



CITY OF ARLINGTON NOTICE OF DECISION

Allen Townhomes Preliminary Unit Lot Subdivision Conditional Use Permit

The City of Arlington has issued a Notice of Decision for a Conditional Use Permit as required by the Arlington Municipal Code. The following project has been **APPROVED**, with the conditions listed in the attached Hearing Examiner Decision.

Project Name: Allen Townhomes Preliminary Unit Lot Subdivision

Proponent: JM1 Holdings, LLC

Project Number: PLN #1000

Description of Proposal: The applicant is proposing a preliminary unit lot subdivision through a conditional use permit for a 36 townhome development on approximately 4.89 acres site, of which 2.2 acres are developable, within the residential high capacity zone. The proposal is for a townhouse style project consisting of three 5-unit buildings, three 4-unit buildings, and three 3-unit buildings. Each unit has its own attached garage and driveway for two parking spaces and guest parking will be provided throughout the development. Access to the site includes a new public road to the west and private drive aisles to the east, both accessed from 172nd Street NE.

The site contains a Category III wetland (Wetland A) that is proposed to remain protected with buffer averaging (no net loss) due to the irregular shape of the wetland. The project includes 13,000 cubic yards of cut and fill across the site. Approximately 55% of the site will remain in a Native Growth Protection Area Tract, however the proposal includes the removal of 13 significant trees and the planting of 95 trees.

Project improvements to the site include frontage improvements along both public and private roads, landscaping, park and open space, critical area protection, and the extension of city water and sewer.

Location: 8927 172nd Street NE, Arlington, WA 98223

Hearing Examiner Decision: Approved, with Conditions

Notice of Decision Date: December 29, 2023

End of Appeal Period: January 19, 2024

Preliminary Plat / Conditional Use Permit Expiration Date: December 29, 2028

Appeals: A Party of Record may file an appeal of this decision within twenty-one (21) calendar days from issuance of this Notice of Decision. Appeals shall be delivered to Snohomish County Superior Court at 3000 Rockefeller Avenue M/S 502, Everett, WA 98201, pursuant the Land Use Petition Act, Chapter 36.70 RCW, by **Friday, January 19, 2024**.

Staff Contact: Amy Rusko, Planning Manager, arusko@arlingtonwa.gov, 360-403-3550

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ARLINGTON**

In the Matter of the Application of)	PLN#1000
)	
JM1 Holdings, LLC)	Allen Townhomes
)	Preliminary Unit Lot Subdivision and
)	Conditional Use Permit
)	
For Approval of a Conditional Use Permit)	FINDINGS, CONCLUSIONS,
<u>and Unit Lot Subdivision</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary major unit lot subdivision and conditional use permit to subdivide a 4.89-acre property into 36 townhome fee simple lots that would contain three, five-unit townhome buildings; three, four-unit townhome buildings; and three, three-unit townhome buildings, with associated improvements, at 8927 172nd St. NE, is **APPROVED**. Conditions are necessary to mitigate specific impacts from the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on December 20, 2023 using remote access technology.

Testimony:

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

Amy Rusko, City Planning Manager
Ryan Larsen, Applicant Representative
Tom Abbott, Project Drainage Engineer

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, undated
2. Land Use Application, dated October 11, 2022
3. Project Narrative, dated August 13, 2023
4. Preliminary Unit Lot Subdivision Site Plans, revised October 4, 2023
5. Preliminary Landscape Site Plans, revised October 4, 2023
6. Preliminary Civil Site Plans, revised September 18, 2023

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Allen Townhomes ULS/CUP PLN#1000*

7. Vicinity Map
8. Water and Sewer Availability Request, approved November 29, 2022
9. SEPA Environmental Checklist, dated August 17, 2023
10. Complete Streets Checklist, undated
11. Critical Area Study and Buffer Mitigation Plan, prepared by Wetland Resources Environmental Consulting, dated September 18, 2023
12. Unanticipated Discovery of Cultural Resources and Human Skeletal Remains Plan, undated
13. Preliminary Stormwater Drainage Report, prepared by LDC Surveying Engineering Planning, dated August 2023
14. Geotechnical Report, prepared by Cobalt Geosciences, dated November 16, 2021
15. Traffic Impact Analysis, prepared by Kimley Horn, dated August 2022
16. Public Notice Materials, undated
17. Public Comments of Stillaguamish Tribe, dated September 27, 2023
18. Public Comments of Tulalip Tribe, dated November 22, 2022
19. Notice of Public Hearing, dated November 9, 2023
20. Notice of Mitigated Determination of Nonsignificance, dated September 27, 2023
21. Notice of Neighborhood Meeting, dated September 27, 2023
22. Neighborhood Meeting Notes, dated October 17, 2023
23. Notice of Application, dated November 9, 2022
24. Notice of Complete Application, dated October 24, 2022
25. Resubmittal Extension Letters, various dates
26. Rescheduled Notice of Public Hearing, dated December 5, 2023

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

FINDINGS

Application and Notice

1. JM1 Holdings (Applicant), requests approval of a preliminary major unit lot subdivision (ULS) and conditional use permit (CUP) to subdivide a 4.89-acre property into 36 townhome fee simple lots that would contain three, five-unit townhome buildings; three, four-unit townhome buildings; and three, three-unit townhome buildings. Each unit would have its own attached garage and driveway (creating two parking spaces per unit). Additional guest parking would be provided throughout the development. Access to the site would occur via a new public road to the west of the subject property, as well as via private drive aisles to east. Both the new public road and new private drive aisles would be accessed via 172nd Street Northeast. Project improvements to the site include frontage improvements along both public and private roads, landscaping, park and open space, critical area protection, and the extension of city water and sewer. The subject property is located at 8927 172nd St. NE. *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6.*

