Public Hearing Date: December 9, 1998

STAFF REPORT TO THE HEARING EXAMINER
CITY OF SHORELINE, WASHINGTON

REPORT TITLE:	Staff Report on the Appeal of the SEPA Threshold Determination and Planning Commission Recommendation for the Plat of Paramount Ridge Preliminary Subdivision
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	James Holland, Senior Planner
APPROVED BY:	Bruce Disend, City Attorney

Summary Information

Proposal:	Formal (Long) Subdivision of 2 existing lots into 9 building lots
Project No.:	1997-01594
Project Address:	15450 and 15440 10th Avenue NE, Shoreline, WA 98155
Property Owner:	Creative Construction Inc., 1243 NE 152nd Street, Shoreline
Agent:	Gary S. Cooper, Lynscot A. Corporation
Zoning:	R-6 Urban Residential, Six homes per acre
Comprehensive Plan Designation:	Urban Medium, 4-12 homes per acre
Planning Commission Hearing Date:	July 30, 1998
Planning Commission Decision:	Recommend Approval (with Conditions) to City Council
Date Appeal Filed:	September 22, 1998
Appellant:	Paramount Park Neighborhood Group
Hearing Date:	7:OO PM, Wednesday, December 9, 1998

I. FINDINGS OF FACT

1. BACKGROUND INFORMATION

A. Common Description of the Subject Properties

The subject properties are located in the Ridgecrest Neighborhood of Shoreline, having street addresses of 15450 and 15440 10th Avenue NE.

B. Legal Description of the Subject Properties

Lots 10 and 11, Block 16, Paramount Park Division No. 2, According to the Plat Thereof, Recorded in Volume 28 of Plats, Page 50, in King County, Washington.

C. The Proposal

The proposal is to formally subdivide (Long Plat) two adjacent properties known as 15450 and 15440 10th Avenue Northeast into a total of nine (9) residential building lots. The property is 1.595 acres (69,488 Square Feet) in size and entirely zoned R-6 residential. The average size of the proposed lots (excluding the proposed access tract and turnaround) would be 6,653 square feet. Lot 1 of the proposed subdivision would be 9,400 Sq. Ft. in size, Lot 2: 8,645 Sq. Ft., Lot 3: 5,007 Sq. Ft., Lot 4: 5,103 Sq. Ft., Lot 5: 7,508 Sq. Ft., Lot 6: 8,014 Sq. Ft., Lot 7: 5,338 Sq. Ft., Lot 8: 5,552 Sq. Ft., and Lot 9: 5,310 Sq. Ft. All Lots meet the lot size standards of the Shoreline Zoning Code that were in effect when the proposal was determined to be complete.

The proposed subdivision would retain the two existing houses located on lots 1 and 2. These lots would also retain their existing direct access onto 10th Avenue Northeast, while lots 3 through 9 would be served by a private road also providing access onto 10th Avenue Northeast.

D. The Site

The subject property is currently occupied by two single family residences (lots 1 and 2) that are located towards the front of each lot, being set back 31 and 37 feet from the 10th Avenue right-of-way. A detached garage is located north of the existing house on 15450 10th Avenue and a woodshed is located in approximately the middle of the lot. These structures range from moderate to poor condition and would be demolished in the event of plat approval. The existing houses fronting 10th Avenue Northeast would remain. The undeveloped portions of both lots are well wooded and contain a number of significant trees (12" or greater trunk diameter measured at breast height). The property slopes a total of 40 feet from the northwest to southeast corners (an average grade of approximately 11%) and the boundary area of Lots 1 and 5 contains an earth fill bank which has a slope of 65% at its steepest point. All but the northeast corner of the site is designated as an Erosion Hazard Area under the Environmentally Sensitive Areas standards of the Shoreline Zoning Code (SMC 18.24). The only public road

directly serving the proposal is 10th Avenue Northeast, which the Public Works Department has designated as a residential street.

E. The Neighborhood

The area surrounding the proposed subdivision is dominantly single family residential in character, with large areas of public recreational space (Paramount Playfield and Paramount Park and Open Space) also existing in the immediate vicinity. The nearest multi-family residential development is located along 15th Avenue NE and the nearest commercial development is focused at the intersection of 145th and 15th Avenue NE.

Not all public facilities are available in the immediate vicinity of the proposal. Where the existing house is located on Lot 1, 10th Avenue Northeast narrows to a half street (before ending approximately one block to the south). No curbs, gutters, or sidewalks are provided along the portion of 10th Avenue NE fronting the proposal, but wide soft shoulders do exist. The certificate of water availability issued for the proposal indicates that water service for the nine lots is available from a 6" diameter main located 300 feet from the project site. Available fire flow capacity was found not to meet fire flow standards, however, and the Shoreline Fire Department requested the City to require the installation of fire sprinkler systems in each new house to be built in the proposed subdivision. Sewer service was approved for the proposal without any special requirements or conditions.

F. Comprehensive Plan Designation

The land use design adopted by the 1994 King County Comprehensive Plan designated this part of the Ridgecrest Neighborhood for medium density urban residential development (UM designation, 4-12 residential units per acre). The King County plan was adopted for interim planning purposes by the City of Shoreline during it's incorporation process in 1995. In accordance with the requirements of the Growth Management Act, the entire city is designated as an Urban Growth Area by the plan.

The following policies from the King County Comprehensive Plan (Adopted by the Shoreline City Council under Ordinance No. 10, on July 10, 1995) address the form and pattern of new development envisaged for existing residential areas;

U-501 King County shall encourage new residential development to occur in Urban Growth Area locations where facilities and services can be provided at the lowest public cost and in a timely fashion. The urban growth area should have a variety of housing types and prices, including mobile home parks, multifamily development, townhouses and small-lot, single family development.

U-502 King County shall seek to achieve through future planning efforts over the next 20 years, an average zoning density of at least seven to eight homes per acre in the Urban Growth Area through a mix of densities and housing types. A lower density zone may be used to recognize existing subdivisions with little or no opportunity for infill or redevelopment.

U-504 King County should apply minimum density requirements to all urban residential zones of four or more homes per acre.

U-515 Urban residential neighborhood design should preserve historic and natural characteristics and neighborhood uniqueness, while providing for privacy, community space, pedestrian safety and mobility, and reducing the impact of motorized transportation.

U-516 Site characteristics that enhance residential development should be preserved through sensitive site planning tools, such as clustering or lot averaging.

U-521 Within the Urban Growth Area, King County zoning and subdivision regulations should require that residential developments, including mobile home parks, provide the following improvements:

a. Paved streets (and alleys if appropriate), curbs and sidewalks, and internal walkways when appropriate;
b. Adequate parking consistent with local transit service levels;
c. Street lighting and street trees;
d. Storm water control;
e. Public water supply; and
f. Public sewers.

G. Zoning Designation

The subject properties are currently zoned R-6 (Residential, six dwelling units per acre). This is the most frequently occurring zoning designation found in the City of Shoreline, with approximately 85% of the City being assigned to this zone. The purpose of the residential zones (including R-6) are specified in Subsection 18.04.080 of the Shoreline Municipal Code (SMC),

Residential Zone

A. The purpose of the urban residential zone (R) is to implement comprehensive plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:

1. Providing in the R-4 through the R-8 zones, for a mix of predominantly single detached dwelling units and other development types with a variety of densities and sizes in locations appropriate for urban densities.

(Numbers 2 and 3 are not applicable to this appeal)

4. Establishing density designations to facilitate advanced area-wide planning for public facilities and services, and to protect environmentally sensitive areas from over development.

B. Use of this zone is appropriate in urban areas, activity centers, or rural activity centers designated by the comprehensive plan or community plans as follows:

1. The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served, at the time of development, by

adequate public sewers, water supply, roads, and other needed public facilities and services.

2. PROCEDURAL HISTORY

An application for preliminary formal subdivision of these properties was first submitted to Development Services on August 15, 1997. Following the completion of preliminary staff review in November 1997, additional information necessary to allow formal review of the proposal was requested from the agent, Mr. Gary Cooper. Following the submission of additional information in March and June of 1998, the application was determined to be complete by the Planning and Development Services Department on June 17, 1998.

Review of the proposal under the State Environmental Policy Act (SEPA) was completed on June 29, 1998, with Development Services issuing a Mitigated Determination of Non-Significance (MDNS) for the proposal. Notification of this threshold determination and a summary of the proposed mitigations was included with all the public notices mailed to adjacent property owners and published in area newspapers. Preliminary public notice of the application was mailed to adjacent property owners on July 1, 1998. Public notice of the proposal was also published in the Seattle Times on July 2nd, and in the Shoreline Enterprise. Finally, in accordance with the requirements of Regulatory Reform, an open record public review hearing before the Planning Commission was held on July 30, 1998.

The Planning Commission hearing included review of applicable development standards in the City subdivision regulations, zoning code and road standards, together with consideration of public comments about actual and potential instability of the project site, groundwater flows, stormwater management, and preservation of existing trees. After completing this review, the Planning Commission voted to recommend approval of the Paramount Ridge preliminary subdivision to the Shoreline City Council, subject to the subdivision approval conditions recommended by Planning and Development Services staff in their report of July 21.

In keeping with the provisions of the Section 16.35 of the Shoreline Municipal Code governing land use hearings and appeals, staff forwarded a report on the Planning Commission recommendation to the City Clerk on August 31, 1998. A notice was also mailed to all parties of record on September 4, 1998, informing then of the required 14 day period for filing an appeal of the Planning Commission recommendation and SEPA threshold determination. On September 22, 1998, Paramount Park Neighborhood Group filed an appeal of both the Planning Commission recommendation for preliminary subdivision approval and the SEPA Mitigated Determination of Non-Significance (MDNS). The appeal document identifies concerns with increased erosion and flooding if the proposed subdivision is built and also asserts that construction of the subdivision will alter the quantity and quality of water flowing through Littles Creek, creating negative impacts on the Paramount Park wetland and Thornton Creek. The appeal document asks that the MDNS issued by the City be reversed, an Environmental

Impact Statement be required for the proposal, and the application for preliminary subdivision be denied.

In response to this appeal, a closed record public hearing was scheduled to be held before the City of Shoreline Hearing Examiner on Wednesday, December 9, 1998 at 7:00 PM in the Mount Rainier Room of the Shoreline Conference Center. Formal notice of the appeal hearing was published in the Seattle Times on November 18, 1998.

3. SUMMARY AND ANALYSIS OF APPLICABLE REGULATIONS GOVERNING PRELIMINARY SUBDIVISIONS

The following provisions of State statutes and locally adopted codes governing the standards and process for the review and approval of preliminary subdivisions directly apply to this appeal. Staff analysis of these provisions, or explanation of their context with respect to the Paramount Ridge preliminary subdivision, is provided in the text boxes that follow each citation.

I. Revised Code of Washington, Chapter 58.17, Plats, Subdivisions and Dedications

Definitions, RCW 58.17.020

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision, consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

Analysis: These definitions differentiate between the purpose and amount of information provided for preliminary and final plats. It is expected that a preliminary plat show conformance with regulations in general terms, where a final plat must show specific conformance.

Consideration of application for preliminary plat or short plat approval--Requirements defined by local ordinance. RCW 58.17.033

(1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

Analysis: This provision prevents the City from going beyond the authority provided by its adopted regulations for the review and conditioning of subdivision proposals.

(2) The requirements for a fully completed application shall be defined by local ordinance.

Analysis: Allows the City to require information for subdivision applications beyond that implied by state definitions. It does not, however, alter the procedural differences between preliminary and final subdivision applications.

(3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1987 c 104 § 2.]

Analysis: Allows SEPA authority to be exercised separately from other City powers and confirms the ability for SEPA conditions to be based upon adopted policies.

Preliminary plat of subdivisions and dedications - Approval Procedure. RCW 58.17.070
... Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. [1981 c 293 § 4; 1969 ex.s. c 271 § 7.]

Analysis: Encourages timely review of applications through combining of review (and notification) procedures.

Approval or disapproval of subdivision and dedication-Factors to be considered-Conditions for approval. RCW 58.17.110

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, 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 schoolgrounds, and shall consider 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 (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

Analysis: Requires the City to evaluate specific elements of a proposed (preliminary) subdivision and make a reasoned determination that the proposal adequately provides a range of facilities necessary for preservation of the public, health, safety and welfare.

II. Subdivision Standards, Title 17, Shoreline Municipal Code

Conformance to Code. SMC 17.08.020
The subdivision shall conform to this chapter and Chapter 19.12. (Note: Now Title 18 of the Shoreline Municipal Code).

Analysis: Requires that any proposed subdivision meet all the applicable standards provided in both the subdivision regulations and the zoning code (For example, density and dimensional standards and protection of environmentally sensitive areas).

Interest of Public Welfare, SMC 17.08.050

The proposed subdivision and its ultimate use shall be in the best interests of the public welfare and the neighborhood development of the area and the subdivider shall present evidence to this effect when requested by the City Manager or his/her designee.

Analysis: Underlines State code requirements and gives force to the policies contained in the King County Comprehensive Plan, together with the standards provided by other adopted regulations (as adopted legal instruments for safeguarding public welfare).

Drainage of Road Ditches, SMC 17.08.130

Proper facilities, as required by the city manager or his/her designee shall be provided for the drainage of road ditches on steep grades in order to minimize the damage of erosion.

Analysis: Establishes minimum protection and design standards for management of stormwater on difficult sites.

Dimensions of Lots, SMC 17.12.050

The minimum dimensions of lots shall conform to the dimensions established in the zoning code and shall not be less than the requirements for the use district in which located.

Analysis: Confirms the role of the zoning code as the primary regulation for determining the acceptability of proposed building lots.

Qualifications Governing Approval of Plat. SMC 17.28.050

A. PRELIMINARY APPROVAL. Council approval of the preliminary plat shall furnish a firm basis upon which the applicant may proceed with development of the subdivision and preparation of the final plat subject only to all the conditions of preliminary approval imposed on the preliminary plat.

B. REVISIONS. The department may approve minor changes or revisions as are deemed necessary to the interests and needs of the community, consistent with the adopted policies and standards of the county.

C. ENGINEERING DETAILS. Subsequent approval of the engineering details of the proposed streets, storm drainage, sanitary sewer and water systems and other proposed public facilities by the county engineer and the King County department of public health will be required prior to the approval of the final plat.

Analysis: Explains how an applicant may use a preliminary subdivision approval to refine their final plat application. These provisions also make it clear that the fine details of a subdivision are required to be provided only at the time of final plat approval.

III. Surface Water Management, Title 13.10, Shoreline Municipal Code

Definitions, SMC 13.10.04.020

"Surface Water Design Manual" means the manual (and supporting documents as appropriate) describing surface and storm water design and analysis requirements, procedures, and guidance which has been formally adopted by rule .....

Drainage Review - When Required SMC 13.10.04.030

A. PERMITS. A drainage review is required for any proposed project requiring one of the City of Shoreline permits or approvals listed in SMC 13.10.04.030B which would:

1. Add more than 1500 square feet of new impervious surface; or
2. Construct or modify a drainage system that collects and concentrates surface and storm water runoff from an on- or off-site drainage area of more than five thousand square feet; or
3. Contain or be adjacent to a floodplain, stream, lake, wetland or closed depression, or a sensitive area as defined in K.C.C. 21A.24 (Sensitive Areas) excluding seismic, coal mines, and volcanic hazard areas.

B. The following City of Shoreline permits and approvals will be required to have a drainage review if the project involves the planned actions listed in SMC 13.10.04.030A:

6. Formal subdivision (plat);

Drainage Review - Requirements SMC 13.10.04.050

A. Core Requirements. Every permit or approval application with drainage review required by SMC 13.10.04.030 must meet ... the ... core requirements which are described in detail in the surface water design manual.

King County Surface Water Design Manual (1995), Section 1.2 Core Requirements

1. *Discharge at the Natural Location.* The discharge from a proposed project site must occur at the natural location.
2. *Off-Site Analysis.* All proposed projects must identify the upstream tributary drainage area and perform a downstream analysis. Levels of analysis required depend on the problems identified or predicted. At a minimum, a Level 1 analysis must be submitted with the initial permit application.
3. *Runoff Control.* Proposed projects must provide runoff controls to limit the developed conditions peak rates of runoff to the pre-development peak rates for specific design storm events based on the runoff from defined existing site conditions, and install biofiltration measures.
4. *Conveyance System.* All conveyance systems for proposed projects must be analyzed, designed and constructed for existing tributary off-site runoff and developed on-site runoff from the proposed project.

Analysis: The above regulations establish City authority to require full analysis of specific activities likely to generate stormwater impacts. The Surface Water Design Manual (adopted under City regulations) specifies both the scope of any stormwater analysis that must be performed and establishes the design objectives that any proposed stormwater management system must meet in order to be accepted by the City. The applicant must demonstrate to the City that any proposed system complies with these requirements before the design is accepted and the proposed plat becomes eligible for proceeding to final approval. The King County Surface Water Design Manual

is widely accepted as the standard reference for stormwater engineering in the State of Washington.

IV. City of Shoreline Zoning Code, Title 18 Shoreline Municipal Code

Erosion Hazard Areas, Development Standards and Permitted Alterations, Subsection 18.24.220 SMC

A. Clearing on an erosion hazard area is allowed only from April 1st to September 1st, except that:
1. Up to 15,000 square feet may be cleared on any lot, subject to any other requirement for vegetation retention and subject to any clearing and grading permit required by Chapter 16.82 KCC; and

B. All development proposals on sites containing erosion hazard areas shall include a temporary erosion control plan consistent with this section and other laws and regulations prior to receiving approval. Specific requirements for such plans shall be set forth in administrative rules.

