



## ENGINEER'S REPORT

### ROAD ESTABLISHMENT REQUEST # 18 -116584 RWE

### ESTABLISHMENT OF A NEW COUNTY ROAD RIGHT-OF WAY **188<sup>th</sup> Place NW**

#### INTRODUCTION

Chapter 36.75 Revised Code of Washington (RCW) gives county legislative authorities broad authority to acquire land for county road purposes by purchase, gift or condemnation. Snohomish County Code (SCC) 13.90.010 provides that the County Council also has the authority to establish public roads independent of the statutory establishment provisions of chapter 36.81 RCW. The county legislative authority's use of this broad authority must be made under the advice and supervision of the County Engineer.

SCC 13.90.010 provides that when the County Engineer determines that the criteria for road establishment have been met, road establishment may be initiated independently by the County Engineer. The County also has the authority under chapter 30.66B SCC to condition land development approvals upon adequate access to a public road, which often requires dedication of public road ROW. The process required for establishment of County roads is found in SCC 13.90.020.

Road Establishment Request # 18-116584 RWE for the establishment of a new county road right-of-way (ROW), **188<sup>th</sup> Place NW**, has been received by the Snohomish County Department of Public Works (DPW) from Lake Martha Development LLC.

#### FACTS/BACKGROUND

1. The Plat of C.D Hillman's Birmingham Water Front Addition to the City of Everett has 69 blocks and is located in the S  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of Section 18, all of Section 19 except the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  of Section 20 Township 31N Range 4E W.M. also lots 3 and 4 and the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 13 and all of Section 24 Township 31N Range 3E W.M. The plat was recorded in 1909, Volume 8 of Plats Pages 21 through 23, records of Snohomish County. All streets and alleys were dedicated to the use of the public forever. (See Exhibit 1 Plat Map Pages 1-3)
2. In April and May of 2017, the following lots of **Blocks 24 and 25**, located in the SW  $\frac{1}{4}$  of Section 18 Township 31N Range 4E W.M., were conveyed to and acquired by Lake Martha Development LLC through recorded Statutory Warranty Deeds. (See Exhibit 2, Assessor's Map and Plat Map)

**Block 24**

- *Lots 1-3, under Auditors File Number (AFN) 201704170316*
- *Lots 9-13 and Lots 74-78, under AFN 201704170387*
- *Lots 14-16 and Lots 69-73, under AFN 201704170232*
- *Lots 17-22, under AFN 201704170330*
- *Lot 23 and Lots 64-68, under AFN 201704170296*
- *Lots 29-33 and Lots 54-58, under AFN 201704170297*
- *Lots 34, 37-38 and Lots 49-53, under AFN 201704170384*
- *Lots 84-86, under AFN 201704210413*

**Block 25**

- *Lots 48-60,63,64 and Lots 65-71, under AFN 201704170330*
- *Lots 61-62, under AFN 201705150213*

3. Lots 24-28 and Lots 59-63, of Block 24 of the Plat of C.D. Hillman's Birmingham Waterfront Addition to the City of Everett are owned by Rona Anderson-Loth. (See Exhibit 3, Map)
4. Lots 35 and 36, of Block 24 of the Plat of C.D. Hillman's Birmingham Waterfront Addition to the City of Everett are owned by Donald and Cheryl Brown. (See Exhibit 4, Map)
5. In May and August of 2017, Lake Martha Development LLC submitted several Affidavit of Boundary Line Adjustments (BLAs) to Planning & Development Services (PDS), proposing to change the boundary lines of blocks 24 and 25.
6. In September 2017, Lake Martha Development LLC, grantor and owner of Lots 37, 38, 49 and 50 of Block 24, granted and conveyed an easement, over, under and across said lots for ingress, egress and utilities to and for the exclusive benefit of the following lots described below. (See Exhibit 5, Recorded Easement, *AFN 201709060096 and Map showing benefited lots*)
  - *Lots 9 through 34, Lots 37 and 38, Lots 49 through 78, of Block 24*
  - *Lots 48 through 71, of Block 25*
7. In October of 2017, the following lots in Blocks 24 and 25 were approved for lot line adjustments and were recorded under AFNs 201710100144, 201710100149, 201710100145, and 201710100143. (See Exhibit 6 Record of Survey, AFN 201904125001)