2. Prior to receiving the application, the City of Arlington (City) convened a public meeting, as required by Arlington Municipal Code (AMC) 20.16.230. The City issued a notice of public meeting on September 25, 2023. The notice was published in the *Everett Herald* newspaper, posted on the site, and posted on the City website, post office, city hall, and library. Notice was also mailed to property owners within 500 feet of the subject property on September 27, 2023. The public meeting was held on October 17, 2023. No members of the public attended. *Exhibit 1, Staff Report, pages 3, 9, and 12; Exhibit 21; Exhibit 22.*
3. The City received the application on October 13, 2022, and determined that the application was complete on October 24, 2022. On November 9, 2022, the City provided notice of the application by mailing notice to affected agencies and to property owners within 500 feet of the subject property and by posting notice on-site and at designated City locations, with a comment deadline of November 23, 2022. On November 9, 2022, the City published notice of the application in *The Everett Herald*. On November 9, 2023, the City published notice of the open record public hearing with the application by mailing notice to property owners within 500 feet of the subject property, posting notice on-site and at designated City locations, and publishing notice in *The Everett Herald*, with a comment deadline of November 28, 2022. The hearing examiner originally scheduled the hear the case, however, was not able to do so, so the City re-issued notice of the public hearing on December 5, 2023, with a comment deadline of December 19, 2023. *Exhibit 1, Staff Report, pages 2–3 and 9–14; Exhibit 16; Exhibit 19; Exhibit 23; Exhibit 24.*
4. The City received two comments on the proposal from members of the public in response to its notice materials. The Stillaguamish Tribe commented that a pre-historic and historic longhouse was in extremely close proximity to the subject property. The Stillaguamish requested an archaeological survey as well as notification of archaeological fieldwork or ground disturbance. The Tulalip Tribe commented that the critical area study submitted in support of the application appeared to have an error. It showed encroachment of one of the open-space tracts into a wetland buffer. In response to these comments, City staff prepared a recommended condition of approval for an archaeological survey prior to issuance of a civil construction permit, as well as notice to the Stillaguamish Tribe of any archeological fieldwork or ground disturbance. City staff also requested the Applicant to revise the site plans to show a complete buffer for the wetland, without encroachment by the parcel identified by the Tulalip Tribe, which the Applicant provided. *Exhibit 1, Staff Report, pages 9, 30, and 33; Exhibit 17; Exhibit 18; Testimony of Amy Rusko.*

State Environmental Policy Act

5. The City Department of Community and Economic Development (DCED) acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington (RCW).

DCED reviewed the Applicant’s environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCED issued a Mitigated Determination of Nonsignificance (MDNS) on September 27, 2023, with a comment and appeal deadline of October 11, 2023. The City provided notice of the MDNS by sending notice to affected agencies and to property owners within 500 feet of the subject property, posting notice on-site and at designated City locations, and publishing notice in *The Everett Herald*. The City did not receive any comments on the MDNS in response to its notice materials. The MDNS was not appealed. The SEPA mitigation measures required in the MDNS are incorporated below, in the conditions of approval for the ULS/CUP. *Exhibit 1, Staff Report, page 3; Exhibit 20.*

Comprehensive Plan and Zoning

6. The property is designated “Residential High Density” under the City Comprehensive Plan. The Residential High Density designation is characterized as “a very active pedestrian environment with attached multi-family residences on shared lots situated along moderate to high-volume thoroughfares” and is intended to “provide a close-knit residential environment (minimum ten dwelling units per acre) that can consist of detached, single-family residences to multi-family complexes that generally have shared outdoor space.” *City Comprehensive Plan, page 5-4.* City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Ensure City Goals and Policies are consistent with the Growth Management Act. [GO-1]
 - Continue to provide effective stewardship over the natural and built environment within the City, ensuring harmony between both environments through application of best practice techniques. [GO-2]
 - Work towards promoting and maintaining an urban environment within the City that enhances livability for its residents. [GO-3]
 - Site design and building architecture in residential developments should be human scaled (pedestrian friendly) and conducive to social interaction. [PO-6.1]
 - Residential plats (subdivisions) should be designed to encourage pedestrian activity through incorporation of amenities such as, but not limited to, sidewalks, street trees, and pedestrian paths connection the plat to adjacent areas. [PO-6.2]
 - Mini parks should be required in new residential developments or a “fee-in-lieu of” paid to the City. [PO-6.3]
 - Land use developments should be conducive to social interaction. [PO-6.4]
 - Design Guidelines/Standards should be established, maintained, and enforced, in order to ensure that all new development both within the Private and Public Realms are in harmony with the desired character of each respective neighborhood subarea. [PO-6.6]

- A variety of housing types and densities should be encouraged on lands with a residential land use designation. [PH-1.1]
- Diversify the City’s housing stock. [GH-1]
- A variety of housing types and densities should be encouraged on lands with a residential land-use designation. [PH-1.1]
- Work to ensure that the character and location of land uses optimize the economic benefit, enjoyment by residents, and protection of natural resources while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses and environmental degradation through implementation of the following:
 - a) Growth Management: Manage growth so that the delivery of public facilities and services will occur in a fiscally responsible manner to support development and redevelopment within the City.
 - ...
 - c) Neighborhood Conservation: Achieve a well-balanced and well-organized combination of open space, commercial, industrial, recreation and public uses that are served by an efficient transportation network while protecting the fabric and character of residential neighborhoods.
 - d) Environmental Preservation and Conservation: Through both preservation and conservation ensure the proper management of the natural environment and resources. [GL-1]
- Residential High Capacity (RHC) – This designation should provide for multi-family and other high-density residential development, with density limited only by development parameters such as-but not limited to-building height, setbacks, parking requirements, screening, open space and compatible uses where a full range of public facilities and services that support urban development exist or can be provided. Generally, this designation is appropriate for land that is located convenient to principal arterials and commercial areas. [PL-1.4]
- Accommodate new development in a manner that supports a growth rate consistent with the goals of the State Growth Management Act but also preserves and enhances Arlington’s quality of life, its natural environment, and its historical and cultural amenities. [GL-4]
- Encourage a mix of residential densities throughout the City. [GL-7]
- The City should ensure that growth and development is consistent with the City’s Capital Facilities Plan for providing public facilities including streets, sidewalks, lighting systems, traffic signals, water, storm, and sanitary sewer, parks and recreational facilities, and schools. [PL-4.2]
- The City should ensure that growth and development is consistent with the City’s Capital Facilities Plan for providing public facilities including streets, sidewalks, lighting systems, traffic signals, water, storm, and sanitary sewer, parks and recreational facilities, and schools. [PL-4.2]

