

March 9, 2011

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L06P0002**
Proposed Ordinance No. **2010-0440**

THE PARKS III
Preliminary Plat Application

Location: 17648 SE 192nd Drive

Applicant: Cambridge Land Holdings, LLC
represented by Duana Koloušková
1601—114th Avenue SE, Suite 110
Bellevue, Washington 98004
Telephone: (425) 467-9966
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King County: Department of Development and Environmental Services (DDES)
represented by Kimberly Claussen
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:

Approve, subject to conditions

Department's Final Recommendation:

Approve, subject to revised conditions

Examiner's Decision:

Approve, subject to further revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	September 28, 2010
Hearing Closed:	September 28, 2010
Hearing Reopened:	November 9, 2010
Hearing Continued Administratively:	November 9, 2010
Hearing Record Closed on Administrative Continuance:	November 17, 2010

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: Cambridge Land Holdings LLC
12011 Bel-Red Road, Suite 206
Bellevue WA 98005
425-454-7777

Engineer: Offe Engineers
13932 Southeast 159th Place
Renton WA 98058
425-260-3412

STR: 36-23-05

Location: The site is located at 17648 SE 192nd Drive, approximately ½ mile east of the intersection of SE 192nd Drive and SE Petrovitsky Road

Zoning: R-4 SO
Acreage: 14.51 acres
Number of Lots: 82 lots
Density: Approximately 5.65 units per acre
Lot Size: Approximately 3,500 - 9,000 square feet in size
Proposed Use: Single family detached dwellings
Sewage Disposal: Cedar River Water & Sewer District
Water Supply: Cedar River Water & Sewer District
Fire District: King County Fire District No. 40
School District: Kent School District No. 415
Complete Application Date: January 19, 2006

2. Except as modified herein, the facts set forth in the DDES reports¹ to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.

¹ Including the DDES supplementary reports and revisions received September 28, November 9 and November 17, 2010 as exhs. 2a, 25 and 26, respectively.

3. The subject property lies in the unincorporated Shady Lake area southeast of Renton, east of Southeast Petrovitsky Road (Petrovitsky Road). It is a near-rectangularly shaped parcel (rectangular except for the curving frontage of its south boundary on Southeast 192nd Drive), 14.51 acres in area. It is northeast of Shady Lake, which lies to the south of Southeast 192nd Drive beyond intervening waterfront residential lots. The surrounding area consists generally of medium-sized suburban scale lots on the Shady Lake waterfront and semi-rural density residential parcels elsewhere. Lying within the urban growth area (UGA), the Shady Lake area is in general undergoing a gradual conversion over time to fairly standard suburban single-family residential densities; areas to the north and northwest have already been redeveloped with residential subdivisions, while the remainder has not yet but has several preliminarily approved or pending subdivision applications such as the subject one and those of the properties to the west and east (see below). The topography of the property consists of very gentle slopes descending generally southerly toward Southeast 192nd Drive and Shady Lake. The site is primarily wooded except for cultivated landscaping in the vicinities of the three existing residences and outbuildings onsite. (All of the structures are intended to be removed upon subdivision development.) Two wetland areas and a Type F stream are located in the southwestern portion of the site.
4. Applicant Cambridge Land Holdings LLC proposes subdivision of the property into 82 lots for detached single-family residential development and separate tracts for private access/joint use driveways serving some residential lots, drainage facilities, critical area preservation and recreation facilities. The proposed recreation facility area is central and meets the locational requirements of county code. Twenty-two of the proposed 82 lots are authorized through the use of the Transfer of Development Rights (TDR) program established in the zoning code, as a density increase allowed over the minimum urban residential density. As noted by DDES, no special design or other amenities are required under the TDR program.
5. Hearing participants expressed concern about drainage impacts in the subject area, with development effects on Shady Lake water levels a particular concern, as well as school pedestrian safety along Petrovitsky Road and on an off-road pedestrian path, with the pedestrian path questioned as being insufficiently improved to provide for year-round pedestrian convenience and of uncertain legal rights. An abutting property owner to the northeast (Dobrowolski) requests extension of subdivision road system to her property for development access, and also expresses concern that the development not cause any drainage backup into or overflowing her ornamental pond. A recommended condition of approval encourages (rather than requires) that development construction not occur during the wet season (the normal limitation period being October 1-April 30), and imposes special erosion prevention conditions should it occur; a neighbor requests that such seasonal limitation be made a mandatory prohibition.
6. Vehicular access into the site would be provided by a curving north-south roadway connecting with Southeast 192nd Drive near the eastern boundary of the site. In the interior of the site, the main access drive would run generally northerly to end at a T-intersection with an east-west road in the far northern portion, which would run the entire width of the property to provide interconnections with the preliminarily approved plat of *The Village at Shady Lake* (file no. L04P0017) abutting to the west and the proposed *Paula's Place* plat (L05P0021) abutting to the east. From each of the main north-south road and the east-west road, a cul-de-sac would branch to serve development lots. In the northwestern portion of the site a stub road would extend north from the east-west road to the north property boundary for eventual interconnection with roads in the formally proposed *Waterstone at Lake Desire* subdivision (L06P0018) of property abutting directly to the north.

