement Plans for 135th Avenue Southeast. These Interim Street Improvement Plans shall meet the requirements of the City of Kent Construction Standards, and City of Kent Development Assistance Brochures #6-2, Private and Public Street Improvements, and # 6-8, Street Improvement Plans, for a street designated as a Residential Street within the City of Kent Comprehensive Plan. Initial guidance for the necessary interim street improvements is given below:
(1) Off-site: A 6-foot wide Hot Mix Asphalt (HMA) pavement walkway along east side of the street, constructed in conformance to Standard Detail 6-60 between SE 256th Street and SE 258th Street.

(2) Off-site: A minimum of 20 feet wide of Hot Mix Asphalt (HMA) pavement, except where additional width is required by the Fire Department for emergency vehicle access, between the subdivision and SE 256th Street.

(3) Off-site: a minimum of two street lights installed at the intersection of 135th Avenue Southeast and Southeast 256th Street.

h. Interim Street Improvement Plans for Southeast 256th Street. These Interim Street Improvement Plans shall meet the requirements of the City of Kent Construction Standards, and City of Kent Development Assistance Brochures #6-2, Private and Public Street Improvements, and #6-8, Street Improvement Plans, for a street designated as a Residential Street within the City of Kent Comprehensive Plan. Initial guidance for the necessary interim street improvements is given below:

(1) Combined vertical concrete curbs and gutters, a 5-foot wide planter strip, and a 5-foot cement concrete sidewalk along the south side of the street.

(2) Along the new property frontage: A minimum of 20 feet of Hot Mix Asphalt (HMA) pavement as measured from the face of vertical curb constructed along the south side of the street to the edge of the traveled pavement on the north side of the street. Pavement shall be provided with a 20-year service life as determined by the process identified in the City of Kent Development Assistance Brochure #6-2, Private and Public Street Requirements.

(3) A street lighting system designed to the City's standards, constructed and maintained by the IntoLight Division of Puget Sound Energy; all electrical and maintenance bills shall be paid for by the Home Owners Association created for this subdivision.

(4) Public stormwater conveyance, detention and treatment facilities as applicable.

(5) Curb return radii of 20-feet at the intersection of the subdivision street and a 45-foot radius to the face of curb for the cul-de-sac bulb, if any.
(6) Street Trees installed within the 5-foot wide planting strips constructed between the back of curb and the front of the cement concrete sidewalk. These Street Trees will be located as approved by the Public Works Department, and the species shall be selected from the Approved Street Tree List contained within City of Kent Development Assistance Brochure #14, City of Kent Street Trees.

(7) All overhead utility lines shall be placed underground along the subject property’s entire frontage.

i. Street Improvement Plans for the new Private Residential Streets connected to Southeast 258th Street. This fully looped street layout as shown on the preliminary plat map received August 29, 2005, will not require a cul-de-sac unless required by the Fire Department for emergency access. The Street Improvement Plans for these streets shall be designed in conformance to the requirements for a Private Residential Street as required by City of Kent Construction Standards, and City of Kent Development Assistance Brochure #6-2, Private and Public Street Improvements and City of Kent Development Assistance Brochure #6-8, Street Improvement Plans for a street 28-feet wide. Initial guidance for these street improvements is given below:

(1) Combined vertical curb and gutter, a 5-foot wide planting strip constructed between the back of curb and the front of the sidewalks, and then a 5-foot wide cement concrete sidewalk along both sides of the street.

(2) A minimum of 28-feet of Hot Mix Asphalt (HMA) pavement, as measured from face of vertical curb to face of vertical curb.

(3) A street lighting system designed to the City’s standards, constructed and maintained by the Intolight Division of Puget Sound Energy; all electrical and maintenance bills shall be paid for by the Home Owner’s Association created for this subdivision.

(4) A private stormwater drainage system, including provisions for conveyance, detention, and treatment facilities.

(5) Curb return radii of 20-feet at the intersection of the subdivision street and Southeast 258th Street, and a 45-foot radius to the face of curb for the cul-de-sac bulb, if any.
(6) Street Trees installed within the 5-foot side planting strips. These Street Trees will be located as approved by the Public Works Department, and the species shall be selected from the Approved Street Tree List contained within City of Kent Development Assistance Brochure #14, City of Kent Street Trees.