- All new residential plat developments should provide additional transportation infrastructure consistent with the City's comprehensive transportation plan and development regulations through installation, dedication, fee-in-lieu or some other acceptable form of mitigation. [PL-4.5]
- The properties around the SR-9 and SR-531 intersection should be planned to become an urban village, with mixed commercial and high-density residential uses. [PL-15.53]
- To safeguard communitywide environmental conditions and resources the City will encourage the effective stewardship of the environment and protect critical areas and conserve land, air, water, and energy resources. [GL-18]
- Through the land planning and development review processes, the City should require the provision of fish and wildlife habitat corridors and restrict the fragmentation of large natural plant communities that provide essential and significant wildlife habitat. [PL-18.2]
- The City should work to ensure compatibility of land uses with topography, geology, soil suitability, surface water, groundwater & aquifers, frequently flooded areas wetlands, climate, and vegetation and wildlife. [PL-18.3]
- The City should work to protect and enhance the natural environment while planning for and accommodating growth. [PL-18.6]
- Require site-sensitive development to protect environmental resources. [GL-19]
- Significant trees within the City should be preserved to the extent feasible. In instances where it is not feasible to preserve significant trees, any significant tree cut down should be mitigated either through re-planting or payment of a fee-in-lieu. [PL-19.1]
- Existing and native vegetation should be preserved as much as possible due to its vital role in the groundwater and wildlife systems of Arlington in order to prevent additional storm water runoff or soil erosion from new developments and to provide a habitat for wildlife. In newly developed and re-developed areas, site disturbance should be minimized and native vegetation and duff should be retained. [PL-19.2]
- Salmonid streams, drainage ways, wetlands, and their buffers should be protected from adverse impacts of land development that might decrease low flows or increase high peak flows, reduce recharge areas for streams, increase bank and be erosion, or increase turbidity of the water. [PL-19.3]
- The City should work to protect, the following sensitive resources: wetlands, streams and creeks, lakes and ponds, aquifer recharge areas, steep slopes, significant trees, fish and wildlife habitat and corridors, archaeological and historical sites and artifacts, geologically hazardous

- areas, and frequently flooded areas. Other resources may be included by amending the City's critical areas regulations. [PL-19.4]
- Minimize storm water runoff and urban drainage impacts by utilizing the natural drainage system where it is possible to do so without significantly altering the natural drainage ways. [GL-20]
 - The City should encourage the design of developments to use natural drainage patterns and incorporate means to entrap storm water and water pollutants before they are carried down slope or before they enter wetlands and/or other bodies of water. [PL-20.1]
 - To minimize impacts on natural resources, the evaluation of Low Impact Development techniques should be evaluated as the preferred approach prior to implementing traditional stormwater treatment and flow control facilities. [PL-20.4]
 - System Development: Plan, develop, and maintain a balanced transportation system for the efficient movement of people, goods, and services within the city and between the community and other activity centers in the region. [T-1]
 - Ensure that safe, convenient, and efficient transportation facilities are provided for all residents of and visitors to the City. This will include improvements to existing facilities as well as extensions to serve growth areas. [PT-1.3]
 - Require Developers to construct those streets directly serving new development and to pay a fair-share fee for specific off-site improvements necessary to mitigate any adverse impacts determined through the review to be created by the development. [PT-1.9]
 - Sub-Area Standards for Traffic Facilities: Consider the special needs of subarea transportation facilities including appearance and safety. [T-4]
 - All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development. [PT-4.8]
 - Critical areas and transportation: Design and build roads to minimize environmental impacts to natural areas and critical areas. [T-9]
 - Encourage efficient use of urban land by maximizing the development potential of existing urban lands, such as advancing development that achieves zoned density. [MPP-DP-2]
 - Preserve and enhance existing neighborhoods and create vibrant, sustainable compact urban communities that provide diverse choices of housing types, a high degree of connectivity in the street network to accommodate walking, bicycling and transit use, and sufficient public spaces. [MPP-DP-14]
 - Provide a range of housing types and choices to meet the housing needs of all income levels and demographic groups within the region. [MPP-H-1]

- Provide an adequate supply of housing with good access to employment centers to support job creation and economic growth. [MPP-Ec-20]
- Prioritize investments in transportation facilities and services in the urban growth area that support compact, pedestrian- and transit-oriented densities and development. [MPP-T-11]

Exhibit 1, Staff Report, pages 6–8.

7. The property is zoned “Residential High Capacity” (RHC). Properties to the north, east, and west of the property are also zoned RHC. Properties south of the property are zoned General Commercial with Mixed-Use Overlay (GG-MXD). The RHC zoning district is designed primarily to “accommodate the highest capacity residential developments, that are designed to be compatible with their sites and surroundings, building types are typically large scale multi-family buildings, mixed use buildings, and live/work units.” *AMC 20.36.010(f)*. Major unit lot subdivisions of more than nine lots are allowed in the RHC zone with a conditional use permit. *AMC 20.40.120*. A *major subdivision* means the division of land “into ten or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.” *AMC 20.08.010*. In addition, the property is within Subdistrict D of the Airport Protection District Overlay. The purpose of this overlay is “to protect the viability of the Arlington Municipal Airport as a significant resource to the community by encouraging compatible land uses and densities, reducing hazards to lives and properties, and ensuring a safe and secure flying environment.” *AMC 20.38.010(a)*. The Applicant will sign an Airport Disclosure Notice with the Arlington Municipal Airport prior to project completion. Language shall be placed on the face of the final unit lot subdivision notifying future owners of possible affects from aviation activities. *Exhibit 1, Staff Report, pages 3 and 12–14; Exhibit 3.*
8. Dimensional standards applicable to the RHC zone include a minimum lot size of 4,300 square feet, a minimum lot width of 30 feet, a right-of-way building setback of 20 feet, a lot line building setback of five feet, a maximum building height of 45 feet, and maximum lot coverage of 75 percent. *AMC Table 20.48-1*. City staff reviewed the proposal and determined that it would comply with these dimensional standards, subject to design review at a later phase related to civil construction permits. *Exhibit 1, Staff Report, page 20–21; Exhibit 4; Exhibit 6.*

Existing Site, Surrounding Area, and Proposed Development

9. The 4.89-acre property is currently occupied by a single-family residence, multiple storage sheds, and associated vehicles. The site is bound by 172nd Street to the south, a large wetland complex to the north and east, and a single-family residence with vacant land to the west. The proposed development is the first property to develop in the immediate area, the other adjacent properties being vacant. The Applicant proposes to develop three, five-unit townhome buildings; three, four-unit townhome buildings; and three, three-unit townhome buildings. The Applicant proposes three open-space tracts,

with a total area of 8,249 square feet. *Exhibit 1, Staff Report, pages 6 and 21; Exhibit 3; Exhibit 6; Exhibit 7; Exhibit 13.*

