



CITY OF ARLINGTON NOTICE OF DECISION

Amber Grove Preliminary Unit Lot Subdivision Conditional Use Permit – PLN#1018

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

Project Name: Amber Grove Preliminary Unit Lot Subdivision

Proponent: Lot 19, LLC

Project Number: PLN#1018

Description of Proposal: The applicant is proposing a preliminary unit lot subdivision through a conditional use permit for an 84 townhome development on approximately 14.36 acres within the residential high capacity zone. The proposal is for a townhouse style project consisting of 21 four-unit buildings, each building will contain four units. Each unit has its own attached garage for two parking spaces and guest parking will be provided throughout the development. Access to the site includes drive aisles from an existing City of Arlington unopen right-of-way to 74th Avenue NE.

The site contains streams and Category III wetlands that are part of a Consent Decree recorded April 3, 2001 with Snohomish County for Case Number C99-1711C the EPA had filed in the United States District Court Western District of Washington. Construction of the access point will require some temporary impacts at the stream crossing due to a girder bridge that will span “bank-to-bank” width of the stream. Temporary and permanent impacts to the streams and wetlands buffers are proposed to be mitigated by providing additional replacement buffers in other areas of the site.

The site grading includes 25,000 cubic yards of cut and fill. About 10,000 cubic yards of this volume will be existing surface soils that will be stripped and conditioned to be replaced in landscape areas of the site. Approximately 50% of the site will remain in Native Growth, however the proposal includes the removal of 237 significant trees and replacement planting of 535 trees.

Project improvements to the site include frontage improvements along 74th Avenue and the unimproved public right-of-way, landscaping, park and open space, critical area protection, and the extension of city water and sewer.

Location:

Hearing Examiner Decision: Approved, with Conditions

Notice of Decision Date: July 10, 2023

End of Appeal Period: July 31, 2023

Conditional Use Permit Expiration Date: July 10, 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 the City of Arlington and 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 **July 31, 2023**.

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)	No. PLN#1018
)	
Merle Ash, Land Technologies, Inc.,)	Amber Grove CUP/ULS
on behalf of Lot 19, LLC)	
)	
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 associated conditional use permit, to subdivide a 14.36-acre property into 84 townhome fee simple lots for development of 21, 4-unit townhome buildings with associated improvements, at the 19700 block of 74th Avenue 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 June 8, 2023, using remote access technology.

Testimony:

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

Amy Rusko, City Planning Manager
Merle Ash, Applicant Representative
Eric Weiss

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, undated
2. Land Use Application, dated December 8, 2022
3. Project Narrative, dated April 18, 2023
4. Consent Decree, dated September 30, 1999, with Arlington Valley Land Company Wetland Compensation Plan, dated December 1998
5. Consent Decree Memorandum, dated May 15, 2023
6. Consent Decree Summary, dated May 12, 2023
7. Preliminary Plat Site Plans (5 Sheets), dated December 5, 2022
8. Landscape Plans (13 Sheets), revised April 13, 2023

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Amber Grove CUP/ULS
No. PLN#1018*

9. Preliminary Civil Plans (32 Sheets), dated December 5, 2022
10. Tree Survey Plan (1 Sheet), undated
11. Water and Sewer Availability Request, dated November 7, 2022
12. SEPA Environmental Checklist, dated April 20, 2023
13. Complete Streets Checklist, undated
14. Cultural Resources Assessment, Drayton Archaeology, dated March 21, 2023
15. Revised Critical Areas Report, Sewall Wetland Consulting, Inc., dated March 27, 2023
16. Critical Area Mitigation Site Plan (1 Sheet), undated
17. Unanticipated Discovery of Cultural Resources and Human Skeletal Remains Plan, undated
18. Stormwater Site Plan Report, Land Technologies, Inc., dated April 2023
19. Construction Stormwater Pollution Prevention Plan, Land Technologies, Inc., dated December 2022
20. Geotechnical Evaluation, Cobalt Geosciences, LLC, dated December 2, 2021
21. Draft Joint Aquatic Resources Permit Application (JARPA) Form, dated March 27, 2023
22. Traffic Impact Analysis, Kimley-Horn and Associates, Inc., dated October 2022
23. Traffic Mitigation Offer to Snohomish County, undated
24. Legal Description
25. Title Report
26. Vicinity Map with Mailing Labels
27. Notice of Public Hearing, dated May 23, 2023, with Affidavit of Posting, dated May 23, 2023
28. Letter from Snohomish County PUD No. 1, dated May 30, 2023
29. Letter from Washington State Department of Archaeology and Historic Preservation, dated April 6, 2023; Letter from Washington State Department of Archaeology and Historic Preservation, dated January 31, 2023
30. Comment from Snohomish County Public Works, dated January 17, 2023
31. Comment from Stillaguamish Tribe of Indians, dated May 23, 2023
32. Comment from Washington State Department of Transportation, dated February 13, 2023
33. Comments from Washington State Department of Fish and Wildlife, dated January 31, 2023, May 22, 2023, and May 23, 2023
34. Notice of Mitigated Determination of Non-significance, dated May 16, 2023, with Ad Copy for Publication in *The Everett Herald*, dated May 17, 2023, Agency Routing Email, dated May 17, 2023, and Email to Parties of Record, dated May 17, 2023
35. Neighborhood Meeting Comments, dated February 7, 2023
36. Notice of Application and Notice of Neighborhood Meeting, dated January 12, 2023, with Ad Copy for Publication in *The Everett Herald*, dated January 12, 2023, and Affidavit of Posting, dated January 12, 2023
37. Notice of Complete Application, dated January 5, 2023

