



Johns Monroe  
Mitsunaga Koloušková  
P.L.L.C.

Robert D. Johns (*Retired*)

Michael P. Monroe

Darrell S. Mitsunaga

Duana T. Koloušková

Vicki E. Orrico

*Via Email and US Mail*

Mr. Allan Giffen  
Director, Planning & Community  
Development  
City of Everett  
2930 Wetmore Avenue  
Everett, WA 98201  
agiffen@everettwa.gov

September 22, 2016

Mr. David Hall  
Deputy City Attorney  
City of Everett  
2930 Wetmore Avenue, Suite 10-C  
Everett, WA 98201  
dhall@everettwa.gov

Re: Soundview Business Campus – Wildlife Corridor Determination

Dear Mr. Giffen and Mr. Hall:

We have been retained to assist LBG 38, LLC, in the process of determining with the City the appropriate setbacks and corridors for the Soundview Business Campus property (referred to herein as the “Soundview Property”). The LBG 38 team of professionals have compiled an extensive history of permitting documentation regarding the property. Much of that material is either on file with the City or City-generated reports, drafts and decisions. We have reviewed that volume of historical information regarding both the Property and the City’s treatment of wildlife corridors with respect to other projects and properties in the area.

Our conclusion is that the appropriate wildlife corridor for eastern boundary of the site is the same area as is required for the residential buffer, i.e. 75 feet. That residential buffer is established under Everett Municipal Code, Table 6.1, for the M-1 zoning which applies here. Based on our review of the site history, zoning and applicable law we believe the 75-foot width is the most defensible wildlife corridor. Anything wider does not appear to have foundation either in Everett Municipal Code, the State Environmental Policy Act and the environmental record for the City’s Planned Action, the evolution of the site and wildlife corridor treatment in the area, or best available science.

The following supporting points for this conclusion are addressed in more detail below:

- In 1996, the SW Everett EIS concluded that designated residential buffer should also serve as wildlife corridor but did not establish particular widths, leaving that to be established through zoning.
- In 1997, the City adopted M-1 Zoning for the Soundview Property, establishing a 75 foot residential buffer on the east side of the property.
- Since 1997, all approved applications for the Soundview Property have set a 75-foot residential buffer and wildlife corridor, overlaid, for the east boundary.
- The City's 2006 Critical Area Mapping appears, and legally must be read, to be consistent with the 75-foot wide residential buffer / wildlife corridor.
- The law requires any conditions or limitations on development to be consistent with the legislatively adopted zoning, proportionately based on the impacts of the specific development *and* on best available science.
- The Habitat Assessment / Enhancement Plan submitted concurrently demonstrates there are no direct or indirect impacts that would warrant a larger corridor than that provided under the 75-foot residential buffer.
- The proposed project will provide more wildlife benefit than other wildlife corridors of even twice the size by providing enhancement of the buffer / corridor beyond a simple buffer designation.

The SW Everett EIS Concluded that Designated Residential Buffer Should Also Serve as Wildlife Corridor but Did Not Establish Particular Widths, Leaving that to be Established Through Zoning.

The language in the SW Everett EIS does not set forth a particular wildlife corridor width. In fact, it expressly delays that determination for the future stating the City "shall", i.e. in the future, designate residential buffers also as wildlife corridors. The EIS never intended to establish concretely a particular width for either a wildlife corridor or residential buffers. Even Figure 3.4-40 declines to do so, labelling wildlife corridors as merely "Potential". This was logical, as at that time, there was neither a residential buffer nor wildlife corridor set for the Property.

Instead, the plain language of the EIS provided that whatever residential buffers might be established on the property would also be regulated and protected as wildlife corridors. As the City would set residential buffers either on a project-by-project basis, or under the adopted zoning, the EIS also anticipated that those residential buffers would be designated as, and act as wildlife corridors. For the Soundview Property, that is exactly what has unfolded: the City under current M-1 zoning has a 75-foot residential buffer for the east boundary of the property. That 75-foot buffer also would be designated as a wildlife corridor. We note that such is a significant benefit to the City and area over and above other wildlife corridors that are as narrow as 60-feet while presumably serving the same purposes.

The information shown for “Potential Wildlife Corridors” on Figure 3.4-40 for the Property was a best guess relying on information from 1992, now more than 25 years old. Our understanding as to why the Potential Wildlife Corridor was speculated at 150 feet in that EIS is not because of an expectation of a wider wildlife corridor than residential buffer, but instead because of information related to residential buffers at the time based on the previous, more intense M-M zone and adjacent property development. Two pieces of evidence guide this understanding. First, the Intermec parcel, abutting to the east, had a 150 foot residential buffer established as part of its SEPA process. That buffer was established in the 1980s, long before SW Subarea Plan was done. Notably, that was established as a residential buffer only, and later became a wildlife corridor because it was already there, merely taking advantage of the previously established residential buffer width.

Second, in 1992, there was a SEPA determination for the Property which identified a 150 foot residential set back on the east line of our site and a 60 foot residential setback on the north where it buffered Mukilteo residences. At that time, the property was zoned M-M, allowing a much higher intensity of use than the current M-1 zoning. We speculate that the drafter of the area-wide SW Everett SEPA likely took the most recent approved SEPA proposal for the site at the time and relied on that residential buffer for that then-vested, more intense project when showing the “Proposed” wildlife corridor yellow lines on each EIS figure.