(7) The two proposed gates at the intersections of the private residential streets with Southeast 258th Street are acceptable subject to the approval by the Fire Department of the final location and operation.

j. Street Improvement Plans for any new Private Residential Streets connected to the new Private Residential Streets and terminating with a permanent cul-de-sac bulb or approved turnaround at the terminus. The Street Improvement Plans for these streets shall be designed in conformance to the requirements for a Private Residential Street as required by City of Kent Construction Standards, and City of Kent Development Assistance Brochure #6-2, Private and Public Street Improvements and City of Kent Development Assistance Brochure # 6-8, Street Improvement Plans for a street at least 20-feet wide. Initial guidance for these street improvements is given below:

(1) A minimum of 20-feet of Hot Mix Asphalt (HMA) pavement, measured from edge of pavement to edge of pavement, or from face of curb to face of curb, except where additional pavement is required by the Fire Marshal for emergency vehicle access.

(2) A 5-foot wide asphalt sidewalk constructed along one side of the street for all private streets serving more than four lots.

(3) An approved cul-de-sac bulb, or turnaround at its terminus, unless these additional street improvements are not required by the City Fire Marshal.

(4) A private stormwater drainage system, including provisions for conveyance, detention, and treatment facilities where applicable.

(5) Unless additional HMA pavement width is provided for parking, all minimum width private streets serving more than two lots shall have pavement markings and traffic signs installed which clearly designate these private streets as Fire Lanes, where no parking will be permitted.

(6) The private street, including sidewalks, must be centered within a private roadway tract or easement that is at least 1-foot wider than the total width of the private street and sidewalk combination.
k. Pedestrian Walkway Improvement Plans for a 6-foot wide vertically separated asphalt walkway conforming to Standard Detail 6-60, along the east side of 135th Avenue Southeast from SE 258th Street to SE 256th Street. At the sole discretion of the Public Works Director, fees-in-lieu of design and construction may be acceptable to satisfy this requirement.

I. Street Light Plans for all public streets meeting the requirements of the City of Kent Construction Standards, and City of Kent Development Assistance Brochure #6-1, Street Lighting Requirements.

4. The Owner/Subdivider shall create a Homeowner's Association for this subdivision to ensure that the property owners within this subdivision are advised of their obligation to pay for the provided street lighting system. Those sections of the required document written to govern that association as they relate to any Intolight Division of Puget Sound Energy street lighting systems, shall be reviewed and approved by the Department of Public Works, prior to the recording these documents.

5. The face of the final plat will clearly identify all private streets, and which lots will be served by those private streets. The face of the final plat will also specify that the maintenance of all private streets is the sole responsibility of the property owners who are served by those private streets.

6. The Owner/Subdivider shall deed all public rights-of-way, and otherwise convey all private and public easements necessary for the construction and maintenance of the required improvements for this subdivision development.

7. The Owner/Subdivider shall submit and receive approval for a Detailed Tree Plan, meeting the requirements of the Kent Zoning Code, and City of Kent Development Assistance Brochure #3, Detailed Tree Plans, prior to the issuance of any Construction Permits for the subdivision. Grading Plans cannot be approved by the Department of Public Works without an approved Detailed Tree Plan. Detailed Tree Plans are not to be confused with required Street Tree Plans, which have any entirely different purpose.

8. The Owner/Subdivider shall be sensitive to the natural topography during construction and minimize negative impact to on-site soils and neighboring properties. The Owner/Subdivider shall permanently protect the approved and preserved, and/or enhanced, or created sensitive area(s) and the associated buffer(s) by creating a separate Sensitive Area Tract and deeding the tract in fee
simple to the City, OR by granting a Sensitive Area Easement to the City for the entire sensitive area, pursuant to Kent City Code Chapter 11.06. This Sensitive Area Tract or Easement shall be consistent with the wetland and wetland buffer map contained within the approved Wetland Delineation Report and/or approved Wetland Mitigation Plan as appropriate. The Owner/Subdivider shall provide a legal description of said easement or tract prepared by a licensed land surveyor, prior to issuance of any Construction Permits. The Sensitive Area Tract and the following language shall be included on the face of the recorded plat:

**SENSITIVE AREA TRACTS/EASEMENTS**

DEDICATION OF A SENSITIVE AREA TRACT/EASEMENT CONVEYS TO THE PUBLIC A BENEFICIAL INTEREST IN THE LAND WITHIN THE TRACT. THIS INTEREST INCLUDES THE PRESERVATION OF NATIVE VEGETATION FOR ALL PURPOSES THAT BENEFIT THE PUBLIC HEALTH, SAFETY AND WELFARE, INCLUDING CONTROL OF SURFACE WATER AND EROSION, MAINTENANCE OF SLOPE STABILITY, VISUAL AND AURAL BUFFERING, AND PROTECTION OF WATER QUALITY, PLANT ECOLOGY AND WILDLIFE HABITAT. THE SENSITIVE AREA TRACT/EASEMENT IMPOSES UPON ALL PRESENT AND FUTURE OWNERS AND OCCUPIERS OF THE LAND SUBJECT TO THE TRACT/EASEMENT THE OBLIGATION, ENFORCEABLE ON BEHALF OF THE PUBLIC BY THE CITY OF KENT, TO LEAVE UNDISTURBED ALL TREES AND OTHER VEGETATION WITHIN THE TRACT. THE VEGETATION WITHIN THE TRACT MAY NOT BE CUT, PRUNED, COVERED BY FILL, REMOVED OR DAMAGED WITHOUT APPROVAL IN WRITING FROM THE CITY OF KENT.