Critical Areas

10. Wetland A is a Category III wetland onsite, and Wetland B is a Category III wetland, offsite to the north, with a buffer that extends onto the subject property. The proposed major unit lot subdivision has avoided impacts to the wetland and has proposed buffer averaging to allow for limited encroachment into the wetland buffer. The Applicant proposes to dedicate to the City the tract containing Wetland A and the wetland buffers. The dedicated tract, identified as Tract 995 on the civil site plans, has an area of 114,497 square feet. The Applicant proposes to use the option of buffer width averaging in order to create a viable project on the subject property. The wetland and buffer on the site are approximately 55 percent of the total land area. The site plans shows that the private drive aisle will border the wetland buffer area from the southeast corner of the site and extend north for approximately half of the site, then the site is bordered by open space and recreational areas north of the roadway, and the back yards of five townhomes will border on the northern portion of the site. The entire buffer area will be fenced and signed as a Native Growth Protection Area. The wetland buffer has been reduced by no more than 25 percent ($110 \times 75\% = 82.5$). The buffer reduction is amount is 9,922 square feet, and the buffer addition is 9,927 square feet. City staff reviewed the buffer averaging proposal for compliance with the critical areas ordinance, AMC 20.93.290 and .320, and determined that it would comply. *Exhibit 1, Staff Report, pages 27 and 28; Exhibit 6; Exhibit 11.*
11. Wetland Resources, Inc., submitted a critical area study and buffer mitigation plan on behalf of the Applicant, dated September 18, 2023. Among other things, the wetland report addresses the concern raised by the Tulalip Tribe that one of the subdivision's open space tracts encroached on the buffer. The Applicant redesigned that portion of the project to avoid the encroachment. *Exhibit 1, Staff Report, page 30; Exhibit 11; Exhibit 15; Testimony of Amy Rusko.*
12. The wetland report delineated the wetlands and their buffers. The report concluded that the wetlands were Category III wetlands. The offsite wetland, Wetland B, was the more ecologically significant of the two, but it was separated from the subject property by a road. The wetland report proposed several mitigation measures:
 - No parking areas are proposed along the buffer edge.
 - Residential building and yard lights will be low wattage lamps that will be manually controlled and generally used for short durations.
 - Lights along the access roads will be directed downward at the road surfaces and will not broadcast into Wetland A.
 - Noise from construction activities will be temporary, during daylight hours. Machinery will be turned off when not actively in use.
 - Vehicle use will be at low speed in this townhome development, reducing noise.

- Noise from the residences will be limited to low decibels that will dissipate quickly to ambient levels, consistent with other residential uses.
- During the clearing and grading activities, runoff will be collected and directed to temporary stormwater facilities.
- Erosion and sedimentation control measures will be in place while clearing, grading, and construction occurs.
- Construction equipment will be kept outside of the wetland buffer.
- All runoff from the proposed development will be collected and/or treated in a manner consistent with the applicable drainage manual.
- During clearing and grading activities, stormwater runoff will be collected and directed to temporary stormwater facilities.
- Erosion and sedimentation control measures will be in place while clearing, grading, and construction occurs.
- Stormwater from the proposed development will be collected and/or treated in a manner consistent with the applicable drainage manual.
- The stormwater management system for the proposed project, including a level spreader trench upslope of Wetland A, is designed to ensure that hydrology within the wetland is maintained.
- No forested areas will be impacted from this project.
- Lawns will be located well away from the wetland.
- Critical area fencing will be constructed along the buffer boundary to keep pets and humans out of the wetland and buffer.
- Critical area signage will be posted along the buffer boundary to educate residents about its location.
- The townhomes will have privacy fencing around them, so the fences near buffer areas will prevent people and pets from entering them.
- Dust produced during construction will be controlled with best management practices, as described in the Stormwater Pollution Prevention Plan.
- The on-site wetland and buffer will be retained, so the proposed development will not disrupt any corridors or connections to other systems.

Exhibit 11.

11. The wetland report also analyzed the project's compliance with the criteria for wetland buffering set forth in AMC 20.93.320:
 - Buffer averaging is required to allow for the proposed development. The irregular shape of Wetland A and its buffer provide an extraordinary hardship to the applicant in trying to design a project that meets density goals while complying with all of the other requirements of the AMC. Wetland A will benefit from the buffer averaging proposal as a slight net increase in buffer area on the site will occur. A total of 9,927 square feet (9245+682) of additional buffer will be provided for 9,922 square feet of buffer reductions, yielding a net increase in 5 square feet of buffer.

- The original design allowed for lesser impactful aspects of the project to be located adjacent to the reduced buffer areas. A loop road is currently being required on the east side of the project, in the area of the reduced buffer. Impacts will be minimized by installing fencing and signage along the reduced buffer edge and buffer enhancement, where necessary. Runoff from the roadway will be captured and treated in the on-site stormwater system.
- The reduced buffer area will be replaced with additional buffer areas of similar vegetative quality. The net gain in buffer area on the site, along with buffer enhancement where necessary, will result in a lift in functional values provided by the buffer, so the averaging will not adversely impact the functional values of Wetland A.
- The buffer is currently vegetated with scattered native trees with a dense shrub and emergent understory that is dominated by native plants, so the buffer is not unvegetated or sparsely vegetated. Although some invasives are present, the vegetation is dense and predominantly native. Any areas of invasive species that are larger than 50 square feet will be removed and enhanced with native trees and shrubs.

Exhibit 11.

13. City staff accepted the wetland report's conclusions and recommendations. *Exhibit 1, Staff Report, pages 27–29.*

Stormwater

14. LDC Surveying Engineering Planning submitted a preliminary stormwater drainage report on behalf of the Applicant, dated August 2023. Due to till soils present onsite, the stormwater report did not recommend infiltration of all stormwater. Instead, the recommendation was for all runoff from developed or disturbed surfaces to be collected, treated, and released to natural drainage courses unless it is dispersed or infiltrated. The stormwater report noted the following features and proposed the following stormwater management techniques:
 - The site contains two separate threshold discharge areas (TDAs) that outfall to separate downstream systems. The disturbed area of the development is contained within the North Basin, South Basin, and Frontage Bypass Basin. The North TDA Basin will be mitigated separate for its own TDA while the South and Frontage Basins will be considered within separate TDA modeling for the South TDA Basin. The basins consist of developed roof, landscape, sidewalk, pavement, and driveway.
 - This project is required to meet flow control requirements for each TDA. Flow control requirements are achieved by two detention vaults in the north and south edges of the site. Developed condition stormwater associated with the site will be collected within the detention vaults then released to historic flowpaths. A small bypass area exists in the west end

of the frontage that cannot be collected due to vertical constraints. The bypass area has been considered in the Frontage Bypass Basin modeling in WWHM.

- The project will exceed the 10,000 SF impervious surface threshold and is required to provide an Onsite Stormwater BMP. Two detention vaults that are both controlled by flow control risers will be installed at the north and south edges of the site and will discharge at mitigated rates that will be dispersed into native vegetation in the wetland area on the north end of the site and into the city conveyance system at the southeast corner of the site.
- As the project will exceed the 5,000 SF threshold of PGIS, the project is required to provide “basic” water quality treatment per the 2019 DOE manual. Two Perfilter water quality treatment units will treat runoff from pollution-generating impervious surfaces downstream of each detention vault.
- The dispersion facility discharge from the north detention vault outfall is proposed within the outer 25% of the wetland buffer.

Exhibit 13.