In sum, this material is consistent with the plain language of the EIS which purely provides that the residential buffer shall also operate as a wildlife corridor (thereby restricting the uses in the residential buffer but not establishing a fixed particular width per se, or operating as authority for a wildlife corridor wider than the residential buffer.

Zoning the Soundview Property as M-1, and all Subsequent Permitting History Conclusively Show that a 75-Foot Residential Buffer is the Proper Width for the Wildlife Corridor Overlay.

After the SW Everett EIS was issued and the Planned Action Ordinance adopted, there has been an extensive history of zoning and project proposals for the Soundview Property. The following material demonstrates that a 75 foot residential buffer is appropriate for the Soundview Property east boundary which also is appropriately designated as a wildlife corridor in the same width. Conversely, we have found no support in the following for the City to require anything different than that 75 foot residential buffer / wildlife corridor.

Most critically, in 1997, the City rescinded an earlier concomitant agreement for the Soundview Property and rezoned it from M-M to the less intensive M-1 zone. Notably, the City left the Intermec property at the more intensive M-M zoning, with a wider 150 residential buffer / wildlife corridor.

The M-1 zoning imposes a 75-foot residential setback under Table 6-1. Therefore, using the plain language of the SW Everett EIS, for development of the Property under M-1

zoning, the residential buffer is 75 feet and the City also shall designate that residential buffer as a wildlife corridor.

To the best of our information, since 1997, the City has consistently applied a 75 foot residential buffer to development in the M-1 zone and for the Soundview Property in particular. Examples of other properties include the Merrill Creek Parkway and North Shore Church projects (SEPA No. 97-029 and SEPA No. 56-98, respectively).

We have also found at least one analogous Boeing project, wherein the City required a 60 foot wildlife corridor that connects to a 200 foot wide wildlife habitat area at the dead end of a gulch. From what we have found in the City's records for that project, no actual habitat improvements were made. In comparison, the Soundview Property presents a nearly identical, but much better environmental scenario. The Soundview Property's 75-foot residential buffer/wildlife corridor is wider than the Boeing corridor, and provides logical connection to the 150 wide buffer area on the adjacent Intermec wildlife collection area. Further, unlike the Boeing buffer/corridor, the Soundview buffer/corridor will be environmentally enhanced, a significant benefit to the wildlife, community and City.

In 2006, the City adopted its Fish & Wildlife Habitat Conservation Area Critical Areas Map. That map reflects the City's most recent understanding of wildlife conservation areas and corridors. For the Soundview Property, consistent with the foregoing, the Map shows a much narrower corridor than what is on the Intermec Property (the 150-foot residential buffer), roughly half that width. This is consistent with the Soundview Property's M-1 zoning and 75-foot residential buffer along the east boundary of the Property. This Map clarified any potential previous confusion about what the residential buffer was to be along the eastern boundary of the Soundview Property. The Map also followed the intent of the critical areas ordinance which was to utilize the existing residential buffers as wildlife corridors.

For the Soundview Property itself, the City historically approved a Planned Action Development and Binding Site Plan under the M-1 zoning for a project known as the Interair Commerce Center. That approval specified a residential buffer and wildlife corridor of 75 feet for the east property boundary. *See attached; SEPA 00-023; BSP 00-004.* The City applied the same analysis as we use in the present application, determining that the EIS and Figure 3.4-40 provide that the residential buffer is also regulated as a wildlife corridor, and applying a 75 foot buffer based on the M-1 zoning. The project went so far as to have an approved grading permit, but was never ultimately constructed.

Again in 2012, the City approved the same residential buffer/wildlife corridor for another project which also was not ultimately constructed. *See attached; SEPA 12-017; BSP 12-001.*

The Law Supports a 75-Foot Residential Buffer / Wildlife Corridor, Particularly Where Extensive Mitigation Enhancement is Proposed.

All the foregoing information is readily consistent in directing the conclusion that the wildlife corridor width is to be that established for the residential buffer, i.e. 75 feet. Again, both the proposed development and the City's approvals, including conditions, must be consistent with the M-1 zoning. However, even if the City determines a separate justification is needed for establishing the wildlife corridor, it is critical that such be done consistently with the operative law.

Any limitation or condition placed on the development of property can only be imposed if it is both reasonably necessary as a direct result of the proposed development and roughly proportionate to the project's impacts. RCW 82.02.020; *Citizens' Alliance for Property Rights v. Sims (CAPR)*, 145 Wn. App. 649, 665 (2008); *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 760 (2002). Likewise, under the State Environmental Policy Act, the City can only impose a mitigation measure that mitigates the impacts of the development and does so consistently with RCW 82.02.020.<sup>1</sup>

Further, under the Growth Management Act, critical area regulations may only be based on best available science. RCW 36.70A.172. By analogy, any wildlife corridor established under SEPA must not only be proportionate to the impacts of the proposed development, mitigating the same, but also be based on the best available science.

As discussed above, speculation as to potential wildlife corridor widths in the 1996 EIS is not binding and is based on outdated information. The assumptions affecting discussion of this Property in the 1996 EIS are now invalid due to subsequent substantial changes in fact (e.g., the less intensive scope of the project to be built on the Property) and law (e.g., the zoning designation of the Property). The EIS never indicated an intention to set a binding wildlife corridor width at that time, but instead provided that the corridor width would be the same as the residential buffer. Further, the best evidence is reflected in the most recent past projects, including conclusive, unappealed SEPA determinations, which established a 75 foot wildlife corridor for the east boundary.