7. The City of Renton requests that the development's road improvements be required to develop to City standards. No evidence is presented into the record demonstrating the existence of a pertinent interlocal agreement between the City and the County authorizing such a requirement.
8. Public water service and sanitary sewer service are proposed to be provided by the Cedar River Water and Sewer District, which has certified their availability.
9. The proposed development is located in the Peterson sub-basin of the lower Cedar River drainage basin. The property's surface drainage all flows generally southerly toward drainage ditching along Southeast 192nd Drive (with sheet flow from a sub-basin in the northeast corner flowing first offsite to the east and then south to the Southeast 192nd Drive drainage ditch). Some natural sheetflow crosses the western property line and enters the adjacent *Village at Shady Lake* parcel. The Southeast 192nd Drive ditched drainage is routed westerly and then southerly via culverting, ditching, a swale and an outlet pipe to Shady Lake alongside property boundaries on the south side of Southeast 192nd Drive. The Shady Lake outflow leaves the south side of the lake, flowing south through an arched culvert under Southeast 196th Drive and then downstream south and east eventually to Peterson Lake. The development proposal is subject to the 2005 edition of the King County Surface Water Design Manual (SWDM) and its Conservation flow control and Basic water quality requirements. Development drainage would be collected and conveyed to drainage detention/water quality facilities in the southwest portion of the site with regulated release entering the previously described downstream conveyance route at the 192nd Drive Southeast drainage ditch and then to Shady Lake. A formal drainage adjustment has been approved under file L06V0109 to combine the flow from the two onsite drainage sub-basins into one post-developed drainage facility.
10. Downstream conveyance restrictions have been identified in the drainage analysis of the proposed development. From Southeast 192nd Drive to Shady Lake, drainage facility improvements, including an increased-capacity outfall, are being performed as a joint project with certain of the aforementioned developments, under mitigation measures imposed by the Mitigated Determination of Non-Significance (MDNS) issued under SEPA for the proposed development action. The MDNS mitigation measure is to be imposed as a condition of preliminary plat approval. In addition, a capital improvement project improving the Shady Lake outlet structure has been completed. Drainage analysis approved by DDES has concluded that the downstream Shady Lake outlet channel does not overtop in the 100-year storm event (the regulatory design standard). Given the required conformity of the development with the standards of the KCSWDM (one aspect of which imposes drainage release flow limits based on an assumed fully-forested condition) and the requirements of the drainage adjustment, the subdivision will make appropriate provisions for drainage.
11. The property's assigned SO overlay zone is the SO-180 wetland management areas (WMA) overlay. [KCC 21A.38.120] By virtue of that overlay zoning designation, under KCC 21A.38.120 the subject development is nominally restricted in its establishment of impervious surface area because the property is identified in an adopted basin plan (the Cedar River Basin Plan) as subject to impervious surface limitations. KCC 21A.38.120.B.1 states that "all subdivisions and short subdivisions on residentially-zoned properties that are identified in an adopted basin plan for impervious surface limitations, shall have a maximum impervious surface area of 8% of the gross acreage of the plat." However, the SO-180 WMA mapping (online source) in the subject area is generalized. The inescapably obvious intent of the mapping is that the WMA boundary in the subject area is to be the drainage divide of the Lake Desire/Otter Lake drainage basin from the Shady Lake basin, with the Shady Lake basin excluded. The Examiner

accordingly ruled at hearing that implementation of the SO-180 regulatory scheme in this instance should be based on the actual drainage basin boundaries, identified by sufficient topographical evidence and mapping. That has been accomplished by supplemental evidence provided during the reopened hearing session. The evidence shows that the entirety of the property lies outside of the Lake Desire/Otter Lake drainage basin and is instead entirely within the Shady Lake basin. The property is therefore not subject to the WMA zoning regulations (and their impervious surface limitations) imposed by KCC 21A.38.120 through the SO-18 overlay.