THE COMMON BOUNDARY BETWEEN THE TRACT/EASEMENT AND THE AREA OF DEVELOPMENT ACTIVITY MUST BE MARKED OR OTHERWISE FLAGGED TO THE SATISFACTION OF THE CITY OF KENT PRIOR TO ANY CLEARING, GRADING, BUILDING CONSTRUCTION OR OTHER DEVELOPMENT ACTIVITY. THE REQUIRED MARKING OR FLAGGING SHALL REMAIN IN PLACE UNTIL ALL DEVELOPMENT ACTIVITIES IN THE VICINITY OF THE SENSITIVE AREA TRACT ARE COMPLETED.

NO BUILDING FOUNDATIONS, STRUCTURES, FILL OR OBSTRUCTIONS (INCLUDING, BUT NOT LIMITED TO OUTBUILDINGS AND OVERHANGS) ARE ALLOWED WITHIN 15 FEET OF THE SENSITIVE AREA TRACT/EASEMENT BOUNDARY, UNLESS OTHERWISE APPROVED BY THE CITY.

THE CITY OF KENT RESERVES THE RIGHT TO INSTALL PUBLIC UNDERGROUND UTILITIES WITHIN THIS SENSITIVE AREA TRACT, AND TO ENTER AND PERFORM DRAINAGE SYSTEM MAINTENANCE, BUT IS REQUIRED TO RESTORE OR ENHANCE THE SENSITIVE AREAS DISTURBED UPON THE COMPLETION OF THE

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UNDERGROUND CONSTRUCTION, AND/OR DRAINAGE SYSTEM MAINTENANCE.

THE CITY OF KENT ALSO RESERVES THE RIGHT TO ENHANCE THE SENSITIVE AREA TRACT OR EASEMENT VIA PLANTING NATIVE VEGETATION AND REMOVING NON-NATIVE OR INVASIVE VEGETATION.

9. After construction, the wetland and/or streams and their associated buffer areas shall be isolated from intrusion by installing a split-rail cedar fence around the entire buffer edge. In addition, sensitive area information signs (available from the Department of Public Works for $7.50 each) shall be placed at the buffer edge to inform and educate owners and nearby residents about the value of sensitive areas.

10. The Owner/Subdivider shall provide the Department of Public Works with a copy of an approved Hydraulic Project Approval (HPA), OR A WRITTEN WAIVER THERE FROM issued by the Washington State Department of Fish and Wildlife with the first submittal of Construction Plans. Contact Larry Fisher of the Washington State Department of Fish and Wildlife at (425) 649-7042 for additional information.

11. Prior to release of any construction bonds, and prior to the approval of any Building Permits within the subject subdivision, the Department of Public Works must receive and approve As-Built Drawings meeting the requirements of the City of Kent Construction Standards, and City of Kent Development Assistance Brochure #E-1, As-Build Drawings, for: Streets; Street Lighting System; Water; Sewer; Stormwater Drainage Facilities; and all off-site improvements where the locations and/or elevations are deemed critical by the Department of Public Works.

12. The Applicant/Owner shall provide mailbox clusters as approved by the Public Works Department and the U.S. Postmaster.

B. Prior to the issuance of a Building Permit on any lot in this subdivision, the Owner/Subdivider shall:

1. Record the Plat.

2. Construct all of the improvements required in Section A, above, and pay the respective fees-in-lieu-of including any mitigation (EMA or EMF) charges.

3. Receive approval of the required as-built crawlings for street improvements, stormwater management system, street lighting system, and other off-site improvements where determined necessary by the City.

4. Construct all wetland mitigation plans, wetland and stream buffer plans, install all
required split-rail cedar fences and sensitive area signs, and any other conditions to protect or enhance critical areas.

C. **Miscellaneous:**

1. If the rezone request associated with the preliminary plat is denied by the City Council, the Applicants will be required to amend the preliminary plat to comply with the SR-4.5 zoning district standards.

DATED this ___________ day of October 2007.

[Signature]

THEODORE PAUL HUNTER
Hearing Examiner