15. City staff accepted the Applicant’s preliminary stormwater plan, determining that it would be feasible to build and would likely result in compliance with the Department of Ecology Stormwater Manual. Final approval of the stormwater system would occur during the review process. *Exhibit 1, Staff Report, page 30.*

Access and Traffic

16. Access to the property would be provided by a new public street to the west of the property, which would connect with existing 172nd Street NE. Access would also occur via a private drive aisle along the east of the subject property, which would also connect with 172nd Street NE. Kimley Horn prepared a Traffic Impact Analysis (TIA) for the proposed development, dated August 2022. The TIA determined that the proposed use would produce 25 new PM peak-hour-trips for 43 townhome units. The project was subsequently reduced to 36 townhome units, but the trip generation rate of 0.57 per unit remains the same for townhouse use. Thus, City staff concluded that the proposed use produces 21 new PM peak-hour-trips for 36 townhome units (36 units x 0.57 trips per unit). On the basis of this calculation, City staff calculated a traffic impact fee of \$70,455 (\$3,355 x 21 trips). *Exhibit 1, Staff Report, page 27; Exhibit 15.*
17. City staff determined that the means of ingress and egress for emergency vehicles, passenger vehicles, pedestrian, and bicycle transportation to the site would be through new public roadways (Roads A and Road B) and new private roadways (Drive A and Drive B). The proposal provides driveway access to each building lot from the internal private Drives A and B and public Road B, which are accessed from the new public Road A and 172nd Street NE. The proposed private access drives are 26 feet in width with a 20-foot drive aisle, a sidewalk on one side, and a curb. The proposed sidewalk connects

to the public sidewalk on the proposed new road into the site (Road A and Road B) that ultimately connects to 172nd Street NE. City staff determined that the proposed development would comply with City code requirements under chapter 20.56 AMC pertaining to streets and sidewalks, including requirements related to lot access for vehicles, emergency vehicles, pedestrians, and bicycles; entrances to streets; relationship of streets to topography; street intersections; and right of way improvements and dedications. *Exhibit 1, Staff Report, pages 17 and 20.*

Utilities and Services

18. The City would provide water and sewer service to the property, and, as verified in a signed “Water & Sewer Availability” letter, the City has capacity to provide water and sanitary sewer services to the site. Cascade Natural Gas would provide natural gas service to the property, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. All proposed utilities to and on the site would be located underground. The property would be served by the Arlington School District and the City’s police and fire departments. The Applicant would be required to pay \$124,380 in school impact fees under AMC 20.90.230. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted, and all utilities must be operational prior to issuance of building certificates of occupancy. The Applicant would have \$53,892 in community parks impact fees. *Exhibit 1, Staff Report, pages 4 and 21; Exhibit 8.*

Parking

19. At the time of the application’s submittal, AMC 20.72.010 required two parking spaces per unit and one additional space for every four units for a unit lot subdivision. Each residential unit would have a garage and driveway, providing two parking spaces, for a total of 72 parking spaces for the 36 residential units. Ten additional guest parking spaces would be provided by parallel parking spaces that would be available at various locations throughout the site. *Exhibit 1, Staff Report, page 16; Exhibit 3; Exhibit 6.*

Landscaping and Open Spaces

20. Residential developments are required to provide 65 feet of recreational space for every person expected to reside in the development. *AMC 20.52.010.* The proposed development would provide housing for 115.2 people, which would require 7,488 square feet of recreational space. The Applicant would exceed this requirement by providing 8,249 square feet of recreational space in two mini-parks on Tract 996 and Tract 999. The Applicant’s landscape plans demonstrate that the proposed development would comply with City code requirements for screening and street trees. *AMC 20.76.020; AMC 20.76.030; AMC 20.76.110. Exhibit 1, Staff Report, pages 21 and 25–26; Exhibit 5.*

Unit Lot Subdivision

21. AMC 20.44.020A(a) provides for unit lot subdivisions as “an alternative to conventional subdivision processes by which the location of a building on a lot can be placed in such a manner that one or more of the building’s sides rest directly on a lot line, allowing for the creation of fee simple lots for townhome[s].” Unit lot subdivisions are allowed in RHC zones, subject to certain development standards, with unit lot subdivisions of more than nine lots requiring approval of a conditional use permit. *AMC Table 20.40-1; AMC 20.44.020A*. City staff reviewed the proposal and determined that, with conditions, the proposal would meet the specific ULS standards, noting:

- The preliminary major unit lot subdivision has proposed townhouses within three 5-unit buildings, three 4-unit buildings, and three 3-unit buildings. The building sizes are mixed throughout the entire site and are a minimum of ten feet apart.
- The proposed townhouses are required to receive Design Review Board approval prior to the submittal of the final unit lot subdivision.
- The proposed preliminary major unit lot subdivision has provided a minimum of fifteen percent of private open space per lot and equal to or more than 200 square feet. The private open space calculations are shown on sheet PP-03 of the site plan sheets show a range between 205 – 1,038 square feet.
- The parent parcel of the preliminary major unit lot subdivision has met the dimensional standards per AMC 20.48.¹
- The proposed preliminary major unit lot subdivision in the residential high-capacity zone has complied with the AMC 20.16.
- The preliminary major unit lot subdivision has proposed a private road and mini parks that are located on Tracts 996 through 999. These areas are to remain private and owned in common by the owners of the individual lots within the subdivision or by a homeowner’s association.
- The proposed preliminary major unit lot subdivision has met the requirements of AMC 20.48 Density and Dimensional Standards.² The site would provide a density of 16.22 dwelling units per acre.
- The private drive aisle shown on the site plan as Tract 998 or Drive A and Drive B is the fire lane for the preliminary major unit lot subdivision. There shall be no parking along the private drive aisle. This shall be enforced by the homeowner’s association.
- Each townhouse unit within the preliminary major unit lot subdivision has a garage for the parking of bicycles. No additional bicycle parking facilities are required.
- The utilities proposed with the preliminary major unit lot subdivision are required to be installed per the Public Works Construction Standards and Specifications. The final approval of all utilities is completed with the

¹ The Hearing Examiner disagrees with staff on this point, as will be discussed below in conclusions.

² *Id.*

civil permit. All utility installation shall be approved prior to final unit lot subdivision approval.

