BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

DECISION

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CITY OF SAMMAMISH

FILE NUMBER:	PSUB2015-00254
APPLICANT:	Seattle Real Estate Holdings, LLC C/o Skip Coddington 1518 1st Avenue S, Suite 301 Seattle, WA 98134
TYPE OF CASE:	Preliminary subdivision (*Hamilton Estates*)
STAFF RECOMMENDATION:	Approve subject to conditions
EXAMINER DECISION:	GRANT subject to conditions
DATE OF DECISION:	January 17, 2017

INTRODUCTION [1]

Seattle Real Estate Holdings, LLC (SREH) seeks preliminary approval of *Hamilton Estates*, a 14-lot single-family residential subdivision of an approximate 9 acre site, owned by SREH, which is zoned R-6. (Exhibits 2; 7; 21 [2])

SREH filed a Base Land Use Application on October 9, 2015. (Exhibit 2) The Sammamish Department of Community Development (the Department) deemed the application to be complete when filed. (Exhibit 3)

The subject property is located at 1702 246th Avenue SE, about 1,200 feet north of SE 24th Street. (Exhibits 2; 7)

The Sammamish Hearing Examiner (Examiner) viewed the subject property on January 5, 2017.

The Examiner held an open record hearing on January 5, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit 26)

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1 Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

2 Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was held on or about net review day 120. (Testimony) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. SREH chose to extend the deadline, if necessary. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

Exhibit 1:	Departmental Staff Report
Exhibits 2 – 26:	As enumerated in Exhibit 1 at pp. 22 and 23

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. SREH proposes to subdivide the subject 9-acre property into 14 lots for single-family residential development. The proposed subdivision will include two public streets that will be created (a portion of the existing 246th Avenue SE, a private easement street, and SE 19th Street, a new street, totaling approximately 44,878 square feet (SF) or 1.03 acres which is 11% of the site), two short private streets serving eight of the lots (Tracts B and G, totaling 10,641 SF or 0.24 acres which is 3% of the site), three stormwater control/recreation tracts (Tracts A, E, and F, totaling 19,593 SF or 0.45 acres which is 5% of the site), and two sensitive areas protection tracts (Tracts C and D, totaling 222,975 SF or 5.12 acres which is 57% of the site). Thus, the 14 lots will occupy only about 24% of the site. (Exhibit 10, especially Sheet 5)

2. The subject property is a long, narrow parcel (about 1,200 feet in north-south dimension and 330 feet in east-west dimension) composed of two tracts in an old King County short subdivision. (Exhibits 10, Sheet 1; 22) The proposed subdivision does not exceed the yield limitation set forth in SMC 19A.08.190. (Exhibit 1, p. 11, § II.EE)

3. The subject property currently has no frontage on any public right-of-way. A 30 foot wide non-exclusive easement extends north from SE 24th Street passing through the subject property along its west edge. That easement contains a narrow gravel road known as 246th Avenue SE. (Exhibits 10, Sheets 1 and 2; 14, p. 2) 246th Avenue SE is used by property owners on both sides of the easement as well as the owner of the acreage parcel to the north of the subject property. (Testimony)

   The recently approved *Costea Estates* preliminary subdivision (PSUB2015-00046, Decision issued August 30, 2016) lies immediately south of the *Hamilton Estates* property. The developer of record

of *Costea Estates* is SREH. *Costea Estates* will dedicate and construct a half-street section in that portion of 246th Avenue SE which passes through it as well as dedicating and construction a full-section public street between 246th and 248th Avenues SE. (Testimony; official notice)

The 246th Avenue SE easement passes through the west edge of *Robin's Ridge*, a 6-lot short subdivision located one lot south of *Costea Estates*. *Robin's Ridge* will dedicate and construct a half-street section of 246th Avenue SE from its north line south to SE 24th Street. (Testimony)

When (and if) all these developments are completed, a half-street section public street will exist from SE 24th Street north to about 420 feet from the north edge of *Hamilton Estates*, except for the one lot gap between *Costea Estates* and *Robin's Ridge*. (Testimony)

4. 247th Avenue SE extends southerly from SE 14th Street along an alignment corresponding with the east line of the subject property. It currently ends about one parcel north of the northeast corner of the subject property. (Exhibit 21)

   SE 17th Place extends easterly from 244th Avenue SE on an alignment that would intersect 246th Avenue SE at approximately the location of the proposed cul-de-sac bulb at the north end of the to-be-dedicated portion of 246th Avenue SE in *Hamilton Estates*. It currently ends about one parcel to the west of the west edge of the subject property. (Exhibit 21)