**BLOCK 24, except lots 4-8 and 79-83**

- *Parcels A, B, and C, AFN 201710100144*
  - Parcel A (lots 37, 38, 49-54)*
  - Parcel B (lots 55-58)*
  - Parcel C (lots 29-34) amended by AFN 201710100149*
- *Parcels C, D, U and V, AFN 201710100149 amended by AFN 201811270370*
  - Parcel C (lots 32-34)*

*Parcel D (lots 29-31)*

*Parcel U (lots 24,25,62,63, north half of lots 26 and 61)*

*Parcel V (lots 27, 28, 59, 60, south half of lots 26 and 61)*

- *Parcels E through L1, AFN 201710100145*

*Parcel E (lots 22, 23, 64, and 65)*

*Parcel F (lots 20, 21, 66 and 67)*

*Parcel G (lots 18, 19, 68 and 69)*

*Parcel H (lots 16, 17, 70 and 71)*

*Parcel I (lots 14, 15, 72 and 73)*

*Parcel J (lots 12, 13, 74 and 75)*

*Parcel K (lots 10, 11, 76 and 77)*

*Parcel L (lot 78)*

*Parcel L1 (lot 9)*

- *Parcels M and N, AFN 201710100143*

*Parcel M (lots 1-3)*

*Parcel N (lots 84-86)*

**BLOCK 25, except lots 1-47 and 72-86**

- *Parcels O through T, AFN 201710100146*

*Parcel O (lots 48-51)*

*Parcel P (lots 52-55)*

*Parcel Q (lots 56-59)*

*Parcel R (lots 60-63)*

*Parcel S (lots 64-67)*

*Parcel T (lots 68-71)*

8. On October 10, 2017, Lake Martha Development, LLC conveyed the following parcels described below to Kelp Construction Inc. by Statutory Warranty Deed (SWD) recorded under AFN 201710100743.
  - Parcel A (Lots 37, 38 and 49 through 54 of Block 24) and Parcel B (Lots 55 through 58, of Block 24) of Snohomish County BLA 17-107746
9. On January 18, 2018, Lake Martha Development LLC conveyed the following parcel described below to Kelp Construction Inc., by SWD recorded under AFN 201801180501.
  - Parcel M and N of Snohomish County BLA 17-107773
10. In April 2018, a meeting was held with several PDS and DPW staff, along with Lake Martha Development LLC. The applicant, Lake Martha Development LLC, proposed to build single family residences on the approved BLA lots and to provide access to existing lots off unopened ROW. Lake Martha Development, LLC considered applying for a trail permit as an access to the existing lots. Per EDDS 3-075, the unopened Right of Way may be used as a trail permit for up to eight (8) lots. Once nine (9) or more lots are proposed off this road system, the road improvements are determined by DPW. Here, because access was being provided to more than eight lots, a trail permit was not allowed under the County

Code. Further, SCC 30.24.010(5)(c), for connectivity purposes, requires a public road to connect from the unopened right-of way of 86<sup>th</sup> Drive NW off of Lakewood Road to the unopened right of way 192<sup>nd</sup> Street NW. Due to potential wetland impacts at the intersection of 85<sup>th</sup> Drive NW and Lakewood Road, Lake Martha Development LLC did not want to open and construct the entire unopened ROW of 85<sup>th</sup> Drive NW between Lakewood Road and 192<sup>nd</sup> Street NW. (See Exhibit 7, Assessors Map & Aerial Photo)

11. SCC 30.24.020 also prohibits a private road from being used to connect two public roads. Because of this, the County Engineer determined a public road was required to provide access to the parcels created by the boundary line adjustment process. The County Engineer also concluded that the proposed road network element was to be built to rural non-arterial standards under EDDS 3-040 and that Lake Martha Development, LLC should petition to have the road established as a County road under chapter 13.90 SCC.