There is simply no basis in the project's impacts which would warrant a wider wildlife corridor than 75 feet. The City rezoned the Soundview Property from M-M to a lower intensive M-1 use (thereby making outdated the idea of a 150-foot wide residential buffer/corridor under M-M zoning or the rescinded concomitant agreement). The City's most recent SEPA review found that a project designed under the M-1 zone for the Property warranted a 75-foot residential buffer/corridor.

---

<sup>1</sup> Under the Growth Management Act, the City can legislatively adopt critical area regulations such as wildlife corridors, but must do so using best available science and again, in a manner consistent with RCW 82.02.020. RCW 36.70A.172. In this case, although the City has adopted comprehensive critical area regulations under the GMA, the City has not adopted wildlife corridors throughout the City.

Mr. Allan Giffen  
Mr. David Hall  
September 22, 2016  
Page 6

Finally, we would note that the treatment of the 75-foot residential buffer as wildlife corridor involves a significant commitment of mitigation and costs for LBG 38 and a major environmental advantage for the area. As discussed in the Habitat Assessment and Wildlife Corridor Enhancement Plan, submitted concurrently, much of the buffer area is overgrown with non-native, invasive species. To accommodate the corridor, LBG 38 will have to undertake extensive mitigation to remove these invasive plants and repopulate with native plants and trees which will create a significantly improved, natural environment for the local fauna. This is a unique advantage for the City for two reasons. First, many of the other residential buffers which are also treated as wildlife corridors were not required to, and did not undertake any environmental enhancement for wildlife at all, let alone to the extent proposed by LBG 38. Second, reserving a buffer of this size is heightened mitigation for protection of wildlife in general as there are no species of local importance, priority species, or endangered/ threatened/ sensitive/ candidate species on or in the vicinity of the property. As a result, the mitigation provided is a major habitat enhancement far beyond what is anticipated under the City's critical area regulations or state and federal mitigation expectations; a significant benefit to the local community and the City.

\*\*\*

Based on the foregoing, we believe there is no serious question that the residential buffer and wildlife corridor for the east boundary of the Soundview Property should be set at 75 feet.

Thank you for your consideration of this very important request.

Sincerely,



Duana T. Koloušková

*Direct Tel: (425) 467-9966  
Email: kolouskova@jmmlaw.com*

CC: Bob Fadden  
John Laufenburg  
Client

*1263-001 Ltr to Everett re Wildlife Corridor determination 9-22-16*

**RECEIVED**  
AUG 30 2005

CITY OF EVERETT  
Planning Dept.



**NOTICE OF DECISION  
PRELIMINARY BINDING SITE PLAN APPROVAL (BSP #00-004),  
PLANNED ACTION DETERMINATION**

**DATE: September 12, 2005**  
InterAir Commerce Center

**APPLICANT:** Barclays North Inc.  
10515 – 20<sup>th</sup> Street S.E., Suite 100  
Everett, WA 98205

**ENGINEER/SURVEYOR:** Group Four, Inc. – Steve Anderson  
16030 Juanita – Woodinville Way N.E.  
Bothell, WA 98011

**LOCATION:** North end of 36<sup>th</sup> Ave. West

**PROJECT:** A proposed binding site plan consisting of 40 acres being divided into a total of 6 lots in the M-1 zone. Construction of six, three-story office buildings with a combined total of 542,747 gross square feet is proposed, along with necessary parking, access roads, utilities and drainage facilities. Additional tracts would be created for wetlands, steep slopes, and storm drainage facilities. The site is located within the Southwest Everett Subarea and is subject to a Planned Action review under City Ord. #2213-97.

**CITY OF EVERETT STAFF CONTACTS:**  
Planning Dept: David Tyler (425) 257-7155  
Public Works Dept: Gordon Witcher (425) 257-8814

**I. GENERAL INFORMATION:**

- A. Existing Zoning:** M-1, Office and Industrial Park
- B. Existing Land Use:** Vacant
- C. Streets:** The site fronts on 36<sup>th</sup> Ave. W. and Sound Avenue. An extension of 36<sup>th</sup> Ave. would provide access to the lots within the Binding Site Plan.
- D. Utilities:** Sewer, water, electricity and gas are available to the site.

**II. EMC TITLE 18 (ORD. #2328-98 and 2718-03) REQUIRES THAT BINDING SITE PLANS AND SITE PLAN APPROVAL BE CONSISTENT WITH THE FOLLOWING;**

**18.28.020. - General Evaluation Criteria for Binding Site Plan and Site Plan Approval**

An application that complies with all of the following general evaluation criteria listed below, the requirements of this Ordinance, and applicable City Standards shall be approved. An application that does not comply with these criteria shall be denied by the City.

**A. Comprehensive Plan** - The proposed Binding Site Plan, site plan and other application information proposed for development shall be consistent with the City's Comprehensive Plan policies and land use map;

**Finding:** The Everett Comprehensive Plan designates this area as 5.4 – Office and Industrial Park. The application states the lots will be used for office uses, which have been identified in the Planned Action Ordinance for the Southwest Everett/Paine Field Subarea Plan as a covered use. These uses are also consistent with the Comprehensive Plan.

