

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: June 1, 2006

PLAT/PROJECT NAME: *RIVER WALK*

APPLICANT/
LANDOWNER: Charles Essex

FILE NO.: 04 120990

TYPE OF REQUEST: A 20-lot Rural Cluster Subdivision (RCS) of 67.1 acres

DECISION (SUMMARY): APPROVED subject to Preconditions and Conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located northwest of the City of Granite Falls, in Snohomish County. It lies between the Engelbretsen Road and the South Fork of the Stillaguamish River, west of the Jordan Road in Granite Falls.

ACREAGE: 67.1 acres

NUMBER OF LOTS: 20

AVERAGE LOT SIZE: 19,393 square feet

MINIMUM LOT SIZE: 18,163 square feet

OPEN SPACE: 52.91 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)
Subarea Plan: Granite Falls
Subarea Plan Designation: R-5 (1 du/5 ac)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewage: On-site septic

SCHOOL DISTRICT: Granite Falls

FIRE DISTRICT: No. 17

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on April 19, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on May 11, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 23, 24 and 25)

A SEPA determination was made on April 18, 2006. (Exhibit 22) No appeal was filed.

The Examiner held an open record hearing on May 17, 2006, the 99th 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 17, 2006 at 9:10 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Rick McArdle, Shockey/Brent, Inc., representing the applicant appeared and stated that this plat has unique features. He stated that the site is not listed as a historical site and referred to page 17 of the environmental checklist. (Exhibit 22) He also asked that Condition B.iv. be changed pursuant to Exhibit 40. He stated that they have verbal approval from the Snohomish Health District and asked to have the record left open for any written comments.
3. Mr. Tom Erlichman, an attorney representing the applicant appeared and stated that he represents an adjacent property owner on the northwest corner of the property and wants to be sure that easement access is maintained for the well and the road along the river.
4. Mr. Paul MacReady, PDS, appeared and recommended that certain changes be made. He stated that he had recommended denial without prejudice as they had not received Health District approval as yet. He recommended an additional condition as shown by Exhibit 40, and that he had no objection to the conditions listed before.
5. No one appeared in opposition to the request.
6. The record was left open for the submittal of additional information. This additional information for changes came in a supplemental staff report. (Exhibit 42)

The hearing concluded at !

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. One letter was received to the request, these questions were responded to by PDS on page 3 of the PDS staff report. One letter was also received from the Tulalip Tribes and the PDS staff responded by indicating that a condition would be placed for their concerns.
4. The request is for approval of a preliminary RCS of 67.1 acres for 20 single-family lots. The site consists of four original parcels and contains two plateaus. The building lots will be developed on the upper plateau in the southeastern half. The lower plateau in the north and northwest will remain as it is today. A steep slope approximately 100 feet in elevation separates the two plateaus. The lower plateau is currently being used as part of the Granite Falls Thoroughbred Farm and is mostly pastureland. Access to the proposed new building lots will be from Jordan Road to the southeast corner of the site, while the lower plateau which is bordered on the north and east by the South Fork of the Stillaguamish River will be accessed from the north through an existing subdivision and equestrian farm.
5. The site is outside the Urban Growth Area with single-family homes on large lots that lie to the south, with pastureland to the west. An equestrian center, veterinarian office and residence, the Granite Falls Thoroughbred Farm, is situated northwest of the proposed plat. The subdivision of *Indian Summer Park* is located directly north of the equestrian center. The South Fork of the Stillaguamish River forms most of the northern boundary of the site and Jordan Road creates the southeastern boundary of the proposed subdivision.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$48.82 for each new single-family residential unit.
7. 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. (See Pages 4-8, Exhibit 39)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

9. There are various wetlands, streams and the South Fork of the Stillaguamish River here. These areas have been reviewed for critical regulations pursuant to Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations. The PDS staff has determined that the application is complete and in conformance with this chapter.
10. The developed portion of the site will contain two drainage systems, each contributing to one of the proposed detention facilities. Storm water from the majority of the developed site will be directed to an open detention pond while storm water from the southeast portion of the site will be directed to an enclosed detention vault, with the remainder of the site to continue to drain as it currently does. 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 PDS staff is waiting for approval from the Snohomish Health District. This is covered by a condition.
12. Public water and on-site septic systems will be available for this development as well as electrical power.
13. The property is designated Rural Residential-5 (1 du/5 ac) on the GPP Future Land Use Map and is located outside of an Urban Growth Area. The 20 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Chapter 30.2 SCC.
14. The proposal complies with the provisions of Section 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 78% (52.91 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage-related problems; the project complies with Snohomish County's Critical Areas Regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

In this regard, the staff has correctly analyzed the effect of the Rural Cluster Subdivision on pages 11 and 12 of the PDS staff report. (Exhibit 39)

15. 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.
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 the GMACP, and GMA-based county codes.
17. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
18. The Snohomish Health District recommends approval subject to certain conditions. (Exhibit 37)

19. The PDS staff has submitted a supplemental report to the Examiner which the Examiner has reviewed and has accepted as Exhibit 42, and is deemed to be a part of the approval of the plat.