- The private road will remain private and owned by the homeowner's association.
- The new landscaping proposed is in conjunction with the mini parks, open spaces, native growth areas (buffers) lot boundaries, and public roadway. There is existing landscaping that will remain on the site that is located in the native growth area and wetland buffer. The proposed street trees within the city right-of-way are trees that are listed on the city approved tree list.
- A homeowner's association is required to be established and documentation submitted to the city prior to recording the final major unit lot subdivision.
- Covenants, Conditions, and Restrictions (CC&Rs) shall be submitted with the final major unit lot subdivision for city review. The CC&Rs are required to be recorded and the recording number shall be placed on the final major unit lot subdivision before recording with Snohomish County Auditor's Office.
- All private common areas within the major unit lot subdivision are required to be maintained by the homeowner's association and shall be stated within the CC&Rs and stated on the final major unit lot subdivision.
- All private lots, buildings, and facilities within the major unit lot subdivision are required to be maintained by the individual lot owner and shall be stated in the CC&Rs and stated on the final major unit lot subdivision.

Exhibit 1, Staff Report, pages 14–19.

Conditional Use Permit

22. As noted above, major unit lot subdivisions of more than nine lots are allowed in the RHC zone with a conditional use permit. *AMC 20.40.120*. The Applicant seeks a CUP to allow a 36-lot ULS. City staff reviewed the proposal and determined that, with conditions, the proposal would comply with the specific criteria for a CUP under *AMC 20.16.225*, noting:

- The requested preliminary major unit lot subdivision review is within the City of Arlington's jurisdiction per the zoning map and permissible use table.
- The proposed site plan review complies with all required sections of *AMC Title 20*.
- The proposed project has complied with SEPA, and the City issued a MDNS. No comments or appeal were received.
- The proposed development would comply with the City Comprehensive Plan, Transportation Plan, and other applicable plans, regulations, and policies.

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- The proposed preliminary major unit lot subdivision will not materially harm abutting properties due to constraints of wetland/buffer areas and new roadways.
- The proposed preliminary major unit lot subdivision is compatible with the future development of the surrounding area and the expected development for the zone an area.

Exhibit 1, Staff Report, page 31.

Testimony

23. City Planning Manager Amy Rusko testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan, zoning ordinances, and criteria of approval for a ULS and CUP. She noted that Public Works determined that municipal sewer and water are available for the proposed development. Ms. Rusko testified that of the 4.89 acres of the subject property, only 2.2 are “developable” in light of the wetland and wetland buffers. The remainder of the site would remain as a native growth protection area. She testified that the project had been modified to accommodate the concerns of the Stillaguamish and Tulalip Tribes. In particular, she called the Hearing Examiner’s attention the difference to the partial site map in Exhibit 18 as compared to the current site plans in Exhibit 6. She showed that the intrusion of the open-space tract into the wetland buffer had been addressed. Ms. Rusko explained that there was no requirement in the code to retain significant trees—instead, the code called for payment in lieu of retention. Ms. Rusko testified that it had been the City’s intent to require the Applicant to comply with all recommendations of the wetland report and the geotech report, and she suggested those be added as conditions of approval. *Testimony of Amy Rusko.*
24. Applicant Representative Ryan Larsen gave an overview of the project, including its size and the plan for collecting its stormwater. Stormwater would go into two detention facilities, thence to be treated and released to natural drainage courses (unless dispersed or infiltrated). He testified that there would be no issue with using the tracts set aside for the detention vaults as open space, recreational land because the vaults were underground where they would not be affected by foot traffic. Also, the tracts containing the vaults were not swales or other stormwater treatment tracts, so again, the foot traffic would not affect their function. He explained that there was a level spreader for the northeast detention facility. He did not object to any of the proposed conditions in the staff report or to the proposed new conditions relating to compliance with the wetland report and stormwater report. *Testimony of Ryan Larsen.*
25. The Applicant’s Project Drainage Engineer, Tom Abbott, confirmed that active use of the stormwater tracts would not affect their function. He testified that the tracts were modeled as permeable, notwithstanding the underground vaults, because the tracts did have soil coverage, thus allowing interflow of stormwater beneath the surface. He confirmed that detained stormwater would be treated prior to release. He testified that

the reason for the level spreader is to control and mitigate the rate of discharge into the wetland buffer, thereby preventing erosion impacts. *Testimony of Tom Abbott.*

Staff Recommendation

26. City staff reviewed the application and recommended that the ULS and CUP be approved, with conditions, as well as two new conditions suggested by the Hearing Examiner. The Applicant agreed to all proposed conditions. *Exhibit 1, Staff Report, pages 21 through 25; Testimony of Amy Rusko; Testimony of Ryan Larsen.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a conditional use permit as well as preliminary plat applications, which are evaluated in the course of conditional use permit approval. *AMC 20.12.210(a); 20.12.230(2), 20.16.225(b); 20.16.400.*

Criteria for Review

In considering whether to approve an application for a conditional use permit, the hearing examiner shall proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.
- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made, then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.
- (3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

AMC 20.16.255(e).

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Subject to Subsection (d) [of AMC 20.16.225], the designated decision-maker shall issue the requested permit unless it concludes, based upon the information submitted at a hearing if there is a hearing or by signed letter if there is not, that:

- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

AMC 20.16.225(c).

Even if the permit-issuing authority finds that the application complies with all other provisions of this title, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

AMC 20.16.225(d).

Additionally, RCW 58.17.110(2) requires that a proposed subdivision shall not be approved unless the Hearing Examiner finds 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.

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

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Conclusions Based on Findings

- 1. With conditions, the proposal would comply with preliminary plat requirements under the State Subdivision Act (RCW 58.17.110).** The City provided reasonable notice of the application and opportunity to comment on the proposal. The City received comments on the proposal from the Stillaguamish Tribe and Tulalip Tribe, which were addressed through modifications to the proposal and through the conditions of approval set forth below. The Hearing Examiner determines that the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds. The City Department of Community and Economic Development acted as lead agency, reviewing the proposal under SEPA, and determined that, with mitigation measures, the proposal would not have any probable significant adverse environmental impacts. The MDNS was not appealed. The MDNS would require the Applicant to implement best management practices to prevent erosion, address stormwater runoff, and protect groundwater; implement dust control measures to reduce fugitive dust emissions; provide tree replacement at a three-to-one ratio; comply with noise restrictions during construction; obtain design review approval; install light fixture to prevent glare; construct frontage improvements and dedicate right-of-way; submit an unanticipated discovery plan; connect to City water and wastewater systems; and pay applicable traffic, school, park impact fees.

The project site contains a Category III wetland and buffer, as well as part of the buffer of a second Category III wetland. Buffer averaging is proposed, whereby part of the buffer will be reduced to accommodate development in exchange for an equivalent expansion of the buffer elsewhere. A competent biologist prepared a wetland report which concluded that the wetland's health and function would not be impaired by the development. The wetland report suggested several mitigation measures, which the Hearing Examiner will make conditions of approval.

Although there are no steep slope critical areas on the site, the Applicant submitted a geotechnical report. The geotechnical report contained several recommendations, including a setback of 15 feet from the steepest slope in the northeast portion of the property, as well as various measures to be implemented during construction. The Hearing Examiner will make these recommendations a condition of approval.