12. On April 18, 2018, Kelp Construction and Lake Martha Development LLC., entered into an Easement Amendment Agreement stating;

*(a) Kelp Construction Inc., authorizes Lake Martha Development LLC, its manager or designated agent, or any successors designated by Lake Martha, in its sole subjective discretion to deed the proposed new public road to Snohomish County,*

*(b) Kelp Construction Inc., grants Lake Martha Development LLC, its manager or designated agent, or any successors designated by Lake Martha, the nonexclusive authority, on Kelp's behalf, and on behalf of Kelp's successor and assigns, to execute and deliver the deed dedicating the right of way to Snohomish County or other governmental authority for public right of way,*

*(c) Kelp Construction Inc., appoints Lake Martha Development LLC, its manager or designated agent, or any successor designated by Lake Martha, as its true and lawful, but not exclusive attorney and dedicating the right of way to Snohomish County or other applicable governmental authority for public right of way.*

*(d) Kelp Construction Inc., for itself retains the right to execute and deliver a deed dedicating the right of way to Snohomish County and other applicable governmental authority, if Lake Martha Development LLC, its manager or designated agent or any successor designated by Lake Martha fails to or is unable to make the dedication and to timely execute and deliver a deed to dedicate the right of way,*

*(e) Upon acceptance of the right-of-way by Snohomish County or other applicable governmental authority for public right-of-way, the Easement recorded under AFN 201709060096 shall terminate and be of no further force or effect. (See Exhibit 8, AFN 201804180187)*

13. On April 24, 2018, Kelp Construction conveyed the following parcel to Brandon and Michelle Richie (the Richie's) by SWD recorded under AFN 201804240266 and was amended by AFN 201901030163.
  - Parcel A of Snohomish County BLA 17-107746 (previously Lots 37, 38, 49 & 50 of Blk 24)
14. The Richie's have since provided Lake Martha Development a Quit Claim deed to the portion of Parcel A, where the proposed County Road has been constructed. This Quit Claim Deed was recorded with the Snohomish County Auditor under recording number 202006260316. (See Exhibit 9, QCD)
15. On May 11, 2018, Kelp Construction conveyed the following parcel to Brandon and Tiffanie Stokes by SWD recorded under AFN 201805110065;
  - Parcel B of Snohomish County BLA 17-107746
16. On June 28, 2018, Kelp Construction Inc., conveyed the following parcel to Jeff and Kamie Ceruti by SWD recorded under AFN 201806280528;
  - Parcel M of Snohomish County BLA 17-107773
17. On August 12, 2019, Lake Martha Development LLC conveyed the following parcels to Housing Hope by SWD recorded under AFN 201908120592;
  - Parcels C, D, E, F and G of Snohomish County BLAs 17-107746, 17-112491 and 17-107756
18. On September 28, 2018, Kelp Construction Inc., conveyed the following parcel to Samuel and Patricia Tarango by SWD recorded under AFN 201809280463;
  - Parcel N of Snohomish County BLA 17-107773
19. On October 3, 2019, Lake Martha Development LLC conveyed the following parcels to Housing Hope by SWD recorded under 201910030381;
  - Parcels H, I, J and K of Snohomish County BLA 17- 107756
  - Parcels O, P, Q, R, S and T of Snohomish County BLA 17-107771
20. On October 3, 2019, Rona Anderson – Loth conveyed the following parcels to Housing Hope by SWD recorded under AFN 201910030382;
  - Parcels U and V of Snohomish County BLA 17-112491
21. In June and July 2020, the easement dated September 5, 2017 and recorded under AFN 201709060096 has been terminated/relinquished under AFN's 202006260315 and

202007200443. On September 15, 2020, the Richie's conveyed the following parcel to William Hara by SWD recorded under AFN 202008151550;

- Parcel A (Lots 37,38 and 49 through 54) Snohomish County BLA 17-107748 recorded under AFN 201710100144

22. On January 28, 2021, Chicago Title Company, trustee under that certain Deed of Trust dated September 10, 2020, recorded September 15, 2020 under AFN 202009151551, in which William Hara is grantor and AmeriFirst Inc. is beneficiary, having received from the beneficiary under said Deed of Trust a written request to reconvey a portion of the real property described in said deed which request was approved by said grantor, does hereby reconvey to Snohomish County the property described below;

- All that portion as shown on Record of Survey AFN 201903275002, recorded with the Snohomish County Auditor, identified as area for road establishment and legally described as follows:
  - Lots 37, 38, 39 and 50 of Block 24, C.D. Hillman's Birmingham Waterfront Addition to the Plat of City of Everett Division No. 1.