Furthermore, the conditions found on page 3 of the Supplemental Staff Report are hereby approved to be changed in this decision.

20. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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 changes to the recommendations of the staff report as shown in Exhibit 42.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request is for RCS in this location, preserving the wetlands, river and streams, while at the same time allowing for a 20 lot RCS on 67.1 acres. This is a desirable and attractive location and attractive development for this area.
5. The request should be approved subject to compliance with the following Conditions:

PRECONDITION

- A. The preliminary plat shall be modified to show that Tract 999 will contain 65 percent of the gross area of the original parcels to comply with SCC 30.41C.220(1).

CONDITIONS

- A. The preliminary plat received by PDS on May 8, 2006 (Exhibit 21) shall be the approved plat configuration if approved. 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 platlor 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 conceptual Critical Area Study, Habitat Management Plan and Restoration Plan for Essex RC, prepared by Wetland Resources, Inc. dated April 19, 2005 (Exhibit 14) in conjunction with the revised Critical Area Study and Habitat Management Plan Map dated September 15, 2005 (Exhibit 19) shall be submitted for review and approval during the construction review phase of this project.
- iv. The applicant shall provide a field reconnaissance report, prepared by a qualified archeologist, to the County and the Tulalip Tribes. The Report shall describe any observed locations within construction areas where construction practices should include the presence of tribal members to monitor site disturbance. The applicant shall provide full access to the Tribe if the report indicates tribal presence is warranted. If significance archeological resources are evident in the field, work shall be stopped and the applicant shall provide archaeologist's report regarding the location, condition, and extent of the archaeological resources located on site, and any recommendations with respect to conditioning the activity to avoid or minimize impact. The archaeological site report shall be written by a qualified professional archeologist, and include the results of consultation with any affected Indian tribe on proposed actions to avoid, protect, or mitigate impacts of the proposed project. The department shall provide a copy of the archaeologist's report to any affected Indian tribe and the state office of archaeology and historic preservation, at the applicant's expense.
- v. The applicant shall submit a request for a deviation to EDDS Standard 3-10 (Road Ends) to allow the location of Unrestricted Open Space Tract 995. If the deviation is not granted by the County, the tract shall be converted to public right-of-way.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Granite Falls School District No. 332 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 four existing parcels. Lots 1 through 4 shall receive credit."
- iii. 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,
 \$1,750.00 per lot for mitigation of impacts on the City of Granite Falls streets paid to the City.
 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 lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.
- iv. 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 30.91N.010 are allowed when approved by the County."

- v. The following language shall be placed on the face of the plat:

"Your real property is on or within 2,000 feet of designated mineral resource land, on which mineral extraction, or a variety of activities related to mineral extraction, may occur that are not compatible with residential development for certain periods of limited duration. An application might be made on the designated mineral resource land for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals."

- D. Prior to recording of the final plat:

- i. The development road shall be designed and constructed in accordance with EDDS 3-040 / 3-060 for a public rural local access road.
- ii. Frontage improvements shall have been constructed along the subject property frontage with Jordan Road and the Granite Falls Alternate Route (GFAR) project, and in accordance with the deviation request granted for the north section. Design and construction of frontage improvements to be coordinated with the appropriate DPW personnel in charge of the design and construction of the GFAR project.
- iii. Additional right-of-way must be dedicated along the property frontage that is identified in the adopted right-of-way plan for the Granite Falls Alternate Route (GFAR) project, and additional right-of-way must be dedicated along the property frontage on Jordan Road (the section located within Snohomish County jurisdiction), to total 40 feet from the centerline of right-of-way.
- iv. The intersection sight distance on Jordan Road at the new public road shall meet the requirement of EDDS. A sight distance easement, as identified by the sight distance analysis, received March 29, 2006 by PDS, (Exhibit 18) shall be recorded on the plat map.
- v. The petition to vacate the Old Jordan Road right-of-way shall have been granted.
- 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 platlor 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 wetland mitigation plan shall be completely implemented.

- E. In conformity with applicable standards and timing requirements:
 - i. Landscaping on the preliminary plat map (Exhibit 21) shall be implemented. All required detention facility and site obscuring buffer landscaping shall be installed in accordance with the approved landscaping on the preliminary plat map.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this recommended 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.

- 7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a Rural Cluster Subdivision consisting of 20 lots is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 5, above.

Decision issued this 1st day of June, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **June 12, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **June 15, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Paul MacReady
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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than June 1, 2007.

1. “Fulfillment” as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