5. The subject property is bisected from northeast to southwest by a 150 foot wide Bonneville Power Administration (BPA) high voltage transmission line easement. (Exhibit 10, Sheet 2) SREH has made application to BPA for the necessary permits to construct facilities within the BPA easement. (Testimony)

6. With the exception of a small shop/garage building [3] located in the west-central portion of the property, the subject property is undeveloped. The subject property is substantially encumbered by three wetlands and a small stream. Wetland M/U is a Category II wetland located in a depression which crosses essentially the entire width of the north end of the property. Wetland P is a Category III wetland which meanders through the eastern half of the central part of the property. Wetland R is a Category III wetland located within the BPA easement in the southwest corner of the property. A Type Ns stream enters the site from the west, passes through a culvert leading to Wetland P, flows through Wetland P, and exists the property near the mid-point of its east property line. (Exhibit 13)

7. The proposal has been designed to avoid direct impact to any of the aquatic features on the site. Buffer averaging (11,449 SF of low-grade existing buffer reduced; 30,413 SF of buffer added) is proposed to facilitate creation of reasonably configured lots. In addition to the 3:1 replacement ratio, SREH proposes to provide substantial vegetative enhancement to improve the habitat value of the buffers. (Exhibits 1; 10; 13)

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[3] See Finding of Fact 17.A, below.

The buffer averaging plan depicts some enhancement plantings across a portion of the 30-foot wide easement immediately north of the end of to-be-dedicated right-of-way for 246th Avenue SE. (Exhibit 10, Sheet 6) The Department testified that it opposed such plantings as they would conflict with the purposes for which the easement was created. SREH agreed to eliminate those plantings. (Testimony)

8. Surface and near-subsurface water flows in this area are generally from west to east. The parcels on the west side of the 246th Avenue SE easement are mostly about 0.75 acres in size and are served by 245th/244th Avenue SE. SREH will be installing a French drain along the west side of 246th Avenue SE within the subdivision to capture water flows from the lots west of 246th Avenue SE. The water will then be conveyed beneath the street and discharged into the on-site wetlands to preserve their hydrology. (Exhibits 10, Sheet 8; 19; 21; and testimony)

9. The subject property is designated on the City's adopted comprehensive plan R-6 and zoned R-6, residential development at a maximum density of six dwelling units per acre. *Costea Estates* and most of the abutting property to the east are likewise zoned R-6. The area to the north and west is zoned R-4. (Exhibit 21)

10. The maximum permissible lot yield under the subject property's R-6 zoning, calculated in accordance with procedures spelled out in the SMC, is 19. (Exhibit 5)

11. All proposed lots meet applicable zoning standards. (Exhibits 1; 10)

12. The record contains evidence that appropriate provisions have been made for open space (Exhibit 10); drainage (Exhibits 10; 19; and testimony); streets and roads (Exhibits 10; 14; 15); potable water supply (Exhibits 7.4; 10; 16 [4]); sanitary wastes (Exhibits 7.4; 10; 16); parks and recreation (Exhibits 1; 10); playgrounds (Exhibits 1; 10); schools and schoolgrounds (Exhibit 1); and safe walking conditions for children who walk to school (Exhibit 7.6 or 9; and testimony: The *Hamilton Estates* sidewalk system will connect to the *Costea Estates* sidewalk system which will provide a safe walking facility out to 248th Avenue SE where school bus stops are located). The plat design does not require alleys or other public ways. (Exhibit 10) The record contains no request for transit stops.

13. Sammamish first enacted tree retention/preservation regulations in or around 2005. [Ordinance No. O2005-175] Those regulations were contained in former SMC 21A.35.210 - .240. In 2014 the City enacted emergency, interim revisions to those code sections. The interim regulations were in effect from October 14, 2014 to October 14, 2015. [Ordinance Nos. O2014-375 and O2015-390] Those interim regulations were repealed and replaced by Chapter 21A.37 SMC, Development Standards – Trees, effective October 14, 2015. [Ordinance No. O2015-395]

    Notwithstanding contrary statements in Exhibit 1, the subject application is vested to the interim tree regulations (since its vesting date precedes the effective date of the current tree regulations).