**Conclusion:** The proposed binding site plan and anticipated land uses are consistent with the Comprehensive Plan.

**B. Zoning** – The proposed binding site plan, site plan and other required application information shall meet the requirements of the Everett Zoning Code, except as permitted by the design and development provisions of (Title 18);

**Finding: a) M-1 Zoning Standards:** The existing zoning of this Binding Site Plan is M-1, Office and Industrial Park. The M-1 zone requires a minimum lot area of 5 acres, with provision to allow lots as small as 2 acres. The proposed lot sizes range from 3.02 to 5.06 acres. Not more than 4 contiguous lots less than 5 acres may be authorized and these lots must be separated from other lots smaller than 5 acres in the M-1 zone by at least 1,000 feet (EMC 19.27.020.E).

**Conclusion:** The lots can provide adequate building, parking and yard areas and meet all M-1 zoning standards. The lots meet size and separation requirements of EMC 19.27.020.E.

**C. Natural Environment** - The Binding Site Plan, site plan and other required application information shall meet the requirements of Environmentally Sensitive Area Regulations of the Everett Zoning Code, Title 20, Everett Municipal Code (Environmental Policies), and the State Environmental Policy Act, WAC 197.11;

**Findings:** The site contains environmentally sensitive steep slopes in the southwestern portion of the site. These include slopes of greater than 40 percent that are part of the Japanese Gulch stream ravine. In addition, there are two Category III wetlands on the site: this includes a 2,246 square foot wetland in the southern portion of the site that will be preserved (Wetland B) and a 5,314 square foot wetland in the southeast corner of the site that will be filled and mitigated at a ratio of 1.5 to 1 (Wetland A). A wetland delineation study and mitigation plan have been provided with the application (Cantrell & Associates, Inc., 12/20/00).

**Conclusion:** The Applicant's proposal mitigates adverse impacts to the natural environment. The steep slopes on the western portion of the site would be preserved and placed within an environmentally sensitive protective tract with a covenant that restricts future development. Impacts from filling of Wetland A would be mitigated by the creation of additional wetland and buffer area for

Wetland B. An assurance device for wetland mitigation work must be provided to the City prior to commencement of clearing/grading activities.

**D. Public Services** - The proposed project shall be designed to meet the following:

*1) Adequate water supply to City Standards:*

**Finding:** There is an existing water main within 36<sup>th</sup> Avenue adjacent to this site. Extension of the water main will need to be provided prior to final approval of each BSP map for each phase of the development. The water main will need to be looped and likely will involve two separate connections within 36<sup>th</sup>.

**Conclusion:** Adequate water supply can be provided to the lots in this BSP per City Standards.

*2) Adequate sewage disposal to City Standards:*

**Finding:** There are existing sewer mains within the street system surrounding this site. Extensions of these mains will need to be provided prior to final. The Southwest Subarea Plan determined that sewer service would be provided to the subarea at 1,700 gallons per acre per day of average flow, and 4,000 gallons per acre per day of instantaneous peak flow or 2.7 gallons per acre per minute. Any sewer demand above this amount must be evaluated further.

**Conclusion:** Adequate sewer disposal can be provided to the site. All new facilities must be constructed in accordance with City Standards. Sewer discharge from the site will be limited to 4,000 gallons per acre per day.

*3) Appropriate surface water management to City Standards;*

**Finding:** Drainage improvements will be required on this site per the Stormwater Manual and City Design and Construction standards. The collected surface water on the property must be conveyed to the nearest established, stable drainage course or stormwater facility, within the naturally occurring drainage basin or basins. Sufficient downstream analysis and appropriate easements will be required for surface water conveyance.

**Conclusion:** Appropriate surface water management is being provided to City Standards.

*4) Adequate fire protection and hydrants to City Standards;*

**Findings:** City standards require fire hydrants within 200 feet of but no closer than 50 feet to all commercial/industrial structures. Two (2) available fire hydrants are required. With planned water system improvements (i.e., water mains) installed within the new public streets, adequate water supply for fire fighting can be provided. Specific requirements for fire access, building construction and sprinklering will be determined at the time that individual buildings are proposed on the lots.

The Fire Marshal has reviewed the preliminary plans and determined that fire department access can be provided to each buildings.

**Conclusion:** Adequate fire protection service can be provided to the site, provided that conditions contained herein are met.

*5) Appropriate access to City Standards for all anticipated uses within the project;*

**Finding:** Primary access to the proposed lots within the BSP will be from a public road extension of 36<sup>th</sup> Avenue and new cul-de-sac. In accordance with City Standards, the new right-of-way must be 60 feet wide with a 40-foot street width and sidewalks on both sides.

**Conclusion:** Adequate circulation and access would be provided to all lots within the BSP.

*6) Provisions for all appropriate deeds, dedications, and all other easements*

**Finding:** Easements must be granted between lots where necessary to provide access, utilities, and for stormwater conveyance. A dedication of new public right-of-way (extension of 36<sup>th</sup>) will be required as a condition of preliminary approval.

**Conclusion:** Adequate provisions must be made for deeds, dedication and other easements.

*7) Provisions made for access to and maintenance of all common facilities.*

**Finding:** Common facilities within the BSP would include environmentally sensitive area tracts, parking and driveways. The City will require appropriate access and maintenance easements as part of the review for final BSP approval.