C. All subdivisions, short subdivisions or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:
1. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;
2. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to submit a restoration plan to the city of Shoreline for review and approval. Following approval, the applicant shall be required to implement the plan;
3. Clearing of vegetation on lots may be allowed without a separate clearing and grading permit if the city of Shoreline determines that:
a. Such clearing is a necessary part of a large scale grading plan,
b. It is not feasible to perform such grading on an individual lot basis, and
c. Drainage from the graded area will meet water quality standards to be established by administrative rules.

D. Where the city of Shoreline determines that erosion from a development site poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water, or the sensitivity of the receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet water quality standards established by law or administrative rules, the city may suspend further development work on the site until such standards are met.

Analysis: The protection standards provided for Erosion Hazard Areas by the Zoning Code apply to any proposed activity meeting the adopted definition of 'alteration'. While these protection standards place limits on the timing and amount of clearing, they do not provide absolute protection to designated erosion hazard areas. The adopted standards presume that a designated erosion hazard area is typically suitable for development, as long as this development takes place according to specific limitations and review requirements that are designed to control on site erosion and prevent damage to adjacent properties and downstream waters.

Steep Slope Hazard Areas, Subsection 18.24.310 SMC

E. The following are exempt from the provisions of this section:
1. Slopes which are 40 percent or steeper with a vertical elevation change of up to 20 feet if no adverse impact will result from the exemption based on the city's review of and concurrence with a soils report prepared by a geologist or geotechnical engineer; and
2. The approved regrading of any slope which was created through previous legal grading activities. Any slope which remains 40 percent or steeper following site development shall be subject to all requirements for steep slopes.

Analysis: This provision allows the City flexibility in reviewing and conditioning development proposals that involve work on properties containing relatively small steep slopes or fill slopes.

ADDITIONAL ANALYSIS - SUBDIVISION AND ZONING REVIEW AUTHORITY

The regulations adopted by the City of Shoreline to govern the subdivision of land provide the City with substantial authority to modify, condition and supervise preparation and development of both preliminary and final long subdivisions. In keeping with the definitions and authority provided by the State platting statute, the City differentiates between applications for preliminary and final subdivisions by requiring a preliminary subdivision to demonstrate the potential for compliance with applicable codes and requiring a final subdivision application to demonstrate full code compliance.

The present application for the formal preliminary subdivision of two existing lots into nine building lots has been reviewed and conditioned by the City within the above regulatory framework. Subject to the approval conditions recommended to City Council by the Planning Commission, the proposed plat has the potential to meet all applicable requirements of city development regulations. The City retains substantial authority through the zoning code, surface water management code, and final subdivision review and approval process to insure that the proposed preliminary subdivision does not generate any of the off site impacts identified by the appellants in their Notice of Appeal filed on September 22.

For discussion of all the factors considered by staff in reviewing this proposal, please refer to the Staff Report to the Planning Commission of July 21, 1998, included as Attachment D to this report.

4. SUMMARY AND ANALYSIS OF SEPA AUTHORITY AND REQUIREMENTS

SEPA Rules, Chapter 197-11 of the Washington Administrative Code

Impacts, WAC 197-11-060 (4)

a. SEPA's procedural provisions require the consideration of "environmental" impacts ..., with attention to impacts that are likely, not merely speculative.

b. In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries.

c. Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

d. A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions.

Analysis: This section of the SEPA rules establishes the scope of the environmental analysis to be followed by a lead agency in identifying the environmental impacts associated with a proposal. Impacts to be considered are limited to those considered to be 'likely' or 'probable'.

Limitations on Action During SEPA Process, WAC 197-11-070

1. Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a government agency that would:
   a). Have an adverse environmental impact; or
   b). Limit the choice of reasonable alternatives.

4. This section does not preclude developing plans or designs, ..., or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

Analysis: These provisions allow an applicant, or agency, the ability to refine a proposal during the review process, but prevent any actions being taken (such as site clearing) that could undermine the ability of SEPA to protect the environment.

Threshold Determination Process, WAC 197-11-330

1. In making a threshold determination, the responsible official shall:

   c). Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws.

Analysis: This provision recognizes that local governments are likely to rely upon a number of regulatory instruments to prevent, or mitigate, impacts on the environment caused by development proposals. This provision also encourages the lead agency to avoid specifying mitigations under SEPA that duplicate protections provided by other adopted regulations.

Mitigated DNS, WAS 197-11-350

3. .... if the lead agency specifies mitigation measures on an applicant's proposal that would allow it to issue a DNS, and the proposal is clarified, changed, or conditioned to include those measures, the lead agency shall issue a DNS.

Analysis: This provision identifies the (M)DNS as being a legitimate tool for agency use in requiring changes or conditions to a specific proposal. Washington Courts have viewed use of an MDNS as being acceptable, and in some circumstances superior to an EIS, because an EIS does not automatically result in substantive mitigation (Anderson vs. Pierce County and RPW Industries, 86 Wn. App 290, 936 P. 2d 432 (1997)).

Substantive Authority and Mitigations, WAC 197-11-660

(1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:
(a) Mitigation measures or denials shall be based on policies, plans, rules or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.
(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decisionmaker. ....
(c) Mitigation measures shall be reasonable and capable of being accomplished.
(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.
(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

Analysis: The above provisions prevent jurisdictions from imposing mitigations that are unsupported by adopted policies, or are either, unspecific, unreasonable, or, redundant. SEPA mitigations cannot, therefore be used to extend City authority past the point where action to preserve the environment is no longer supported by local and state laws. Mitigation measures required by the City for this proposal directly address identified significant adverse environmental impacts and act in concert with other City regulatory authority to fully and effectively condition the proposed development.

ADDITIONAL ANALYSIS - SEPA AUTHORITY AND MITIGATIONS

One way in which SEPA meets its purpose of preventing or eliminating damage to the biosphere, is through allowing the issuance of a Mitigated Determination of Non-Significance (MDNS) to eliminate or reduce significant adverse environmental impacts. Lead agencies will often chose to issue an MDNS where sufficient environmental information is available on a proposal to allow it's environmental impacts to be

accurately identified without reliance upon an EIS. Such an approach to environmental protection is encouraged by SEPA, through its policies that direct agencies;

A) To consider only likely or probable impacts, and
B) Avoid the use of mitigations that merely duplicate existing regulatory authority.

The purpose of mitigations under SEPA and the function of an MDNS are considered in Anderson vs. Pierce County (86 Wn. App. 290, 936 P. 2d 432 (1997) Attachment C), by the State Supreme Court (citing The Court of Appeals, Division One). According to the court;

> "When the decisionmaker imposes some mitigation measures, this does not necessarily mean that unmitigated impacts no longer exist or will be totally eradicated by mitigation, but merely that as mitigated, the project as a whole is acceptable".

Such an interpretation is consistent with the role of SEPA as one of a range of regulatory tools to be used by government to require the conditioning and revision of development proposals to bring them to a point where they are acceptable to the public interest.

In Anderson vs. Pierce County, the Supreme Court held that where an MDNS is issued as a result of detailed environmental review by the lead agency,

> "The need for an EIS was superseded by the MDNS."

In analyzing the appellants arguments for requiring an EIS to be prepared for a proposed bio-remediation facility, the court found that;

> "Buckley has failed to cite any fact or evidence in the record demonstrating that the RPW project, as mitigated by the 54 MDNS conditions, will cause significant adverse environmental impacts. ...
>
> Moreover, community displeasure and Buckley's preference for an EIS are inadequate grounds for overturning the decision of the Hearing Examiner." (Anderson vs. Pierce County, page 305)

In the case of Nagatani Bros., Inc. v. Skagit County Board of Commissioners (108 Wn. 2d 477, 739 P.2d 696 (1987)), the State Supreme Court held that (governmental) action under SEPA may be "conditioned or denied only on the basis of specific, proven significant environmental impacts". The Court elaborated on this position in Levine vs. Jefferson County (116 Wn. 2d 575, 807 P. 2d 363), where the county imposed 9 mitigation measures on a building permit for a sawmill, based upon letters of concern sent by area residents. The court found that these letters did not provide sufficient (any) evidence that the perceived ill effects would materialize and that the record contained "absolutely no justification for the imposition of stringent mitigative restrictions'. In finding for Mr. Levine, the court also noted that the record provided by the county to support their action failed "to address specific, proven environmental impacts". This

statement by the court may be taken as underlining the language of the Washington Administrative Code, which relies on the words 'probable' and 'likely'.

In Anderson vs. Pierce County (86 Wn. App. 290, 936 P. 2d 432 (1997), the State Supreme Court noted that the clearly erroneous standard is used for judicial review of an agency decision to issue an MDNS. The court noted that a decision is not "clearly erroneous" unless "it is unsupported by evidence in the record or the reviewing court is left with a definite and firm conviction that a mistake has been made." The court then goes on to state that,

> "A mitigated determination of nonsignificance should be upheld under the clearly erroneous standard if (1) environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with the State Environmental Policy Act (RCW 43.21C), (2) it is based on information sufficient to evaluate the development's probable environmental impacts, and (3) the mitigation measures are reasonable and capable of being accomplished." (Page 291)

It is apparent from the above analysis performed by Washington courts, that an MDNS is a legitimate tool for use in the SEPA review process and production of an EIS is not an automatic requirement for a project that will disturb a relatively undeveloped piece of land. It is also clear that that any requirement to produce an EIS, as well as any mitigations required for a proposed land use action, be based on hard facts and reasoned analysis. In issuing an MDNS for the Paramount Ridge Preliminary Subdivision, the City has correctly identified all significant adverse environmental impacts potentially associated with this proposal and required their mitigation in a direct and reasonable manner that is consistent with both SEPA and other applicable City regulations.

For discussion of all the factors considered by staff in reviewing this proposal, please refer to the Staff Report to the Planning Commission of July 21, 1998, included as Attachment D to this report.

5. CONCLUSIONS

Based upon full review of this proposal and its applicable statutory authority, the City of Shoreline imposed the following recommended subdivision conditions and SEPA mitigations on the proposed preliminary subdivision:

Recommended Subdivision Conditions

1. No vegetation shall be removed from the proposed lots or access tract until Final Plat approval has been obtained and all construction plans have been reviewed by the City of Shoreline and a Site Development Permit has been issued.
2. The applicants shall widen the existing 10th Avenue NE road surface by paving from the platted centerline to the edge of the planting strip required under 3. (below).

3. The applicants shall construct a five feet wide sidewalk and six feet wide planter strip immediately adjacent to the western property boundary for the lengths of Lots 1 and 2 of the proposed plat.

4. Consistent with the Road Standards, the applicant may modify the design of the access tract by eliminating the proposed sidewalk on it's western side.

5. Prior to the submission of any application for final approval of the subdivision, the applicants shall submit proof of a legal public easement allowing the construction of stormwater conveyance facilities from the project site to the 12th Avenue NE stormwater collection system. The easement shall be approved by the City of Shoreline Public Works Department.

6. Road improvements required as subdivision conditions 2 and 3 (above) shall be designed to direct stormwater flows into the required planter strip.

7. Fire sprinkler systems shall be installed in each house built on lots 3 through 9 of the proposed subdivision.

8. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a deadend system, or, a minimum pipe diameter of 6" for a looped system.

9. The applicant shall implement a Maintenance Agreement between the owners of the proposed building lots to provide for the maintenance and repair of all commonly owned facilities, such as sidewalks, the private road, stormwater management system, and landscaping, installed as part of this subdivision.

SEPA Mitigations

1. Earth

A. The applicant shall comply with the following recommendations made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, specifically;

i. The steep fill slope located in the northwest corner of lot 5 be regraded to an inclination of no steeper than 2:1 (Horizontal/Vertical) for appropriate long-term stability.
ii. All bare areas should be revegetated or be mulched with straw to reduce erosion until permanent landscaping and vegetation are in place.
iii. A silt fence should be erected along the downslope sides of the development area.
iv. The storm drain system for the proposed street should be installed and functional early in the development process.
v. No fill or debris from the clearing or excavation should be placed on the downslope sides of the houses, unless properly retained by an engineered wall.
vi. Temporary slopes cannot be excavated at a grade of more than 1:1 (Horizontal:Vertical).
vii. All permanent cuts into native soil should be inclined no steeper than 2:1 (Horizontal:Vertical).

viii. Water should not be allowed to flow uncontrolled over the top of any slope.

ix. All permanently exposed slopes should be seeded with an appropriate species of vegetation to reduce erosion and improve the stability of the surficial layer of soil.

B. In addition to regrading the fill slope located on Lot 5 of the proposal in accordance with the recommendations made by Geotech Consultants, Inc., the applicant shall plant the slope with suitable native vegetation.

2. Stormwater

A. Prior to the submission of an application for final plat approval, the applicant shall submit an analysis of the downstream stormwater management system. The analysis shall determine whether sufficient system capacity exists to safely accommodate the runoff flows to be generated by lots 5 and 6 of the proposal and make recommendations for these flows based on it's findings.

B. Prior to placing any fill on the slope surcharging the existing rockery wall in the southeast corner of the subject property, the applicant shall place a footing drain at the base of the rockery. This drain shall feed into a dedicated catchbasin which should then connect to the existing storm drain system.

3. Plants/Land Use/Aesthetics

A. Prior to the submission of an application for final plat approval, the applicant shall submit a plan that provides for the preservation of all significant trees (12" or greater trunk diameter at breast height) located outside of identified access road, driveway and building footprints.

B. The applicant shall include with the plan required under A, above, a written report identifying specific protection methods to be used for each identified tree during and after site clearing and development.

C. The applicant shall dedicate a minimum 20' wide buffer along the east and south boundaries of the subject property. This buffer shall include rear yard setbacks required under the Shoreline Zoning Code (Title 18 SMC), and remain undisturbed by construction except in the southeast corner of the property, where fill may be added to the existing slope in accordance with the provisions of the grading plan and SEPA Mitigation 3.B. above. No significant trees may be removed from this buffer area.

These recommended subdivision approval conditions, together with the SEPA mitigations required for this proposed preliminary subdivision, were determined by the Planning and Development Services Department to offer the strongest protections for the natural environment and surrounding neighborhood, while preserving the ability of the property owner to create a viable residential subdivision. These mitigations and recommended conditions are supported by the full force of City authority. The project applicant will implement all these provisions if they wish to proceed to final plat approval.

The City of Shoreline Planning and Development Services Department diligently adhered to its responsibility to preserve and enhance the public health, safety, and welfare in reviewing, conditioning and recommending for approval, this application for a preliminary formal plat. In imposing a range of conditions and mitigations upon the proposal, the Department has worked to preserve both the neighborhood and the environment to the maximum extent allowed by state and local laws. Both the Planning Commission and the Department chose to recommend approval of the proposal because it complied (or had the potential to comply) with all applicable Shoreline development standards and its probable significant adverse environmental impacts could be effectively mitigated.

6. RECOMMENDATION

Based upon review of the record, application of state and local laws, and full consideration of the characteristics of the project site and surrounding neighborhood, the City of Shoreline Planning and Development Services Department recommends that the SEPA MDNS issued for this proposal be upheld and the Hearing Examiner forward a recommendation for preliminary approval of the Paramount Ridge subdivision to City Council.

Allowing the appeal filed on behalf of Paramount Park Neighborhood Group will likely result in the City being exposed to substantial liability. The City will be forced to require an EIS, and potentially require modification of the proposal beyond the extent allowed by our statutory authority or supported by the record of environmental review.

Attachments

A) SEPA Threshold Determination
B) Appeal filed by Knoll D. Lowney on behalf of Paramount Park Neighborhood Group
C) Anderson vs. Pierce County, (86 Wn. App. 290, 936 P. 2d 432 (1997)
D) Staff Report to the Planning Commission, July 21, 1998

NOTE: The full record of this application for Preliminary Long Subdivision is available for inspection in the office of the Shoreline City Clerk. Copies of the full record have also been forwarded to the Shoreline Hearing Examiner and the Appellants.

ATTACHMENT A

SHORELINE

City of Shoreline
Planning and Development
Services Group
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

SEPA THRESHOLD DETERMINATION

MITIGATED DETERMINATION OF NON-SIGNIFICANCE ISSUED FOR PARAMOUNT RIDGE SUBDIVISION, 18842 MERIDIAN AVENUE, SHORELINE

PROPOSAL:	**Formal Subdivision of Two Building Lot Into Nine Single Family Residential Building Lots**
PROJECT NO:	**1997-01594**
LOCATION OF PROPOSAL:	**15450 10th Ave NE Shoreline, WA 98155**
APPLICANT:	**Creative Construction Inc. 1243 NE 152nd St. Shoreline WA 98155**
CURRENT ZONING:	**R-6 Residential (6 Dwelling Units Per Acre)**
LEAD AGENCY:	**City of Shoreline**

THRESHOLD DETERMINATION: **Mitigated Determination of Non-Significance (MDNS)** The City of Shoreline has determined that the proposal will not have a probable significant adverse impact on the environment and that an environmental impact statement is not required under RCW 43.21C.030(2)(c). An MDNS has been issued, subject to the following mitigating measures and conditions:

MITIGATION LIST:
The following mitigation measures and conditions are required to clarify and change the proposal in accordance with WAC 197-11-350:

1. **Earth**

A. The applicant shall comply with the following recommendations made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, specifically;

i. The steep fill slope located in the northwest corner of lot 5 be regraded to an inclination of no steeper than 2:1 (Horizontal/Vertical) for appropriate long-term stability.
ii. All bare areas should be revegetated or be mulched with straw to reduce erosion until permanent landscaping and vegetation are in place.
iii. A silt fence should be erected along the downslope sides of the development area.

iv. The storm drain system for the proposed street should be installed and functional early in the development process.
v. No fill or debris from the clearing or excavation should be placed on the downslope sides of the houses, unless properly retained by an engineered wall.
vi. Temporary slopes cannot be excavated at a grade of more than 1:1 (Horizontal:Vertical).
vii. All permanent cuts into native soil should be inclined no steeper than 2:1 (Horizontal:Vertical).
viii. Water should not be allowed to flow uncontrolled over the top of any slope.
ix. All permanently exposed slopes should be seeded with an appropriate species of vegetation to reduce erosion and improve the stability of the surficial layer of soil.