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4 The Sammamish Plateau Water and Sewer District is now simply known as Sammamish Plateau Water. (Official notice)

14. The interim tree regulations [former SMC 21A.35.210 - .240] required new subdivisions to retain at least 35% of all "significant" trees [5] located outside of protected environmentally sensitive areas [former SMC 21A.35.210(3)(a)]; significant trees within protected environmentally sensitive areas had to be be retained as required by adopted environmentally sensitive areas regulations. [former SMC 21A.35.210(3)(b)] Up to 50% of the significant trees to be retained could be replaced upon approval by the Department and all significant trees removed lawfully had to be replaced. Replacement had to be in kind (conifer for conifer, deciduous for deciduous) on a one-to-one ratio with new trees of specified minimum sizes. [former SMC 21A.35.210(7) and .240(1)]

15. The subject property contains 158 significant trees of which 59 are located within critical areas. (Exhibit 10, Sheet 13) Pursuant to former SMC 21A.35.210(3)(a), 35 (35% of 99) significant trees outside of sensitive areas and the 59 significant trees within sensitive areas tracts must be retained.

    SREH proposes to retain 41 significant trees outside environmentally sensitive areas plus the 59 trees within critical areas, for a total of 100 significant trees retained. (Exhibit 10, Sheet 13) SREH's proposal exceeds the retention requirements of the interim tree regulations.

16. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Hamilton Estates* on November 21, 2016. (Exhibit 1, p. 1) The DNS was not appealed. (Testimony)

17. The Department's Staff Report (Exhibit 1) provides a detailed exposition of facts related to all criteria for preliminary subdivision approval. SREH concurred in full in the Findings, Conclusions, and Recommended Conditions set forth in that report. (Testimony) The record contains no challenge to the content of that report. Therefore, the Findings and Conclusions/Analysis within the Staff Report are incorporated herein as if set forth in full with the following exceptions:

    A. Pages 3, 8, and 10. The Staff Report provides various descriptions of the existing on-site building. [6] The Examiner concludes that the sworn testimony offered during the hearing is the most credible evidence on this point: The building is not a residence, it is a garage/shop. (Testimony)

    B. Page 8, § II.G. The Issaquah School District has not said that a school bus stop will be located at the entrance to the subdivision. (Exhibit 7.6 or 9)

    C. Page 8, § II.J. As previously noted, the application is not vested to the current tree retention regulations.

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[5] The SMC defines a "significant tree" as either a coniferous tree with a diameter at breast height (DBH) of 8" or more or a deciduous tree with a DBH of 12" or more. [SMC 21A.15.1333]

[6] Other exhibits in the record also describe it in various ways. (Exhibits 10, 12 – 14, 19, and 20)

D. Page 10, § II.V. The text of this section suggests that various aspects of the proposal do not comply with applicable storm water control requirements. Such is not the case. Assuming that BPA issues the required permits, the drainage facilities as now proposed would meet applicable requirements. (Testimony)

E. Page 18, §§ III.C.1, III.C.2, and III.C.3. These three paragraphs were "borrowed" from a staff report for a different project [7] and have no applicability at all to *Hamilton Estates*.

F. Page 22, Exhibit List. Exhibit 7.1 is identified as a written comment from "Hamilton." That is incorrect. Exhibit 7.1 is a written comment from "Hanson."

18. The Department recommends approval of *Hamilton Estates* subject to 27 conditions. (Exhibit 1, pp. 20 - 22) During the hearing the Department asked for the following changes to its recommended conditions:

A. Recommended Condition 3. The Department's intention with this condition is that a note be placed on the face of the final plat indicating that a future public street connection to 247th Avenue SE may be made at the northeast corner of the subdivision. (Testimony) A street entering the subject property at its northeast corner would run into Wetland M/U. The existing easement along the west edge of the subject property already crosses Wetland M/U near the property's northwest corner. (Exhibits 10, Sheet 2; 13, Figure 1/2)

B. Recommended Condition 6. The Department asked that this condition be deleted as it duplicates Recommended Condition 14. (Testimony)

C. Recommended Condition 9. The Department's intention with this condition is that a note be placed on the face of the final plat indicating that SE 17th Street might interconnect with 246th Avenue SE at some time in the future. (Testimony)

D. Recommended Condition 11. The Department's intention with this condition is to convey that no portion of any lot may be within the BPA easement. That in turn means that Proposed Lots 3 – 7 would have to be reduced in size because a portion of each is depicted as lying within the BPA easement. (Exhibit 10, Sheet 5) The effect on Proposed Lot 5 and its access might be the most profound, but there is no evidence in the record that the redesign could not be effected.