The proposed stormwater system would collect all stormwater from pervious and impervious surfaces and would detain, treat, and release it. The release to the north (in the direction of the wetland) would occur via level spreader to lessen erosion impacts. The Hearing Examiner is persuaded that compliance with the Western Washington Stormwater Water will be feasible at the construction permit stage.

The Applicant's Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable level of service during AM and PM peak hours following a full buildout of the proposed development. The City determined that the proposed development would generate 21 new PM peak hours and that the Applicant would need to pay traffic impact fees based on the newly generated PM peak hour trips, as required by the MDNS. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements and would include safe walking routes to schools and school bus stops.

The City confirmed that it has capacity to provide water and sanitary sewer service to the property. The City would also provide police and fire emergency services to the property. Cascade Natural Gas would provide natural gas service, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted. The proposal includes 8,249 square feet of recreational space in two mini-parks on Tract 996 and Tract 999. The Applicant would comply with code requirements for tree retention and replacement. The proposed development would also implement landscaping for screening and parking area shading in compliance with code requirements. Conditions, as detailed below, are necessary to ensure the proposal complies with all municipal and state requirements related to the preliminary subdivision of land. *Findings 1–26.*

2. **With conditions, the proposal would comply with the unit lot subdivision requirements of the municipal code.** ULSs are permitted in RHC zone. The proposed development includes three, five-unit townhome buildings; three, four-unit townhome buildings; and three, three-unit townhome buildings for a total of 36 residential units. The proposed building heights would be less than the maximum allowed under City code. The Design Review Board would review and approve the proposed building designs prior to final building permit issuance. The proposal includes provisions meeting requirements for usable open space, including two private mini-parks that would be maintained by the homeowner's association. As proposed and conditioned, the development would comply with all requirements for a ULS under AMC 22.44.020A. *Findings 1–26.*
3. **With conditions, the proposal would satisfy the requirements for approval of a conditional use permit.** Major unit lot subdivisions of over nine residential units are allowed in the RHC zone with a conditional use permit. Multi-family townhouses are also allowed in the RHC zone, with a conditional use permit. The City deemed the application complete on October 24, 2022. The proposed 36-unit townhome development is an appropriate use in the RHC zone and would meet all but one of the density and dimensional standards for development in the RHC zone, including standards for minimum lot sizes, minimum lot widths, building setbacks, and maximum building height. The proposal would not, strictly speaking, meet the minimum density limits.

City staff determined that the proposal only offers 16.22 dwelling units per acre, less than the minimum of 17 dwelling units per acre required by AMC Table 20.48-1. But staff's density calculation was based on a buildable area of 2.2 acres out of a total parcel size of 4.89 acres. (If staff had used the full 4.89 acres, the density would have been even less, at 7.36 units per acre.) The Hearing Examiner agrees it is reasonable to exclude the wetlands and their buffers from the buildable area for purposes of the density calculation. The Hearing Examiner recognizes, however, that some of the buildable area was created by wetland buffer averaging—in particular, along the eastern edge of the property, where the wetland buffer was reduced by 9,922 square feet to accommodate the drive aisle. (The reduced buffer was “added back” elsewhere, as required during buffer averaging.) The reduction of the wetland buffer throughout averaging had the effect of “growing” the area that could practically be built upon, at the cost of “reducing” the density of dwelling units per acre. By the Hearing Examiner's rough estimation, if the 9,922 square feet of new developable area created by buffer averaging were subtracted from the developable area, then the project would have had a density of 18 units per acre. The Arlington code does not provide instruction as to how density calculations are to be handled under these circumstances. The Hearing Examiner concludes that, given the infeasibility of developing the site absent buffer averaging, given the strong policy statements in the Comprehensive Plan in favor of promoting a variety of densities of housing, and given the large area of wetlands and associated buffers that are being protected (well over half the total site area), it is reasonable to calculate the site density without including the area “gained” by the wetland buffer averaging. Under that approach, the proposal does meet the minimum density requirement.

The City evaluated the environmental impact of the proposed development as required by SEPA and issued an MDNS, which was not appealed. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. As noted above in Conclusion 1, the City provided reasonable notice of the application and associated public hearing. As addressed in Conclusion 1 above, the Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable levels of service following a full buildout of the proposed development. The Applicant would construct and dedicate Road A to the City, with full frontage improvements, which would provide sidewalk connections and access to 172nd Street NE. The proposed development includes open space in excess of requirements for 36 residential lots.

The proposed use would be consistent with the Comprehensive Plan's Residential High Density land use designation for the property and would further several Comprehensive Plan goals and policies related to pedestrian-friendly site design, development of mini-parks, and the provision of a variety of housing types in appropriate locations. The proposed 36-unit townhouse development would meet the City's criteria for building design, density and dimensional standards, recreational facilities and open space, streets and sidewalks, utilities, parking, and screening. The development would be adequately screened from surrounding properties and would not endanger the public health or safety,

or adversely affect abutting properties. As detailed below, conditions are necessary to ensure the proposal complies with all requirements associated with approval of a conditional use permit. *Findings 1–26.*

DECISION

Based upon the preceding findings and conclusions, the request for a preliminary major unit lot subdivision and conditional use permit to subdivide a 4.89-acre property into 36 townhome fee simple lots that would contain three, five-unit townhome buildings; three, four-unit townhome buildings; and three, three-unit townhome buildings, with associated improvements, at 8927 172nd St. NE, is **APPROVED**, subject to the following conditions:³

1. All development shall be in substantial conformance with the approved Preliminary Unit Lot Subdivision and Landscape Plans received on October 5, 2023, subject to any conditions or modifications that may be required as part of the permit review.
2. The Applicant shall meet all local, state, or federal code requirements. Please refer to the Arlington Municipal Code for a complete list of code requirements for your project type.
3. The Preliminary Unit Lot Subdivision shall comply with all permits and conditions thereof from the City of Arlington and other government agencies with jurisdiction.
4. In order to mitigate potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention and TESC Controls to prevent erosion during and after construction. A Certified Erosion and Sediment Control Lead is required to monitor the site.
5. In order to mitigate potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction. A Construction Management Plan shall be submitted to the City prior to commencement of construction to ensure these measures. Construction equipment emissions shall comply with all State and Federal regulations for emissions.
6. In order to mitigate potential impacts to the on-site Category III wetland (Wetland A) and the off-site Category III wetland (Wetland B), the Applicant shall follow the submitted Critical Area Study and Buffer Mitigation Plan completed by Wetland Resources. The project proposal shows that Wetland A is protected by a native growth protection area tract. The standard buffer for a Category III wetland is 110 feet. The project has proposed buffer width averaging as permitted through AMC 20.93.320, with a reduction of no more than twenty-five percent or a distance equal to 82.5 feet. The buffer reduction is 10,278 square feet and the buffer addition is 10,283 square feet.