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

Findings, Conclusions, and Decision
 City of Arlington Hearing Examiner
 Amber Grove CUP/ULS
 No. PLN#1018

FINDINGS

Application and Notice

1. Lot 19, LLC (Applicant) requests approval of a preliminary major unit lot subdivision (ULS) and associated conditional use permit (CUP) to subdivide a 14.36-acre property into 84 townhome fee simple lots. Development would involve construction of 21 buildings with four townhome units within each building. Each unit would have its own attached garage with two parking spaces. Associated improvements would include grading, landscaping, creation of a park and open space, protection of critical areas and their associated buffers, and frontage improvements along 74th Avenue NE. Access to the individual lots would be provided by drive aisles internal to the subdivision that would connect to 74th Avenue NE. The lots would be served by water and sewer services. The property is located at the 19700 block of 74th Avenue NE, southeast of the intersection at 197th Place NE and 74th Avenue NE.¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 3; Exhibit 7; Exhibit 9; Exhibit 11; Exhibit 25.*
2. The City of Arlington (City) determined that the application was complete on January 5, 2023. On January 12, 2023, the City provided notice of the application and neighborhood meeting by mailing 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*, with a comment deadline of January 26, 2023. The City held a neighborhood meeting on February 7, 2023, as required by Arlington Municipal Code (AMC) 20.16.130. Two members of the public provided comments on the proposal at the neighborhood meeting. Scott Timmerman expressed concerns about increased traffic and dumping of garbage on surrounding properties and requested that fencing be installed between the proposed development and his property. Michael Cook also requested that fencing be installed around the property. On May 23, 2023, the City provided notice of the open record hearing associated 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 June 7, 2023. *Exhibit 1, Staff Report, pages 2, 9, 11, and 12; Exhibit 27; Exhibits 35 through 37.*
3. The City did not receive any written comments on the proposal from members of the public in response to its notice materials. The City received the following comments from reviewing departments and agencies:
 - Snohomish County Public Utility District (PUD) No. 1 commented that the PUD has sufficient electric system capacity to serve the proposed development. The

¹ The property is identified by tax identification number 31051400101800. *Exhibit 1, Staff Report, page 3.*
A legal description is provided in Exhibit 24. *Exhibit 24.*

PUD also stated that existing facilities in the area may require upgrading and that the cost any new work or upgrades to the existing facilities associated with the proposed development must be paid for by the Applicant.

- The Washington State Department of Archaeology and Historic Preservation (DAHP) stated that the agency requests a professional archaeological survey of the project site due to the property's location in an area with a high to very high risk of containing archeological resources.
- Snohomish County Public Works stated that it concurred with the traffic impact fees detailed in the traffic impact analysis provided by the Applicant.
- The Stillaguamish Tribe of Indians requested that the Tribe be notified of any ground disturbance associated with the proposal.
- The Washington State Department of Transportation (WSDOT) provided comments related to stormwater impacts of the proposal.
- The Washington State Department of Fish and Wildlife (WDFW) stated that it was unable to find a full mitigation sequencing plan for the wetlands and Type F stream. WDFW stated that in order for the Applicant to obtain a Hydraulic Permit Approval (HPA) permit, the Applicant must demonstrate no net loss of ecological function from site development.

Exhibits 28 through 33.

4. The City provided the following responses to concerns raised by members of the public and comments submitted by reviewing agencies:
 - The City requested that the Applicant complete an archaeological survey of the project.
 - Traffic impact fees would be included in the SEPA threshold determination decision and listed in the permit conditions.
 - The request for notification of ground disturbance by the Stillaguamish Tribe of Indians would be added to the conditional use permit and to the civil construction and/or grading permits for the proposed development.
 - The City forwarded WSDOT's comments to the Applicant.
 - The City required the Applicant to provide additional information about mitigation for the proposal and this was provided prior to environmental review of the proposal under the State Environmental Policy Act, as detailed below.
 - The City added a request for installation of a fence as a conditional of approval for the conditional use permit. The fence would run along the southern property line from State Route 9 to the stream buffer.

Exhibit 1, Staff Report, pages 31 through 34.

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

*Findings, Conclusions, and Decision
City of Arlington Hearing Examiner
Amber Grove CUP/ULS
No. PLN#1018*

(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 May 16, 2023, with a comment and appeal deadline of May 31, 2023. On May 17, 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 received the following comments on the MDNS in response to its notice materials:

- DAHP commented that it concurred with the results and recommendations in the Cultural Resources Assessment prepared by Drayton Archaeology, dated March 21, 2023. DAHP stated that, because no cultural resources were identified during the assessment, no further direct archaeological supervision would be required. DAHP recommended that the Applicant follow a standard Inadvertent Discovery Plan during all ground disturbing activities.
- The Stillaguamish Tribe of Indians stated that it had no comments but that the site has a high potential of containing cultural resources and requested that the Tribe be notified of any ground disturbance associated with the proposal.
- WDFW stated that the extent of mitigation and buffer associated with critical areas was sufficient. WDFW requested that a condition of approval be added depicting the ordinary high water mark (OHWM) of the stream on all relevant plan drawings and that the distance between the OHWM and the underside of the bridge/water crossing be accurately depicted.

Exhibit 1, Staff Report, pages 2, 9, and 32 through 34; Exhibit 29; Exhibit 31; Exhibit 33; Exhibit 34.

6. The MDNS was not appealed and requires the Applicant to comply with the following measures to mitigate for the project's anticipated environmental impacts, which have been included as conditions of the current decision:
 - 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.
 - 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.

