

**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: October 19, 2005

PLAT/PROJECT NAME: *CROSS CANYON*

APPLICANT/  
LANDOWNER: Cross Canyon, LLC

FILE NO.: 05 100883

TYPE OF REQUEST: A 25-lot subdivision of 5.1 acres. The 24 proposed single-family residential lots range in size from 4,022 square feet to 8,834 square foot, with one 21,125 square foot lot large enough for a duplex

DECISION (SUMMARY): APPROVED subject to conditions

**BASIC INFORMATION**

GENERAL LOCATION: The property is located immediately north of the intersection 30<sup>th</sup> Street NE and 75<sup>th</sup> Drive NE, about one mile southeast of the Marysville city limits

ACREAGE: 5.1 acres

NUMBER OF LOTS: 25

AVERAGE LOT SIZE: 5,330 square feet

MINIMUM LOT SIZE: 3,928 square feet

DENSITY: 4.9 du/ac (gross)  
8.2 du/ac (net)

OPEN SPACE: 51,159 square feet

ZONING: R-7200 & R-9600

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential Limited (5-6 du/ac)  
Subarea Plan: Snohomish-Lake Stevens  
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewage: City of Marysville

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services (PDS): Approve subject to conditions  
Public Works (DPW): Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on January 28, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 28, 2005 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 19, 20 and 21)

A SEPA determination was made on August 12, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on October 6, 2005, the 207<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 October 6, 2005 at 1:00 p.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. Dave Gardner, representing the applicant appeared, and stated that the PDS staff report is complete. He had questions as to one item in the conditions and he wanted clarification to Condition D. iii. relating to the construction of an off-site walkway to the nearest bus stop since they did not own the property. He referred to Exhibit 39 which shows the area.
3. Mr. Bob Pemberton, PDS, stated that there is approximately 10,880 square feet in the drainage and retention areas of open space in Tract 999.
4. Ms. Ann Goetz, DPW, stated that there should be a sidewalk either on the south or north side of 30<sup>th</sup> Street so children won't have to cross the street twice. She stated that they have no choice but to require an off-site walkway. However they can't wait to see what might happen in the future and they will accept pedestrian easements.
5. Mr. Gardner responded if it's required on private property, how do they do that without the owner's permission?

6. Ms. Brown, owner of the property to the west, stated that they feel a sidewalk is necessary. She also indicated that they want a fence along their property line.
7. Mr. James Hagen appeared and stated that he was concerned about traffic when 74<sup>th</sup> Street is opened up. He also suggested that a playground over the covered retention area would be good.
8. The Examiner left the record open until October 17, 2005 to allow Mr. Gardner to talk with Ms. Brown regarding any proposed solution.

The hearing concluded at 1:55 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the 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. Three items of correspondence were received and raised numerous issues including fencing, traffic concerns, recreational opportunities, drainage, zoning and tree removal. Fencing is not required by the county code.
4. The request is for a 25-lot subdivision of 5.1 acres. Access to all lots will be via a public road connecting to the intersection of 74<sup>th</sup> Drive NE and 30<sup>th</sup> Street NE. This site lies north of the newly developed subdivision of *Northwest Point*. Most of the site and surrounding properties to the north, west and south are zoned R-7200 with a small sliver of this site and the area to the east zoned R-9600. To the south lies the newly developed single-family residential subdivision of *Northwest Point*, while immediately to the west, north and east are large lots developed residentially.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,040 for each new single-family home.
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. (See Pages 3-6, Exhibit 38)

7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. Critical areas on the site consist of steep slopes along the easterly boundary, which slope down steeply to Soper Hill Creek. These will be preserved as a Native Growth Protection Area and the critical area study and buffer restoration plan will comply with Chapter 30.62 SCC. (Chapter 32.10 SCC)
9. Stormwater runoff from the new impervious surfaces will be collected and transported by a system of catch basins and pipes to a detention vault located in the southeastern portion of the site. 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).
10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. The existing septic system should be abandoned and any existing wells decommissioned.
11. Public water and sewer service will be available for this development as well as electrical power.
12. The subject property is designated Urban Low Density Residential-Limited (ULDR-L: 5-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential-Limited designation “allows mostly detached housing development on larger lot sizes. This designation is applied in a portion of the Sunnyside area that is confined to the lowest density urban zone because of environmental constraints and difficulties in service provision. Implementing zones include R-9,600 and PRD-9,600” PDS finds the requested subdivision, to be developed in accordance with the existing R-9,600 zoning, to be consistent with the General Policy Plan’s Urban Low Density Residential-Limited designation of the property.
13. 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.
14. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
15. 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.
16. The aerial photograph (Exhibit 10) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
17. On viewing the area, the Examiner noted that across 30<sup>th</sup> Street to the south there runs a sidewalk in the newly developed subdivision area the length of 30<sup>th</sup> Street. The Examiner also notes that on the northerly side of 30<sup>th</sup> Street, there is an un-improved area where children may walk, and that 30<sup>th</sup> Street itself in this area is basically a half-street.

18. A letter was submitted from the applicants responding to the issues raised. (Exhibit 41)
19. 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 by the elimination of Condition D.iii.
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 allows for the development of single-family homes in this rapidly growing area of Marysville and Snohomish County and would allow for those members of the public to reside in this attractive location.
5. Questions were raised with regard to construction of an off-site walkway on the northerly side of 30<sup>th</sup> Street. (See Condition D.iii.) The Examiner concludes that with the already existing sidewalk on the south side of 30<sup>th</sup> Street NE, and the ability to walk on the existing property on the north, as well as the possibility of having a school bus stop moved, that in the absence of an agreement with the existing property owner to share the cost, in the future, that construction of an off-site walkway is not needed. (Exhibit 41)
6. The adjacent property owners to the west have requested that a fence be placed between the properties. No evidence was submitted to justify the placing of a fence and in the absence of an agreement between the parties to share the expense, either now or in the future, no requirement is imposed at this time. However, see the letter from Mr. Robinett regarding his offer to share. (See Exhibit 41-Attached)
7. The request should be approved subject to compliance by the applicant with the following Conditions:

**CONDITIONS:**

- A. The preliminary plat received by PDS on August 12, 2005 (Exhibit 13) 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 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 *Critical Areas Study and Buffer Restoration Plan* prepared by Wetland Resources, Inc., dated Revision #1: May 5, 2005 (Exhibit 16) 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. "The lots within this subdivision will be subject to school impact mitigation fees for the Marysville School District No. 25 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 1 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:  
  
\$1,883.38 per lot for mitigation of impacts on county roads paid to the county,  
\$72.72 per lot for transportation demand management paid to the county,  
\$1,196.10 per lot for mitigation of impacts on the City of Marysville streets paid to the city.  
  
\$201.29 per lot for mitigation of impacts on the City of Arlington streets paid to the city.  
Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued for a lot, all mitigation payments shall be deemed paid for that lot.
  
  - iii. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.
  
  - 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 UDC 30.91N.010 are allowed when approved by the County."

D. Prior to recording of the final plat:

i. The developer shall pay the County \$1,040.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect 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.

ii. Urban standard frontage improvements shall be constructed along the property frontage with 30<sup>th</sup> Street NE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]

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iii. 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 platator 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.

iv. The final 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.

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

**DECISION:**

The request for approval of a 25-lot subdivision utilizing lot size averaging is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 19<sup>th</sup> day of October, 2005.

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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, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **October 31, 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 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 **November 2, 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 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.

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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.
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