**Conclusion:** Prior to final approval, the Applicant shall provide appropriate easement documents, agreements and covenants addressing ownership and maintenance of, and access to common facilities as required. These documents must be recorded prior to, or concurrently with, the final BSP.

**E. Existing Public Facilities and Services** - The proposed project shall be designed to not adversely impact the following public facilities and services:

*1) Existing streets and other transportation systems;*

**Finding:** The site is accessed from 36<sup>th</sup> Avenue West. This street will need to be extended into the site to provide access to the lots.

**Conclusion:** Existing streets and public transportation can be provided to all lots within the BSP.

*2) Existing utilities system;*

**Finding:** The City has conducted an analysis of utility needs for this proposal. The City has capacity in its existing utility systems to provide service to this project site. System-wide needs have been identified through the SW Everett Planned Action Determination and EIS.

**Conclusion:** The additional lots created will not impact the City's existing utilities system. Required utility improvements are addressed in the preceding sections of this decision and the conditions listed herein.

*3) Police, Fire, Parks, and Schools;*

**Finding:** The Fire Department has provided specific comments which are addressed in the preceding findings and conclusions and within the conditions listed herein.

**Conclusion:** The impacts on public facilities have been addressed with the conditions of approval and the Planned Action Determination and the conditions contained herein.

**F. Phasing Plan**

**Finding:** The Applicant has not proposed to develop the site in phases. However, if the site is to be developed in phases, then the City will request a phasing plan that addresses access, drainage, utilities and other elements of the Binding Site Plan.

**Conclusion:** If necessary, the City will require phasing of improvements such that adequate site access, utilities and fire access can be provided to each lot within the BSP.

**NOW, THEREFORE, the City of Everett hereby GRANTS PRELIMINARY APPROVAL of 6 lots for Binding Site Plan #00-004. The following conditions shall apply:**

1. Lot design/configuration for this Binding Site Plan shall be as shown on the preliminary binding site plan map on file with the Planning/Community Development Department. Any changes in lot design/configuration will require approval by both Planning and Public Works Departments.
2. *The Following shall be noted as Conditions of Approval on the Final Binding Site Plan Map:*
  - a) "The site must be developed per the Site Plan Exhibit "A" on record with the City of Everett Planning and Community Development Department (File - SEPA #00-023) dated March 27, 2000 and the Conditions of Preliminary Binding Site Plan Approval and Planned Action Determination."
  - b) "All future land uses shall be consistent with the zoning standards for the M-1, Office and Industrial Park zone, as set forth in Title 19 of the Everett Municipal Code."
  - c) "A soils report may be required in conjunction building permit application for each lot."
  - d) "All lot owners shall participate in the Building/Property Owners Association and the maintenance responsibilities therein."

- e) "Each lot owner shall notify its employees and visitors that parking on Sound Avenue and on Debralon Lane is prohibited."
2. The Applicant must provide for agreements for use and maintenance of common access points, common parking, general circulation (drive aisles), utilities, landscaping, fencing, required fire lanes, and access for all lots. These may take the form of Declaration of Covenants, Easements, and Restrictions, to be recorded with or on the Final Binding Site Plan Map and shall be in a form acceptable to the City. A note must be placed on the final Binding Site Plan Map stating, "Declaration of Covenants, Easements, and Restrictions are recorded under Auditor's File # \_\_\_\_\_."
  3. The steep slope area on the western portion of the site (Tract B) and the wetland on the southern portion of the site (Tract F) shall be placed within environmentally sensitive area protective tracts and held in common by all lots owners within the Binding Site Plan.
  4. The project must comply with all requirements of the Planned Action Determination (SEPA #00-023).
  5. The following covenant shall be placed on the Final Binding Site Plan Map"  
**"There shall be no clearing, grading, cutting of vegetation, or placement of structures within the environmentally sensitive area or buffer, except for removal of dead, dying, diseased or hazardous trees as approved by the Planning Department."**
  6. The 75-foot buffer/wildlife corridor adjacent to the adjoining residential areas shall be set aside in an ESA tract, owned in common by all developable parcels.
  7. The encroachments along the north property lines must be resolved by quitclaim deed or other means acceptable to the City.

FINAL APPROVAL OF THIS BINDING SITE PLAN shall be given subject to the satisfactory completion of the above-specified requirements and improvements within three (3) years.

**NOTE: THERE ARE NO TIME EXTENSIONS FOR THIS BINDING SITE PLAN**

**APPEALS TO HEARING EXAMINER FOR BINDING SITE PLAN:**

All appeals of decisions relating to Binding Site Plan shall be made to the Hearing Examiner. Such appeals must be made in writing and filed with the office of the Hearing Examiner within fourteen (14) calendar days from the date on which the preliminary decision was rendered.

The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the Hearing Examiner shall be final.

Standing to appeal is limited to the following: 1) the Applicant or owner of the property on which the Binding Site Plan is proposed; and 2) any property owner who deems himself aggrieved and will thereby suffer a direct and substantial impact from the proposed Binding Site Plan.

There is a \$100.00 appeal fee.