- In order to mitigate for impacts to the two ESA Fish Stream tributaries to Portage Creek and the off-site Category III wetland along the north boundary of the site, the applicant shall follow the Settlement Agreement Consent Decree with the EPA (case number C99-1711C) recorded with the Snohomish County Auditor under recording number 200104030169, that regulates the wetlands and streams on the site. There are proposed impacts to the buffers of the stream with the road crossing, these buffer impacts are to be mitigated by providing replacement buffers in other areas of the site. The Applicant shall obtain approval from the US Army Corps of Engineers, Washington Department of Fish and Wildlife and Washington Department of Ecology prior to construction commencing on the site.
- 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.
- 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.
- In order to mitigate the removal of significant trees on the property the Applicant shall replant trees on the site and pay an in-lieu tree mitigation fee for the remaining trees. Replacement of significant trees are calculated at a 3:1 ratio.
- In order to mitigate potential impacts to animals on the property the Applicant shall provide protection to the stream and wetland during construction and provide native growth protection signage along all buffers prior to approval of final plat.
- 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.
- 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 7:00 PM to 7:00 AM 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.
- 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.
- 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 C – that is comprised of the Federal Aviation Regulations (FAR) parts 77 Imaginary surfaces.

- 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 single-family attached dwelling unit.
- An Archaeological Report was provided with the project application and no precontact or historic cultural materials were observed. 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 notify the Stillaguamish Tribe and submit an Unanticipated Discovery Plan prior to ground disturbance. The Stillaguamish Tribe may have a monitor on-site to observe site disturbances during the construction of the project.
- The proposal is required to construct frontage improvements along 74th Avenue and provide a new public road with improvements extending east of 74th Avenue leading into the subdivision to the property line.
- Trip generation has been calculated by Kimley Horn Traffic Consultants through a Traffic Impact Analysis. The report references land use code 215 for Single-Family Attached Housing per the ITE Trip Generation Manual, 11th Edition. The project proposes 84 townhouse units, which results in 47.88 new PM Peak Hour Trips.
 - The Applicant is required to pay Traffic Mitigation fees in the amount of \$160,637.40 to the City of Arlington. The fee is equivalent to \$1,912.35 for each residential unit. City traffic impact fees shall be paid prior to building permit issuance and may be split between buildings.
 - The Applicant is required to pay Traffic Mitigation fees in the amount of \$47,419.20 to Snohomish County. The Snohomish county fee is equivalent to \$564.51 for each residential unit. Snohomish County traffic impact fees shall be paid prior to building permit issuance.
- 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.
- 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.

Exhibit 34.

Comprehensive Plan and Zoning

7. 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 enforce, 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]
- 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]
- Ensure the development of new multi-family housing and small single-family units occur within close proximity to commercial areas within the City. [GH-2]
- Multi-family housing should be located close to commercial and employment centers, transportation facilities, public services, schools, and park and recreation areas. [PL-2.1]
- 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:

- 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.
- 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.
- Environmental Preservation and Conservation: Through both preservation and conservation ensure the proper management of the natural environment and resources.

[GL-1]

- The Residential High Capacity (RHC) 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]
- 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]
- Encourage a mix of residential densities throughout the City. [GL-7]
- All recommended changes in residential densities should be based on the following:
 - The overall impact to surrounding properties;
 - The general impact to the existing transportation network;
 - The feasibility of the site and its situation for the proposed density;
 - The availability/capacity of urban services such as water and sewer to serve the area;
 - The vacant land supply within the City at the proposed density;
 - Consistency with GMA growth targets and buildable land supply.

[PL-7.1]

- Higher density residential uses should be located around commercial areas. [PL-7.2]
- Create pedestrian links between commercial and residential developments. [GL-9]
- Where commercial and residential areas abut, new development proposals should include the design and construction of walkways, sidewalks or other non-motorized features to integrate and link commercial activities and other neighborhoods within the City. [PL-9.1]
- Protect and enhance the various neighborhoods. [GL-15]
- Kent Prairie has a very diverse range of uses and housing types; such diversity should be protected. [PL-15.43]
- Through design, screening, and setbacks, impacts should be minimized between residential and non-residential uses. [PL-15.44]
- 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]
- 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]
- Any culverts, bridges, or other road crossings over or through critical areas shall be designed to meet WDFW current Fish Passage guidelines. [PT-9.6]
- 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]
- Achieve and sustain – through preservation, rehabilitation, and new development – a sufficient supply of housing to meet the needs of low-income, moderate-income, middle-income, and special needs individuals and households that is equitable and rationally distributed throughout the region. [MPP-H-2]
- 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 5 through 9.

8. The property is zoned “Residential High Capacity” (RHC). Properties to the west of the property are zoned “General Industrial” (GI). Properties north and east of the property are zoned “Residential Low Capacity” (RLC). Properties to the south are zoned “Residential Ultra Low Capacity” (RULC). 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.” *Arlington Municipal Code (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 Table 20.40-1*. 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 C 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 is required to obtain an aviation easement prior to project completion. *Exhibit 1, Staff Report, pages 3 through 5, and 13*.