B. In addition to regrading the fill slope located on Lot 5 of the proposal in accordance with the recommendations made by Geotech Consultants, Inc., the applicant shall plant the slope with suitable native vegetation.

2. Stormwater

A. Prior to the submission of an application for final plat approval, the applicant shall submit an analysis of the downstream stormwater management system. The analysis shall determine whether sufficient system capacity exists to safely accommodate the runoff flows to be generated by lots 5 and 6 of the proposal and make recommendations for these flows based on it's findings.

B. Prior to placing any fill on the slope surcharging the existing rockery wall in the southeast corner of the subject property, the applicant shall place a footing drain at the base of the rockery. This drain shall feed into a dedicated catchbasin which should then connect to the existing storm drain system.

3. Plants/Land Use/Aesthetics

A. Prior to the submission of an application for final plat approval, the applicant shall submit a plan that provides for the preservation of all significant trees (12" or greater trunk diameter at breast height) located outside of identified access road, driveway and building footprints.

B. The applicant shall include with the plan required under A, above, a written report identifying specific protection methods to be used for each identified tree during and after site clearing and development.

C. The applicant shall dedicate a minimum 20' wide buffer along the east and south boundaries of the subject property. This buffer shall include rear yard setbacks required under the Shoreline Zoning Code (Title 18 SMC), and remain undisturbed by construction except in the southeast corner of the property, where fill may be added to the existing slope in accordance with the provisions of the grading plan and SEPA Mitigation 3.B. above. No significant trees may be removed from this buffer area.

PUBLIC COMMENTS:
This MDNS is issued under WAC 197-11-350. The lead agency will not act upon this proposal for 15 days from the date of issuance. Any interested party may submit written comments on this project to the City of Shoreline Planning and Development Services Department. Written comments must be received before 5:00 PM on July 20, 1998. If you have any questions, please call the Project Manager, James Holland, at 546-3542, or write to; City of Shoreline, Development Services Group, 17544 Midvale Avenue North, Shoreline, WA 98133.

Anna Kolousek

Anna Kolousek, Manager
Development Services

6/29/98
Date

ATTACHMENT B

RECEIVED

SEP 2 2 1998

City Clerks Ofc.

SEP 2 2 1998

Copies to:
Tim Stewart
Bruce Disend
Anna Kolousek
James Holland
CMO

BEFORE THE CITY OF SHORELINE

IN RE: APPEAL OF RECOMMENDATION ON PRELIMINARY PLAT APPROVAL AND DETERMINATION OF NON-SIGNIFICANCE RE: PARAMOUNT RIDGE SUBDIVISION

FILE NO. 1997-01594

NOTICE OF APPEAL

Introduction

Appellant Paramount Park Neighborhood Group, Inc., ("Appellant") hereby appeals the recommendation of the Planning Commission to approve the Paramount Ridge Subdivision preliminary plat. Additionally, Appellant appeals the Mitigated Determination of Non Significance ("MDNS") on the project, dated June 29, 1998.

Description of Appellants and How Impacted

Appellant is a not-for-profit corporation representing citizens concerned about environmental issues relating to Paramount Park, its hydrological and biological systems, and its surrounding ecosystem.

ORIGINAL

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Appellant's members include neighbors living directly adjacent to or downstream of the proposed subdivision, who will experience increased erosion and flooding if the subdivision is built. In addition, the proposed subdivision will alter the quantity and quality of water flowing through Littles creek, which flows through Paramount Park, creating negative environmental impacts to the Park and its ecosystem and ultimately impacting Thornton Creek itself.

Statement Of Issues

I. Appeal of Determination of Non Significance.

The MDNS issued on the Paramount Ridge Subdivision was inadequate and contrary to SEPA.

a. The proposed subdivision is likely to have a significant environmental impact on local and downstream erosion and flooding, and other elements of the environment as defined by SEPA, requiring the preparation of an Environmental Impact Statement ("EIS"). During the hearing, Appellant provided unrebutted testimony as to the significant flooding and erosion problems in the vicinity of the project site and downstream. Such flooding negatively impacts Paramount Park and numerous individual members of Appellant. Additionally, the project, as proposed, will result in the degradation of the quantity and quality of water entering riparian wetlands and anadromous fish streams. For example, water quality will suffer due to discharge of sediments during construction, and discharge of fertilizer, oil and other contaminants and stormwater from the project over the long term. The loss of trees on the site will also have a significant environmental impact due to increased threat of erosion, slope instability, and loss of water retention. A full EIS should be prepared to analyze the impacts of this proposal.

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b. In issuing the MDNS, the City failed to sufficiently analyze impacts to the environment, including but not limited to increased flooding and erosion. See WAC 197-11-330, -335. Instead, the City has deferred analysis of these environmental impacts by allowing the analysis of these impacts to be conducted sometime in the future. This is contrary to SEPA's requirement that a DNS be based upon *actual* analysis of environmental impacts, *See* Norway Hill Preservation and Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976), WAC 197-11-335, and circumvents the public participation and accountability provisions of SEPA. Rather than conduct the necessary analysis, the City bases its action on the assumption that there is sufficient capacity in the downstream drainage system to handle the increased surface water from the subdivision, even though that assumption is contrary to the unrebutted evidence presented at the hearing. In addition, the City failed to analyze issues such as subsurface water flows, which are significant environmental impacts raised at the hearing.

c. In issuing the MDNS, The City failed to consider likely direct, indirect, and cumulative impacts of this proposal, including but not limited to the impact of other permitted and planned developments on erosion and surface water management. See 197-11-060(4).

d. In issuing the MDNS and approving the subdivision, the City acts contrary to its own codes related to environmental protection, which are incorporated into SEPA. These include codes related to drainage, roads, flood hazards, subdivisions, and critical areas. For example, but not by way of limitation, the City's code limits discharges of stormwater to pre-development volume and velocity, and allows direct off-site discharge only where sufficient capacity in the downstream system is known to exist. These provisions are violated by the proposal.

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e. In issuing the MDNS, the City relied upon inaccurate information contained in the SEPA checklist and accompanying reports, making meaningful environmental review impossible.

f. In issuing the MDNS, the City failed to properly consider all substantive environmental policies and failed to require sufficient mitigation to bring the level of impacts of the project below a level of environmental significance. For example, the projeet fails to mitigate for the full impacts to surface water and flooding, and wetlands and wildlife habitat. Moreover, mitigation that was required in the MDNS will be impossible to implement. For example, but not by way of limitation, the Developer has been unable to obtain an easement through which to discharge stormwater to the existing but wholly inadequate stormwater system. Without such an easement, the subdivision cannot be built. The approval of the plat depended upon misrepresentations by the developers and therefore provides justification for reopening the record to correct such misrepresentations.

g. Neighborhood character also will be significant adversely affected by the project. Currently, the neighborhood consists of detached single family houses on significantly larger lots than those proposed in the subdivision. The new development will significantly affect the aesthetics of the neighborhood and will lower property values. This compatibility issue should have been considered under SEPA and the subdivision ordinance.

h. The physical configuration of the proposal will need to be altered to accommodate necessary mitigation and environmental protection, probably requiring alteration of the layout and number of lots, and the configuration of stormwater systems and utilities, and the potential effects of the project. A proposal must be adequately defined to ensure proper environmental review. See WAC 197-11-060.

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i. When requiring mitigation as a condition of approval, the City is required to set forth the policies on which the mitigation measures are based and the environmental impacts sought to be mitigated. See Levine v. Jefferson County, 116 Wn.2d 575 (1991). The MDNS does not specifically identify the significant environmental impacts that will occur as a result of the proposal. Further, the MDNS does not analyze how such environmental impacts will be mitigated by the proposed measures such that an EIS is unnecessary. Therefore, the MDNS does not demonstrate that environmental impacts were considered and mitigated in a manner sufficient to comply with SEPA.

j. Appellants hereby incorporate by reference the concerns and issues identified in the comment letter of its members.

k. The City has rightfully rejected the proposal for utilizing infiltration pits, as these were demonstrated to have a significant environmental impact by requiring removal of trees, violating buffer requirements, and increasing danger of flood, landslides and erosion. The proposal for infiltration pits also violated the King County Surface Water Design Manual.

II. Preliminary Plat Approval.

In recommending / approving the subdivision proposal, the City acted contrary to the local and state subdivision regulations, including RCW 58.17.110 and King County Code Title 19. For example, but not by way of limitation, the following errors occurred:

a. The City failed to inquire into the public interest of the proposed subdivision or make findings thereon as required by RCW 58.17.110, and the developer has not demonstrated public interest as required by KCC 19.08.050.

b. The City approved the subdivision without requiring "appropriate provisions" for items such as drainage ways, as required by RCW 58.17.110. For example, but not by way of

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the City abrogated its responsibility by approving the subdivision *prior* to the submission of an analysis of adequate downstream drainage capacity. By so doing, the City also violated the public participation elements of RCW Chapter 58.17.

c. The City failed to comply with development regulations, including those related to drainage and flood protection, erosion hazard zones and steep slopes. For example, but not by way of limitation, the proposed drainage system is inconsistent with the King County Surface Water Design Manual, which has been adopted by the City.

d. Appellant hereby incorporates the allegations relating to SEPA as if set forth herein.

Authorized Representatives

Smith & Lowney, P.L.L.C., and Knoll D. Lowney, are serving as authorized representative to the Paramount Park Neighborhood Group, Inc.

Knoll D. Lowney
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Relief Requested

Appellants seek reversal of the MDNS and an issuance of a Determination of Significance ("DS") requiring that an environmental impact statement ("EIS") be prepared. Appellants also seek denial of the subdivision.

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Respectfully Submitted on this 22nd day of September, 1998.

SMITH & LOWNEY, P.L.L.C.

By _____
Knoll D. Lowney, WSBA # 23457
Attorneys for Paramount Park Neighborhood Group, Inc.

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Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997).

1997

[No. 19643-3-II. Division Two. May 9, 1997.]
JAMES R. ANDERSON, ET AL., Appellants, v. PIERCE COUNTY, ET AL., Respondents.

[1] Environment - SEPA - Governmental Action - Judicial

May 1997
291

ANDERSON v. PIERCE COUNTY

86 Wn. App. 290

Review - Standing - Test. A person has standing as a "person aggrieved" under RCW 43.21C.075(4) to obtain judicial review of a decision under the State Environmental Policy Act if: (1) the interest the person is seeking to protect is arguably within the zone of interests protected or regulated by the act, and (2) the person has alleged an injury in fact (i.e., it is alleged that the proposed action will result in specific and perceptible harm).

[2] Environment - SEPA - Governmental Action - Consideration of Environmental Issues. The State Environmental Policy Act (RCW 43.21C) requires that government decisionmaking give environmental values appropriate consideration along with economic and technical considerations; the act does not, however, demand a particular substantive result.

[3] Environment - SEPA - Mitigated Determination of Nonsignificance - Agency Discretion. Whether the probable environmental impacts of a proposed development should be addressed by way of a mitigated determination of nonsignificance - under which assent to the development is conditioned upon the developer's performance of one or more mitigation measures or modification of the development - rather than an environmental impact statement is a matter addressed to the sound discretion of the governing agency.

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)

[4] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Standard of Review. Judicial review of an agency's decision to address the probable environmental impacts of a proposed development by way of a mitigated determination of nonsignificance - under which assent to the development is conditioned upon the developer's performance of one or more mitigation measures or modification of the development - is conducted under the clearly erroneous standard. A decision is not "clearly erroneous" unless it is unsupported by evidence in the record or the reviewing court is left with a definite and firm conviction that a mistake has been made. A mitigated determination of nonsignificance should be upheld under the clearly erroneous standard if (1) environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with the State Environmental Policy Act (RCW 43.21C), (2) it is based on information sufficient to evaluate the development's probable environmental impacts, and (3) the mitigation measures are reasonable and capable of being accomplished.
[5] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Deference to Agency. An agency's decision to address the probable environmental impacts of a proposed development by way of a mitigated determination of nonsignificance rather than an environmental impact statement is entitled to substantial deference by a reviewing court.
[6] Environment - SEPA - Mitigated Determination of

Nonsignificance - Validity - In General. Under the State Environmental Policy Act (RCW 43.21C), a mitigated determination of nonsignificance - under which assent to a proposed development is conditioned upon the developer's performance of one or more mitigation measures or modification of the development - can be a valid alternative to an environmental

impact statement for addressing the probable environmental impacts of the development.
[7] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Community Displeasure - Effect. Community displeasure is not a sufficient basis to overturn an agency's decision to issue a mitigated determination of nonsignificance rather than to require an environmental impact statement.
[8] Environment - SEPA - Mitigated Determination of Nonsignificance - Review - Party's Demand for EIS - Effect. An aggrieved party's demand for an environmental impact statement is not a sufficient basis for overturning an agency's decision to issue a mitigated determination of nonsignificance in lieu of requiring an EIS.
[9] Environment - SEPA - Mitigated Determination of Nonsignificance - Size and Complexity of Development - Effect. The size and complexity of a proposed development does not foreclose an agency's using the mitigated determination of nonsignificance process rather than the environmental impact statement process to address the probable environmental impacts of the development.
[10] Constitutional Law - Separation of Powers - Judicial Encroachment. Under the separation of powers doctrine, the judiciary should not arrogate unto itself powers that constitutionally reside with the legislative or executive branch of government.
[11] Constitutional Law - Separation of Powers - Policymaking Decisions. Environmental policy issues are properly addressed to the legislative and executive branches of government, not the judicial branch.
[12] Certiorari - Statutory Review - Review - Appellate Review - Record - Agency Record - Findings and Conclusions. When reviewing a trial court's decision on an RCW 7.16 writ of certiorari (or writ of review), an appellate court reviews de novo the record of the government agency that made the decision subject to the writ, not the record of the trial court. Conclusions of law are reviewed under the error of law standard.

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)

Unchallenged findings of fact are verities.
[13] Statutes - Construction - Retroactivity - Presumption - In General. A statute is presumed to apply prospectively only unless the Legislature has clearly indicated its intent that the statute apply retroactively or it is remedial in nature. A statute is

remedial in nature if it relates to practice, procedure, or remedies and does not affect a substantive or vested right.
[14] Statutes - Construction - Retroactivity - Presumption - Tense of Verbs. The presumption that a statute applies prospectively and not retroactively is strengthened by the Legislature's use of only present and future tenses in the wording of the statute.
[15] Statutes - Construction - Retroactivity - Absence of Express Provision. The retroactive application of a statute will not be judicially implied when the act does not expressly so provide.
[16] Statutes - Construction - Retroactivity - New Cause of Action. A statute that creates a new right of action is presumed to apply to future transactions only.
[17] Building Regulations - Land Use Actions - Attorney Fees - Statutory Right - Retroactivity. RCW 4.84.370, enacted in 1995 to provide for awards of attorney fees to prevailing parties in land use actions, applies prospectively only.

Nature of Action: A citizen, a citizens' organization, and a municipal corporation sought judicial review of a county's issuance of a mitigated determination of nonsignificance and a conditional use permit for the construction of a soil bio-remediation facility in an unincorporated area of the county near the boundary of the municipal corporation.

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)

Superior Court: The Superior Court for Pierce County, No. 94-2- 05136-4, Karen L. Strombom, J., on June 2, 1995, entered a judgment upholding the county's decision.

Court of Appeals: Holding that the county's determination of nonsignificance, conditioned on several mitigation measures, was a proper means of addressing the environmental impacts of the proposed development; that the environmental factors associated with the proposed development were properly addressed; and that the preparation of an environmental impact statement was not required by law under the circumstances, the court affirms the judgment.

Joanne Henry and Vandeberg Johnson & Gandara, for appellants.

Brian L. Holtzclaw and Cairncross & Hempelmann, P.S.; John W. Ladenburg, Prosecuting Attorney for Pierce County, and Eileen M. McKain, Deputy; and John L. Hendrickson and Foster Pepper & Shefelman, for respondents.

HUNT

HUNT, J. - The City of Buckley and the Buckley Plateau Coalition appeal Pierce County's issuance of a Mitigated Determination of Non-Significance (MDNS) and a Conditional Use Permit to RPW Industries, Inc. Buckley contends that (1) the Hearing Examiner's decision to uphold the MDNS was "clearly erroneous," and (2) the Hearing Examiner erred in finding no violation of an Urban Area Agreement between Pierce County and the City of Buckley. RPW Industries and Pierce County contend that (1) Buckley does not have standing to challenge the MDNS, and (2) they are entitled to reasonable attorney fees and costs

under the Regulatory Reform Act, RCW 4.84.370. We affirm the decisions of the Hearing Examiner and deny the requests for attorney fees under RCW 4.84.370.

FACTS

In 1988, Pierce County and the City of Buckley entered into an Urban Area Agreement (UAA), County Ordinance No. 88-187, in order to plan for anticipated growth. The purpose of the UAA was to "plan for and regulate uses of land and the environmental impacts arising therefrom within their jurisdictions, and [to] consider the impacts of governmental actions upon adjacent jurisdictions. . . ." /1

1 An unincorporated area outside Buckley city limits was designated the "Buckley Urban Area." It appears that both Buckley and Pierce County anticipate eventual annexation to Buckley of portions of this unincorporated area.