³ Conditions include those required to reduce project impacts as well as those required to meet City codes.

7. In order to mitigate potential impacts to ground water the Applicant shall employ best design practices meeting the current Department of Ecology's Stormwater Management Manual for Western Washington.
8. In order to mitigate potential impacts to water runoff the Applicant shall follow the current edition of the Department of Ecology's Stormwater Management Manual for Western Washington and Best Management Practices used to protect groundwater.
9. In order to mitigate the removal of significant trees on the property the Applicant shall replant trees on the site. Replacement of significant trees are calculated at a 3:1 ratio. The project removes 13 significant trees and more than 39 trees are shown to be replanted on the landscape plan.
10. In order to mitigate potential impacts to animals on the property the Applicant shall provide protection to the wetland and retained trees during construction and provide native growth protection fencing and signage along all buffers prior to approval of Final Unit Lot Subdivision.
11. The Applicant shall comply with current codes to reduce or control environmental health hazards. A spill prevention plan shall be in place according to local, State and Federal policies.
12. City of Arlington noise standards found in AMC 9.20.060 shall be complied with. Specifically, in section 9.20.060(8) noises resulting from any construction or development activity or the operation of heavy equipment from 7:00pm to 7:00am Monday through Saturday shall be prohibited. The project will generate short term noise associated with construction activities. Construction hours will conform to City requirements. Noise from light vehicle traffic will be generated during business hours at project completion.
13. The proposal is required to meet the City of Arlington Development Design Standards of AMC 20.46 through a Design Review Board Decision prior to submittal of the Final Unit Lot Subdivision permit.
14. To mitigate potential light pollution, the Applicant will be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict D – that is comprised of the Federal Aviation Regulations (FAR) parts 77 Imaginary surfaces.
15. To mitigate the impacts on recreation the Applicant is providing over an acre of on-site recreation for future residents. The Applicant shall pay Community Park Impact Fees in the amount of \$1,497.00 per multi-family attached dwelling unit.

16. If during construction historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The Applicant shall follow the submitted Unanticipated Discovery Plan and shall notify the Stillaguamish Tribe prior to ground disturbance. The Stillaguamish Tribe may have a monitor on-site to observe site disturbances during the construction of the project.
17. The Applicant is required to construct frontage improvements along 172nd Street NE, construct a public street along the west property line, and private drive aisles throughout the subdivision. The public street improvements and property is required to be dedicated to the City of Arlington at the time of Final Unit Lot Subdivision.
18. Trip generation has been calculated by Kimley Horn Traffic Consultants through a Traffic Impact Analysis, completed in August 2022. The report references land use code 215 for Single-Family Attached Housing per the ITE Trip Generation Manual, 11th Edition. The original report was completed for 43 town house units. The revised project proposes less units on the site. The analysis shows a rate of 0.57 PM Peak Hour Trips per unit. The project proposes 36 townhouse units, which results in 21 new PM Peak Hour Trips. City of Arlington Traffic Impact Fees are required in the amount of \$70,455.00 (\$3,355/trip x 21 trips).
19. The Applicant shall pay Arlington School District Mitigation Fees in the amount of \$3,455 per two/+ bedroom multi-family dwelling unit. The Applicant shall provide proof of payment to the Arlington School District prior to building permit issuance.
20. The Applicant shall connect to the City of Arlington water and wastewater systems, extend utility lines as necessary and pay water and sewer connection fees. All improvements shall be installed during the Site Civil Construction phase of the project. All utilities shall be installed underground.
21. The Applicant is required to apply for a Civil Construction Permit and receive approval prior to any land disturbance or work commencing on the site.
22. The Applicant shall submit an archaeological survey per the Stillaguamish Tribe of Indians and shall provide notification of archaeological fieldwork and/or ground disturbance.
23. The Applicant shall submit the final landscape plans and mitigation plans with the Civil Construction Permit.
24. The Applicant shall submit a lighting plan with the Civil Construction Permit.

25. The project is subject to submit a Right-of-Way Permit for all work with public rights-of-way.
26. The project is required to meet the most current version of the Department of Ecology Stormwater Manual for Western Washington and the City of Arlington Engineering Standards for the specific details of the project.
27. The Applicant is required to obtain Design Review Board approval for all structures proposed on the site prior to the submittal of Final Unit Lot Subdivision. The building design is required to meet all applicable code requirements and Development Design Regulations.
28. The Applicant shall submit a copy of the incorporation of the Homeowner's Association and the Covenants, Conditions, and Restrictions with the final major unit lot subdivision application. The CC&Rs shall include the following:
 - No parking allowed along the private drive.
 - No storage of inoperable motor vehicles.
 - Maintenance of private roads and sidewalks, common open space and parks, common parking spaces, private utility infrastructure, landscaping, and
 - Maintenance of private lots, buildings and facilities on the site.
29. The Applicant shall complete all required Civil Construction improvements on the subject site.
30. The Applicant shall submit as-builts, acquire all required bonds, and complete the civil construction punch list for the project.
31. The Applicant shall provide the conditions found in AMC 20.44.020N on the face of the final plat document.
32. The Applicant shall dedicate all Native Growth Protection Areas to the City of Arlington. The NGPA areas are shown on the site plan under Tract 995. This is required to be noted on the final major unit lot subdivision site plan.
33. The Applicant shall provide language to be placed on the final unit lot subdivision that notifies future property owners of possible effects from aviation activities and the proximity of the Arlington Municipal Airport.
34. The Final Unit Lot Subdivision shall be recorded at Snohomish County Auditor's Office and the recorded document returned to the City of Arlington prior to issuance of any Building Permits.

35. The proposed building plans shall be in compliance with the approved Design Review Board Decision.
36. The project is subject to applicable water and sewer utility fees. These fees are collected at the time of building permit issuance.
37. Prior to issuance of building permits, all associated impact fees shall be paid.
38. All contractors working on the site are required to obtain a Washington State Business License and a City of Arlington Endorsement.
39. The Applicant shall comply with all recommendations and mitigation measures included in the Critical Area Study and Buffer Mitigation Plan prepared by Wetland Resources, Inc., dated September 18, 2023.
40. The Applicant shall comply with all recommendations and mitigation measures included in the Geotechnical Evaluation prepared by Cobalt Geosciences, dated November 16, 2021.

DECIDED this 29th day of December 2023.



ALEX SIDLES
Hearing Examiner