9. Dimensional standards applicable to the RHC zone include a minimum lot size of 4,300 square feet, a minimum residential density of 17 dwelling units per acre, a minimum lot width of 30 feet, a rear lot boundary line of 20 feet, a side lot boundary line of five feet, a maximum building height of 35 feet, and a maximum lot coverage of 75 percent. *AMC Table 20.48-1*. Unit lot subdivisions do not need to conform to the minimum lot area or dimensional standards of Title 20 AMC, provided that overall development of the parent parcel meets the development and design standards of the underlying zone and

requirements of Chapter 20.44 AMC. *AMC 20.44.020B*. City staff reviewed the proposal and determined that it would comply with these standards. The parent property is approximately 625,560 square feet in size. Individual lots would be 7,447 square feet in size. The density of the proposed development is 17.28 dwelling units per acre. The lot widths range in size from 106 feet to 948 feet. Setbacks from the rear lot boundary lines would be greater than 20 feet and setbacks from side lot lines would be greater than 15 feet. The height of the proposed buildings would be 35 feet. Lot coverage would be 26 percent. *Exhibit 1, Staff Report, page 21; Exhibit 3; Exhibit 7; Exhibit 9.*

Existing Site, Surrounding Area, and Proposed Subdivision

10. The 14.36-acre property is relatively flat. The property is currently undeveloped dominated by a second or third growth conifer overstory and understory vegetation consisting of sword fern, vine maple, Indian Plum, and salmonberry. The southern portion of the property contains younger deciduous trees, including alder and maple. The property also contains large patches of Himalayan blackberry. A large wetland has a fringe edge along the north portion of the property. Two streams are also located on-site. One stream runs along the western boundary line of the property and the other comes onto the site in the westerly third of the site. The streams converge near the northwest corner of the property. The property to the north is vacant and is a City-owned native growth protection (NGPA) area. Properties south of the subject property are developed with single-family residences. Properties east of the subject property are vacant or developed with single-family residences. State Route 9 is also located east of the property. Properties west of the subject property are developed with industrial businesses. The Applicant proposes to develop 84 lots consisting of 21 buildings with four townhomes each, private and public open space, a mini-park system, drive aisles internal to the subdivision, and frontage improvements along the 74th Avenue NE and right-of-way connecting the subdivision to 74th Avenue NE. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3*

Critical Areas

11. Sewall Wetland Consulting, Inc., submitted a report on behalf of the Applicant addressing critical areas on the property, entitled “Revised Critical Areas Report” (“Critical Areas Report” or “CAR”), dated March 27, 2023. The Critical Areas Report identified two wetlands (Wetland A and Wetland B) and two streams (Stream A and Stream B) on the property. Wetland A is a Category III forested and emergent wetland located along the northern boundary line of the property. Wetland B is a Category III forested wetland located around the eastern stream channel. Stream A is a Type F stream along the eastern side of the property that enters the site from a steep sided ravine located along the west side of State Route 9 and south of the site and flows to the north. Stream B is also a Type F stream. Stream B passes is located in the western portion of the property and flows to the north. Stream A and Stream B converge on the northwest side

of the property. The CAR indicated that both streams contain salmonid, which are protected under the Endangered Species Act (ESA).

The critical areas on-site are subject to a Consent Decree recorded with Snohomish County, dated April 3, 2001. The Applicant has provided the Consent Decree and associated materials for the record. The Critical Areas Report states that “as agreed with the City, the Consent Decree states that there are no buffers on the wetlands on the site, so no buffer is required on [Wetland A].”² *Exhibit 15, page 9*. Likewise, the CAR also states that “as agreed with the City, the Consent Decree states that there are no buffers on the wetlands on the site, so no buffer is required on [Wetland B].” *Exhibit 15, page 10*. Typically, Type F streams containing an ESA species require a 150-foot buffer. *AMC Table 20.93-3*. However, under the Consent decree, the Applicant is only required to maintain a 50-foot buffer for both streams. The CAR and City staff indicate that the proposed development would exceed the 50-foot buffer requirement. The proposed development would maintain a minimum 75-foot buffer between Stream A and residential development to the east. No development is proposed west of Stream A, except for Road A in the northwestern corner of the property, which is required to provide access to the proposed subdivision. Stream B is located west of Stream A. Streams A and B and their associated buffers would be placed in a native growth protection area (NGPA) tract and a conservation easement to be deeded to the City. The NGPA tract (Tract 999) is approximately 266,435 square feet in size.

Sewall Wetland Consulting, Inc., also provided a “Critical Areas Mitigation Plan” (“Mitigation Plan” or “MP”) on behalf of the Applicant, dated March 28, 2023. The Mitigation Plan demonstrates that the proposed development would require the stream buffers to be reduced by 7,215 square feet in order to accommodate the construction of Road A, which contains a bridge crossing gap between 74th and the proposed subdivision. To compensate for the buffer reduction, the Applicant would utilize buffer averaging and add 7,215 square feet in the southern portion of the property, adjacent to Tract 996. The Applicant would also restore 7,140 square feet of buffer near Wetland A by installing native vegetation and mulch. The MP includes a five-year monitoring plan. City staff reviewed the Applicant’s critical areas materials and determined that the proposed development would comply with the Consent Decree and all applicable critical areas regulations under Chapter 20.93 AMC. *Exhibit 1, Staff Report, pages 28 through 31; Exhibits 4 through 6; Exhibit 9; Exhibit 15; Exhibit 16*.

² The Hearing Examiner notes that inconsistent values were provided for the buffers associated with the wetlands. The critical areas report indicated that both Wetland A and Wetland B have habitat scores of five, requiring a 105-foot buffer. *Exhibit 15, pages 9 and 10*. City staff indicated that the wetlands would require 60-foot buffers under AMC Table 20.93-4. *Exhibit 1, Staff Report, page 31*. However, since the wetland buffers are subject to the Consent Decree, which does not require a buffer for either wetland on the property, these inconsistencies are irrelevant.