Under the UAA, Buckley reserved the right to review land use regulations, proposals, hearings, and decisions before finalization by Pierce County. Pierce County agreed to provide Buckley with copies of permit requests and accompanying documents submitted in accordance with the State Environmental Policy Act (SEPA). RCW 43.21C.010.910. The UAA also required Buckley to notify Pierce County in writing within 15 days if any proposed action was inconsistent with Buckley's plans or development strategies. The County agreed to "consider the City's response prior to taking any action on the application" but retained final authority for all decisions.

In November 1990, RPW Industries, Inc. (RPW), submitted a permit application to construct a soil bio-remediation facility (RPW Project) on eight acres of a 33-acre parcel at the corner

of SR-410 and 254th Avenue East in unincorporated Pierce County, between Buckley and Bonney Lake. The RPW Project would use naturally-occurring bacteria to break down petroleum hydrocarbons in contaminated soils (PCS). The RPW Project would not be used to treat any soils containing hazardous wastes.

The Pierce County Department of Planning and Land Services (PALS) classified the RPW Project as a "Waste Recycling Facility," which required a Conditional Use Permit (CUP). Along with the CUP application, RPW submitted an Environmental Checklist (checklist) as prescribed by SEPA. The CUP application and the checklist were reviewed by PALS, several state and local agencies, and the City of Bonney Lake. PALS was initially unaware of the UAA because it did not have a copy of the UAA or a map of the Buckley Urban Area. Consequently, PALS did not send to Buckley copies of the RPW Project CUP application or the checklist at the outset of the review process.

PALS received numerous comments from state and local agencies concerning several significant adverse environmental impacts that were not addressed in the checklist. PALS then informed RPW that the RPW Project

would likely cause significant adverse environmental impacts, and that PALS planned to issue a threshold Determination of Significance (DS), which would require RPW to prepare an Environmental Impact Statement (EIS).

RPW and PALS then began a series of intensive negotiations to design measures to mitigate the RPW Project's significant adverse environmental impacts so that a Mitigated Determination of Non- Significance (MDNS) could be issued and an EIS would not be required. Over the next 12 to 18 months, RPW and PALS accumulated volumes of environmental studies and evaluations, which were compiled in a planning department file.

In March 1992, Kathy Sandor, the Mayor of Buckley (Mayor),

contacted PALS, expressing displeasure with the lack of notice provided to Buckley, as well as an alleged lack of in-depth review of the RPW Project. The Mayor requested that PALS issue a DS for the RPW Project and require preparation of an EIS.

On April 9, 1992, Debora Hyde, the Director of PALS (Director), apologized to the Mayor for not having previously provided Buckley with notice of the RPW Project application, stating that the failure was an unfortunate oversight. The Director provided Buckley with documents related to environmental review of the RPW Project proposal and stated that:

[T]his department is close to issuing a . . . MDNS for this proposal. This MDNS will carry approximately 54 mitigation measures aimed at protecting wetlands, wildlife, surface and ground water quality, air, noise, odor, and traffic impacts

. . .

. . . We hope that sending this material at this time will provide you with additional time to review the proposal before the MDNS is issued.

The Director assured the Mayor that the MDNS mitigation measures would protect surrounding land uses from the impacts of the RPW Project. The Director promised to send a copy of the MDNS to Buckley as soon as it was

issued, noting that a 15-day comment period would follow its issuance. Buckley submitted no comments to Pierce County before the MDNS was issued.

Seven weeks later, on May 28, 1992, PALS issued a MDNS for the RPW Project. The MDNS imposed 54 mitigating conditions on the RPW Project in order to address seven primary areas of significant environmental impact. /2 The MDNS was later amended and reissued with minor revisions on July 17, 1992.

Buckley appealed the issuance of the MDNS to the local Pierce County Hearing Examiner. The Hearing Examiner conducted extensive public hearings, during which over 60 exhibits were admitted, nearly 50 witnesses testified, and numerous experts and professionals provided scientific analysis. The Hearing Examiner found that the proposed RPW Project, as mitigated by the 54 conditions, would cause only moderate environmental impacts, such that an EIS was not required. The Hearing Examiner gave "substantial weight" to PALS' election of the MDNS process, instead of the DS/EIS process, and concluded that the issuance of the MDNS was not "clearly erroneous." /3

Buckley appealed the Hearing Examiner's decision to the Pierce County Council. The Council remanded the

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2 While the 54 mitigating conditions are too lengthy to be listed in this opinion, they provided for example that RPW must:

(1) Submit a detailed final mitigation plan which would provide extensive buffers consisting of native species of trees and bushes to mitigate the loss of wetland areas and to mitigate the impacts of traffic, noise, light, glare, and movement from the RPW Project;

(2) Treat all stormwater runoff with approved bio-filtration systems and prevent any runoff from entering adjacent wetland areas;

(3) Comply with all applicable regulations of the Puget Sound Air Pollution Control Agency which may require implementation of the Best Available Control Technology to control odor, air, and noise impacts;

(4) Install and maintain leak detection and protective liner systems under the entire RPW Project area, to be approved by the Tacoma-Pierce County Health Department, to prevent groundwater and surface water contamination.

3 The Hearing Examiner stated, however, that even though the decision to utilize the MDNS process was not "clearly erroneous," he personally disagreed with the decision not to

require an EIS, which would have afforded greater public involvement.

case to the Hearing Examiner to determine whether Pierce County had complied with the UAA.

On remand, the Hearing Examiner ruled that under the UAA, Pierce County was required to provide Buckley with the RPW Project CUP application and checklist "within a short time" after having received them. The Hearing Examiner determined that Pierce County's failure to give Buckley early notice of the RPW Project application was remedied on April 8, 1992, when the County provided Buckley with the necessary environmental information and an opportunity to contribute to the MDNS process. The Hearing Examiner thus concluded that Pierce County had substantially complied with its obligations under the UAA.

Buckley again appealed the Hearing Examiner's decision to the Pierce County Council. The Council deadlocked three to three, and because there was no majority, the decision of the Hearing Examiner was affirmed.

Buckley then obtained a writ of review from Pierce County Superior Court pursuant to RCW 7.16.010-.370. After a hearing, the trial court affirmed the Hearing Examiner's decision, holding that: (1) The decision to issue an MDNS was not "clearly erroneous;" (2) the RPW Project, as mitigated under the MDNS, would not have a significant adverse environmental impact; and (3) Pierce County did not violate the UAA. /4

Buckley timely appealed the decision of the trial court. Pierce County now argues that the Buckley Plateau Coalition lacked standing to challenge the MDNS. Pierce County and RPW also request reasonable attorney fees and costs under the newly enacted Regulatory Reform Act, RCW 4.84.370.

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4 The trial court indicated that in her personal opinion, an EIS may have been appropriate for the RPW Project in order to facilitate public comment and public access to information.

ANALYSIS

I. Standing to Challenge the MDNS.

[1] Any "person aggrieved" by a SEPA determination may obtain judicial review. RCW 43.21C.075(4). The term "person aggrieved" has been interpreted to include anyone with standing to sue under existing law. Trepanier v. City of Everett, 64 Wn. App. 380, 382, 824 P.2d 524 (1992). Washington courts apply a two-part test for determining whether a person or entity has standing to challenge a SEPA determination: (1) The interest that the party is seeking to protect must be "arguably within the zone of interests to be protected or regulated" by SEPA; and (2) the party must allege an "injury in fact," i.e., that he or she will be "specifically and perceptibly harmed" by the proposed action. /5 Trepanier, 64 Wn. App. at 382 (citing Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 886, 576 P.2d 401 (1978) (quoting Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 153, 90 S. Ct. 827, 829, 25 L. Ed. 2d 184 (1970))).

In order to show "injury in fact," the Buckley Plateau Coalition must present testimony or affidavits indicating that it will be adversely affected by Pierce County's decision to issue the MDNS and not to require an EIS. Trepanier, 64 Wn. App. at 383. If Buckley's alleged injury is merely conjectural or hypothetical, then there can be no standing. Trepanier, 64 Wn. App. at 383 (citing United States v. SCRAP, 412 U.S. 669, 688-89, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973)).

Pierce County contends that the Buckley Plateau Coalition has not alleged a sufficient "injury in fact," but rather has presented only community displeasure and hypothetical injury to support its claim, which were insufficient to confer standing. See CORE v. City of Olympia,

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5 Pierce County does not argue that the City of Buckley lacks standing.

33 Wn. App. 677, 683-84, 657 P.2d 790 (1983) (a bald assertion of injury without supporting evidentiary facts is insufficient to support standing).

The Chairman of the Buckley Plateau Coalition testified before the Hearing Examiner that he owns 60 acres of property immediately adjacent to the RPW Project site which he alleges would be adversely impacted by the RPW Project. He also contended that the mitigation measures proposed in the MDNS were insufficient to control storm-water runoff which would damage his adjoining property. We agree with the trial court that the Buckley Plateau Coalition adequately alleged a specific "injury in fact" within the "zone of interests" to be protected by SEPA, and that they had standing to challenge the MDNS.

II. Judicial Review of a MDNS.

[2] SEPA is a legislative pronouncement of our state's environmental policy. It recognizes "the necessary harmony between humans and the environment in order to prevent and eliminate damage to the environment and biosphere, as well as to promote the welfare of humans and the understanding of our ecological systems." Stempel v. Department of Water Resources, 82 Wn.2d 109, 117, 508 P.2d 166 (1973). While SEPA does not demand a particular substantive result in government decision-making, SEPA does require that "environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations." Stempel, 82 Wn.2d at 118; RCW 43.21C.030(2)(b).

A. The Threshold Determination.

Under SEPA, before a local government processes a permit application for a private land use project, it must make a "threshold determination" of whether the project is a "major action significantly affecting the quality of the environment." RCW 43.21C.030(2)(c); Sisley v. San Juan County, 89 Wn.2d 78,

82, 569 P.2d 712 (1977). A "threshold

determination" by the "responsible official" of the "lead agency" is required for any proposal that meets the definition of "action" under SEPA and is not "categorically exempt." WAC 197- 11-310(1) and (2). In order to facilitate the "threshold determination," the applicant must prepare an environmental checklist, which must provide information reasonably sufficient to evaluate the environmental impact of the proposal. WAC 197-11- 315 to 335. The responsible official must then thoroughly consider a proposal's potential environmental significance as documented in the environmental checklist. WAC 197-11-315(1)(a).

Based upon independent review of all relevant information and analysis, the responsible official determines whether the proposal is "likely to have a probable significant adverse environmental impact." WAC 197-11-330(1)(b). The responsible official then renders a "determination of significance" (DS) or a "determination of non-significance" (DNS). A DS mandates intensified environmental review through preparation of an EIS. WAC 197-11-360. Conversely, a DNS means that no EIS will be required. WAC 197-11-340. It does not mean, however, that environmental review will not be undertaken.

B. Mitigated Determination of Non-Significance.

An alternative threshold determination is the "mitigated determination of non-significance," or "MDNS," which involves changing or conditioning a project to eliminate its significant adverse environmental impacts. WAC 197-11-350. With a MDNS, promulgation of a formal EIS is not required, although, as here, environmental studies and analysis may be quite comprehensive. An applicant may clarify or change a proposal by revising the environmental checklist and permit application so that a MDNS

can be issued for the revised project. WAC 197-11-350(2). Alternatively, the governmental agency may specify mitigation measures and issue a MDNS only if the proposal is

changed to incorporate those measures. WAC 197-11-350(3).

C. Standard of Review.

[3-5] Selection of environmental review process and protection is left to the sound discretion of the appropriate governing agency, not this court. We review a decision to issue a MDNS under the "clearly erroneous" standard. Pease Hill Community Group v. County of Spokane, 62 Wn. App. 800, 809, 816 P.2d 37 (1991). A finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed. Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267, 274, 552 P.2d 674 (1976) (quoting Ancheta v. Daly, 77 Wn.2d 255, 259-60, 461 P.2d 531 (1969)). For the MDNS to survive judicial scrutiny, the record must demonstrate that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA," and that the decision to issue a MDNS was based on information sufficient to evaluate the proposal's environmental impact. Pease Hill, 62 Wn. App. at 810 (citing Sisley, 89 Wn.2d at 85; Brown v. City of Tacoma, 30 Wn. App. 762, 766, 637 P.2d 1005 (1981)). Moreover, the mitigation measures imposed must be reasonable and capable of being accomplished. RCW 43.21C.060; WAC 197-11-660(1)(c); Kiewit Constr. Group, Inc. v. Clark County, 83 Wn. App. 133, 143, 920 P.2d 1207 (1996). An agency's decision to issue a MDNS and not to require an EIS must be accorded substantial weight. RCW 43.21C.090; Indian Trail Property Owner's Assoc. v. City of Spokane, 76 Wn. App. 430, 442, 886 P.2d 209 (1994).

Anderson v. Pierce County, 86 Wn. App. 290, 936 P.2d 432 (1997)

D. SEPA Public Policy and the MDNS Process.
Buckley contends that use of the MDNS process violated the basic policies of SEPA, WAC 197-11-030(2), in that: (1)

the public did not have useful access to necessary information or the decision-making process; (2) the PALS file that was available for public review was not clear and concise; and (3) the threshold determination process dragged on for an excessive period of time. Buckley further argues that the Hearing Examiner erred in failing to consider adequately the public policies of SEPA, /6 and in giving "substantial weight" to the County's utilization of the MDNS process.

[6] The Legislature created the MDNS process to encourage agencies and applicants to work together to reduce the impacts of a project below the threshold level of significance. WAC 197-11- 350. With an MDNS, promulgation of an EIS and intense public participation are rendered unnecessary because the mitigated project will no longer cause significant adverse environmental impacts.

Use of mitigation to bring projects into compliance with SEPA, without promulgation of an EIS, has been viewed favorably by the Washington courts. The Washington State Supreme Court deems the MDNS process to be "eminently sensible." Hayden v. City of Port Townsend, 93 Wn.2d 870, 880, 613 P.2d 1164 (1980), overruled on other grounds, SANE v. Seattle, 101 Wn.2d 280, 676 P.2d 1006 (1984). The Court of Appeals, Division One, has held that

> SEPA encourages compromise and accommodation by requiring that the decisionmaker consider mitigation and state why it is inadequate to relieve the adverse impact. When the decisionmaker imposes some mitigation measures, this does not necessarily mean that unmitigated impacts no longer exist or will be totally eradicated by mitigation, but merely that as mitigated, the

project as a whole is acceptable.

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6 The policies and goals of SEPA are supplementary to existing agency authority. WAC 197-11-030(1). Agencies have the authority to pursue and grant a MDNS under WAC 197-11-350, so long as all significant adverse environmental impacts are sufficiently mitigated. The public policy objectives listed in WAC 197-11-030(2) are general guidelines for agencies to utilize throughout the SEPA process, and do not override agency authority to work cooperatively with an applicant and to grant an MDNS.

Victoria Tower Partnership v. City of Seattle, 59 Wn. App. 592, 603, 800 P.2d 380 (1990) (footnote omitted).

Similarly, the Washington Department of Ecology (DOE) has favorably characterized the MDNS process as conducive to efficient, cooperative reduction or avoidance of adverse environmental impacts:

> The mitigated DNS provision in WAC 197-11-350 is intended to encourage applicants and agencies to work together early in the SEPA process to modify the project and eliminate significant adverse impacts. The mitigated DNS process is not intended to reduce the amount of environmental review done on a project, but to reduce the paperwork needed to document the process.

Richard L. Settle, DOE Interpretations of Determination of Non-Significant Provisions, at 466 app. (1988 SEPA HANDBOOK G-1 to G- 6).

The propriety of bringing a proposal below the significance threshold by informally negotiating project modifications has been embraced by the SEPA Rules and reined in by the requirements of WAC 197-11-350. Settle, The Washington State Environmental Policy Act - A Legal and Policy Analysis, §

13(d)(vi), pg. 137- 39. The SEPA Rules provide that if in the course of formulating a MDNS, the lead agency determines that "a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared." WAC 197-11- 350(2) touchstone of the SEPA review process provides protection from abuse. If a MDNS is issued and an appealing party proves that the project will still produce significant adverse environmental impacts, then the MDNS decision must be held to be "clearly erroneous" and an EIS must be promulgated.

Our review of the record indicates that PALS thoroughly considered appropriate environmental factors in analyzing RPW's CUP application and environmental checklist, reviewing comments from other state agencies, and formulating 54 mitigation measures included in the

MDNS. After accepting comments and analyzing the proposal, PALS initially determined that the RPW Project was reasonably likely to have a "significant adverse environmental impact." WAC 197-11- 330(1)(b). PALS and RPW then worked cooperatively to reduce the project's significant adverse environmental impacts. WAC 197-11- 350(2). RPW altered its plans, and PALS imposed substantial mitigating measures. /7 These mitigation measures reduced all significant adverse environmental impacts below the threshold level of significance, such that an EIS was no longer required. WAC 197-11-350(5).

Environmental review was not "avoided" for the RPW Project. Rather, the need for an EIS was superseded by the MDNS. The 54 mitigation measures of the MDNS may provide more effective environmental protection than promulgation of an EIS, since an EIS does not automatically result in substantive mitigation. See Sisley, 89 Wn.2d at 89 (An EIS merely assures a full disclosure and consideration of environmental information prior to the

construction of the project.)

Buckley has failed to cite any fact or evidence in the record demonstrating that the RPW Project, as mitigated by the 54 MDNS conditions, will cause significant adverse environmental impacts. Despite repeated inquiries at oral argument, Buckley could not identify a single environmental impact that had not been adequately addressed in the MDNS. Buckley's skepticism about the effectiveness of some mitigation measures is speculative at best and does not provide a basis for holding the MDNS to be "clearly erroneous."