12. School pedestrian walkway safety will be adequately provided. The resident school pedestrian safety issues are as follows:
 - A. Resident public elementary and high school students will be bused to school from bus stops along Southeast 192nd Drive and at the Southeast 192nd Drive /Petrovitsky Road intersection, respectively. Safe walking conditions to the bus stops will be provided by the development's internal, frontage and offsite road improvements extending westerly to Petrovitsky Road.
 - B. Resident public middle school students will be required to walk to Northwood Middle School, which is northwest of the site on the east side of Petrovitsky Road. Two route alternatives exist for pedestrian access to the school: a) a route exclusively alongside public roads, west along Southeast 192nd Drive to and then north along the east side of Petrovitsky Road, and b) an alternative route which runs partway along Southeast 192nd Drive and then utilizes an existing public pedestrian path/trail that runs north from Southeast 192nd Drive within a county regional drainage facility parcel and an undeveloped Kent School District parcel to Southeast 188th Street within the nearby *Cambridge at the Parks* residential subdivision and then along public road sidewalks to the school. (In the longer term future, a third alternative pedestrian route to the school may be available: northward from the property via the aforementioned proposed subdivision (*Waterstone at Lake Desire*; L06P0018) of property directly abutting to the north, within and from which the route would follow existing public road sidewalk improvements.)
 - C. In alternative a, safe walking conditions exist along Petrovitsky Road, which provides a combination of directly abutting and separated 6-8 foot wide asphalt walkways (though in places weed maintenance is in order), by the development's internal and frontage road improvements and by required offsite road improvements along Southeast 192nd Drive westerly to Petrovitsky Road. The safety of using Petrovitsky Road walkways is disputed by neighbors, however, due to 50 mph vehicle traffic alongside. Though the speed of vehicle traffic alongside the pedestrian walkways on Petrovitsky Road may raise a perceptual concern about pedestrian safety, actual physical safety is the standard against which sufficient safety must be judged. It is common in suburban and rural areas to have pedestrian walkways along relatively high-speed roadways; such adjacency in and of itself is not shown by any evidence to be inherently unsafe for school pedestrians, particularly as in this case the pedestrians at issue are relatively older middle school students. The existing walkways along Petrovitsky Road are found to provide sufficient safety for the planned middle school student usage.

- D. The use of alternative b is less attractive in terms of pedestrian comfort due to muddy and at times dark wintertime conditions. The trail route thus presents some pedestrian disincentives during the winter season. The alternative Petrovitsky Road route, found sufficiently safe above, presents a reasonable alternative that meets the legal requirement of safe conditions. Given the age of the users at issue in this consideration, middle-schoolers rather than elementary schoolers, and reasonable reliance on parental direction and the availability of an alternative public road route via Petrovitsky Road, the Examiner is not persuaded that there are not safe walking conditions available merely because of the trail's condition, and there is therefore no justification to require the trail's improvement. From another standpoint, the Examiner is powerless to ban the trail's use.
- E. In summary, the pedestrian facilities in place and to be provided along with other improvements required by conditions herein will provide sufficiently safe walking conditions 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-4 zone and the TDR program.
2. The Examiner concurs in general with county staff's conclusion that there is insufficient regulatory authority to require the development to extend a stub road to the Dobrowolski property adjacent to the northeast. Such road extension is not necessary for general traffic circulation. It is well-established Washington law that the statutory purposes of the subdivision act, more particularly the requirement of RCW 58.17.110 that a subdivision serve the public health, safety and welfare and the public use and interest, provide insufficient regulatory authority to require without compensation the extension of subdivision roads to subdivision perimeters in order to serve future development of adjacent parcels. A requirement of extension on such grounds without compensation would constitute an impermissible regulatory taking as there would not be a sufficient *rational nexus* (connection) between the impact of the development and the requirement. [*Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.App. 502, 887 P.2d 446 (1995), review denied, citing *Unlimited v. Kitsap County*, 50 Wn.App. 723, 750 P.2d 651 (1988) and *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987)] There may be other options of gaining development access to the Dobrowolski property, including private negotiation. It cannot be required by King County without compensation to the developer. The County has not proposed such a compensatory arrangement to be incorporated in this proposal. The Examiner therefore declines to impose such a requirement.
3. Absent a pertinent interlocal agreement to such effect, there is no legal authority to impose City of Renton road standards on development in the unincorporated area.
4. The request that seasonal construction limitations advised by DDES be made mandatory cannot be honored. The issue is largely one under DDES's administrative authority, and in any case, the evidence in the record, particularly given DDES's recommended erosion control provisions for wet-season activity (which shall be imposed), does not demonstrate justification for such a mandatory restriction.