12. Cobalt Geosciences, LLC, submitted a report on behalf of the Applicant addressing the geology of the property, entitled “Geotechnical Evaluation” (“Geotechnical Report” or “GR”), dated December 2, 2021. The Geotechnical Report stated that the site is underlain by weathered and unweathered Vashon Advance Outwash. The GR determined that the proposed residential structures could be supported on shallow foundation systems bearing on medium dense or firmer native soils or on structural fill places on the native soils. *Exhibit 20.*

Stormwater

13. Land Technologies, Inc, submitted a report on behalf of the Applicant addressing stormwater on the property, entitled “Stormwater Site Plan Report” (“Stormwater Report” or “SR”), dated April 17, 2023. The Stormwater Report determined that the proposed development would contain 3.99 acres of impervious surface, 2.47 acres of which would be pollution generating and 1.52 acres of which would be non-pollution generating impervious surface. Runoff from rooftops adjacent to the stream buffer would recharge the buffers through splash block dispersion. Stormwater runoff from the remaining rooftops would be routed to downspout infiltration trenches. Where possible, runoff from road, driveway, and parking areas would be conveyed to a level spreader dispersion trench to discharge into the buffer area. The remaining impervious surfaces would be managed with bioretention cells to expose stormwater to the native soil column to preserve natural infiltration pathways. Stormwater discharged to the wetland and streams systems would ultimately drain to Prairie Creek, which continues west to the Stillaguamish River Floodplain and Portage Creek. The SR states that the proposed stormwater system would mimic natural stormwater routes.

Land Technologies, Inc., also submitted a report on behalf of the Applicant addressing stormwater during construction, entitled “Construction Stormwater Pollution Prevention Plan” (“Construction Stormwater Plan” or “CSWPPP”), dated December 5, 2022. The CSWPPP recommends that, in order to prevent erosion, sedimentation, and stormwater contamination, the Applicant implement Best Management Practices (BMPs) including preservation of vegetation; marking of clearing limits; control of flow rates; installation of sediment controls; stabilization of soils; protection of slopes; protection of permanent drain inlets; and stabilization of channels and outlets. City staff reviewed the proposal and determined that it would comply with requirements for stormwater under Chapter 13.28 AMC. *Exhibit 1, Staff Report, page 32; Exhibit 18; Exhibit 19.*

Access and Traffic

14. Access to the property would be provided by Road A, which would connect to 74th Avenue NE via a right-of-way owned by the City. Road A would contain a bridge-type culvert structure that would cross the stream. The Applicant would construct frontage improvements along 74th Avenue NE and Road A, including five-foot sidewalks and

landscaping. Access to individual townhome lots would be provided by drive aisles internal to the subdivision. The drive aisles would have a 20-foot lane, five-foot sidewalk, and six-inch depressed curb. Kimley-Horn and Associates, Inc., submitted a report on behalf of the Applicant addressing traffic impacts related to the proposed development, entitled “Traffic Impact Analysis” (“TIA”), dated October 17, 2022. The TIA determined that the proposed development would generate 605 new daily trips, with 40 AM peak-hour trips and 48 PM peak-hour trips. The TIA determined that three of the studied intersections would operate at deficient levels of service (LOS) following a full buildout of the proposed development. These three intersections include 67th Avenue NE at 188th Street NE; 67th Avenue NE at 172nd Street NE; and 59th Avenue NE at 172nd Street NE. The City has identified that the intersection of 67th Avenue NE at 188th Street NE would likely be improved as a signalized intersection. The traffic mitigation fee paid by the Applicant would help fund these improvements. The other two intersections would be improved with roundabouts by Washington State Department of Transportation (WSDOT). These intersections are fully funded by state legislation. All of the intersections are anticipated to operate at acceptable LOS after improvements are made.

The City has a standard mitigation fee of \$3,355 per PM peak hour trip. The Applicant would be required to pay \$160,637.40 for the approximately 48 new PM peak hour trips generated by the proposed development. Snohomish County PUD No. 1 stated that traffic mitigation fees of \$47,419.20 should be paid to the County. *Exhibit 1, Staff Report, pages 22 and 23; Exhibit 9; Exhibit 18; Exhibit 22; Exhibit 23; Exhibit 30.*

Utilities and Services

15. 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 No. 1 would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. As noted above, Snohomish County PUD submitted a comment that stated that existing District facilities in the area may require upgrading and that the Applicant would be required to pay any upgrading costs associated with the proposed development. 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 school impact fees under AMC 20.90.230. Students living in the subdivision would be bussed to schools. 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. *Exhibit 1, Staff Report, pages 3, 23, 27, and 34; Exhibit 3; Exhibit 11; Exhibit 28.*

Parking

16. AMC 20.72.020 requires 2.25 parking spaces per two-bedroom unit and 2.5 parking spaces per three-bedroom unit, with one additional space for every four units for a unit lot subdivision. Half of the proposed units would contain two bedrooms and the other half of the units would contain three bedrooms. The proposed 84-unit development would require a total of 221 parking spaces. Each residential unit would have a garage, with two parking spaces, for a total of 168 parking spaces for the 84 residential units. 74 additional pocket parking stalls would be spaced throughout the site, exceeding the number required parking spaces for the proposed development. Parking would not be permitted in the drive aisles. *Exhibit 1, Staff Report, pages 1, 16 and 17; Exhibit 3; Exhibit 9.*