[7, 8] Moreover, community displeasure and Buckley's preference for an EIS are inadequate grounds for overturning the decision of the Hearing Examiner. See, e.g., Maranatha Mining, Inc. v. Pierce County, 59 Wn. App 795, 804, 801 P.2d 985 (1990). This legal principle was implicitly recognized by the Hearing Examiner and the trial court,

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7 See summary of conditions at note 3.

who despite their contrary personal opinions, nevertheless held as a matter of law that PALS' decision to issue an MDNS was not "clearly erroneous."

Our review of the extensive documentation and scientific analysis regarding the impacts of the RPW Project demonstrates that PALS adequately considered the required environmental factors. The 54 mitigation measures imposed by the MDNS appear to be both reasonably based on thorough analysis and capable of being accomplished. /8 RCW 43.21C.060. Therefore, we cannot say that either the Hearing Examiner's decision to uphold the issuance of the MDNS or the MDNS itself was "clearly erroneous."

D. Limiting the MDNS Process.

Buckley contends that a MDNS should be issued only for projects with minor environmental impacts. Buckley therefore requests the court to declare that a MDNS is not suitable for the RPW Project as a matter of law because of its size, scope, and complexity. Buckley asks this court to establish guidelines to regulate the use of the MDNS process.

[9] As Buckley concedes, SEPA does not set forth criteria limiting the use of the MDNS process. See, WAC 173-11-350. If the Legislature had intended that the MDNS process be used for only small, simple projects, then it would have so provided. The fact that the RPW Project is large and complex does not foreclose use of the MDNS process.

[10, 11] Buckley argues that we must establish guidelines so that the MDNS process is not abused to become an EIS-avoidance device. See Brown, 30 Wn. App. at 767. Issuance of guidelines that limit use of the MDNS process is not a proper function for the courts. Such guidelines, if necessary, are the province of our legislative and executive

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8 See note 3.

bodies. See, e.g. Homes Unlimited, Inc. v. City of Seattle, 90 Wn.2d 154, 158, 579 P.2d 1331 (1978). We therefore decline Buckley's invitation to create such guidelines judicially.

III. The Urban Area Agreement.

Buckley argues that Pierce County violated the UAA by failing to provide adequate notice of the RPW Project CUP application. Buckley contends that PALS was obligated under the UAA to transmit the CUP application and environmental checklist early in the review process. Pierce County and RPW argue that although

procedural errors did occur, the basic obligations of the UAA were followed.

[12] When a party appeals a superior court decision rendered pursuant to a writ of review, this court reviews de novo the record of the Hearing Examiner, not the superior court. Leavitt v. Jefferson County, 74 Wn. App. 668, 677, 875 P.2d 681 (1994) (citing Lejeune v. Clallam County, 64 Wn. App. 257, 263, 823 P.2d 1144 (1992)). Thus, we must determine whether the decision of the Hearing Examiner regarding the alleged violation of the UAA was "contrary to law." /9 RCW 7.16.120(3); State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce, 65 Wn. App. 614, 617, 829 P.2d 217 (1992).

The UAA required Pierce County to notify the City of Buckley when a project application was submitted and to allow Buckley to submit comments before Pierce County

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9 Under the writ statute, issues of fact are normally reviewed to determine if the findings of the hearing examiner are supported by substantial evidence. RCW 7.16.120(5); Freeburg v. Seattle, 71 Wn. App. 367, 371, 859 P.2d 610 (1993). But Buckley did not specifically assign error to any of the Hearing Examiner's findings of fact. A separate assignment of error for each finding of fact a party contends was improperly made must be included, with reference to the finding by number. RAP 10.3. Unchallenged findings of fact are considered to be verities on appeal. Henderson Homes, Inc. v. City of Bothell, 124 Wn.2d 240, 244, 877 P.2d 176 (1994). Therefore, the only issue before the court is whether the Hearing Examiner's conclusion that Pierce County did not violate the UAA was "contrary to law."

acted on the application. The UAA did not specify a time period within which Pierce County must provide this information to

Buckley, but did require Buckley to "notify the County within 15 days of receipt if any proposed action [was] found to be lacking." The UAA required Buckley to submit its concerns in writing and to

1. identify those portions of the proposed action which are inconsistent with adopted plans, policies, or development standards, or comprehensive plans under consideration; and
2. indicate whether Buckley would object; not object; or not object with conditions.

Pierce County would then "consider the City's response prior to taking any action on the application."

Because PALS was inadvertently unaware of the UAA, Pierce County did not inform Buckley of the RPW Project and provide the environmental review materials for more than a year after the CUP application was submitted. However, when PALS learned of the omission, the Director immediately sent copies of the environmental review materials to Buckley, seven weeks before the MDNS was issued. Along with these materials, PALS included a letter explaining that an MDNS was "close" to being issued and that Buckley had time to review the proposal and to provide input "before" the MDNS was issued.

The Hearing Examiner determined that even though the County should have informed Buckley of the RPW Project soon after the application was submitted, Buckley eventually had all necessary information and time to comment. The Hearing Examiner noted that the County did not issue the MDNS for seven weeks after informing Buckley about the RPW Project and that Buckley did not submit any comments during that period. Thus, the Hearing Examiner concluded that Pierce County substantially complied with the terms of the UAA and that Buckley did not fulfill its obligations.

We agree. The UAA mandated only that Pierce County was to keep Buckley informed of any land use proposals

that would affect the unincorporated surrounding areas. While Pierce County should have acted sooner in providing the information to Buckley, it remedied its error as soon as it was discovered. Buckley then failed to respond. Buckley cannot now claim that it was "harmed" when it was provided with the opportunity to provide significant input and instead chose to remain silent.

Buckley argues that because the County was so close to issuing the MDNS, any comments from Buckley would have been futile. We disagree. The County's notice indicates that Buckley had time to review the RPW Project proposal and invited Buckley's input weeks before the MDNS issued.

Even if we were to hold that the UAA was breached, Buckley cannot establish substantial harm. The UAA provided Buckley with the right only to "comment" on a proposed project. The UAA did not provide Buckley with veto power over a project, nor did the UAA mandate that Pierce County had to follow Buckley's recommendations. Under the terms of the UAA, Pierce County clearly retained decision-making authority. Thus, even if Buckley had been informed of the RPW Project at an earlier date, it is unlikely that the result would have been any different.

Moreover, the UAA does not contain a remedy provision. Buckley asserts that the alleged violation of the UAA warrants repetition of the entire SEPA process. Such a remedy is unrealistic, considering the extensive time and effort that has already been invested by RPW, Pierce County, and the other entities that have provided input.

In sum, Buckley has failed to prove that the UAA was substantively violated or that Buckley has been harmed. The decision of the Hearing Examiner was not "contrary to law." Therefore, we affirm.

IV. Attorney Fees.

Pierce County and RPW request reasonable attorney

fees and costs on appeal under the recently enacted Regulatory Reform Act, RCW 4.84.370. /10 Buckley points out that this appeal was filed one month before the Regulatory Reform Act became effective, and argues that the statute should not be applied retroactively. We agree.

[13] A statute is presumed to operate prospectively only, unless it is remedial in nature or the statutory language contains a clear indication of legislative intent that it apply retroactively. Adcox v. Children's Orthopedic Hosp. & Medical Ctr., 123 Wn.2d 15, 30, 864 P.2d 921 (1993); Johnston v. Beneficial Management Corp. of America, 85 Wn.2d 637, 641, 538 P.2d 510 (1975). A statute is remedial and has a retroactive application when it relates to practice, procedure, or remedies and does not affect a substantive or vested right. In re Mota, 114 Wn.2d 465, 471, 788 P.2d 538 (1990).

[14, 15] Statutory language couched in the present and future tenses manifests a legislative intent that the statute should apply prospectively only. Adcox, 123 Wn.2d at 30; Washington State School Dirs. Ass'n v. Department of Labor & Indus., 82 Wn.2d 367, 379, 510 P.2d 818 (1973).

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10 RCW 4.84.370, a provision providing for fees on appeal, was adopted by the Legislature as part of the Growth Management Act. LAWS OF 1995, ch. 347, § 718. The statute provides as follows:

Appeal of land use decisions - Fees and costs. (1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or

similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

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The language of RCW 4.84.370 is couched in the present and future tenses; thus, the statute on its face does not appear to apply retroactively. When retroactive application is not expressly provided in a statute, it should not be judicially implied. Miebach v. Colasurado, 102 Wn.2d 170, 180, 685 P.2d 1074 (1984).

[16] The Regulatory Reform Act, RCW 4.84.370, establishes a new right to recover attorney fees on appeal from land use decisions, where no such right previously existed. A statute that creates a new right of action is presumed to apply to future transactions only. Johnston, 85 Wn.2d at 641. RPW and Pierce County argue that:

unless a contrary intent clearly appears from the statute, the right to costs and attorney fees, as well as the determination of the amount thereof, is governed by the statute in force at the termination of the action, rather than at the time of its

commencement.

Mackey v. American Fashion Inst. Corp., 60 Wn. App. 426, 430, 804 P.2d 642 (1991) (emphasis added) (quoting City of Bellingham v. Eiford Constr. Co., 10 Wn. App. 606, 608, 519 P.2d 1330 (1974)).

However, the cases relied upon by Pierce County and RPW involve existing statutes that were amended to expand their applicability while an action was pending. Mackey, 60 Wn. App. at 430; Bellingham, 10 Wn. App. at 608. At oral argument, RPW asserted that the Regulatory Reform Act did not create a new cause of action, but rather that the Act simply amended the existing statutory attorney fees provision to increase the availability of recovery for parties who prevail in cases involving land use determinations. We disagree. In the present case, a new statute established a new right to recover attorneys fees after Pierce County's issuance of the MDNS in May 1992 and Buckley's appeal in July 1992.

[17] Retroactive application of the attorney fees portion of the Regulatory Reform Act is not appropriate. Therefore, the requests for attorney fees and costs under the Regulatory Reform Act are denied.

We affirm the Hearing Examiner's decision upholding the MDNS. We decline to award attorney fees and costs under the Regulatory Reform Act.

It is so ordered.

ARMSTRONG, J., and MORGAN, J. Pro Tem., concur.

ATTACHMENT D

CITY OF SHORELINE

Planning and Development Services
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

STAFF REPORT TO THE PLANNING COMMISSION

PUBLIC HEARING ON AN APPLICATION BY CREATIVE CONSTRUCTION INC. FOR A NINE (9) LOT PRELIMINARY LONG SUBDIVISION AT 15450 and 15440 10th AVENUE NE

HEARING DATE: JULY 30, 1998

SUMMARY INFORMATION

Project Address:	15450 and 15440 10TH Avenue NE, Shoreline, WA 98155
Zoning:	R-6 Residential (Six (6) dwelling units per acre)
Property Size:	69,488 Square Feet (1.595 Acres)
Number of Proposed Lots:	9
Proposed Lot Size:	**Lot 1:** 9,400 Sq. Ft., **Lot 2:** 8,645 Sq. Ft., **Lot 3:** 5,007 Sq. Ft., **Lot 4:** 5,103 Sq. Ft., **Lot 5:** 7,508 Sq. Ft., **Lot 6:** 8,014 Sq. Ft., **Lot 7:** 5,338 Sq. Ft., **Lot 8:** 5,552 Sq. Ft., **Lot 9:** 5,310 Sq.Ft.
Comprehensive Plan Designation:	UM (Urban Medium, 4 - 12 Units Per Acre)
Subdivision Name:	Paramount Ridge
Application No:	1997-01594
Applicant:	Creative Construction Inc.
Property Owner:	Creative Construction Inc.

Legal Description of the Subject Property

Lots 10 and 11, Block 16, Paramount Ridge Div. No. 2, According to the Plat thereof, recorded in Volume 28 of Plats, Page 50, In King County, Washington

NOTE: PLEASE VISIT THE SITE PRIOR TO THE HEARING.
Development Services Staff are available to answer any questions you may have in advance of the Hearing. Please call James Holland at 546-3542.

I. FINDINGS OF FACT

1. BACKGROUND INFORMATION

A. The Proposal

The proposal is to formally subdivide (Long Plat) two adjacent properties known as 15450 and 15440 10th Avenue Northeast into a total of nine (9) residential building lots (Attachment A, Site Plan). The property is 1.595 acres in size and entirely zoned R-6 residential. The average size of the proposed lots (excluding the proposed access tract and turnaround) would be 6,653 square feet. Lots 1 and 2 of the proposed long plat would retain their existing direct access onto 10th Avenue Northeast, while lots 3 through 9 would be served by a private road providing access onto 10th Avenue Northeast.

B. The Site

The subject property is currently occupied by two single family residences (lots 1 and 2)that are located towards the front of each lot, being set back 31 and 37 feet from the 10th Avenue right-of-way. A detached garage is located north of the existing house on 15450 10th Avenue and a woodshed is located in approximately the middle of the lot. These structures range from moderate to poor condition and would be demolished in the event of plat approval. The existing houses fronting 10th Avenue Northeast would remain. The undeveloped portions of both lots are well wooded and contain a number of significant trees (12" or greater trunk diameter measured at breast height). The property slopes a total of 40 feet from the northwest to southeast corners (an average grade of approximately 11%) and the boundary area of Lots 1 and 5 contains an earth fill bank which has a slope of 65% at its steepest point. All but the northeast corner of the site is designated as an Erosion Hazard Area under the Environmentally Sensitive Areas standards of the Shoreline Zoning Code (SMC 18.24). The only public road directly serving the proposal is 10th Avenue Northeast which the Public Works Department has designated as a residential street.

C. The Neighborhood

The project site is located in the Ridgecrest Neighborhood of Shoreline. The dominant land use in the surrounding area is single family residential, with large areas of public recreational space (Paramount Playfield and Paramount Park and Open Space) also existing in the immediate vicinity. The nearest multi-family residential development is located along 15th Avenue NE and the nearest commercial development is focused at the intersection of 145th and 15th Avenue Northeast.

Not all urban facilities are available in the immediate area of the proposal. No sidewalks or coordinated stormwater management system exist along this part of 10th Avenue Northeast and there is no full width roadway along the entire frontage of the proposed development.

D. Procedural History

An application to subdivide these properties was first submitted to Development Services on August 15, 1997. Preliminary review of the proposal was completed on November 19, 1997 and a letter sent to the agent, Mr. Gary Cooper, requesting the submission of information necessary to allow formal review of the proposal to begin. While some of the requested information was submitted on behalf of the applicant on March 2, 1998, additional review of the application and project site by planning and engineering staff revealed that the proposal was still not ready for public review. This was communicated to Mr. Cooper in a letter dated April 24, 1998 (Attachment B).

Development Services received the majority of the information requested from the applicant on June 17, 1998 and determined that the application could now proceed to the public review process. Review of the proposal under the State Environmental Policy Act (SEPA) was completed on June 29, 1998, with Development Services issuing a Mitigated Determination of Non-Significance (MDNS) for the proposal (Attachment C). Notification of this threshold determination and a summary of the proposed mitigations was included with all the public notices mailed to adjacent property owners and published in area newspapers. Preliminary public notice of the application was mailed to adjacent property owners on July 1, 1998. Public notice of the proposal was also published in the Seattle Times on July 2nd , and in the Shoreline Enterprise. Finally, in accordance with the requirements of Regulatory Reform, the Public Review Hearing before the Planning Commission was scheduled for the earliest available Planning Commission meeting date and notice of the July 30 hearing was published in the Seattle Times on July 17.

E. Public Comment

The public comment period for this proposal ran from July 2 to 5:00 PM on July 20, 1998. City of Shoreline Ordinance No. 126 (Administrative Procedures for Permit Review, Land Use Hearings and Appeals), requires a public comment period of not less than 15 days be provided. At the time the public comment period for this proposal closed, a total of 29 comment letters had been received from neighborhood residents. 11 of the comment letters requested a postponement of the public hearing date until mid August in order to allow interested citizens and neighborhood groups more time to prepare their input for the public hearing. After reviewing the provisions of City Ordinance 126, staff determined that postponement of the hearing could not be allowed and informed the first five commentors of this situation in a letter dated July 15, 1998 (Attachment D).

Comments (including requests for postponement of the hearing) were submitted by the following people; Olaf Kramms, David A. Kalman, Gail M. Hammer, Hope Crippen, Anne Sakai (3), Donna M. Egan (2), Lauren Basson (2), Severa A. Guillen, Jon and Joan Desrosier (2), S. Harris, Kathi and Roberto Swain (2), Ed and Audrey Waddell, Janet Way (Paramount Park Neighborhood Group), Cecilie Hudson, Mikhail and Tanya Golant and Igor and Inna Ioffe, Steve and Sandra Elliot, Richard Tinsley, Clive and Carolyn Stewart, Marylou Evans, Charles and Julie Milstead, Jan Stewart, Thornton Creek Alliance, and Vicki Westberg.

Staff have reviewed all these letters, identified the issues raised by each person and consolidated them into Table 1 (pages 5, 6 and 7 of this report).

On July 20, 1998, Development Services also received a citizen petition in opposition to the proposed subdivision. The petition was signed by a total of four (4) people and objected to the proposal for the following reasons;

A. Existing problems with surface water
B. Removal of trees from the subject property
C. Landslide problems

All comment letters have been copied for review by the Planning Commission and form a separate attachment to this report.