5. 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.
6. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
7. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on August 9, 2010, 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 *Parks III* subdivision, as revised and received August 9, 2010, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A 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 that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 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 Environment Services.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

The applicant shall provide a pertinent TDR certificate with the submittal of the engineering plans and the final plat. If the TDR certificate is not provided, the applicant shall redesign the plat to conform to the density permitted without the TDR allowance.

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. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location, water main and fire flow standards of Chapter 17.08 KCC.
6. (Deleted from recommendation)
7. The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Basic Water Quality standards in the 2005 King County Surface Water Design Manual (KCSWDM).

8. A new offsite drainage outfall pipe to Shady Lake is required in conjunction with Shoreline Substantial Development Permit L06SH012 and *The Village at Shady Lake* L04P0017 plat development. The improvement shall be constructed with the subject development individually or jointly with other developments. The new outfall pipe is proposed across the westerly portion of Lot 28, Block 2 of *Shady Lake Addition*. This offsite drainage improvement shall be designed in general conformance with the Conceptual Drainage Plan received March 20, 2008 (*Village at Shady Lake*, L04P0017), unless otherwise approved by DDES. Plans for the improvement shall be included with the engineering plan submittal. Note that a drainage easement has been acquired for this improvement.
9. This site is subject to the Wet Season Erosion Control Requirements in Appendix D of the 2005 KCSWDM. If construction is occurring in the wet season, an erosion control supervisor shall be designated per KCSWDM Section D.5.4. Weekly reviews and documentation shall be provided per Section D.5.4 Maintenance Requirements. Notes for these requirements shall be placed on the engineering plans. Because the site is in close proximity to Shady Lake, DDES encourages that no site construction take place during the seasonal limitation period (October 1 to April 30).
10. A drainage adjustment (L06V0109) has been administratively 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.
11. 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 2005 KCSWDM.
12. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):
 - a. Road "A" shall be improved to the urban subcollector street standard.
 - b. Road "B" shall be improved to the urban subaccess street standard.
 - c. Road "C" shall be improved to the urban subcollector standard from proposed Road "D" to a point east of Road "A", and shall be improved to the urban subaccess street standard from east of Road "A" to the easterly subdivision boundary.
 - d. Road "D" shall be improved to the urban subcollector standard from proposed Road "C" to the north subdivision boundary.
 - e. The unlabeled cul-de-sac serving proposed Lots 42-46 shall be improved to the urban minor access street standard.
 - f. A joint-use driveway shall be provided for proposed Lots 1 and 2 to mitigate the (otherwise) short separation of the access to Lot 1 and the intersection curb return of the northeast corner of Road "A" and Southeast 192nd Drive. Alternatively, the Applicant may adjust the configuration of proposed Lots 1-3 to ensure that no portion of the driveway to Lot 1 encroaches into the northeast curb return of this intersection.

- g. Type III barricades shall be installed at the temporary termini of Road “C”, (1) near proposed Lots 48 and 49, (2) near proposed Lot 63, and (3) at the northerly terminus of proposed Road “D”. Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade identifying that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message: *This road is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.*
- h. Tracts “E” and “F” shall be improved to the Private Access Tract standard and Tracts “D” and “K” shall be improved to the Joint Use Driveway standard, per KCRS Sections 3.01 and 2.09, respectively. These tracts shall be owned and maintained by the lot owners served.