Landscaping and Open Spaces

17. Residential developments are required to provide 65 square feet of recreational space for every person expected to reside in the development. *AMC 20.52.010*. The municipal code assumes that each of the 42 three-bedroom townhomes would house an average of 3.2 persons (per *AMC 20.52.010*) and each of the 42 two-bedroom townhomes would house an average of 2.2 persons. Accordingly, the proposed development would provide housing for 226.8 people, requiring 14,742 square feet of recreational space. The Applicant would meet this requirement by providing 15,000 square feet of recreational space as mini-park area. Subdivided residential development of more than 25 dwelling units require at least ten percent additional useable open space of the total development area. *AMC 20.52.030*. The development area is 290,381 square feet,³ requiring 29,038 square feet of useable open space. The Applicant has proposed 53,911 square feet of useable open space. Existing vegetation in the NGPA, stream buffers, and wetland buffers would be retained. 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*. 20 percent of vehicle accommodation areas must be shaded. *AMC 20.76.130.b*. The total parking area would be approximately 13,131 square feet, requiring 2,626 square feet of shading. The Applicant would provide 6,116.5 square feet of shading. Land Technologies, Inc., submitted a plan addressing significant trees on the property ("Tree Survey"), undated. The Tree Survey identifies 237 trees that would need to be replaced at a 3:1 ratio. The Applicant proposes to plant 711 replacement trees, in compliance with this requirement. *Exhibit 1, Staff Report, pages 18, 19, 21, 25, 26, 36, and 37; Exhibit 3; Exhibit 8; Exhibit 10.*
18. Screening would be provided by vegetation in the NGPA, stream, and wetland buffer areas on the north, south, and west property lines. Type A screening would be required along the eastern property lines, which abuts State Route 9. Trees would be planted in

³ The area of the lot is reduced due to the NGPA, stream buffer, and wetland area, which do not count toward the buildable or useable area of the property. *Exhibit 1, Staff Report, page 21.*

the front and rear yards of the townhouse lots. The Applicant would install street trees every 30 feet along 74th Avenue NE and Road A with a root barrier on both sides of the root ball facing the right-of-way and sidewalk. The property owner or homeowner's association would be required to maintain the landscaping on the property and within the private right-of-way. The site plan demonstrates that no improvements would obscure sight at any entrance or exit from the property. The Applicant would be required to pay community park impacts fees for 84 residential units. *AMC 20.52.024. Exhibit 1, Staff Report, pages 18, 19, 21, 25, 26, 36, and 37; Exhibit 3; Exhibit 8; Exhibit 10.*

Unit Lot Subdivision

19. 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 ULS has proposed townhomes within 21 buildings of four units each. The buildings would be located in different areas on the site and are greater than ten feet apart.
- The proposed development is located in the RHC zoning district.
- The proposed townhomes are required to receive Design Review Board approval prior to the submittal of the final subdivision.
- The proposal would provide a minimum of 15 percent of private open space per lot and equal to or more than 200 square feet of private open space per unit.
- The parent parcel of the subdivision meets the density and dimensional requirements under Chapter 20.48 AMC for the RHC zone.
- The proposal complies with development and design standards.
- The proposal includes a private road and mini parks located on Tracts 973 through 994. 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 proposal complies with Chapter 2.72 AMC for required parking. The proposal would provide one additional parking space for every four units. The proposed parking spaces must be used for residents or guests of residents and not to store inoperable motor vehicles.
- The private drive aisles in Tracts 992 and 993 are the fire lanes for the subdivision. There shall be no parking along the private drive aisle. This shall be enforced by the homeowner's association.

- Each townhouse has a garage for bicycle parking. No additional bicycle parking facility is required.
- The proposal would provide private drive aisles to access the townhouses. The private access drive is 20 feet in width with a five-foot sidewalk on one side and six-inch curb. The proposed sidewalk connects to the public sidewalk on 74th Avenue NE. The private road has provided crosswalks and accessible ramps. No parking on the private street would be allowed.
- Utility installation must comply with construction standards. The final approval of all utilities is completed with the civil permit. All utility installation must be approved prior to final plat approval.
- Access to the site would be provided from 74th Avenue NE and then to the private drive aisles in Tracts 992 and 993 via private Road A. The private road would remain private and owned and maintained by the homeowner's association.
- The Applicant would install landscaping throughout the site, including in the mini parks. Street trees would be planted on the eastern portion of the property within the City rights-of-way.

Exhibit 1, Staff Report, pages 14 through 18.

Conditional Use Permit

20. As noted above, major unit lot subdivisions of more than nine lots are allowed in the RHC zone with a conditional use permit. *AMC 20.40.010*. The Applicant seeks a CUP to allow an 84-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 request site plan review is within the City's jurisdiction.
- The application for site plan review was deemed complete on January 5, 2023.
- The proposal would comply with all required sections of AMC Title 20.
- The proposed project has complied with SEPA, and the City issued a MDNS on May 16, 2023. No appeal was received.
- The proposed development would comply with the City Comprehensive Plan, Transportation Plan, and other applicable plans, regulations, and policies.
- The proposed development would not endanger the public health or safety of City residents. The proposed subdivision is isolated from surrounding properties and would not materially harm abutting properties.
- The proposed development is compatible with the surrounding neighborhood and the RHC zone. The proposed development would blend in with the surrounding area and may go unnoticed from the north, south, and west property boundaries due to existing buffers on the property.

Exhibit 1, Staff Report, pages 34 and 35.