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
Public Hearing should be delayed to allow interested parties more time to prepare.	20	City Ordinance No. 126 limits the period between issuance of public notice and holding the public hearing to a maximum of 30 days	No	The 30 day period between issuing a public notice and holding a public hearing was included in City Ordinance 126 in direct response to the Washington State 'Regulatory Reform' Act of 1995.
The subject property and surrounding land are unstable, with noted instances of slippage, sinkholes and underground springs.	9	Review of conditions on-site and in the surrounding area is required under SEPA and subdivision codes	Proposed subdivision conditions 1, 5 and 6 and the conditions required by the SEPA MDNS address site stability and off-site stormwater issues.	The applicant has been required to produce a geotechnical evaluation of the surrounding property and an engineered stormwater detention system. The SEPA and Subdivision conditions required for this proposal will prevent degradation of the project site and potentially improve existing off-site conditions.
SEPA mitigations should more explicitly control the project	1	SEPA rules (WAC 197-1100) require that specified mitigations be understandable, capable of implementation and supported by adopted regulations.	Yes	This comment relates to the summary of mitigation measures provided in the July 2 public notice. Actual mitigation language complies with the SEPA rules.
Allowed removal of trees and existing vegetation from the project site will harm neighborhood appearance, worsen stormwater runoff and increase erosion hazard.	17	Some authority to limit tree removal is provided by subdivision regulations and SEPA	Yes. Subdivision condition 1 and SEPA mitigations control the timing and removal of trees and on-site vegetation. A 20' buffer is also required along the eastern and south property boundaries.	In addition to the conditions limiting the timing and amount of tree removal, the City has required installation of an on-site stormwater detention system that has the design requirement of limiting the volume and velocity of post development stormwater flows to pre-development levels.

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
Stormwater from the Paramount Playfield currently drains onto the project site.	6	Yes.	Subdivision condition 6 requires stormwater flows from 10th Avenue NE be directed into the required planting strip.	Adopted standards for design of the on-site stormwater detention system require the proposal to accommodate existing and proposed stormwater flows. Any on-site flows from Paramount Playfield must be accommodated by the proposed system.
The intersection of 10th Avenue NE and NE 155th street has poor visibility and a history of accidents.	1	Yes.	No.	Staff review of the proposal found that the level of traffic to be generated by this proposal was not sufficient to trigger further analysis of potential impacts.
The property should be used for green space instead of development.	2	No.	No.	The presence of Paramount Playfield and Paramount Park and Open Space in the vicinity of this proposal indicates a good supply of open/recreational space is already available.
New vehicle traffic associated with the development will increase noise and air pollution in the area.	2	Yes. SEPA requires consideration of potential air and noise pollution.	No.	Such impacts were considered in the King County Comprehensive Plan and are reflected in the development density allowed for the property.
There should be no net loss of wildlife habitat around Paramount Park.	2	Yes. City regulations require preservation of designated habitat areas.	Yes. SEPA mitigations establish a buffer area, limit removal of significant trees, and require replanting.	Due to designation of most of the property as an Erosion Hazard Area, the City has required the applicant to retain existing significant trees and replant unpaved areas.
An EIS should be prepared on the proposal	5	Yes. Adopted regulations specify when an EIS is required	Yes. the City has issued a Mitigated determination of Non-Significance (MDNS)	City review of the proposal did not identify the existence of significant adverse environmental impacts that could not be successfully mitigated.
Stormwater runoff from the project site will impact the Paramount Park Wetland and Thornton Creek.	5	Yes. Stormwater regulations consider sensitive areas in requiring detention.	Yes. SEPA mitigation 2.A. requires analysis of the downstream stormwater system.	Adopted regulations only allow direct off site discharge where sufficient system capacity is known to exist.

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
The local storm drainage system (particularly on 12th Avenue NE) is already overloaded and the proposed development will worsen this situation.	10	Yes. City regulations require detention of stormwater and limit release to pre-development levels.	Yes. SEPA mitigations require analysis of the downstream system to determine whether sufficient capacity exists to accommodate the proposed direct discharge from lots 5 and 6.	The City has considerable authority to review and regulate projects that will create more than 1500 Sq. Ft. of impervious surface. On-site detention is required for stormwater flows greater than 0.5 cubic feet per second and any required system capacity must exist before final approval is granted.
The number of proposed houses/lots should be significantly reduced.	5	Yes. City regulations allow for required reduction in lot numbers where significant environmental constraints are proven to exist.	No.	The proposed plat is for 10 lots rather than the 11 potentially allowed by the Zoning Code. Review of the proposal by planning and engineering staff indicated that site and neighborhood impacts could be mitigated without requiring a reduction in the number of proposed lots.
Trees on adjacent properties will be damaged or killed by the proposed access road.	2	No.	No. SEPA mitigations focus on on-site trees and vegetation.	If the plat is approved, staff can request the applicant to prepare construction plans that minimize root damage to adjacent trees.
The majority of the proposed building lots are smaller than the 7200 square feet proposed in the new Comprehensive Plan.	5	Yes. All proposed building lots comply with the size and dimensional standards of the present zoning code.	No.	State law requires that all development applications be reviewed under the regulations in effect at the time the application is considered to be complete by the City. Prospective changes cannot be considered.
Wetland plants are growing on adjacent properties	2	Yes The Zoning code protects designated wetlands.	No.	City regulations protect only wetlands that are relatively large in size, have high wildlife habitat value, or a biologically diverse.

II. REVIEW PROCESS AND CODE STANDARDS

1. Process

For any application proposing the division of a single parcel of land into five or more building lots, the City of Shoreline requires a landowner to apply for a Formal (or Long) Subdivision. As the name implies, the review and approval process to be followed for a long subdivision is more detailed than that required for a short plat. Before they can build any houses, the applicant must go through the Preliminary Approval process, the Final Approval process and submit construction plans for review and approval (under the Site Development Permit process). Information required for the preliminary and final approval processes is summarized in the application checklists included as Attachment E of this report.

City of Shoreline Ordinance No. 126 requires that the following review processes be followed for formal subdivisions:

Action	Review Authority	Appeal Authority and Decision-Making Body
1. Preliminary Long Plat (Subdivision)	Planning Commission	City Council
2. Final Long Plat (Subdivision)	Director	City Council

While both the Preliminary and Final approval of a long subdivision are actions that can only be taken by the City Council, only the preliminary approval process requires public notification of a proposal and the holding of a formal public hearing in front of the Planning Commission (Ordinance No. 126, Process 'C' , Attachment F). It is, therefore, through the preliminary subdivision review and approval process that the issues of size, form, and contribution to the community associated with a subdivision proposal are addressed and specific conditions defined for the project in order to receive preliminary approval. The final approval and site development review processes focus on the 'nuts and bolts' issues of making the subdivision comply with any special conditions and mitigations and provide for all required services and safety issues in the manner specified by relevant sections of the City code.

The applicant must comply with all conditions of preliminary approval before final plat approval can be granted by the City Council. If the applicant can't, or wishes not to, comply with the conditions of preliminary approval, the proposal would have to be revised and a new public notice, public comment period and public hearing scheduled in front of the Planning Commission.

2. Applicable Statutes and Codes

The submission, review and approval of preliminary subdivisions is governed in part by the King County subdivision regulations, adopted on an interim basis by the City of Shoreline in 1995 (Section 17.28 of the Shoreline Municipal Code). These regulations provide standards specifying the information to be provided by the developer at the time of application for a preliminary plat (See Attachment E.1, Preliminary Subdivision Submittal Checklist), authority of the City to require additional information or studies prior to preliminary review, and timelines for submission of final plat documents

These King County regulations provide the local standards specifically required from each jurisdiction by the state platting statute, (Plats , Subdivisions and Dedications, RCW 58.17). The state law defines the land use regulations long subdivisions shall be reviewed under, identifies public notice procedure and hearing responsibility, specifies timelines for review and decision, and lists factors to be considered in approving a proposed long subdivision. RCW 58.17.100 requires the Planning Commission to review all preliminary plats, and make recommendations to the City Council to approve or disapprove each proposal, on the basis of conformance of the proposed subdivision to;

A. The general purposes of the Comprehensive Plan, and,
B. Locally adopted planning standards and specifications.

The following section provides analysis of the specific code requirements applicable to this proposal:

III. ANALYSIS

A. Zoning Code (Chapter 18, Shoreline Municipal Code)

The project site is 69,488 square feet (1.595 acres) in size. Using the method provided by the Zoning Code for calculating the number of building lots allowed for a development proposal (SMC 18.12.030, 18.12.070, .080, .085 and 200), the maximum number of lots allowed by the City would be 10. The applicants are proposing creation of a total of 9 building lots. In keeping with the design standards of the R-6 zone, the applicant has also chosen to construct detached single family residences on each proposed lot. This property and the surrounding area are intended for predominantly residential use under the UM (Urban Medium 4 -12 units per acre) designation provided by the King County Plan.

The City of Shoreline park closest to the proposed development is the Paramount Playfield located across 10th Avenue NE from the project site. The sizing of the proposed lots and the nearness of the park allow the development to meet the Zoning Code standards for provision of an on-site children's play area and recreational space.

The majority of the subject property is also designated as an Erosion Hazard Area by the Environmentally Sensitive Areas Maps prepared by King County and adopted by the City of Shoreline. The protection standards provided by this section of the Zoning Code assign the City substantial authority to control on site development activities in order to minimize the threat of soil erosion. Any grading and construction plans submitted as part of the plat review process are reviewed for compliance with these standards. While this authority and the SEPA conditions imposed on this project through the June 29 MDNS address the majority of issues associated with potential soil erosion, Development Services recommends that the following condition for removal of erosion hazard threats be placed upon any recommendation for subdivision approval;

i. No vegetation shall be removed from the proposed lots or access tract until Final Plat approval has been obtained and all construction plans have been reviewed by the City of Shoreline and a Site Development Permit has been issued.

B. Road Standards (Title 12, Shoreline Municipal Code)

City Ordinance No. 16 adopted the King County Road Standards for use by the City of Shoreline on an interim basis. These standards are still in effect and are referenced by engineering staff for the review of all roads proposed to serve residential subdivisions in the City of Shoreline. Working directly from these standards, Engineering staff determined that the proposal required two variances;

a. Table 2.03 of the King County Road Standards requires a 22' paved surface for the access tract. The proposed subdivision shows a 20' wide paved surface.

b. Subsection 2.08 requires turnarounds to have a 100' easement width and an 80' paved surface. The proposed subdivision currently provides a 50' diameter turnaround with 40' of paved surface.

The agent submitted a formal request for the required variances on July 6, 1998 (Attachment G). Based upon the criteria provided by the Road Standards for reviewing variances, the Public Works Department was required to analyze all elements of the proposed private road and driveway system. Based upon this review, Public Works concluded that the variance request for use of a 20' wide paved surface could not be approved, while the variance request for a reduction in turnaround size could be allowed (Attachments H and I).

Based upon review of the public road system serving the proposed subdivision, Development Services recommend that the following conditions for improvement of these roads be placed upon any recommendation for approval;

i. The applicants shall widen the existing 10th Avenue NE road surface by paving from the platted centerline to the edge of the planting strip required under ii. (below).

ii. The applicants shall construct a five feet wide sidewalk and six feet wide planter strip immediately adjacent to the western property boundary for the lengths of Lots 1 and 2 of the proposed plat.

iii. Consistent with the Road Standards, the applicant may modify the design of the access tract by eliminating the proposed sidewalk on it's western side.

C. Surface Water Management

The City of Shoreline adopted King County stormwater review standards upon incorporation. These standards are implemented through the King County Stormwater Manual which was first adopted by King County in 1994 and is generally regarded as the 'state of the art' for the review and design of stormwater management systems in Western Washington. In accordance with adopted standards, the applicant was required to revise this application in November of 1997 to provide a fully engineered stormwater detention system. This design has been reviewed and accepted by Engineering staff, subject to proposed conditions listed at the end of this subsection.

The proposed stormwater management design is, however, dependent upon the applicants obtaining an easement that will allow connection to the 12th Avenue NE stormwater collection system from the owners of adjacent residential property to the southeast. The present status of such an easement is unclear and proof of a suitable easement being obtained in advance of any application for final subdivision approval is recommended as a condition of preliminary approval.

Based upon review of the stormwater detention system proposed for this subdivision, Development Services recommend that the following condition for stormwater management be placed upon any recommendation for approval;

i. Prior to the submission of any application for final approval of the subdivision, the applicants shall submit proof of a legal public easement allowing the construction of stormwater conveyance facilities from the project site to the 12th Avenue NE stormwater collection system. The easement shall be approved by the City of Shoreline Public Works Department.

ii. Road improvements required as subdivision conditions under subsection B. (above) shall be designed to direct stormwater flows into the required planter strip.

D. SEPA

As a formal (long) subdivision proposing the creation of nine (9) residential building lots, the current application is automatically subject to environmental review under the State Environmental Policy Act (SEPA). SEPA reviews are carried out using the state administrative policies provided by Chapter 197-11 of the Washington Administrative Code (WAC) and King County regulations, (adopted by the City of Shoreline as Title 14.05 of the Shoreline Municipal Code).

Any mitigations imposed on a long subdivision in order to address potential significant adverse impacts to the environment are specifically separated from the authority of the state platting statute and are imposed using the statutory authority specifically granted for environmental review. SEPA conditions cannot therefore be directly modified by the Planning Commission as part of their review responsibilities. Compliance with all required SEPA mitigations must be demonstrated by the applicant before the city will grant final approval of a proposal.

The following mitigations were imposed on this proposal through the Mitigated Determination on Non-Significance (MDNS) issued by the City on June 29, 1998 (Attachment C);

Earth: Compliance with site preparation, development and planting conditions specified in the soils report produced for the proposal, Replanting of the fill slope on Lot 5 with native vegetation.

Stormwater: Provide an analysis of the downstream stormwater system to determine the existence of sufficient capacity for stormwater generated by lots 5 and 6 and Place a footing drain at the base of an existing rockery in the southeast property corner.

Plants/Land Use/Aesthetics: Submission of a plan and report to preserve significant trees outside of identified development areas, provision of a 20 feet wide buffer along the east and south property boundaries.

E. Other Facilities and Utilities

Consistent with existing subdivision regulations and road standards, installation of a full curb, gutter and sidewalk along the property boundary with 10th Avenue NE is recommended by Development Services as a condition of subdivision approval (Please refer to Subsection B. of this report)). A full curb, gutter and sidewalk will also be installed along the (north and) eastern side of the proposed access tract.

The certificate of sewer availability provided with this application indicates that this service is available in sufficient capacity to serve the proposed development and that no special conditions of approval were required of the applicant. The Certificate of Water Availability issued by the Shoreline Water District indicates,

however, that a calculated rate of flow of only 705 gallons per hour (GPH) is available to serve this development as opposed to the 1,000 GPH required by fire flow standards.

The proposed long plat was reviewed on March 13, 1998, by Jeff LaFlam of the Shoreline Fire Department for conformance with fire access and water fire flow requirements. This review found two deficiencies with the proposed subdivision design;

a. The size of the vehicle turnaround proposed in the plat design was inadequate for emergency vehicle use (a 40' radius being required).
b. That the size of the water main serving the proposed fire hydrant should be either, a minimum diameter of 8" for system deadends over 50' in length, or, 6" minimum diameter for looped systems.

Fire Department regulations require that each of these deficiencies be corrected. While the specified water system improvements must be made, these regulations do allow for the installation of sprinkler systems in each house of the subdivision that will be served by the proposed access tract as a substitute for a turnaround of approved dimensions. Based upon Fire Department review of the fire access and fire flow systems proposed for this subdivision, Development Services recommends that the following conditions for be placed upon any recommendation for approval;

i. Fire sprinkler systems shall be installed in each house built on lots 3 through 9 of the proposed subdivision.
ii. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a deadend system, or, a minimum pipe diameter of 6" for a looped system.

IV. CONCLUSIONS AND RECOMMENDATIONS

If approved, the proposed Paramount Ridge Subdivision will create nine residential building lots in an area of Shoreline that is characterized by detached residential land uses. Such a development is consistent with the purposes of the R-6 residential zone and supported by the policies of the King County Comprehensive Plan, the UM land use designation assigned to the property by the Plan, and the lot development standards provided by the Shoreline Zoning Code.

Recommendation

Based upon the above review and statutory authority, the DSG requests that the Planning Commission consider recommending approval of the proposed subdivision to the Shoreline City Council, subject to a set of subdivision conditions that are in addition to SEPA mitigations

The Development Services Group has drafted the following language for the Planning Commission to consider if they choose to recommend approval of the proposed preliminary subdivision to City Council:

The Planning Commission recommends City Council grant preliminary approval to the proposed nine lot long subdivision, Paramount Ridge, based upon its compliance with the following subdivision conditions and the mitigations required under the State Environmental Policy Act.

1. No vegetation shall be removed from the proposed lots or access tract until Final Plat approval has been obtained and all construction plans have been reviewed by the City of Shoreline and a Site Development Permit has been issued.
2. The applicants shall widen the existing 10th Avenue NE road surface by paving from the platted centerline to the edge of the planting strip required under 3. (below).
3. The applicants shall construct a five feet wide sidewalk and six feet wide planter strip immediately adjacent to the western property boundary for the lengths of Lots 1 and 2 of the proposed plat.
4. Consistent with the Road Standards, the applicant may modify the design of the access tract by eliminating the proposed sidewalk on it's western side.
5. Prior to the submission of any application for final approval of the subdivision, the applicants shall submit proof of a legal public easement allowing the construction of stormwater conveyance facilities from the project site to the 12th Avenue NE stormwater collection system. The easement shall be approved by the City of Shoreline Public Works Department.
6. Road improvements required as subdivision conditions 2 and 3 (above) shall be designed to direct stormwater flows into the required planter strip.
7. Fire sprinkler systems shall be installed in each house built on lots 3 through 9 of the proposed subdivision.
8. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a deadend system, or, a minimum pipe diameter of 6" for a looped system.
9. Prior to final plat approval, the applicant must establish a homeowners association or other entity that will be responsible for the maintenance and repair of all commonly owned facilities such as sidewalks, the private road, and landscaping installed as part of the subdivision. The duties and responsibilities for the maintenance and repair of the commonly owned facilities shall be set forth in covenants, conditions and restrictions (CC and R's) which must be reviewed and approved by the City and recorded with the King County Auditor.