Note: Compliance with fire code requirements may require wider roadway sections than are called for in the 1993 KCRS. A 36-foot wide (curb-to-curb) roadway is required to allow for parking without any restrictions. Permitted alternatives to roadways wider than required under the KCRS would include either:

- (a) the conveyance of a minimum 3-foot wide private easement abutting the public right-of-way for the private installation and HOA maintenance and enforcement of “No Parking Fire Lane” signs, or
- (b) installation of a fire suppression system meeting the requirements of the Fire Marshal in each unit/structure.

A note referencing the selected alternative, as appropriate, shall be placed upon the final plat map, and the easement shown if alternative (a) is selected. (Also see Condition 24.)

- i. FRONTAGE: Southeast 192nd Drive shall be improved along the property frontage in accordance with urban neighborhood collector standards, with a minimum of 12 feet of pavement on the south side of the roadway crown, and a minimum of 16 feet of pavement (meeting the urban neighborhood collector half-street cross-section) on the north side (plat frontage) of the roadway crown. Urban shoulder improvements consisting of concrete curb/gutter and sidewalk are required along the entire frontage of the subdivision, with appropriate transitions to the off-frontage improvements to the west and the existing improvements to the east.
- j. The final designs of the Southeast 192nd Drive frontage improvements shall be coordinated with the future necessary road improvements for *The Village at Shady Lake* plat (L04P0017) to assure a consistent roadway alignment across both subdivisions’ frontages. During the engineering review phase, the precise alignment may be adjusted to allow an offset between the right-of-way centerline and the interim construction centerline (16-feet south of the new curb line) to minimize/eliminate the need for relocation of utilities for these interim improvements. However, a roadway crown shall be set no less than 12 feet from the south edge of pavement.
- k. OFFSITE: Offsite road improvements are also required along Southeast 192nd Drive extending westerly from the subject property’s frontage to Petrovitsky Road. The design requirements for the offsite improvements shall be generally the same as those shown in the conceptual road improvement plans submitted to DDES, with a minimum

of 24 feet of pavement (two 12 foot wide travel lanes, one lane on each side of a new roadway crown) and a five foot wide paved shoulder for pedestrians along the north side of the roadway.

- l. (Deleted from recommendation)
 - m. (Deleted from recommendation)
 - n. Construction impacts on area travel, pedestrian safety and ingress/egress to residences on the Shady Lake loop road (Southeast 192nd Drive/Southeast 196th Drive) shall be addressed by a construction traffic and management plan. The plan shall be prepared and submitted with the engineering plans for the plat and shoreline substantial development for review and approval by DDES prior to the start of construction.
 - o. Channelization and illumination plans for all offsite roadway improvements shall be submitted for KCDOT review and approval. Channelization and illumination shall conform at minimum to the requirements of the 1993 KCRS.
 - p. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
13. There shall be no direct vehicular access to or from Southeast 192nd Drive from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
 14. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 15. 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 the 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.
 16. 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 the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated equally to the dwelling units in the plat and shall be collected prior to building permit issuance.
 17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 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., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.

- b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. 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 tract.
19. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 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 county 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 KC Metro Service Planning at (206) 684-1622 to determine if Southeast 192nd Drive is on a bus route. If so, 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.

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.
20. 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 final plat.

21. To implement K.C.C. 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of K.C.C. 21A.38.230. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 21A.38.230.B.4. 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 for grading work permitted pursuant to K.C.C. 21A.38.230.B.4.d.(2).

