



COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)  
Subarea Plan: North Creek  
Subarea Plan Designation: Rural (.4 - 1 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

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 November 30, 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 August 2, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on September 20, 2005, the 76<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 September 20, 2005 at 10:28 a.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, C & B Investments, LLC, was represented by Ry McDuffy, Brian Ziegler, and the applicant himself, Craig Pierce. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works. Public testimony urging greater buffering on the north was given by Wayne Porter, whose home adjoins the proposed PRD there. Further public testimony was given by Gene Grieve, who demonstrated detailed knowledge of growth and planning issues in the vicinity and who challenges all involved to provide for parks in the area, particularly through interlocal agreements.

3. The hearing concluded at 11:15 a.m.

**NOTE:** The above information summarizes the information submitted to the Examiner at the hearing. However, 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 PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone of 5.07 acres from R-9,600 to R-7,200 in order to construct a 32-lot planned residential development. Average new weekday vehicle trips generated by the PRD will be 287 trips, of which 30 will be p.m. peak hour trips and 22 will be a.m. peak hour trips. The per lot fee for 32 lots is \$1,749.52.
4. Wayne Porter believes the landscaping proposed along the northern boundary of the subject PRD and the width of that buffer are not adequate to protect his home and others from adverse impacts of the PRD. The applicant, Craig Pierce, testified that he has met Wayne Porter three times to discuss the buffering on the north. Mr. Pierce points out that along the north boundary there is a 12-foot wide buffer and an additional five-foot building setback for a total of 17 feet of separation between PRD homes and the rear yard lot line of homes such as that of Mr. Porter. The Landscape Plan (Exhibit 8) shows that 22 trees will be west of the Native Growth Protection Area in that buffer strip: Leyland Cypress, Douglas Fir and Vine Maple. A pedestrian pathway will pass through those trees. The 12 planting notes on the Landscape Plan include provisions assuring survivability and maintenance of the landscaping. In summary, the Examiner finds the buffering offered to Mr. Porter and all other property owners on the north to be in compliance with the PRD provisions of Chapter 30.42B.125: Landscaping.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$918.00 for each new single-family home. The Hearing Examiner has no role beyond determining whether that compliance exists. Witness Gene Grieve entered into the record a report (Exhibit 35) which describes that in 2,000 acres of Northeast Bothell where a potential of 10,000 people will reside, "...there is not one square foot of park being planned." He supports that assertion by listing nearly 30 recent developments built and proposed in that community, showing for most of those listed whether park fees were collected or proposed and asking: "Where are the park mitigation fees going and into what Park Service Areas"? He laments the lack of an interlocal agreement between Bothell and Snohomish County applicable to providing parks. The Hearing Examiner can, at least, devote this one paragraph of findings of fact to Mr. Grieve's well-reasoned plea.

6. 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.
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. There is one large Category 3 wetland on the eastern portion of the site that extends offsite to the northeast and to the south. Most of the wetland and its required buffer will be protected in a Native Growth Protection Area but approximately 1,060 square feet of the wetland will be filled and another 4,260 square feet of the required wetland buffer adjacent to it will be adversely impacted. Mitigation is described in the staff report and will be in accordance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
9. With particular thoroughness, the staff report reviews section-by-section the compliance of the proposed planned residential development with the applicable SCC Chapter 30.42B including number of dwellings, design criteria, open space, landscaping, drainage, roads and pedestrian access and parking, bulk, housing types and decision criteria. The County and the applicant agree that site improvements and the final mitigation plan must either be completed and approved or bonded prior to final plat approval but disagree whether bonding in lieu of completion should be at the discretion of PDS. The Examiner finds that PDS should retain that discretion, abuse of which would be appealable. (See Conditions 6.E.iv and vii.)
10. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
12. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development.
14. 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.

15. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

16. 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 GMACP and GMA-based County codes.
17. 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. There are no changes to the recommendations of the staff report.
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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan.
5. The request is for a planned residential development and therefore must comply with Chapter 30.42B. The application complies with that Chapter in all material aspects.

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

**CONDITIONS**

- A. The Preliminary Plat (Exhibit 22) received by the Department of Planning and Development Services on September 8, 2005, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Preliminary Plat (Exhibit 22), PRD Site Plan received by the Department of Planning and Development Services on May 17, 2005 (Exhibit 17C), Conceptual Building Elevations & Floor Plans received by the Department of Planning and Development Services on March 29, 2005 (Exhibit 15) and Detailed Landscape and Recreation approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
- i. A detailed landscape and recreational facilities plan shall have been submitted to and approved by the Department of Planning and Development Services. The plan shall be prepared in general conformance with the Landscape Plan received by the Department of Planning and Development Services on May 17, 2005 (Exhibit 17D) and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
- ii. The plattor 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 Final Wetland Buffer Mitigation Plan for The Cottages at Windsor Court, prepared by Wetland Resources, Inc. dated March 29, 2005 shall be submitted for review and approval.
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B., above.
- D. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District 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 two existing parcels. Lots 1 and 2 shall receive credit.”
- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$1,749.52 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$71.02 per lot for Transportation Demand Management (TDM) paid to the County,

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by the Department of Planning and Development Services.

- iii. 40 feet of right-of-way shall be dedicated along the property frontage on 39<sup>th</sup> Avenue SE, to total 40 feet from the right-of-way centerline; or 20 feet of property that is within the described property ownership will be dedicated as right-of-way, and the remaining 20 feet will be described on the face of the recorded plat stating that the developer shall relinquish to the County any interest in the 20-foot wide strip of land lying west and parallel with the right-of-way centerline for 39<sup>th</sup> Avenue SE.
- iv. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-120608.
- v. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- vi. 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."
- vii. "The dwelling units within this development are subject to park impact fees in the amount of \$918.00 per newly approved dwelling unit, as mitigation for impacts to the North Creek community area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by November 30, 2009 (Five years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

E. Prior to recording of the final plat:

- i. Frontage improvements conforming to county standards shall have been constructed along the development's frontage along 39<sup>th</sup> Avenue SE.

- ii. Sidewalk improvements conforming to county standards shall have been constructed along the western frontage of Lot 1 of Rocking Star Ranch to provide safe walking conditions for the school children from this development to the bus stop at the 209<sup>th</sup> Place SE.
- iii. The applicant shall submit to the Department of Planning and Development Services covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by the Department of Planning and Development Services. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership.
- iv. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved and/or bonded prior to final plat approval at the discretion of the Department of Planning and Development Services.
- v. A bond or other guarantee of performance shall have been submitted to and accepted by the Department of Planning and Development Services to assure compliance with the provisions of SCC 30.42B.125 (5)(b).
- 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.  
  
 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.
- vii. The final mitigation plan shall be completely implemented and/or bonded prior to final plat approval at the discretion of the Department of Planning and Development Services.

F. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to the Department of Planning and Development Services.

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

7. 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 requests for a 32-lot planned residential development and a rezone from Residential-9,600 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 28<sup>th</sup> day of September, 2005.

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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 **OCTOBER 10, 2005**. 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 **OCTOBER 12, 2005** 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: Monica McLaughlin  
Department of Public Works: Norm Stone

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.
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