

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**FRENCH CREEK PROPERTIES, LLC** ) **FILE NO. 04 114270**  
 )  
11-lot Rural Cluster Subdivision (RCS) on 37.8 acres )

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DATE OF DECISION: May 24, 2006  
PROJECT NAME: *Homestead Creek*  
DECISION (SUMMARY): The 11-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the south side of Dubuque Road, 8/10 of a mile east of 139<sup>th</sup> Avenue SE of Snohomish, Washington.

ACREAGE: 37.8 acres

NUMBER OF LOTS: 11

AVERAGE LOT SIZE: 27,938 square feet

MINIMUM LOT SIZE: 21,651 square feet

DENSITY: 0.3 du/ac (gross)  
1.4 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5  
Subarea Plan: Snohomish/Lake Stevens  
Subarea Plan Designation: Rural-5 Acre

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewer: Individual, on-site septic systems

SCHOOL DISTRICT: Snohomish No. 201

FIRE DISTRICT: No. 4

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions  
Public Works (DPW): Approval subject to conditions

### **INTRODUCTION**

The applicant filed the Master Application on September 17, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on March 10, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on May 9, 2006, the 120<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

### **PUBLIC HEARING**

The public hearing commenced on May 9, 2006 at 2:05 p.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, French Creek Properties, LLC, was represented by Greg Lamb. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services.
3. Two letters (consolidated File No. 24) were received from vicinity owners of 40 acres, spouses Robert L. Bisnett and Mary Elinore Bisnett, urging that consideration be given to future access to their 40 acres. Their letters point out the environmental constraints to access in the vicinity.

The hearing concluded at 2:31 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS OF FACT

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file as if set forth in full herein.
2. The applicant, French Creek Properties, LLC, propose an 11-lot subdivision on nearly 40 acres zoned Rural-5. The applicant proposes to phase the development in two 20-acre segments platted concurrently herein in order to more sensitively develop the higher portions of the site while leaving 24 to 29 acres as restricted open space. That phasing addresses protection of the eight wetlands and three streams on the subject site: two Category 1 wetlands, six Category 3 wetlands and three Type 3 streams.
3. The environmental constraints on the site are described, in part, in a letter by the Washington State Department of Fish and Wildlife's Bob Pfeifer (Exhibit 26), who notes: "This is a major wetland system with use by numerous native fishes, plus a plethora of wildlife and amphibian species." His letter describes the active beavers in the vicinity and the interaction between their dam and the proposal to bridge a tributary of Panther Creek on site. He notes that Coho salmon pass the beaver dam to get to spawning and rearing areas upstream. He characterizes the wetlands and pond complexes as "...superior salmonid rearing area in the Panther Creek system." (See Critical Area Study revised January 4, 2006 (Exhibit 16) and related wetland mitigation (Exhibits 17A and 17B).
4. In that setting, Mr. and Mrs. Robert and Mary Bisnett endeavor to achieve vehicular access to Dubuque Road for their 40 acres. They testified to that issue during review of the plat of Homestead Meadows (05-118451), which has its access through the subject Homestead Creek subdivision. Again, in this record, they seek access. However, the cul-de-sac road in the proposed plat terminates at a stream, wetland and buffers. The evidence in both records does not support a condition requiring access for the Bisnetts through the subject property. The applicant has met the Bisnetts and explored access options but finds no way to help the Bisnetts acquire the access needed to develop the land they purchased with the help of their children decades ago.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,128.00 for each new single-family home.
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).

9. The Snohomish County Health District has no objection to this proposal in which each lot will be served by its separate on-site sewage disposal system. Potable water service is available from a water main extension pursuant to Snohomish County Public Utility District No. 1.
10. The subject property is designated Rural Residential-5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
11. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
12. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for 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 other planning features including safe walking conditions for students.
13. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
14. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.

4. The request should be approved subject to compliance by the applicant with the following conditions:

**CONDITIONS**

- A. The preliminary plat received by the Department of Planning and Development Services on January 5, 2006 (Exhibit 14) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - iii. A final mitigation plan based on the Critical Area Study and conceptual Wetland Mitigation and HMP Map for Homestead Creek, prepared by Wetland Resources, Inc., Revision #1 dated January 4, 2006 (Exhibits 16 and 17) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. Lot 1 shall not have direct access to Dubuque Road.
  - ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot one shall receive credit.”
  - iii. The lots within this subdivision are subject to park impact mitigation fees in the amount of \$1,128.00 per new dwelling unit in accordance with Chapter 30.66A SCC; provided, however, the developer has elected to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
  - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
  
\$3,521.76 per lot for mitigation of impacts on county roads paid to the County,

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- vi. Depict a 15 foot building setback line (BSBL) along the NGPA boundaries on each of the lots.

D. Prior to recording of the final plat:

- i. The development road shall be designed and constructed in accordance with EDDS 3-090 for a private rural subcollector and in accordance with the deviation requests that have been granted.
- ii. Rural standard frontage improvements (the extent of which are detailed in the deviation request letter dated October 7, 2004) consisting of 20 feet of pavement width from the centerline of the right-of-way shall have been constructed along the subject property frontage with Dubuque Road.
- iii. The existing home on lot 1 shall take access from the new private road and the existing driveway shall be removed.
- iv. 10 feet of additional right-of-way must be dedicated along the property frontage on Dubuque Road, to total 40 feet from the centerline of right-of-way.
- v. The stopping sight distance on Dubuque Road at the new private road shall meet the requirement of EDDS.
- vi. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
- vii. NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.
- viii. The final wetland mitigation plan shall be completely implemented.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

### **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for an 11-lot rural cluster subdivision on 37.8 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 24th day of May 2006.

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Ed Good, Deputy Hearing Examiner

### **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

#### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 5, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JUNE 7, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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Staff Distribution:

Department of Planning and Development Services: Bob Pemberton  
Department of Public Works: Ann Goetz

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.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.