If the Planning Commission accepts this recommendation: *This application for the creation of a long subdivision will be forwarded to the City Council for preliminary approval.*

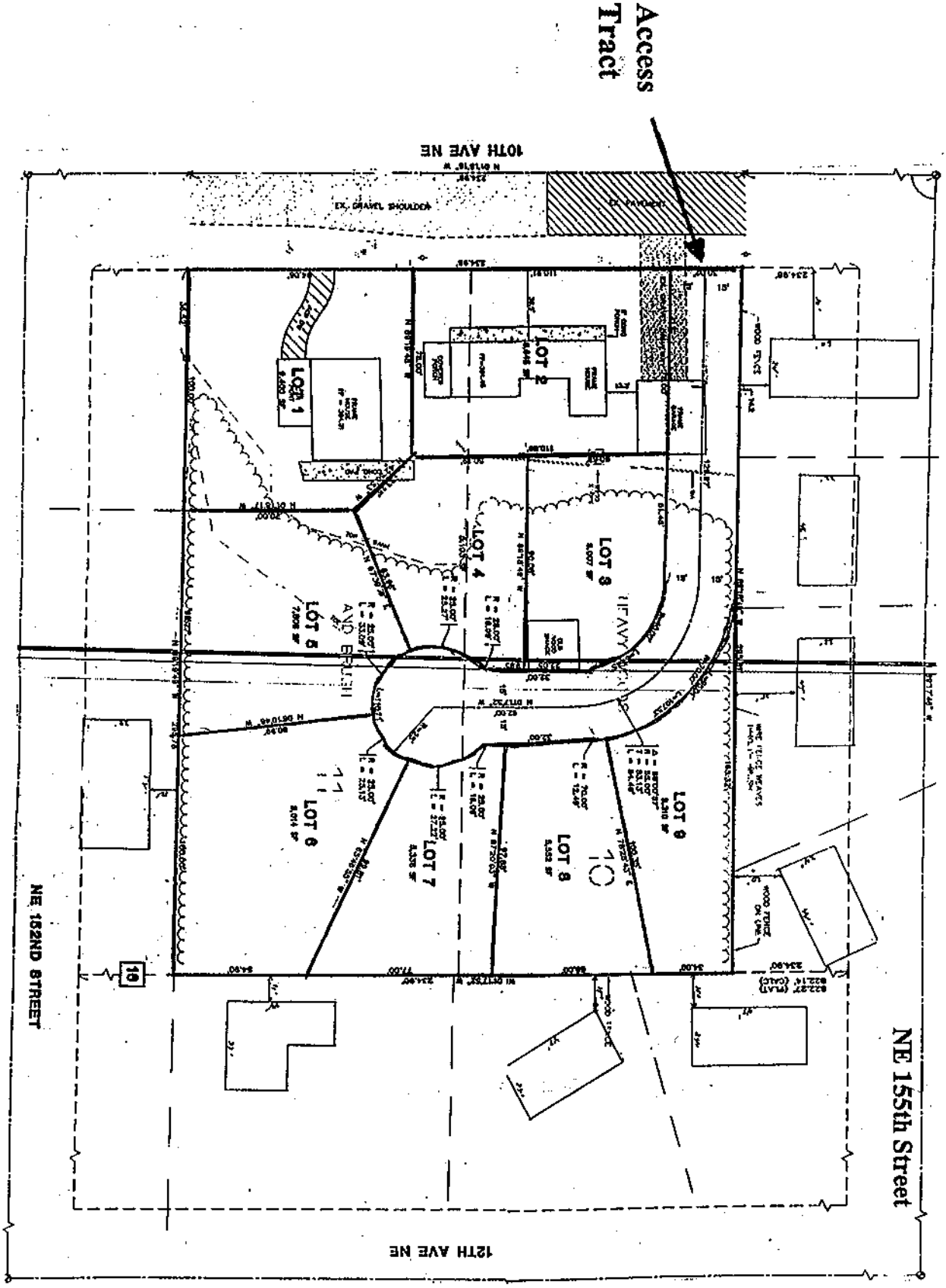
If the Planning Commission rejects this recommendation: *Alternative findings and conclusions will need to be prepared by the Planning Commission to support this decision. The proposal will be returned to the applicant for potential revision and resubmission.*

Attachments

Attachment A:	Site Plan
Attachment B:	Letter to Mr. Gary Cooper, April 24, 1998
Attachment C:	SEPA MDNS, June 29, 1998
Attachment D:	Letter on Public Hearing Date, July 15, 1998
Attachment E:	Application Checklists 1. Preliminary Subdivision 2. Final Subdivision
Attachment F:	Process Flowchart for Type 'C' Actions
Attachment G	Request for Variances from Adopted Road Standards, July 6, 1998
Attachment H:	Public Works Road Standards Variance Review

Please return the blueprints after the hearing!

Attachment A: Site Plan



SITE PLAN

Attachment B: Letter to Mr. Gary Cooper, April 24, 1998

CITY OF SHORELINE

Development Services Group
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

Gary Cooper
Lynscot A. Corporation
20351 Greenwood Avenue North
Shoreline, WA 98133

April 24, 1998

RE: Proposed Paramount Ridge Subdivision, Creative Construction (1997-01594)

Dear Mr. Cooper,

Please accept this letter as a formal response to the materials you submitted to us on March 2, 1998 for the Paramount Ridge Subdivision.

Planning and engineering staff of the Development Services Group (DSG) have carefully reviewed the entire project application. Based upon this review and visits to the project site, we have determined that the proposal, as it has been submitted, cannot be presented to the Planning Commission for public review. We have determined that submission of the following material is necessary to bring the proposal to the point where it can receive public review. The majority of the information we need was originally requested in our letter of November 19, 1997 (attached).

1. A revised Stormwater Drainage Report and Analysis including a conceptual drainage plan. Engineering staff request that this report be typewritten (or word-processed) and accompanied by the results of the infiltration pit tests. Please note that our letter of November 19 specifically requested on-site detention.
2. The submitted geotechnical report is inadequate for the review of a formal subdivision. 4' deep test pits are insufficient. Further on-site analysis needs to be performed in order to allow the City to properly review the entire proposal and for proper grading plans to be prepared.
3. Existing and proposed topography should be shown on the preliminary plat drawing, engineering plans and the requested grading plan. Please refer to Items 6 and 8 of the November 19 letter for the original information request.
4. The location of significant trees (trunk diameter of 12" or greater at breast height) proposed for removal should be surveyed into the preliminary plat plan design.
5. Please clearly show the height of the bank in the southern portion of the property. This information will allow us to determine whether it meets the definition of a steep slope environmentally sensitive area.
6. Show adjacent structures on the preliminary plat drawing and engineering plans. This is required by our submittal checklist.

As soon as we have received the above information we will be able to complete our review of this proposed long plat and advance it to public hearing before the Planning Commission.

Our reviews have also identified the following issues associated with this proposal that need to be resolved. While we encourage you to address them at the same time as you prepare the information requested above, this is not absolutely required as we have the alternative of recommending their resolution to the Planning Commission as preliminary approval conditions.

A. Revise the sizing of the proposed access turnaround to comply with Road Standards, or apply for a variance.
B. Increase the proposed paved access roadway width to 22' (with curbing on each side), or apply for a variance from the adopted road standards.
C. Agree to demolition of the 'converted porch' identified as part of the existing house on Lot #2. Demolition is required to conform with setback standards.
D. Show the location of the new garage to be built on Lot #2.
E. Confirm that the building footprint proposed for Lot #9 will meet adopted setback standards.
F. Clarify the location of the sanitary sewer easement shown for Lot #5 as it does not correspond with the proposed lot line.
G. Obtain the necessary drainage easement from the property owner to the east of the proposal.
H. Provide for the following improvements to 10th Avenue NE;
    i. Construction of a five feet wide sidewalk and five feet wide planter strip immediately adjacent to the western property boundary for the length of the Lots 1 and 2.
    ii. Pave from the required planting strip westwards to the existing 10th NE pavement surface.

Please note that additional conditions or SEPA mitigations may be identified following the submission and review of the information requested earlier.

Due to the need for this additional information, we have been required to place this application on 'hold' until it has been received. A public hearing will be scheduled as soon as we have received this material and completed our reviews. Please do not hesitate to contact me at (206) 546-3542 if I can be of further assistance to you in this matter.

Yours Sincerely,

James Holland
Senior Planner

Attachment
cc Anna Kolousek, DSG Director
Chuck Purnell, Project Engineer
Steve Brown, Project Engineer
Daniel Bretzke, Planner
File

CITY OF SHORELINE

Gary Cooper
Lynscot A. Corporation
20351 Greenwood Avenue North
Shoreline, WA 98133

November 19, 1997

RE: Application for Formal Plat of 15440 10th Avenue NE, Creative Construction (1997-01594)

Dear Mr. Cooper,

Thank you for the application made on behalf of Creative Construction to subdivide two parcels (at 15440 and 15450 10th Avenue NE) into a total of nine residential building lots.

The Development Services Group has now completed it's preliminary review of this application and found that the following additions or corrections need to be made before we can proceed to making a SEPA threshold determination and holding a public hearing:

1. Submission of two copies of a completed SEPA checklist. The original application was received without a completed checklist.

2. Submission of a Vicinity Map providing the information specified in the Preliminary Subdivision Submittal Checklist (enclosed).

3. Submission of two copies of a Preliminary Plat Drawing that provides the information specified in the Preliminary Subdivision Submittal Checklist.

4. Preparation of a Drainage Report that;
   A. Identifies proposed drainage easements to convey runoff to the public stormwater system,
   B. Provides for an on-site detention system sized to accommodate the 25 year storm.
   The report should also include all relevant calculations.

5. Provision of a Geotechnical Report that includes;
   A. An investigation of on-site soils,
   B. A review of slope stability issues associated with infiltration systems,
   C. Recommended erosion control measures,
   D. Fill and cut recommendations.
   E. Identification of any on-site steep slope or landslide hazard areas.

6. Inclusion of an erosion control and grading plan that shows existing and proposed topography, together with cross sections.

7. The preliminary plat drawing should be amended to;
   A. Clearly show the name of the proposed subdivision,
   B. Identify any trees with a trunk diameter of 12" or greater (measured at breast height) that are proposed for removal.

8. Amend the submitted preliminary plat drawing, engineering plans and stormwater management plan to show;
   A. Contours of topography at five feet intervals. These contours should be surveyed by a registered professional surveyor.
   B. Any on-site environmentally sensitive areas (ESA's).

Please note that we will place your application on hold until we have received the requested information. Once this information has been received, staff will schedule the public hearing before the Shoreline Planning Commission and issue a SEPA threshold determination. We are anxious to assist you through the review and approval process and will be happy to work with you to see this project through. Please feel free to call me at 546-3542 if you have any questions on this matter.

Yours Sincerely,

James Holland
Project Manager III

cc. Creative Construction
Anna Kolousek, DSG Director
Chuck Purnell, Project Engineer
File

SHORELINE

City of Shoreline
Planning and Development
Services Group
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

SEPA THRESHOLD DETERMINATION

MITIGATED DETERMINATION OF NON-SIGNIFICANCE ISSUED FOR PARAMOUNT RIDGE SUBDIVISION, 18842 MERIDIAN AVENUE, SHORELINE

PROPOSAL:	**Formal Subdivision of Two Building Lot Into Nine Single Family Residential Building Lots**
PROJECT NO:	**1997-01594**
LOCATION OF PROPOSAL:	**15450 10th Ave NE Shoreline, WA 98155**
APPLICANT:	**Creative Construction Inc. 1243 NE 152nd St. Shoreline WA 98155**
CURRENT ZONING:	**R-6 Residential (6 Dwelling Units Per Acre)**
LEAD AGENCY:	**City of Shoreline**

THRESHOLD DETERMINATION: **Mitigated Determination of Non-Significance (MDNS)**
The City of Shoreline has determined that the proposal will not have a probable significant adverse impact on the environment and that an environmental impact statement is not required under RCW 43.21C.030(2)(c). An MDNS has been issued, subject to the following mitigating measures and conditions:

MITIGATION LIST:
The following mitigation measures and conditions are required to clarify and change the proposal in accordance with WAC 197-11-350:

1. **Earth**

A. The applicant shall comply with the following recommendations made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, specifically;

i. The steep fill slope located in the northwest corner of lot 5 be regraded to an inclination of no steeper than 2:1 (Horizontal/Vertical) for appropriate long-term stability.
ii. All bare areas should be revegetated or be mulched with straw to reduce erosion until permanent landscaping and vegetation are in place.
iii. A silt fence should be erected along the downslope sides of the development area.

iv. The storm drain system for the proposed street should be installed and functional early in the development process.
v. No fill or debris from the clearing or excavation should be placed on the downslope sides of the houses, unless properly retained by an engineered wall.
vi. Temporary slopes cannot be excavated at a grade of more than 1:1 (Horizontal:Vertical).
vii. All permanent cuts into native soil should be inclined no steeper than 2:1 (Horizontal:Vertical).
viii. Water should not be allowed to flow uncontrolled over the top of any slope.
ix. All permanently exposed slopes should be seeded with an appropriate species of vegetation to reduce erosion and improve the stability of the surficial layer of soil.

B. In addition to regrading the fill slope located on Lot 5 of the proposal in accordance with the recommendations made by Geotech Consultants, Inc., the applicant shall plant the slope with suitable native vegetation.

2. **Stormwater**

A. Prior to the submission of an application for final plat approval, the applicant shall submit an analysis of the downstream stormwater management system. The analysis shall determine whether sufficient system capacity exists to safely accommodate the runoff flows to be generated by lots 5 and 6 of the proposal and make recommendations for these flows based on it's findings.

B. Prior to placing any fill on the slope surcharging the existing rockery wall in the southeast corner of the subject property, the applicant shall place a footing drain at the base of the rockery. This drain shall feed into a dedicated catchbasin which should then connect to the existing storm drain system.

3. **Plants/Land Use/Aesthetics**

A. Prior to the submission of an application for final plat approval, the applicant shall submit a plan that provides for the preservation of all significant trees (12" or greater trunk diameter at breast height) located outside of identified access road, driveway and building footprints.

B. The applicant shall include with the plan required under A, above, a written report identifying specific protection methods to be used for each identified tree during and after site clearing and development.

C. The applicant shall dedicate a minimum 20' wide buffer along the east and south boundaries of the subject property. This buffer shall include rear yard setbacks required under the Shoreline Zoning Code (Title 18 SMC), and remain undisturbed by construction except in the southeast corner of the property, where fill may be added to the existing slope in accordance with the provisions of the grading plan and SEPA Mitigation 3.B. above. No significant trees may be removed from this buffer area.

PUBLIC COMMENTS:
This MDNS is issued under WAC 197-11-350. The lead agency will not act upon this proposal for 15 days from the date of issuance. Any interested party may submit written comments on this project to the City of Shoreline Planning and Development Services Department. Written comments must be received before 5:00 PM on July 20, 1998. If you have any questions, please call the Project Manager, James Holland, at 546-3542, or write to; City of Shoreline, Development Services Group, 17544 Midvale Avenue North, Shoreline, WA 98133.

Anna Kolousek

Anna Kolousek, Manager
Development Services

6/29/98
Date

Attachment D: Letter on Public Hearing Date, July 15, 1998

CITY OF SHORELINE

Planning and Development Services

17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

Property Owner
857 NE 151st Street
Shoreline, WA 98155

July 15, 1998

RE: Creative Construction Preliminary Subdivision (Project No. 1997-01594)

Dear Sir,

Thank you for your recent letter requesting the City of Shoreline Development Services Department to postpone the Planning Commission public hearing scheduled on July 30, 1998, for review of the Creative Construction long subdivision proposed for 15450 10th Avenue Northeast.

After careful consideration, Development Services has determined that we must decline your request for postponement of the July 30 public hearing. In 1995, the State of Washington adopted Substitute House Bill 1774, more widely known as 'Regulatory Reform'. This law required all cities and counties within the state to adopt new regulations that provide for efficient and timely review of land use applications. The City of Shoreline revised its administrative procedures to comply with this law in June of 1996. The most current set of these regulations (City Ordinance No. 126) requires the City to hold a public hearing on a long subdivision application within 30 days of the public notice being issued. The public notice for this application was issued on July 2, 1998, allowing the City to hold a public hearing by no later than July 31.

Please consider sending us written comments on this proposal by 5:00 PM on July 20, or, presenting oral testimony at the Planning Commission hearing (7:00 PM on July 30). All written comments will be forwarded to the Planning Commission for their review at the hearing. Please do not hesitate to call me at 546-3542 if you have any questions on this matter.