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 K.C.C. 21A.38.230.B.6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

22. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.
- a. The two Category IV wetlands shall have a 50-foot buffer as measured from the wetland edge.
 - b. The stream or aquatic area onsite is a Type F and shall have a 115-foot buffer as measured from the ordinary high water mark (OHWM).
 - c. Improvements along Southeast 192nd Drive are required. The Type F stream or roadside drainage ditch cannot be piped; therefore this lower portion of stream channel maybe re-routed within the project area as proposed in the "Stream Channel Relocation/Fish Habitat Improvement Concept Plan" for the *Village at Shady Lake*, dated March 18, 2008. (The *Village at Shady Lake* is the neighboring plat to the west.) Final plans shall be routed to KC Critical Area staff for review.
 - d. The wetlands, stream and their buffers shall be placed in Critical Area Tracts (CAT) for long term protection. A four foot high split-railed fence or similar shall be installed along the CAT boundaries. Critical Area signs, one per lot on those lots that abut the CAT, shall be installed on or near the fence.
 - e. A 15 foot building setback line (BSBL) is required from the edge of Critical Area Tracts and shall be depicted on the plat on all affected lots.
 - f. Prior to construction or clearing activities onsite, the CAT boundaries shall be clearly marked with orange construction fencing or similar, and shown on the engineering plans. The fencing shall remain in place until all clearing or construction is completed.
 - g. The critical area buffers located within the Tracts shall be replanted as directed by the County with native vegetation. A final planting plan, if required by the County, shall be submitted to the Critical Area staff for review and approval during engineering review.
 - h. During engineering and/or early start plan review the applicant shall provide a wetland hydrology analysis to demonstrate how the wetland hydrology is being or will be maintained post-construction.

- i. The engineering plans shall be submitted to and reviewed by Critical Areas staff.
- j. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR CRITICAL AREA TRACTS AND CRITICAL
AREA BUFFERS

Dedication of critical area tract(s) and buffer conveys to the public a beneficial interest in the land within the tract/critical 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 critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical 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/critical area and buffer. The vegetation within the tract/critical 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/critical 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 critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

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

- 23. The following have been imposed under SEPA substantive authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.

To mitigate the significant adverse impact (KCC 14.80.030B) the plat of *The Parks III* will have on the intersection of Southeast 192nd Drive/Petrovitsky Road, the applicant shall install, either individually or in conjunction with other development projects in the area, a southbound left turn lane from Petrovitsky Road onto eastbound Southeast 192nd Drive. This turn lane shall comply with requirements in the King County Road Standards, including a 12-foot wide turn lane with no less than 100 feet of storage, one travel lane in each direction on Petrovitsky Road, eight (8) foot wide paved shoulders on each side of Petrovitsky Road and an illumination system meeting applicable County requirements that extends northerly to the existing Southeast 184th Street/Petrovitsky Road intersection. This may include relocation of any utilities conflicting with these requirements. Minor modifications to this may be proposed through the variance process.

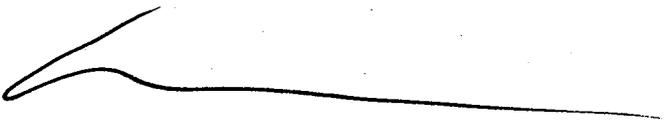
The design for the Southeast 192nd Drive/Petrovitsky Road intersection improvements shall be approved by the King County Department of Transportation.

In lieu of the installation of the above-noted improvements prior to final plat approval, the applicant (successors or assigns), either individually or jointly with other developers, may post a financial guarantee with King County which assures the installation of these improvements within two years of the recording of the plat of *The Parks III*. In this event, the intersection improvement design must be approved by KCDOT prior to approval of the engineering plans for *The Parks III*.

If the above-noted intersection improvements have already been made by others prior to the recording of *The Parks III*, or a financial guarantee has been posted by others which assures the installation of these improvements, then the Applicant (or successors or assigns) for *The Parks III* shall pay a pro-rata share dollar amount to the developer who has made the improvements or “bonded” for the improvements, in the amount proportional to the impacts of *The Parks III*. The pro-rata share dollar amount to be paid should be based on the following:

