

April 26, 2006

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **L04P0033**  
Proposed Ordinance No. **2006-0104**

**HAZEL VIEW**  
Preliminary Plat Application

Location: Off of Southeast 305th Place in the Lea Hill Area east of Auburn

Applicant: Fremantle Development, Inc.  
*represented by Duana Kolouskova*  
Johns Monroe Mitsunaga PLLC  
1500 – 114th Avenue Southeast, #102  
Bellevue, Washington 98004  
Telephone: (425) 467-9966  
Facsimile: (425) 451-2818

King County: Department of Development and Environmental Services,  
*represented by Trishah Bull*  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
Telephone: (206) 296-6758  
Facsimile: (206) 296-7051

**SUMMARY OF DECISION/RECOMMENDATIONS:**

Department's Preliminary Recommendation:	Approve with conditions
Department's Final Recommendation:	Approve with conditions
Examiner's Decision:	Approve with conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:	March 30, 2006
Hearing Closed:	March 30, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

**1. General Information:**

Owner/Developer: Dennis Johnson  
Fremantle Development, Inc.  
PO Box 3574  
Bellevue, WA 98009  
425-467-6602

Engineer: Baima & Holmberg Inc.  
100 Front Street South  
Issaquah, WA 98027  
425-392-0250

STR: 9-21-5

Location: The site is located on SE 305<sup>th</sup> Place, via the entrance to the plat of *Kingsley Meadows* off of 124<sup>th</sup> Avenue SE. The property is located directly east of Rainier Junior High and Hazelwood Elementary.

Zoning: R-6-SO  
Acreage: 5.22 acres  
Number of Lots: 20  
Density: 3.8 units per acre  
Lot Size: Ranges from approximately 5,000 to 8,000 square feet  
Proposed Use: Single-family detached dwellings  
Sewage Disposal: City of Auburn  
Water Supply: City of Auburn  
Fire District: King County District No. 44  
School District: Auburn School District No. 408  
Complete Application Date: December 28, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a 5.22 acre rectangular parcel located in the unincorporated area just south of the City of Kent and northeast of the City of Auburn. Its specific location is west of 122nd Avenue Southeast and south of Southeast 304th Street in the Lea Hill area. The site terrain slopes generally to the south and southwest, with a curving gully located in the southeast corner and descending to the south of the property. The site is vegetated primarily with a mixed, species, mixed-growth overstory and typical Northwest groundcover and grasses, and is undeveloped structurally. The surrounding area consists of residentially developed parcels to the east and south, at suburban densities. Other areas are of mixed densities reflecting the area's former status as a rural area; the general Lea Hill area is currently undergoing suburbanization at fairly standard suburban density lots (approximately four units per acre).

4. Applicant Fremantle Development, Inc., proposes subdivision of the property into 20 lots for detached single-family residences. The residential density would be approximately 3.8 units per acre, with lot sizes ranging from 5,000 to 8,000 square feet. Internal access to the lots would be provided by the extension of Southeast 305th Place westerly into the site from a temporary cul-de-sac of 122nd Avenue Southeast in the adjacent *Kingsley Meadows* subdivision and then curving south to terminate in a cul-de-sac in the south central portion. SE 305<sup>th</sup> Place will also be extended east with a 20 foot wide emergency access road adjoining the east side of Lot 30 of *Kingsley Meadows*. The purpose of this extension is to provide emergency access to the existing 122nd Avenue SE. An emergency access gate will be provided east of the 122nd Avenue SE/SE 305th Street intersection. The access road will be paved easterly from SE 305th Place to the gate, then graveled east of the gate to 122nd Avenue SE.
5. Portions of the property would be devoted to stormwater detention facilities and other drainage facilities, as well as recreation facilities for the subdivision residents. The low gully area, which contains a Class 3 wetland, will be preserved in a Sensitive Area Tract. Resident school pedestrians would walk to their respective schools, except that high school students would walk to Rainier Middle School and be bused from there to their high school. The school pedestrian path would utilize an existing easement to which the property purportedly maintains rights of usage (although such rights are disputed by neighboring residents and other users of the easement; see Findings 9 and 10 below).
6. Most development runoff from the property would be collected and directed to a single detention and water quality facility located at the midpoint of the west property line. Release would be directed to the existing drainage swale on the adjacent parcel. Nuisance flows to adjacent properties from the northern plateau area and southern western property line would be significantly reduced.
7. The City of Auburn has renewed its commitment of sanitary sewer and water utility services to the development in an Outside Utility Extension Agreement.
8. Adjacent residents upon whose property the walkway easement runs have expressed their opinion that the development would not maintain its easement rights upon redevelopment of the subject site (without citing any legal authorities or compelling language of the easement document), and also are concerned that they will take on additional property owner liability with the use of the easement by additional pedestrians, particularly those of school age. Another concern is that the subject property is not a party to the road maintenance agreement established by such adjacent property owners (although the prospective developer expressed a commitment to participate in the maintenance agreement during the hearing). Additionally, a traffic barrier which was to have been installed in the *Kingsley Meadows* development has not yet been installed, although it should have been approximately three years ago. (DDES staff stated in response to that statement that it would immediately review the matter to assure that it is installed as required.)
9. It should be noted that the easement in question is intended for eventual conversion to a public road in concert with anticipated future road improvements in the area. Typically, absent evidence to the contrary, an easement of this sort runs with the land regardless of the land's level of development, and would therefore be available for the development's school-age residents to use along their pedestrian route to school. In any case, the Examiner does not have jurisdiction as an administrative hearing officer to adjudicate disputes regarding real property, which jurisdiction resides in Superior Court. [RCW 2.08.010; also see Washington State Constitution, Article IV, § 6] The approach the Examiner will take to address the issue to make the positive