Testimony

21. 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 explained that the City owns right-of-way that connects the property to 74th Avenue NE, which is the only possible access point for the proposed development. She stated that the Applicant would install improvements, including sidewalk and planter strips, along the right-of-way and the frontage of 74th Avenue NE. She clarified that WSDOT would not allow the proposed development to establish a vehicle connection to State Route 9, which is located east of the subject property, but that the Applicant may be able to establish a pedestrian access to the road in the future. Ms. Rusko explained that the area north of the property is owned by the City and is undevelopable area associated with a wetland. She noted that after the Consent Decree was issued, the City rezoned the subject property to allow higher density on the property in order to make development of the property economically viable. She explained that the Applicant would be planting native vegetation around the wetland located in the northern portion of the property, despite not being required to do so. She noted that there is a small slope in the southern portion of the property, but the proposed development would not be located near that area. Ms. Rusko noted that the proposed development would include sidewalk and biking opportunities to Centennial Trail, consistent with the City's complete streets policy. She noted that the area south of the subject property is developed with single-family residences but that the residential development is located approximately 350 feet from the proposed development. She clarified that there was no requirement to install a fence between the proposed development and adjacent residential development to the south. *Testimony of Ms. Rusko.*
22. Eric Weiss explain that he owns property in the surrounding area, including where the right-of-way easement is located. He requested clarification that the interests of the commercial tenants on his property would not be changed or disturbed. *Testimony of Mr. Weiss.*
23. Applicant Representative Merle Ash explained that there would be a significant buffer between the right-of-way and Mr. Weiss's property to the north. He stated that industry in the City and surrounding areas is growing and that the proposed subdivision would provide necessary housing to support development. He noted that proposed development would include a mini park system with dispersed recreational features. Mr. Ash stated that proposed development would require greater buffers for the on-site stream than is required by the Consent Decree. He commented that he would prefer to install a retaining wall with a short fence near the properties to the south. *Testimony of Mr. Ash.*

Staff Recommendation

24. Ms. Rusko testified that City staff reviewed the application and recommend that the ULS and CUP be approved, with conditions. Mr. Ash testified that the Applicant concurs with

the City's recommendation. *Exhibit 1, Staff Report, pages 35 through 38; Testimony of Ms. Rusko; Testimony of Mr. Ash.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the application for a unit lot subdivision and conditional use permit. *Revised Code of Washington (RCW) Chapter 36.70.970; Arlington Municipal Code (AMC) 20.12.210(a), 20.16.140(b), 20.16.170.*

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 20.16.170(e).

Subject to Subsection (d) [of AMC 20.16.140], 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 20.16.140(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 20.16.140(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.*

Conclusions Based on Findings

- 1. With conditions, the proposal would comply with preliminary subdivision 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, including a neighborhood meeting. During the neighborhood meeting, members of the public requested that a fence be installed between the subject property and adjacent residential development to the south. One member of the public also expressed concerns about traffic impacts. Fencing is not required between residential development. The City also received comments from several reviewing agencies and the Stillaguamish Tribe. These comments have been incorporated into the recommended conditions of approval for the permit application. Accordingly, 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; mitigate for impacts to two on-site Type F streams; comply with the DOE Stormwater Management Manual for Western Washington; provide tree replacement at a three-to-one ratio; provide protection to the streams and wetlands during construction to mitigate potential impacts to animals; comply with current codes to reduce or control environmental health hazards; comply with noise restrictions during construction; obtain design review approval; install light fixture to prevent glare; provide over an acre of on-site recreation; halt work if historical, cultural, or archaeological materials are discovered; construct frontage improvements along 74th Avenue NE and the right-of-way connection to the subdivision; connect to City water and wastewater systems; and pay applicable traffic, school, park impact fees, as determined by the City.

The project site is relatively flat. The property contains two wetlands and two on-site Type F streams containing salmonid. The Applicant provided a Critical Areas Report and Mitigation Plan for the proposed development. The critical areas are all subject to a Consent Decree issued by the City in 2001. The Consent Decree does not require all buffers associated with the wetlands and 50-foot buffers associated with the on-site streams. The Applicant would provide a minimum 75-foot buffer for the streams, in excess of the Consent Decree requirements. The Applicant would compensate for 7,215 square feet of stream buffer impacts to accommodate the connection between the proposed development and 74th Avenue NE by adding 7,215 square feet through buffer averaging in the southern portion of the property. The proposed connection is the only

available access to the property. The Applicant would also restore 7,140 square feet of buffer near the wetland located in the northern portion of the property by installing native vegetation and mulch.

Where possible, stormwater from impervious surfaces would be dispersed. Stormwater runoff from rooftops where dispersion is not possible would be routed to downspout infiltration trenches. Remaining impervious surfaces would be managed with bioretention cells to expose stormwater to the native soil column to preserve natural infiltration pathways. The proposed stormwater system would mimic natural flows to the greatest extent possible. The Applicant submitted a CSWPPP, which recommends the Applicant utilize BMPs to reduce stormwater pollution during construction.

The Applicant's Traffic Impact Analysis determined that three studied intersections would operate below acceptable level of service during AM and PM peak hours following a full buildout of the proposed development. However, the City is proposing to signalize the intersection of 67th Avenue NE at 188th Street NE and would utilize funds from the Applicant's traffic mitigation fees. The other two intersections – 67th Avenue NE at 172nd Street NE and 59th Avenue NE at 172nd Street NE – have been identified for installation of roundabouts by WSDOT. With these improvements, all the intersections are anticipated to operate at acceptable levels of service. The City determined that the proposed development would generate 48 new PM peak hours, and that the Applicant would need to pay traffic impact fees based on the newly generated PM peak hour trips. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements.

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 to the property, Snohomish County PUD No. 1 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 approximately 15,000 square feet of recreational space in an on-site mini-park system with dispersed recreational features. The Applicant would plant trees every 30 feet along dedicated streets, trees between each building, and 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 – 24.*

2. **With conditions, the proposal would comply with the unit lot subdivision requirements of the municipal code.** Unit lot subdivisions are permitted in RHC zone. The proposed development includes 21 buildings each consisting of four townhomes for a total of 84 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 a private mini-park system 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 22.44.020.A. *Findings 1, 2, 7 – 24.*

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. City staff determined that the proposed 84-unit townhome development would be an appropriate use in the RHC zone and would meet or exceed all 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 Hearing Examiner concurs with the City's assessment.

