

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**PACIFIC RIM INVESTMENT MANAGEMENT** ) **FILE NO. 06 101548 SD**  
 )  
14-lot Rural Cluster Subdivision (RCS) on 31 acres )

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DATE OF DECISION: July 19, 2006

PROJECT NAME: *Parkwood Estates*

DECISION (SUMMARY): The 14-lot rural cluster subdivision on 31 acres is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 8702 196<sup>th</sup> Street NE, Arlington, Washington.

ACREAGE: 31 acres

NUMBER OF LOTS: 14

AVERAGE LOT SIZE: 19,928 square feet

MINIMUM LOT SIZE: 19,356 square feet

DENSITY: .45 du/ac

ZONING: R-5

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: RR-5 (1 du/5 acre Basic)

Subarea Plan: Arlington

Subarea Plan Designation: Rural (0.2-4 du/ac)

UTILITIES:

Water: City of Arlington  
Sewer: Individual septic systems

SCHOOL DISTRICT: Arlington No. 16

FIRE DISTRICT: No. 21

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 January 26, 2006. (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 20, 21 and 22)

A SEPA determination was made on May 16, 2006. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on July 13, 2006, the 91<sup>st</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 July 13, 2006 at 1:04 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, Pacific Rim Investment Management, LLC, was represented by Debbie Rothfus of Peak Engineering. Snohomish County was represented by Roxanne Pilkenton of the Department of Planning and Development Services.
3. No member of the public attended the hearing. Pre-hearing letters of opposition and concern were received from vicinity residents Greg Johnston dated February 17, 2006 (Exhibit 26) and Michael Van Winkle sent March 3, 2006 (Exhibit 25). Both are reviewed below.

The hearing concluded at 1:34 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, Pacific Rim Investment Management, LLC, filed an application for a 14-lot rural cluster subdivision (Parkwood Estates) on approximately 31 acres south of 196<sup>th</sup> Street NE west of Old Burn Road. Access will be off Old Burn Road. The internal roadway has no potential for future extension due to the existence of Portage Creek, wetlands and steep slopes. No development or disturbance is proposed on portions of the site having slopes exceeding 33 percent. A resident asserts that steep slopes cover half of the subject site. (See Exhibit 26.)
3. Portage Creek is a Type 3 stream and is mapped as presumed habitat for anadromous salmonids, including bull trout, an endangered species. Portage Creek crosses the southwest corner of the western parcel of property, flowing northwesterly, at the bottom of a steep ravine. The application was amended during review to tightline storm drainage to Portage Creek rather than to have drainage flow down the ravine sideslopes. Vicinity resident Greg Johnston (Exhibit 26) writes that it is his "...most pressing and important point." to urge that such a tightlined drainage be provided on what he terms the "...deep, steep-sided and locally unstable..." Portage Creek ravine. He asserts that he is willing to show on site where on-side sideslope failures have occurred during the past decade due to previous logging. The applicant responds that the ravine is now protected by Tract 997 as Restricted Open Space/Native Growth Protection Area as amended after receipt of Mr. Johnston's above-mentioned letter.
4. Concerning Portage Creek, Michael Van Winkle, treasurer of the Portage Creek Homeowners Association, argues (Exhibit 25) that the plat road should be built of porous surface to stop drainage from flowing through the back of those Association members' properties "...as it currently does." He points out that that same drainage flows eventually into Portage Creek. He points out that the Portage Creek community consists in nine parcels of five acres each: a rural setting with no lot in the surrounding area being less than 2.5 acres. He notes that salmon now run in Portage Creek again. (Greg Johnston asserts the presence of Coho salmon and cutthroat trout as well at Exhibit 26.) Mr. Van Winkle expresses the dismay of the owners in his community who had felt that under the Growth Management Act growth in the vicinity and east of State Route 9 would be at R-5 density. Instead, he asserts that exceptions were made: Arlington High School was built and Crown Ridge Estates. Those, he asserts, "... opened the door to California-like urban creep." He urges that homeowners' by-laws and covenants in the proposed Parkwood Estates be modeled on those of his Portage Creek Homeowners Association to preserve the habitat, include prohibitions against off-road vehicles and limits on noise.
5. Vicinity resident Greg Johnston (Exhibit 26) seethes with a sense of betrayal and, in so doing, captures the essence of protestations being heard by the County's Hearing Examiners each week. He hits a nerve by asking whether Native Growth Protection Areas are to be "permanently undisturbed" or only until the area becomes part of Arlington's Urban Growth Area, then be developed in what he terms "double dipping". His lament merits quote, even though more legislative than quasi-judicial:

“First, I would like to express my dismay and disappointment that you have apparently left such a gaping loophole in your zoning code. It seems your planning and zoning process is lacking in much of any application of fairness. A few years ago those of us in the project vicinity were all downzoned from rural 2.3-acre lots to 5-acre minimums. Yet am I now to understand that the proponents of this project would be allowed by some apparent sleight of hand to develop at the equivalent of the old 2.3-acre-lot density? Is your rural R-5 zoning just lip service with no meaning at all? You may think you’re doing something really clever and progressive, but these out-of place islands of suburbia scattered throughout are inconsistent with and are undermining of the intended rural character of the area as the zoning was *supposed* to insure.”

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. A resident (Exhibit 26) urges a stop sign on 196<sup>th</sup> Street NE at Old Burn Road to keep the latter as the “through” street.
7. 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 home.
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. Safe walking conditions for students to and from Kent Prairie Elementary School, Post Middle School and Arlington High School are only internal to the plat because, according to the Arlington School District, all students will be bussed from the intersection of the plat road with Old Burn Road.
9. 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 is furnished. That water will be supplied by the City of Arlington. Each lot will be served by its private septic system.
11. 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.
12. 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.

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 proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on May 31, 2005. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community as noted in this report. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.
15. The subject rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on February 1, 2006 (Exhibit 15), and in an open space management plan (Exhibit 8) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
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. 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 PDS on April 25, 2006 (Exhibit 11) 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.

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 Arlington School District No. 16 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 2 existing parcel(s).

ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,143.68 per lot for mitigation of impacts on county roads paid to the County,

\$934.20 per lot for mitigation of impacts on the City of Arlington streets paid to the City. Proof of payment to the city is required.

\$344.25 per lot for mitigation of impacts on state highways 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.

iii. 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."

- iv. The developer shall pay the County \$48.82 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.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall have been constructed along the parcel's frontage on Old Burn Road to the specifications of the County.
- ii. The East-West private road shall be designed to conform to Plate 3-090 of the EDDS or a deviation to the standards will need to have been granted.
- 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 4) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. 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 a 14-lot rural cluster subdivision on 31 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 19<sup>th</sup> day of July, 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 **JULY 31, 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 **AUGUST 2, 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: Roxanne Pilkenton  
Department of Public Works: Norm Stone

<p>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.</p>
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