## FINDINGS

1. On May 8, 2018 Lake Martha Development LLC, submitted an application and a petition proposing to create a new public road.
2. The proposed new County road was constructed over former Lots 37, 38, 49 & 50 of Block 24 of the Plat of C.D. Hillman's Birmingham Waterfront Addition to the City of Everett that is currently a portion of Parcel A as discussed above. Lake Martha Development LLC will provide the County a statutory warranty deed and clear title for that real property where the road was constructed as is required by SCC 13.90.020 (5).
3. Lake Martha Development, LLC has obtained a release of the ingress, egress, and utilities easement from all current owners of the benefitted properties.
4. The new proposed public road (previously Lots 37, 38, 49 & 50 of Block 24) designated as 188<sup>th</sup> Place NW, will connect 86<sup>th</sup> Drive NW formerly known as (FKA) Warren Avenue to the west and 85<sup>th</sup> Drive NW FKA Horner Avenue to the east.
5. Lake Martha Development LLC proposed a new right of way width of 59.94 feet which was approved on November 19, 2018, via deviation request to PDS.
6. 188<sup>th</sup> Place NW will start at the east ROW line of 86<sup>th</sup> Drive NW and run for a length of 199.78 feet and end at the west ROW line of 85<sup>th</sup> Drive NW. A record of survey depicting the ROW limits and road alignment has been recorded under Auditor's File Number 201903275002. (See Exhibit 10, ROS)

7. The establishment of 188th Place NW as a County road ROW is necessary, is practicable, and will benefit the public. The establishment of 188th Place NW is consistent with the requirements set forth in chapter 30.24 SCC “General Development Standards – Access and Road Network,” and EDDS chapter 3-01 (7), “Road Circulation.”
8. The establishment of ROW shall not create any responsibility to Snohomish County to construct any road or other public facility thereon. Plans for the construction of the roads to County standards have been approved by PDS. PDS approved the as-built construction plan on February 11, 2020 and has released the performance security that was provided by Lake Martha Development LLC. Lake Martha Development LLC has provided a two-year maintenance security to the County as allowed under SCC 13.10.108.
9. No public expenditures were required for the construction of 188<sup>th</sup> Place NW. The construction costs were paid in full by the developer and include, but are not limited to, costs associated with construction of all necessary bridges, culverts, clearing work, grubbing work, drainage work and grading work.
10. DPW has reviewed and approved the Statutory Warranty Deed and recommends the deed be accepted by the County.

## RECOMMENDATION

Based on the foregoing Findings, the establishment of the public road for 188<sup>th</sup> Place NW is necessary, practicable, and in the best interest of the general public; establishing 188<sup>th</sup> Place NW as a County Road is necessary as it provides connectivity to two rights-of-way and provides access to 24 parcels. It will benefit the public because it ensures the road is constructed and maintained to County standards providing safe travel to those using the road. The County Engineer recommends the establishment be granted provided that: (1) all administrative costs are paid in full by the developer to the County Road Fund pursuant to SCC 13.90.070; and, (2) PDS determines after inspection of the finished construction that the road meets all County road standards.

The County Engineer also recommends that the County Council accept the statutory warranty deed conveying ROW for the road and that it be recorded upon the terms and conditions of the ordinance.

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Douglas W. McCormick P.E  
Deputy Director/County Engineer

Date: \_\_\_\_\_

*Maria Acuario*

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Prepared By: Maria Acuario  
ROW Investigator III

Date: \_\_\_\_\_