- a. The final *The Parks III* lot count.
 - b. The total trips contributed to the intersection of Southeast 192nd Drive/Petrovitsky road intersection by the plats of the *Village at Shady Lake* (L04P0017), *The Parks III* (L06P0002), *Paula's Place* (L05P0021), *Shady Lake* (L05P0002), Mitchell short plat (L04S0016), Shady Lake short plat (L05S0008) and any future land use applications submitted to King County for which compliance with the King County Intersection Standards (KCC 14.80) is required at the Southeast 192nd Drive/Petrovitsky Road intersection.
 - c. In the event that King County adopts a formal “latecomers” system prior to final plat recording, that system may be followed in lieu of the approach described above, at the option of the applicant (or successors or assigns), as long as at a minimum there is a financial guarantee which assures that the above-noted intersection improvements will be installed within two years of the date of recording of the plat of *The Parks III*.
[Comprehensive Plan Policy T-303 and King County Code 21A.28.060A]
24. All future residences within this subdivision are required to be sprinkled NFPA 13D unless the requirement is removed by the King County Fire Marshal or designee. The fire code requires all portions of the exterior walls of structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20 foot wide unobstructed driving surface. To qualify for removal of the sprinkler requirement, driving surfaces between curbs must be a minimum of 28 feet in width when parking is allowed on only one side of the roadway, and at least 36 feet in width when parking is permitted on both sides.

ORDERED March 9, 2011.



Peter T. Donahue
King County Hearing Examiner

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 March 23, 2011*. If a notice of appeal is filed, the original and 2 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 March 30, 2011*. 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 1039, King County Courthouse, 516 Third 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. If the Office of the Clerk is not open on the specified closing date, 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 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 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 SEPTEMBER 28 AND NOVEMBER 9, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L06P0002.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker, Nick Gillen and Kristen Langley representing the Department; Duana Koloušková and Darrell Offe representing the Applicant; and Mark Reeves, Joe Giberson and Debbie Dobrowolski.

The following Exhibits were offered and entered into the record on September 28, 2010:

- | | |
|----------------|--|
| Exhibit No. 1 | Department of Development and Environmental Services (DDES) file no. L06P0002 |
| Exhibit No. 2 | DDES Preliminary Report, dated September 28, 2010 |
| Exhibit No. 2a | DDES addendum report dated September 28, 2010 |
| Exhibit No. 3 | Application for Land Use Permits received January 16, 2006 |
| Exhibit No. 4a | State Environmental Policy Act (SEPA) checklist received January 16, 2006 |
| Exhibit No. 4b | Revised Environmental checklist received March 17, 2010 |
| Exhibit No. 5 | SEPA Determination of Non-Significance issued July 29, 2010 |
| Exhibit No. 6 | Affidavit of Posting indicating a posting date of March 3, 2006; received by DDES on March 6, 2006 |
| Exhibit No. 7 | Preliminary plat map received August 9, 2010 (revised) |
| Exhibit No. 8 | Assessors map; SE 36-23-05 |
| Exhibit No. 9 | Conceptual drainage plan received September 27, 2010 (revised) |
| Exhibit No. 10 | Level 1 drainage by Offe Engineers dated August 23, 2006 (revised) |
| Exhibit No. 11 | Drainage analysis by Site Development Association dated March 24, 2010 |
| Exhibit No. 12 | Drainage analysis by Site Development Association dated July 8, 2010 |
| Exhibit No. 13 | Critical areas report by B-twelve Wetland Consulting Inc. dated December 14, 2005 |
| Exhibit No. 14 | Geotech report by Cornerstone dated July 1, 2005 |
| Exhibit No. 15 | Addendum traffic study by Transportation Engineering NorthWest dated March 4, 2010 |

- Exhibit No. 16 Frontage improvement plan by Offe Engineers received April 15, 2010 (revised)
- Exhibit No. 17 Transfer of Development Credit agreement received January 19, 2006
- Exhibit No. 18 SWDM adjustment L06VA0109
- Exhibit No. 19 2008 aerial w/superimposed map of property along with other developments
- Exhibit No. 20 Graph showing observations of Shady Lake water level

The following Exhibits were offered and entered into the record on November 9, 2010:

- Exhibit No. 21 Applicant's Submittal Pursuant to Notice of Limited Hearing Reopening and Examiner Interrogatory
- Exhibit No. 22 Revised conceptual drainage plan dated August 12, 2010
- Exhibit No. 23 Revised conceptual drainage plan dated August 15, 2010
- Exhibit No. 24 Existing conditions drainage plan (annotated) dated October 19, 2010
- Exhibit No. 25 November 1, 2010 DDES memorandum with response to submittals

The following Exhibit was offered and entered into the record on November 17, 2010:

- Exhibit No. 26 November 15, 2010 DDES Memorandum regarding drainage boundaries

PTD:gao
L06P0002 RPT