**FINAL BINDING SITE PLAN REVIEW WILL BE COORDINATED BY:**

Public Works Department  
3102 Cedar Street  
Everett, WA 98201  
Phone: (425) 257-8814  
Contact: Gordon Witcher

**PRELIMINARY APPROVAL:** Will lapse if all of the specified requirements and improvements have not been completed to the satisfaction of the City prior to expiration date on September 12, 2005

**PRELIMINARY APPROVAL:** September 12, 2005

Report Prepared By and Contact Person For  
Planning/Community Development Department:  
David Tyler  
Planner

  
\_\_\_\_\_  
Planning/Community Development  
Department

  
\_\_\_\_\_  
Public Works Department

SW Everett/Silver Sound BSP-PA



**NOTICE OF DECISION  
And  
FINAL MITIGATED DETERMINATION OF NON-SIGNIFICANCE  
And  
PLANNED ACTION DETERMINATION  
And  
BINDING SITE PLAN PRELIMINARY APPROVAL**

SEPA 00-023  
BSP 00-004

September 12, 2005

**DESCRIPTION OF PROPOSAL:** The proposed action is the division of approximately 39 acres of office and industrial park land into six lots, construction of access roads and utilities, and construction of six, three story office buildings containing approximately 542,747 gross square feet of building. Parking will be provided on each parcel. Several tracts will be created to provide for drainage facilities, wetlands, environmentally sensitive steep slopes, and buffer/wildlife corridors.

The proposal includes construction of a new public road extension of 36<sup>th</sup> Ave. West, which will provide access to the site. Since construction of new public roads was not addressed by the S.W. Everett Subarea Plan and EIS, this part of the proposal is subject to review under SEPA.

**ORIGINAL PROPONENT:** Silver Legacy Corporation  
Terry Martin  
8227 - 44th Ave W, Suite M  
MUKILTEO, WA 98275

**NEW PROPONENT AND REPRESENTATIVE:** Barclays North Inc.  
Attn: Phil Johnson  
10515 - 20<sup>th</sup> Street S.E., Suite 100  
Everett, WA 98205

**LOCATION:** 36th Avenue W  
**ZONING:** M-1, Office and Industrial Park  
**GENERAL PLAN:** 5.4, Office and Industrial Park  
**Lead Agency:** City of Everett Planning Department  
**Contact Person:** Dave Tyler Phone: (425) 257-7155

Division of the 39 acres into six lots and several tracts, and construction of six office buildings containing a total of approximately 543,000 square feet of gross building area is consistent with the City of Everett Southwest Everett Subarea Plan Planned Action Ordinance. Construction of the proposed new public street is subject to a standard SEPA review.

The City of Everett Planning and Community Development Director has determined that:

- The project is located within the boundaries of the Southwest Everett Subarea Plan.

- The zoning designation of the property upon which the project is proposed is consistent with those designations analyzed in the Southwest Everett/Paine Field Subarea Plan and EIS, December 1996.
- The proposed use is consistent with the uses and intensities allowed in the City's development regulations and is listed as a use analyzed in the final EIS, Tables 3.1-1 and 3.1-2.
- The project is a use that implements the Subarea Plan and, with the exception of the proposed new public street, the project's significant environmental impacts have been adequately addressed in the SW Everett/Paine Field Subarea Plan EIS.
- The project's significant adverse environmental impacts will be mitigated through the application of the mitigation decision document. These mitigation measures, along with other City requirements and conditions, constitute sufficient mitigation for the significant environmental impacts associated with the proposed project.
- The proposed project must comply with all applicable local, state and federal regulations and development standards.
- The proposed project is not an essential public facility.
- The proposed new public street was not specifically analyzed in the Southwest Everett/Paine Field Subarea Plan and EIS, and is subject to a project specific SEPA review at this time.

The project proponent has agreed to comply with the SW Everett Subarea Plan Mitigation Decision Document. **The project is hereby designated a Planned Action** pursuant to RCW 43.21C.031(2)(a) and City of Everett Ordinance No. 2213-97. A SEPA threshold determination is not required for this proposal per 43.21C.031 RCW, except for the proposed public roadway which is subject to a SEPA threshold determination. This determination is dependent upon compliance with the SW Everett Subarea Plan Mitigation Decision Document and all local, state, and federal regulations related to general environmental protection including, but not limited to, right-of-way improvement requirements, drainage, etc. This decision was made after review of a completed environmental checklist and other information on file with the lead agency.

There is no public comment period provided for this determination for the division of 39 acres into six lots and several tracts and construction of six office buildings totaling approximately 543,000 gross square feet.

A 14-day public comment period has been provided for the proposed public road being constructed for this project.

**Responsible**

**Official:** Allan Giffen

**Title:** Planning and Community Development Director

**Address:** 2930 Wetmore Avenue, Suite 8-A, Everett, WA 98201

**Date:** September, 12, 2005

**Signature:**

*F. A. for Allan Giffen*

There is no administrative appeal provided for this Planned Action Determination. There is an appeal period on the SEPA threshold determination, for 14 days from the date the above date. Any appeals must be limited to issues related to construction of a public road for this project.

**NOTE:** This Determination may be withdrawn in the event of significant changes in the proposal, disclosure of new significant information, misrepresentation by the applicant, or failure to comply with the existing regulations or the conditions in the Mitigation Decision Document.