finding that “appropriate provisions” are made for safe walking conditions for school pedestrians (as required by state subdivision law and implementing county code) is to impose a condition that DDES/KCDOT certify in writing prior to final plat approval that such safe walking conditions are in place or dependably anticipated to be provided along the pertinent pedestrian routes or reasonably convenient alternative routes prior to first residential occupancy of the development. Adjudication and/or settlement of the easement use dispute may be required prior to final plat approval to achieve that end. The Examiner shall also implement the applicant’s offer to enter into the road maintenance agreement which applies to the easement on a proportional basis, which may go a long way toward ameliorating the neighbors’ concerns about maintenance burdens and liability.

10. With existing and scheduled walkway improvements, and the alternative and ascertainment provisions noted above, safe walking conditions would be provided for resident schoolchildren.

#### CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-6-SO zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions of preliminary plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on August 22, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

#### DECISION:

The preliminary plat of the *Hazel View* subdivision, as revised and received August 22, 2005, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-6-SO zone classification. All lots shall meet the minimum dimensional requirements of the R-6-SO zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
  - d. The drainage detention facility shall be designed to meet at a minimum the Level 3 Flow Control and Basic Water Quality menu in the 1998 King County Surface Water Design Manual (KCSWDM).
  - e. Appropriate outlet provisions for the Tract A Wetland shall be included in the engineering design plans.
  - f. A drainage adjustment (L05V0092) is approved to combine the onsite subbasins into one post-developed detention facility. All conditions of approval for this adjustment shall be incorporated into the engineering plans.

The proposed diversion of the easterly 0.81 acre subbasin shall be minimized, employing one or more of the methods outlined in a letter from Ed McCarthy, P.E., P.S. dated November 10, 2005. Other methods for minimizing the diversion may also be considered, as approved by DDES. Details of the design shall be included in the engineering design plans.
  - g. The 100-year floodplain for any onsite streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the KCSWDM.

6. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
  - a. The internal access road (SE 305<sup>th</sup> Place extended) shall be improved at a minimum to the urban subaccess street standard.
  - b. OFFSITE: SE 305<sup>th</sup> Place adjoining Lot 29 of The Plat of Kingsley Meadows shall be improved at a minimum to the urban one-half street standard. The sidewalk shall extend south along 122<sup>nd</sup> Avenue SE to match the existing sidewalk.
 

SE 305<sup>th</sup> Place shall also be extended east with a 20 ft wide emergency access road adjoining the east side of Lot 30 of the Plat of Kingsley Meadows. The purpose of this extension is to provide emergency access to the existing 122 Avenue SE. An emergency access gate shall be provided east of the 122<sup>nd</sup> Avenue SE/SE 305<sup>th</sup> Street intersection in general conformance with the Area Access Plan dated 10/04/2004. The access road shall be paved easterly from SE 305<sup>th</sup> Place to the gate, then gravel east of the gate to 122<sup>nd</sup> Avenue SE.

The final design of the emergency gate shall be reviewed and approved by KCDOT and serving emergency responders.
  - c. Tracts D, E and F shall be a minimum 26 feet wide and improved as private access tracts per Section 2.09 of the KCRS. These tracts shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the engineering plans and on the final plat map.
  - d. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
7. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
8. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
9. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
10. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.

11. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
12. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

#### Wetlands

- a. The on-site class 3 wetland shall have a minimum, undisturbed 25-foot buffer as measured from the wetland edge.
  - b. The wetland and buffer shall be placed in a Sensitive Areas Tract.
  - c. A 15 foot building setback line (BSBL) is required from the edge of all Sensitive Areas Tracts and shall be shown on all affected lots.
  - d. Road construction in or near wetlands or buffers shall utilize construction techniques such as retaining walls to avoid impacts to sensitive areas.
  - e. Construction and sedimentation fencing shall be used at the edge of the Sensitive Areas Tract boundaries to ensure protection of the sensitive areas during the construction phase of the project. The fencing shall remain in place until after construction is completed.
  - f. To ensure long term protection of the sensitive areas a permanent split-railed type fence and sensitive area signage is required after the construction phase and prior to home building along the Sensitive Area Tract boundary.
  - g. During engineering and/or early start plat review the applicant shall provide a wetland hydrology analysis to demonstrate how the wetland hydrology will be maintained post-construction.
13. The following note shall be shown on the final engineering plan and recorded plat:

#### RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

14. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children’s play equipment, picnic table[s], benches, etc.).
  - a. A detailed recreation space plan (i.e., area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan. This plan must not conflict with the Significant Tree Inventory & Mitigation Plan.
  - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
15. A homeowners’ association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
16. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
  - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
  - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.

- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
  - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SE 305<sup>th</sup> Place is on a bus route. If SE 305<sup>th</sup> Place is a bus route, the street tree plan shall also be reviewed by Metro.
  - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
  - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
17. To implement KCC 21.A.38.230, Special District Overlay – Significant Trees, which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention and engineering plans shall be consistent with the requirements of KCC. No clearing of the site is permitted until the tree retention plan is approved by DDES. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except as may be permitted under the provisions of KCC.
- A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with KCC 21A.38.230B6. The tree retention plan shall be included as part of the final engineering plans for the subject plat.
18. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval:
- Prior to final approval of construction activities on the site, the boundary between the Sensitive Area Tract(s) and adjacent land shall be identified using a split-rail fence and permanent signs.
19. DDES/KCDOT as appropriate shall certify in writing prior to final plat approval that safe walking conditions are in place or dependably anticipated to be provided along the development's pertinent school pedestrian routes (or reasonably direct, convenient and lawful alternative routes) prior to the first residential occupancy of the development.
20. If the disputed road easement is necessary to be utilized by the development for direct and convenient safe walking conditions for resident schoolchildren, prior to final plat approval the developer shall have entered into the easement's respective road maintenance agreement on a proportional burden basis. In the event of dispute over the appropriate proportional basis, DDES shall be the final arbiter of the appropriate proportionality.

21. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.

ORDERED this 26th day of April, 2006.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 26th day of April, 2006 to the following parties and interested persons of record:

Baima & Holmberg, Inc.  
Attn: Shupe Holmberg  
100 Front St. S.  
Issaquah WA 98027-3817

Larry & Debbie Beckler  
30505 - 122nd Pl. SE  
Auburn WA 98092

City of Auburn  
Attn: Daniel Heid, Atty.  
25 W. Main St.  
Auburn WA 98001-4998

Elmer Hautala  
12220 - 25th Ct. SW  
Burien WA 98146

Dennis Johnson  
Fremantle Dev. Inc.  
P.O. Box 3574  
Bellevue WA 98009

Duana Kolouskova  
Johns Monroe Mitsunaga PLLC  
1500-114th Ave. SE, #102  
Bellevue WA 98004

Seattle KC Health Dept.  
E. Dist. Environ. Health  
14350 SE Eastgate Way  
Bellevue WA 98007

Trishah Bull  
DDES/LUSD  
MS OAK-DE-0100

Kim Claussen  
DDES/LUSD  
MS OAK-DE-0100

Lisa Dinsmore  
DDES/LUSD  
MS OAK-DE-0100

Nick Gillen  
DDES/LUSD  
MS OAK-DE-0100

Kristen Langley  
DDES/LUSD  
MS OAK-DE-0100

Carol Rogers  
DDES/LUSD  
MS OAK-DE-0100

Steve Townsend  
DDES/LUSD  
MS OAK-DE-0100

Larry West  
DDES/LUSD  
MS OAK-DE-0100

Bruce Whittaker  
DDES/LUSD  
MS OAK-DE-0100

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) **on or before May 10, 2006**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before May 17, 2006**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office

of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MARCH 30, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0033.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Bruce Whittaker, and Kristen Langley, representing the Department; Duana Kolouskova, Dennis Johnson and Shupe Holmberg representing the Appellant, and Debbie Beckler and Anthony Courtney.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L04P0033
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report dated March 30, 2006
- Exhibit No. 3 Application dated December 28, 2004
- Exhibit No. 4 Environmental Checklist dated December 28, 2004
- Exhibit No. 5 Mitigated Determination of Non-Significance dated February 17, 2006
- Exhibit No. 6 Affidavit of Posting indicating February 15, 2005 as date of posting and February 18, 2005 as the date the affidavit was received by DDES
- Exhibit No. 7 Preliminary Plat Map & Conceptual Utility Plan dated August 22, 2005 (Revised)
- Exhibit No. 8 Assessors Maps: NW 09-21-05
- Exhibit No. 9 Geotechnical Engineering Report by Dennis Joule, P.E. received August 23, 2005
- Exhibit No. 10 Preliminary Drainage Report by Baima & Holmberg, Inc. received December 28, 2004
- Exhibit No. 11 L05V0092 – Approved KCSWDM adjustment dated January 12, 2006
- Exhibit No. 12 Conceptual Recreation Space Conceptual Plan received August 25, 2005
- Exhibit No. 13 Outside Utility Extension Agreement received March 20, 2006
- Exhibit No. 14 Map indicating showing where schools and walkways are located

PTD:gao  
L04P0033 RPT