19. Several neighboring property owners participated in the application review/public hearing process:

A. Hanson, owner of the abutting acreage parcel to the north, wants the 246th Avenue SE easement preserved so that it could be used to access his parcel. He plans to subdivide his

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[7] Most likely *Costea Estates*. (Speculation by Examiner based upon the street named in them)

parcel into two or three lots and may want to use 246th Avenue SE for access. He would also like all underground utilities stubbed to his south property line. (Exhibit 7.1; and testimony)

B. Westfahl and Wirasnik are property owners on the west side of the 246th Avenue SE easement. Both are concerned that existing drainage flows towards the east not be blocked by the proposed development. (Exhibits 7.2; 7.3; and testimony) In addition Westfahl wants a privacy screen along the west edge of 246th Avenue SE, but also wants to preserve their access to the rear of their property via that street. (Exhibit 7.2; and testimony) Wirasnik opposes street lights as they would conflict with the rural character of the area and wants his east property line protected. (Exhibit 7.3)

20. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK [8]

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority
A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

> The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria
Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

> When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and

[8] Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

> helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

> When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:
>
> (1) 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 school grounds 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
>
> (2) The public use and interest will be served by the platting of such subdivision and dedication.

Vested Rights

Sammamish has enacted a vested rights provision.

> Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on October 5, 2015.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Hamilton Estates* is, for the most part, an uncontested case.

2. Section 20.10.200 SMC requires the Examiner to consider a number of items, including "the interim comprehensive plan". The Examiner's ability to use the comprehensive plan in project review is constrained by state law which states that the comprehensive plan is applicable only where specific development regulations have not been adopted: "The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan ...." [RCW 36.70B.030(1)]

   The state Supreme Court addressed that provision in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] in which it ruled that "[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise." [at 873]

   > Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor.

   [*Mount Vernon* at 873-74, citations omitted]

3. Based upon all the evidence in the record, the Examiner concludes that *Hamilton Estates* meets the considerations within SMC 20.10.200. All evidence demonstrates compliance with Comprehensive Plan policies, to the extent they can be considered, and zoning code, subdivision code, and Environmentally Sensitive Areas regulations. Eliminating the small amount of buffer expansion that is depicted as occurring within the 246th Avenue SE easement should be able to be done without adversely affecting the entire project. An existing ingress/egress easement should not be encumbered with or blocked by new wetland buffer expansion plantings.

4. Given all the evidence in the record, the Examiner concludes that *Hamilton Estates* complies with the review criteria of SMC 20.10.220(1). The proposed subdivision allows development at the density expected under the Comprehensive Plan, does not thwart future development of surrounding properties, and makes appropriate provision for all items listed in that code section.

5. Given all the evidence in the record, the Examiner concludes that *Hamilton Estates* will serve the public use and interest and will thus comply with the review criteria of SMC 20.10.220(2), but only

if *Costea Estates*, or at least its public street system, is recorded and developed first. Since *Hamilton Estates* has no frontage on any public right-of-way, it cannot be recorded until such access is available. *Costea Estates* provides that access from 246th Avenue SE out to 248th Avenue SE. SREH acknowledged that development of *Hamilton Estates* is dependent upon development of *Costea Estates*. (Testimony)

6. The main utility lines within the subdivision will likely end some 400 feet south of Hanson's property. [9] The City most likely lacks the authority to make SREH pay to extend those lines to the north edge of the subject property since they would not serve any part of the development: They would only be providing a benefit to Hanson's future development. As a general rule, the City cannot make one developer pay for infrastructure that isn't required by the developer's project. The Examiner declines to impose a condition that would most likely be illegal.

7. Fencing of at least part of the western property line, in one form or another, was requested by Westfahl and Wirasnik. City regulations do not require fencing of residential subdivisions. Fencing is usually a private matter left up to the abutting property owners to resolve as they wish. The property owners to the west apparently (based upon testimony during the hearing) have the right to take access over the existing easement; they will have the right to take access over 246th Avenue SE after it becomes a dedicated City street. It would make no sense to order SREH to fence those owners off from their rightful access to 246th Avenue SE. [10] Nor would it be fair to require SREH to negotiate fence or no fence, gate or no gate with every one of those abutting lot owners. If the fence were not to be built within the newly dedicated right-of-way, then a fencing requirement would force SREH to build the fence on private property owned by others – a wholly untenable requirement. The Examiner concludes that fencing should remain a private matter here as elsewhere.