Yours Sincerely,

James Holland
Senior Planner

cc Anna Kolousek, Manager, Development Services
Tim Stewart, Director, Planning and Development Services

The City of Shoreline
Development Services Group

PRELIMINARY SUBDIVISION SUBMITTAL CHECKLIST

The following information is needed in order for your application to be submitted for review. Please review each item carefully and provide all applicable information

- ☐ **City of Shoreline Permit Application Form**
- ☐ **Proof of Legal Lot:** Please provide proof that the property was created in accordance to the subdivision rules of the State of Washington. A legal lot is one that was created by a formal or short subdivision; or if property was created before October 1, 1972. (If created by a recorded short plat, a five-year interval must occur before your parcel may be eligible to be platted again). Please provide a copy of the recorded short plat, plat, or lot line adjustment or a copy of legal conveyance (deed, real estate contract), whichever is applicable.
- ☐ **Certificate of Sewer Availability** is required for all permit applications which are served by Shoreline Wastewater Management, including all new construction and remodels with new sewer hook-ups for the City of Seattle or The Highlands, (if applicable).
- ☐ **Certificate of Water Availability:** May be obtained from Shoreline Water District or the City of Seattle, (if applicable).
- ☐ **Environmental Checklist:** 2 copies required
- ☐ **Vicinity Map:** Submit one copy, drawn to a scale of not less than 1" = 200' showing:
  - All building lots within 1,000 feet of the subject property
  - The existing zoning of each building lot
- ☐ **Preliminary Plat Drawing:** The plat drawing is a graphical representation seen from above of your total property to be subdivided. Submit two (2) copies drawn to scale, such as 1" = 50' on 8 ½ x 11 or 8 ½ x 14 paper. **Please show the following details on the drawing:**
  - Proposed name of the subdivision
  - Name and address of the developer
  - Name and address and seal of the registered land surveyor who prepared the plat
  - Graphic and numerical scale, north arrow and drafting date
  - Contours of topography at five foot intervals
  - Any wetlands, fish and wildlife habitat areas, streams; landslide, slope or erosion hazard areas
  - Proposed layout of streets, with names and widths, as well as proposed widths of alleys, crosswalks and easements
  - Any parcels of land to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision
  - The existing, and when different the proposed zoning of the subdivision

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Telephone (206) 546.2338 F 6.8761 Internet dsg@ci.shoreline.wa.us

☐ **Engineering Plans:** The following plans shall be produced by a licensed, professional engineer and bear their name, address and seal. Submit two (2) copies drawn to scale, such as 1" = 50'. **Please show the following details on the plans:**

- The proposed name of the subdivision
- The name and address of the developer
- Graphic scale, north arrow and drafting date
- Contours of topography at five foot intervals
- Any wetlands, fish and wildlife habitat areas, streams; landslide, slope or erosion hazard areas
- The boundary line of the proposed subdivision, indicated by a solid, heavy line
- The location, width and names of all existing or prior platted streets or other public ways; railroad and utility rights-of-way; parks and other public open spaces; permanent buildings and structures and any section and municipal corporation lines within or adjacent to the proposed subdivision.
- Existing sewers, water mains, culverts or other underground facilities, including existing pipe sizes, grades and exact locations, within the proposed subdivision. Information provided by existing public records shall be acceptable.
- The proposed location of additions or modifications to sewers, water mains, culverts and other underground facilities necessary to appropriately serve the proposed subdivision
- The boundary lines of adjacent tracts of unsubdivided and subdivided land within 100 feet of the proposed subdivision, including the owners and existing zoning of these tracts. Boundaries shall be indicated by dotted lines.

☐ **Stormwater Management Plan:** The following plan shall be produced by a licensed, professional engineer and bear their name, address and seal. Submit two (2) copies drawn to scale at 1" = 50'. **Please show the following details on the preliminary plan:**

- Proposed name of the subdivision
- Name and address of the developer
- Graphic scale, north arrow and drafting date
- Contours of topography at five foot intervals
- Any wetlands, fish and wildlife habitat areas, streams, slope or erosion hazard areas
- Boundary line of the proposed subdivision, indicated by a solid, heavy line
- Location, width and names of all existing or proposed platted streets or other public ways; railroad and utility rights-of-way; parks and other public open spaces
- Proposed on-site stormwater flow patterns
- Proposed location of stormwater detention and/or treatment facilities
- Design specifics of proposed stormwater detention and/or treatment facilities
- Support calculations

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☐ **Current Assessor's Maps/Mailing Labels** showing:
- Subject property outlined in red
- All properties within 500 feet of the subject property, with mailing labels for each owner

NOTE: Assessor maps are available through King County, Room 700A, 500 4th Avenue, Seattle, WA. Phone (206)296-6548 Fax (206)296-0567. Map/label requests should be made in person.

☐ **Fees:** **Preliminary Subdivision--$3519 plus $31 per lot**
Public Hearing--$1750
Environmental Checklist Review--$1395

Other Issued Permits or Information related to the Long Subdivision:
Other special studies may be required, such as a wetland report, geotechnical analysis, traffic study, etc. These may be requested at the time of application or after review of the application.

NOTE: **Please be sure that all drawings are clear and information is legible. Number each page consecutively and staple them together with the site plan as your first sheet. No pencil drawings will be accepted.**

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Telephone (206) 546.2338 F 6.8761 Internet dsg@ci.shoreline.wa.us

The City of Shoreline
Development Services Group

FINAL SUBDIVISION SUBMITTAL CHECKLIST

The following information is needed in order for your application to be submitted for review. Please review each item carefully and provide all applicable information.

☐ **City of Shoreline Permit Application Form**

☐ **Final Plat Drawing:** Two (2) copies required. The final plat shall be produced in accordance with the requirements of WAC 332-120-040 and provide the following additional information:

- The name of the subdivision
- Legal description of the property (including section, township, range)
- An Index Sheet showing the entire subdivision, including street and highway names and block numbers, as appropriate
- Standard survey information requirements as provided in WAC 332-130-050

☐ **Surveyor Lot Closure Documents**

☐ **Protective Deed Covenants:** A formal copy of the protective deed covenants shall accompany the final plat. All these forms shall be printed with india ink in distinct, legible lettering and be substantially the same as provided by the sample plat filed with the King County Records and Election Division. **Please provide a set of forms with the following information:**

- Dedication, with proper acknowledgement by the owner or owners, of the adoption of the plat and dedication of the streets or other public areas
- Restrictions
- Certification by a registered surveyor, that the plat represents a survey performed by them and that the monuments shown exist as located and that all dimensional and geodetic details are correct
- Proper forms for the approval of the City Manager (or their designee) and the City Council, with space for signatures
- Approval by signature of appropriate agencies as to filing for record

☐ **Fees:** Final Subdivision--$2765 plus $19 per lot

NOTE: Please be sure that all drawings are clear and information is legible. No pencil drawings will be accepted.

G:\DEPT\DSG\SUBCH\17(01/30/98)

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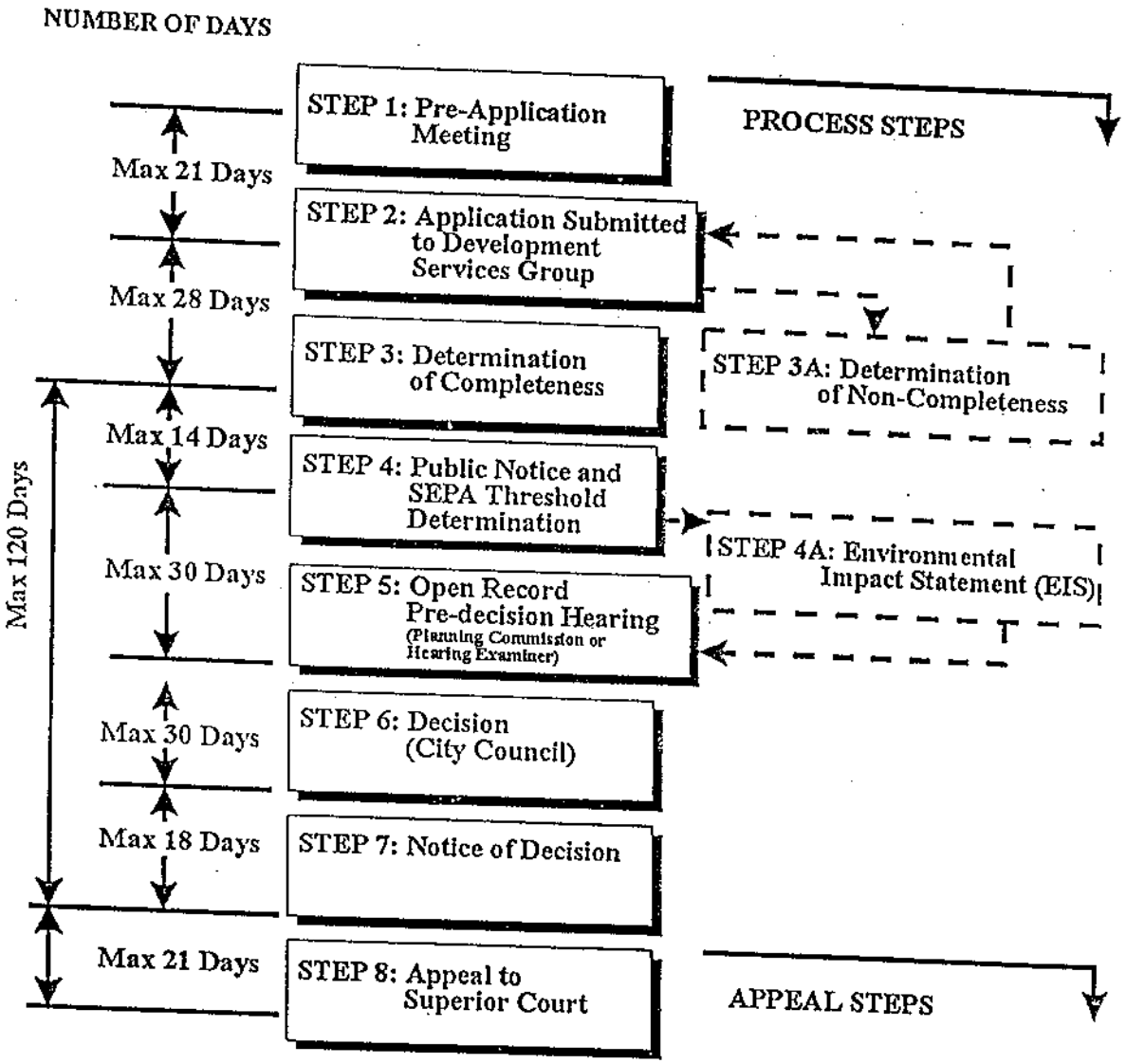
FLOWCHART 2: PROCESS FOR TYPE 'C' ACTIONS



Lynscot, A Corporation
20351 Greenwood Ave N
Shoreline, WA 98133

July 5, 1998

JUL 06 1998

Mr. James Holland
Project Manager
City of Shoreline
17544 Midvale Ave N
Shoreline, WA 98133

Dear Mr. Holland:

We would like to request a variance from Section 2.08.A.1 and 2.03.H of the King County Road Standards, 1993. With this variance approved, we will continue to meet the requirements for safety, function, fire protection, appearance and maintainability.

PROJECT DESCRIPTION

We propose to develop two parcels of land currently used for two single residences. The land has approximately 1.6 acres, zoned R-6, and is located at 15450 10th Ave NE. Our proposal is to subdivide this parcel into nine lots, and build an access street off of 10th Ave NE, which will access seven of the new lots. The two existing homes will access directly off of 10th Ave NE. At the end of this access street, we are proposing to build a 50-ft. cul-de-sac.

THE VARIANCE

1. We are proposing a 30-ft right-of-way with 20 ft. of road width paving and a 50-ft. paved cul-de-sac area following all of the details as required by the King County Road Standards, 1993. We are requesting a variance from Section 2.08.A.1 which calls for an 80 ft. paved area for cul-de-sacs and a variance from Section 2.03.H which calls for a 22 ft. paved roadway width.

JUSTIFICATION

Section 2.08.A.1 states: *Right of way may be reduced, provided utilities and necessary drainage is accommodated on private easements within the development.*

1. We will provide drainage and utility easements if in our proposed 20-ft. paved right of way, we will be unable to install all utilities and drainage.

2. The reduction in paving in this variance request will reduce the amount of impervious surface, which will reduce drainage collection and runoff. Although existing trees and vegetation will be removed and will be replaced after construction of new houses, the reduction of road paving will help retain existing vegetation.

3. We believe in Section 3.02.A.2 the code allows us to construct sidewalks on one side of the paved road. Our proposal is to construct sidewalks on both sides except the west 180 ft. of the south side of the road. At this point, the pavement width could be increased to 22-24 ft. in width. The sidewalk will be installed in front of all homes in this project. We have attempted to make each one of these lots as large as possible.

July 5, 1998

We have consulted with the fire marshall, the waste collection agency, the utility agencies, and our civil engineer. They all believe our proposal to build our project as stated will be adequate and will not interfere with their need to provide appropriate utilities, drainage, and accessibility for fire protection.

Safety

We increased the safety for pedestrians using our access street with a 50 ft. cul-de-sac by building a curb and sidewalk according to the requirements. We also provide enough off-street parking and a garage for each dwelling unit. We will be installing a new fire hydrant at the start of the cul-de-sac which will increase fire protection.

Function

Ingress and egress with a cul-de-sac provides for adequate access by ambulance, moving and delivery trucks, maintenance vans and everyday household usage.

Maintenance

Most neighborhood maintenance vehicles and heavy equipment would have adequate access to serve and maintain the development without restricting traffic circulation.

Appearance

With the planting of new vegetation and the retaining of the existing vegetation, the development will continue to have the same appearance that City of Shoreline residents expect.

REQUEST

Mr. Holland, I believe we have shown that our request for this variance is a responsible, reasonable and well thought out proposal. As you can see, it imparts no negative impact, either directly or indirectly to the neighborhood and yet still complies with standard rules and regulations. We would ask that you accept this variance as soon as possible.

I look forward to hearing from you soon. If either you or your committee require additional information, please contact me by mail or phone 206-546-9213. Thank you in advance for your assistance with this request.

Sincerely,

Gary S. Cooper
President
Consultant for Creative Construction

CITY OF SHORELINE

City of Shoreline
Development Services Group
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

Road Standards Variance Review

Variance Request Number 1998-1002

Owner / Agent Gary Cooper

Project Address 15450 10th Avenue NE

Code Section

Section 2.03 Residential Access Street Standards.
Section 2.08 Cul-de-sacs and eyebrows

Analysis and History

Section 2.03 Residential Access Street Standards.

The access road to this subdivision is classified as a minor access street. This type of street is designed to serve up to 16 residences. This sections requires a 22 feet pavement width. This type of street is designed for low speed traffic. This street will be connecting to 10th Avenue NE, which is also a low speed, low volume local access street.

This project proposes a street approximately 280 feet long including a turnaround. This street will serve seven single family residences. The road curves approximately 160 feet into the project, and ends at the cul-de-sac. The access road slopes down approximately 7%.

The applicant requests a variance to the pavement requirements from 22 feet to 20 feet, to allow for reduced impervious surfaces, increase the amount of vegetation, and increase lots sizes. The applicant believes that this will meet the utility requirements, safety, function, maintenance, and appearance which the code requires for variances to be approved.

The City of Shoreline comprehensive plan encourages the protection of trees, and the reduction of pavement where possible. Approving the variance would reduce the amount of paving by approximately 560 square feet. It would not affect the location of the houses, because the setbacks are calculated from property line. Because the slope of the road, the curve, and the length of the road, and considering the variance request to reduce the required cul-de-sac turn around, approval of the request is not recommended.

Section 2.08 Cul-de-sacs and eyebrows

This section applies for streets which serve more than six lots and extends more than 150 feet from the center line of the intersecting road. It requires a right of way width of 100 feet and pavement width of 80 feet diameter.

The Shoreline Fire department has developed some alternate cul- de-sacs design which meet their requirements for fire engine access. For projects which do not meet these specific designs, the fire department requires, all of the dwellings built on the lots served by the road shall be equipped with fire sprinkler systems designed in accordance with NFPA 13D. This applies to dwellings of any size.

The applicant requests a variance to the pavement requirements for cul-de-sac from 80 feet to 40 feet diameter paving width, and the right of way width to be reduce from 100 feet to 50 feet diameter. This would allow for reduced impervious surfaces, increase the amount of vegetation, and increase lots sizes. The applicant believes that this will meet the utility requirements, safety, function, maintenance, and appearance which the code requires to be meet as a condition for variances to be approved.

The City of Shoreline encourages the protection of trees, and the reduction of pavement where possible. Approving the variance would reduce the amount of paving by approximately 3,768 square feet. It would allow the location of the houses to be set away from the exterior borders, and thus allowing more significant trees to be saved. By conditioning the plat to require all residences to be equipped with residential fire sprinklers, and by requiring the access road to be full width, the approval of this variance would meet the utility requirements, safety, function, maintenance, and appearance which the code requires for the approval of variances.

Decision

Section 2.03 Residential Access Street Standards.

Due to the length of the cul de sac, the curve in the road, the slope of the access road, and the negligible public benefit, the variance from section 2.03 of the road standards is denied. The applicant must construct the road with a pavement width of 22 feet, in a private access tract of 30 feet in width. All other design elements must meet the requirements of the 1993 King County Road Standards and the 1995 edition of the King County Surface Water Design Manual.

Section 2.08 Cul-de-sacs and eyebrows

Due to the amount of impervious surface to be eliminated, and by allowing the houses to be built farther from the perimeter property line, and with the condition that fire sprinklers be installed in each residence served from this plat, the variance from section 2.08 of the road standards is approved. The applicant must construct the paving width to be 40 feet in diameter within a 50 feet diameter private access tract. The plat is to be conditioned to have residential fire sprinklers installed in each new residence served by this road. All other design elements must meet the requirements of the 1993 King County Road Standards and the 1995 edition of the King County Surface Water Design Manual.

Review and Approval

PROJECT REVIEW (PADS)	Dan M	DATE: 7/22/98
CITY ENGINEER (Public Works)	Charles J. Purnell for Mike Gillespie	DATE: 7/22/98

Appeal Procedure.

1. The applicant may appeal the Engineer's decision by submitting the original variance proposal, the Engineer's written decision, reasons for appealing, and additional supporting justification to the Director of Public Works within 30 days of the issuance of the Engineer's decision.
2. The Director of Public Works shall respond in writing within ten working days. The director may either concur with the Engineer's decision, approve the proposed variance as originally submitted, or approve it with special conditions.
3. In cases were the proposed variance requires extensive staff review, the Director may extend the review period for another ten days, maximum.
4. The Director's decision shall be final.