As noted above in Conclusion 1, the City provided reasonable notice of the application and associated public hearing and received comments from reviewing agencies, whose comments have been incorporated as conditions of approval. As addressed in Conclusion 1 above, the Traffic Impact Analysis determined that all studied intersections would operate at acceptable levels of service following a full buildout of the proposed development with improvements identified by the City and WSDOT.

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 84-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. Fencing is not required between residential development. The Applicant would retain vegetation in the NGPA, stream, and wetland buffer areas along the north, south, and west property lines, which would provide screening between the proposed development and adjacent properties. The proposed development would include open space in excess of requirements for 84 residential lots under the ULS standards. As detailed below, conditions are necessary to ensure the

proposal complies with all requirements associated with approval of a conditional use permit. *Findings 1 – 24.*

DECISION

Based upon the preceding findings and conclusions, the request for a preliminary major unit lot subdivision and associated conditional use permit to subdivide a 14.36-acre property into 84 townhome fee simple lots for development of 21, 4-unit townhome buildings with associated improvements, at the 19700 block of 74th Avenue NE, is **APPROVED**, subject to the following conditions:

1. All development shall be in substantial conformance with the approved Preliminary Unit Lot Subdivision, Landscape Plans, and Supplemental Drawings, received on April 20, 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. The Applicant is required to obtain a Washington Department of Fish and Wildlife HPA permit.
5. In order to mitigate for 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.
6. In order to mitigate for 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.
7. In order to mitigate for impacts to the two ESA Fish Stream tributaries to Portage Creek and the off-site Category III wetland along the north boundary of the site, the Applicant shall follow the Settlement Agreement Consent Decree with the EPA (case number C99-1711C) recorded with the Snohomish County Auditor under recording number 200104030169, that regulates the wetlands and streams on the site. There are proposed impacts to the buffers of the stream with the road crossing, these buffer impacts are to be mitigated by providing replacement buffers in other areas of the site. The Applicant shall

obtain approval from the US Army Corps of Engineers, Washington Department of Fish and Wildlife and Washington Department of Ecology prior to construction commencing on the site.

8. In order to mitigate for 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.
9. In order to mitigate for 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
10. In order to mitigate for the removal of significant trees on the property the Applicant shall replant trees on the site and pay an in-lieu tree mitigation fee for the remaining trees. Replacement of significant trees are calculated at a 3:1 ratio.
11. In order to mitigate potential impacts to animals on the property the Applicant shall provide protection to the stream and wetland during construction and provide native growth protection signage along all buffers prior to approval of final plat.
12. 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.
13. 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 7:00 PM to 7:00 AM 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.
14. The proposal is required to meet the City of Arlington Development Design Standards of AMC 20.46, through Design Review Board approval prior to building permit submittal.
15. To mitigate for potential light pollution, the Applicant would be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict C – that is comprised of the Federal Aviation Regulations (FAR) parts 77 Imaginary surfaces.

16. 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 single-family attached dwelling unit.
17. An Archaeological Report was provided with the project application and no precontact or historic cultural materials were observed. 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 the find 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 notify the Stillaguamish Tribe and submit an Unanticipated Discovery Plan prior to ground disturbance. The Stillaguamish Tribe may have a monitor on-site to observe site disturbances during the construction of the project.
18. The proposal is required to construct frontage improvements along 74th Avenue and provide a new public road with improvements extending east of 74th Avenue leading into the subdivision to the property line.
19. Trip generation has been calculated by Kimley-Horn Traffic Consultants through a Traffic Impact Analysis. The report references Land Use Code 215 for single-family attached housing per the ITE Trip Generation Manual, 11th Edition. The project proposes 84 townhouse units, which results in 47.88 new PM Peak Hour Trips.
 - The Applicant is required to pay Traffic Mitigation fees in the amount of \$160,637.40 to the City of Arlington. The fee is equivalent to \$1,912.35 for each residential unit. City traffic mitigation fees shall be paid prior to building permit issuance and may be split between buildings.
 - The Applicant is required to pay Traffic Mitigation fees in the amount of \$47,419.20 to Snohomish County. The Snohomish County fee is equivalent to \$564.51 for each residential unit. Snohomish County traffic impact fees shall be paid prior to building permit issuance.
20. 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.
21. 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.
22. 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.

23. The Applicant shall provide notice to the Stillaguamish Tribe of Indians prior to ground disturbance on the site.
24. The Applicant shall depict a visible ordinary high water mark of the stream on all relevant plan drawings and accurately represent the distance between the OHWM and the underside of the bridge/water crossing.
25. The Applicant shall submit the final landscape plans and mitigation plans with the Civil Construction Permit.
26. The Applicant shall submit a lighting plan with the Civil Construction Permit.
27. The project is subject to submit a Right-of-Way Permit for all work with public rights-of-way.
28. 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.
29. 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.
30. 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, 996, 997, 998 and 999. This is required to be noted on the final major unit lot subdivision site plan.
31. 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.
 - 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.
32. The Applicant shall complete all required Civil Construction improvements on the subject site.
33. The Applicant shall submit as-builts, acquire all required bonds, and complete the civil construction punch list for the project.

34. The Applicant shall provide the conditions found in AMC 20.44.020N on the face of the final plat document.
35. 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.
36. The proposed building plans shall be in compliance with the approved Design Review Board Decision.
37. The project is subject to applicable water and sewer utility fees. These fees are collected at the time of building permit issuance.
38. Prior to issuance of building permits, all associated impact fees shall be paid.
39. All contractors working on the site are required to obtain a Washington State Business License and a City of Arlington Endorsement.

DECIDED this 10th day of July 2023.



ANDREW M. REEVES
Hearing Examiner
City of Arlington