8. Street lights are required by code. The Examiner would not, even if he could, bar installation of required street lights in a new subdivision. The area along the 245th Avenue SE corridor, because of its relatively large lot sizes, is relatively rural, or at least semi-rural. But it is zoned for development at up to four dwelling units per acre – three to four times as dense as it presently is. This area is experiencing a redevelopment surge which will change the character of the area from semi-rural to suburban. That change will be fully consistent with the regulations adopted by the City's legislative officials, the City Council. With suburbanization comes change which, unfortunately, not everyone may appreciate. But the Examiner is obligated to apply the City's adopted regulations in each application which comes before him.

9. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:

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9 Sammamish Plateau Water will control the location of water and sewer lines.

10 The Examiner is not even sure that the City's Public Works Standards (either the prior Interim PWS or the newly enacted 2016 PWS) would allow construction of a privacy fence within City right-of-way.

A. Recommended Condition 3. The Department testified that this condition seeks placement of a note on the face of the final plat indicating the possibility of a future north-south connection to SE 14th Street at the northeast corner of the development. While the Examiner understands the Department's desire for inter-connections within the public street system, the logic of expecting that connection to occur at the northeast corner of *Hamilton Estates* is weak. The existing easement which is being slowly but surely converted into dedicated 246th Avenue SE lies along the west edge of and ends at the northwest corner of *Hamilton Estates*. In order to get from the west edge to the northeast corner of the subdivision would require crossing through the middle of Wetland M/U. Whether existing City wetland protection regulations would even allow that to be done is questionable, to say nothing of whether it would be desirable.

In lieu of a northeast corner potential connection, the Examiner will require that that portion of the existing 246th Avenue SE easement not being converted into dedicated right-of-way be designated as a separate tract, that no wetland planting be done within that tract, and that a note be placed on the face of the final plat to the effect that that tract may be converted into a public right-of-way at some time in the future. The condition will be split: The portion regarding preservation of the easement will be added to Condition 1; the portion regarding the final plat note will be moved to the "Conditions to appear on the face of the final plat ..." section.

B. Recommended Condition 6. The Examiner agrees with the Department that this duplicate condition should be deleted.

C. Recommended Condition 9. Clarification of this condition as discussed during the hearing will be made.

D. Recommended Condition 11. The code citation in this condition is incorrect: There is no "SMC 21A.15.160(1)". There is an "SMC 21A.15.160", but that code section contains the definition of "Campground". The correct code section is SMC 21A.25.160(1) which requires regional utility corridors to be contained in separate tracts within subdivisions. The preliminary plat will have to be adjusted to meet that requirement. This condition will be consolidated with Recommended Condition 1.

E. A new condition is needed in the "Prior to or Concurrent with Final Plat" section. *Hamilton Estates* is dependent upon prior development of *Costea Estates* for its public street access. A condition to that effect must be added.

F. Recommended Conditions 18 and 19. Because the Department thought *Hamilton Estates* was vested to the current tree retention regulations, the code citations contained in these conditions are to the current code. But *Hamilton Estates* is vested to the interim tree regulations. All code citations in these conditions must be changed to reflect that fact.

G. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 4, and 10 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

10. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** preliminary subdivision approval for *Hamilton Estates* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued January 17, 2017.

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS [11]

Mark Plog
Daniel Westfahl
Haim Strasbourger
Ryan Harriman
Gary Hanson

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

[11] The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

CONDITIONS OF APPROVAL
HAMILTON ESTATES
PSUB2015-00254

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, the General Standard Plan Notes as set forth in hearing Exhibit 24, and the following special conditions:

Site Development Permit Special Conditions:

1. Exhibit 10 is the approved preliminary plat (and supporting plans); PROVIDED, that:

   A. The portion of the existing 30 foot wide easement along the west edge of the subject property not being dedicated as public right-of-way shall be established as a separate tract denoted for ingress, egress, and utilities.

   B. The buffer addition and associated buffer plantings depicted on Sheet 6 as occurring within the 30 foot wide easement along the west edge of the subject property shall not occur within said easement.

   C. Proposed Lots 3 – 7 shall be revised such that no part of any lot lies within the BPA transmission easement.

   D. The BPA transmission easement shall be placed within one or more separate tracts.

   Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.