6. In conjunction with issuance of development permits for a site, a permanent fence must be constructed along the entire edge of any environmentally sensitive area buffer. The design of the fence must be split rail, or an alternative approved by the Planning Department prior to issuance of permits. ESA signs should be placed at approximately 50-foot intervals along the fence. Signs are available from the Planning and Community Development Department. The City may require that environmentally sensitive areas be placed in separate tracts and designated as sensitive habitat with listed restrictions on the approval/final plans. (Chapter 37 of the Zoning Code and SEPA Water, Plant and Animal, and Land and Shoreline Use Policies)
7. Prior to initiation of construction, a biologist or wetland/stream expert must inspect construction fencing along environmentally sensitive areas buffers/construction limits to ensure that fencing is located properly. The biologist/expert should inspect the site occasionally during construction, and shall have authority to impose a stop work order immediately if the biologist/expert determines that work activities violate buffer and setback requirements. (SEPA Plant and Animal, Water, and Land and Shoreline Use Policies)

#### **4.3.2 Mitigating Impacts of Development on Vegetation and Wildlife**

1. Wildlife Corridors<sup>1</sup> Because the area is generally built out, few opportunities exist to establish east-west wildlife corridors between basins in the residential areas to the north of the Subarea. Thus the remaining corridors are important for wildlife movement. Several wildlife corridors were required on the Boeing property. In addition, the City owns a parcel between Narbeck Creek and Merrill and Ring Creek that will function as a wildlife corridor.

The City shall designate the buffers between industrial developments and the residential areas and buffers separating residential areas (see Figure 3.4-40 in the EIS) as wildlife corridors as well as buffers. Additional plantings shall be required in these corridors/buffers in conjunction with issuance of permits on these sites when the Planning Director determines that the corridor can be enhanced. An enhancement plan must be reviewed and approved by the Planning Department prior to the issuance of any permits. The City encourages enhancement in all corridors. Enhancement should provide additional cover and food sources for wildlife, as well as coniferous vegetation. (SEPA Plant and Animal and Land and Shoreline Use Policies)

2. No removal of vegetation is permitted in environmentally sensitive areas and their buffers, including wildlife corridors, except as approved by the Planning Director to eliminate hazardous trees, allow construction and maintenance of utilities, and/or provide access to properties. Any cleared areas shall be replanted with native vegetation. In wildlife corridors, the intent of plantings shall be to establish coniferous forest where feasible, except that utility corridors shall be established with native shrubs and groundcover. (SEPA Plant and Animal and Land and Shoreline Use Policies)

---

<sup>1</sup> Defined as "continuous vegetative corridors linking watersheds" in the City's Environmentally Sensitive Areas Ordinance.

- b. All garbage dumpsters and recycle bins must be screened from view from the street and from adjacent properties. This screening may be done using dense vegetation or by placing the dumpster or recycle bin in a structural enclosure.
  - c. For specifics on design of refuse and recycling facilities, contact Rubatino Refuse Removal, Inc. at 259-0044 for areas generally north of 112th Street. For areas east of I-5 from Valley View south, contact Waste Management Northwest, Inc. at 337-1197.
44. Any rockeries or retaining walls proposed in required setback areas must be in conformance with Section 39.150 of the Zoning Code.
45. Rooftop mechanical equipment, including vents, must be screened per Section 39.040 of the Zoning Code.
46. Building setbacks must be a minimum of 75 feet from residentially zoned property in Everett and Mukilteo, 30 feet setback from all external and internal public streets, 15 feet on each side of each internal parcel line, and 25 feet from the top of bank for any steep sloped areas. Building height shall be a maximum of 25 feet for all buildings located less than 130 feet from lots located in residential zones; a maximum of 35 feet for buildings located between 130 feet to 175 feet from lots located in residential zones; a maximum of 50 feet for buildings located between 175 feet to 300 feet of lots located in residential zones; a maximum of 80 feet for buildings located between 300 feet to 500 feet if
47. Landscaping must be provided per Section 35 of the Zoning Code. At a minimum this must include the following:
- a. A landscape strip a minimum of 75 feet wide must be provided adjacent to all areas in the City of Everett and the City of Mukilteo that are zoned for residential use. This area shall be planted with Type I landscaping. Existing native vegetation shall be retained and supplemented as necessary to achieve the required landscaping. Additional native, native hybrid, and drought-tolerant trees, shrubs and ground cover shall be planted in the 75-foot residential buffer and wildlife corridor. This vegetation must be selected on the basis of the habitat value of the selected plants.
- Any disturbance or vegetation removal within the 75-foot buffer because of utility work must be replaced with dense evergreen ground cover, and shrubs. Evergreen trees shall be planted in locations that screen the corridor to the extent that they do not interfere with required utility improvements.
- A solid wood or masonry wall, or combination of wood and masonry, six feet in height and located on the property line shall be installed along the property line. In lieu of this location the fence or wall shall be located on the inside edge of the 75-foot wide landscape area. A landscape modification must be requested developer and approved by the City to accomplish the relocation of the fence or wall.
- Vegetation in the 75-foot buffer and the solid fence must be installed prior to final binding site plan approval. A performance bond equal to 300% of the estimated cost of materials and installation of the vegetation and must be provided to the City prior to issuance of grading permits. (SEPA Land and Shoreline Use Policies)
- b. A landscape strip a minimum of 30 feet wide must be provided along all street frontages, internal to and adjacent to the proposed development. Existing native vegetation shall be retained to the extent possible. Type III landscaping shall be provided within the street frontage landscaped area where adequate existing native vegetation is not retained. Landscaping required along 36<sup>th</sup> Avenue W. shall be provided prior to final binding site plan approval



**NOTICE OF COMPLETE APPLICATION  
And  
PROPOSED DETERMINATION OF NON-SIGNIFICANCE  
And  
PLANNED ACTION DETERMINATION**

SEPA #12-017/ BSP #12-001

October 23, 2012

**DESCRIPTION OF PROPOSAL:** The proposal is a division of approximately 39 acres into six lots consisting of: nine buildings with a total of 59,661 s.f. of office space; 109,316 s.f. of light industrial space; 45,636 s.f. of warehouse space; and 650 parking stalls. A 4,920 square foot, Category III wetland is proposed to be filled, with mitigation consisting of 9,848 square feet of wetland creation in the southeast corner of the site.

The proposal involves extension of a public road (36th Ave W) into the site, which requires review under SEPA.

Lot sizes within the Binding Site Plan are proposed at 3.3 to 5.5 acres. This compares to the minimum lot size of 5 acres in the M-1 zone. Under EMC Chapter 19.37.210.A.3, lot sizes within industrial zones are permitted to include a portion of a site placed within a critical area tract. For this project, approximately 10 acres of land area will be set aside within undeveloped critical areas, providing sufficient credit for each of the lots to meet M-1 zoning requirements.

**PROPONENT:** Nickerson Street Associates, LLC  
Attn: Chris Clousing  
4 Nickerson Street, Suite 200  
Seattle, WA 98109

**PROPONENT'S REPRESENTATIVE:** Baseline Engineering  
Attn: Kevin Foley  
1910 64<sup>th</sup> Ave. W.  
Fircrest, WA 98466

**LOCATION:** 5900 36th Avenue W

**ZONING:** M-1, Office and Industrial Park

**GENERAL PLAN:** 5.4, Office and Industrial Park

**Lead Agency:** City of Everett Planning Department

**Contact Person:** Dave Tyler Phone: (425) 257-8731

The proposed development is consistent with the City of Everett Southwest Everett Subarea Plan Planned Action Ordinance. Construction of the proposed new public street is subject to a standard SEPA review.

The City of Everett Planning and Community Development Director has determined that:

- The project is located within the boundaries of the Southwest Everett Subarea Plan.
- The zoning designation of the property upon which the project is proposed is consistent with those designations analyzed in the Southwest Everett/Paine Field Subarea Plan and EIS, December 1996.

- The proposed use is consistent with the uses and intensities allowed in the City's development regulations and is listed as a use analyzed in the final EIS, Tables 3.1-1 and 3.1-2.
- The project is a use that implements the Subarea Plan and, with the exception of the proposed new public street, the project's significant environmental impacts have been adequately addressed in the SW Everett/Paine Field Subarea Plan EIS.
- The project's significant adverse environmental impacts will be mitigated through the application of the mitigation decision document. These mitigation measures, along with other City requirements and conditions, constitute sufficient mitigation for the significant environmental impacts associated with the proposed project.
- The proposed project must comply with all applicable local, state and federal regulations and development standards.
- The proposed project is not an essential public facility.
- The proposed new public street was not specifically analyzed in the Southwest Everett/Paine Field Subarea Plan and EIS, and is subject to a project specific SEPA review at this time.

The project proponent has agreed to comply with the SW Everett Subarea Plan Mitigation Decision Document. **The project is hereby designated a Planned Action** pursuant to RCW 43.21C.031(2)(a) and City of Everett Ordinance No. 2213-97. A SEPA threshold determination is not required for this proposal per 43.21C.031 RCW, except for the proposed public roadway which is subject to a SEPA threshold determination. This determination is dependent upon compliance with the SW Everett Subarea Plan Mitigation Decision Document and all local, state, and federal regulations related to general environmental protection including, but not limited to, right-of-way improvement requirements, drainage, etc. This decision was made after review of a completed environmental checklist and other information on file with the lead agency.

There is no public comment period provided for this determination for the division of 39 acres into six lots and several tracts and construction of six office buildings totaling approximately 543,000 gross square feet.

There is a 14-day public comment period on the SEPA threshold determination on the proposed public roadway. Written comments on the SEPA threshold determination are due on **November 6, 2012**.

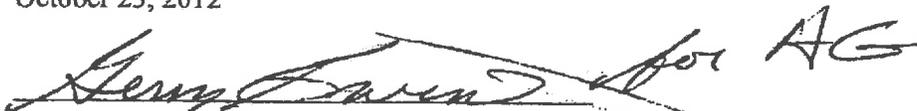
**Responsible**

**Official:** Allan Giffen

**Title:** Planning and Community Development Director

**Address:** 2930 Wetmore Avenue, Suite 8-A, Everett, WA 98201

**Date:** October 23, 2012

**Signature:**  for AG

There is no administrative appeal provided for this Planned Action Determination. There is an appeal period on the SEPA threshold determination, for 14 days from the date the final threshold determination is issued.

**NOTE:** This Planned Action Determination may be withdrawn in the event of significant changes in the proposal, disclosure of new significant information, misrepresentation by the applicant, or failure to comply with the existing regulations or the conditions in the Mitigation Decision Document.

**APPLICABLE CONDITIONS FROM SW EVERETT MITIGATION DECISION DOCUMENT**