2. The Plattor or subsequent owner(s) shall comply with the payment of street impact fees, impact fees for park and recreational facilities, and school impact fees in accordance to SMC Chapters 14A.15, 14A.20, and 21A.105, respectively.

3. Connectivity road stub to the east at SE 19th Street shall be provided as shown on the preliminary plat plans with the addition of a temporary turnaround matching Public Works standards.

4. Half-street frontage improvements shall be provided on 246th Avenue SE consistent with the local road standard and any variation from the standards approved by the City Engineer.

5. Illumination shall be provided in the plat local roads consistent with the City's standards for average foot candles and uniformity for a local road. Luminaires shall be full cut off. Pole type and style shall be approved by Public Works.

6. Drainage plans, Technical Information Reports, and analysis shall comply with the *2009 King County Surface Water Design* Manual (KCSWDM), the *City of Sammamish Surface Water Design Manual Addendum*, the City of Sammamish *Stormwater Management Comprehensive Plan,* and the *East Lake Sammamish Basin Plan.*

7. The Plattor shall provide written authorization from the Bonneville Power Administration for construction and operation of those portions of the subdivision lying within its transmission easement.

Prior to or Concurrent with Final Plat:

8. The final plat of *Costea Estates* (PSUB2015-00046) shall have been constructed and recorded or, in the alternative, the public street network within said subdivision shall have been constructed and dedicated to the City.

9. Local roads shall be dedicated as public right-of-way.

10. Private roads, driveways, frontage improvements, and off-site improvements shall be constructed as required by the site development permit and/or right-of-way permit.

11. A public pedestrian access easement shall be provided to connect the cul-de-sac to the plat's north boundary.

12. A public stormwater easement shall be provided for access, inspection, maintenance, repair, and replacement of the detention and water quality facilities within Tracts A, E and F, or as their locations are updated during final engineering.

13. Any offsite stormwater easements required by the stormwater design shall be recorded;

Conditions to appear on the face of the final plat (italicized words verbatim):

14. A note shall be provided indicating that the ingress/egress/utilities easement along the west edge of the plat may, in the future, become a street connecting with SE 14th.

15. A note shall be provided indicating that SE 17th Place west of the subdivision may, in the future, extend easterly to connect with 246th Avenue SE within the subdivision.

16. The plattor shall include a note regarding the payment of all street, park, and school impact fees consistent with the provisions of Chapters 14A.15, 14A. 20, 14A.25, and 21A.105 SMC as the same exist at the time the final plat is being approved. The note shall indicate whether fees have already been fully paid, partially paid, or deferred. Specific language shall be reviewed and approved by the City prior to final plat approval.

17. Trees retained in accordance with former SMC 21A.35 as the same existed on October 9, 2015, shall be identified on the face of the final plat for retention. Trees shall be tagged in the field and referenced on the face of the final plat with the applicable tag number.

18. *"Trees identified on the face of this plat have been retained pursuant to the provisions of former SMC 21A.35 as the same existed on October 9, 2015. Retained trees are subject to the tree protection standards of former SMC 21A.35 as the same existed on October 9, 2015. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property, and may be subject to a clearing and grading permit approved by the City of Sammamish. Trees removed subject to this provision shall be replaced in compliance with former SMC 21A.35 as the same existed on October 9, 2015."*

19. Covenant and easement language pertaining to individual lot and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language prior to final plat.

20. Unless located within a recreation tract and public easements provided, all Surface Water Management Facilities required for this subdivision shall be contained within a separate tract of land and shall be dedicated to the City of Sammamish for inspection, maintenance, operation, repair, and replacement. Language to this effect shall be shown on the face of the final plat.

21. *"Maintenance of all landscape strips along the plat roads shall be the responsibility of the Homeowners Association or adjacent property owners. Under no circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat."*

22. *"Maintenance of landscaping strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association."*

23. *"Individual lot flow control BMP's in accordance to the 2009 King County Surface Water Design Manual shall be provided with each single family residential building permit unless otherwise incorporated into the subdivision site development plans."*

24. *"Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development."*

25. *"All building permits shall be subject to 2009 King County Surface Water Design Manual Appendix C to determine the best management practices for all surface water runoff. All connections of roof drains shall be constructed and approved prior to final building inspection approval."*

Prior to City Acceptance of Improvements:

26. Prior to acceptance into the Maintenance and Defect period, project close-out documents including the final acceptance construction punch list, as-builts, and final corrected TIR shall be submitted to Public Works for approval;