

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 1, 2005

PLAT/PROJECT NAME: *SILER PLACE*

APPLICANT/
LANDOWNER: Delta Pacific Construction Corporation

FILE NO.: 96 106255

TYPE OF REQUEST: A 13-lot Rural Cluster Subdivision (RCS) on a 22 acre site within a Rural Conservation zone

DECISION (SUMMARY): APPROVE subject to preconditions and conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located approximately 300 feet south of the intersection of 113th Drive SE, and 206th Street SE

ACREAGE: 22 acres

NUMBER OF LOTS: 13

AVERAGE LOT SIZE: 20,084 square feet

MINIMUM LOT SIZE: 15,182 square feet

DENSITY: .59 du/ac (gross)
2.17 du/ac (net)

OPEN SPACE: 67% or 14.84 acres

ZONING: Rural Conservation (RC)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Medium Density Rural Residential 2.3 (1 du/2.3 acres)
Subarea Plan: Cathcart-Maltby-Clearview
Subarea Plan Designation: Rural (1 du/2.3 acres)

UTILITIES:

Water: Cross Valley Water District
Sewage: Individual wastewater septic

SCHOOL DISTRICT: Monroe

FIRE DISTRICT: No. 7

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 September 11, 1996. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 10, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 28, 29 and 30)

A SEPA determination was made on June 4, 2005. (Exhibit 27) No appeal was filed.

The Examiner held an open record hearing on November 16, 2005, the 72nd 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 November 16, 2005 at 10:30 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. Jeff Webber, an attorney, appeared on behalf of the applicant and stated that he believes that they are vested to a different standard. He stated that he supports the PDS staff report and the conditions.
3. Mr. David Radabaugh, PDS, indicated that he had nothing further to add.
4. Ms. Laura Hartman appeared and stated that she was concerned about the Old Siler Logging Road and there not being clear title to it. She stated that it has become a public right-of-way (r/w) and it's good for non-motorized vehicle traffic. She indicated that they claim it as a public r/w and that they do not want it closed off. She indicated that she supports any school district actions and that there was no posting on the main road. i.e. Ecker Road. She stated that this area is listed as a floodplain area and that there are some low lots here. She indicated that there is also the Cross Valley aquifer here and that it is above ground near some of the lots. She stated that she is not asking to kill the development, but asks that the impacts be considered.

5. Mr. Michael Murphy, from the Monroe School District appeared, and stated that he wanted to thank the applicant for continuing with this matter for approximately 10 years. He wanted to be sure their wetlands to the south and west of the property have legal access.
6. By way of rebuttal, Mr. Schoening stated that they have records which show ownership to the r/w on the logging road. He indicated that the entire logging road is in the open space. Mr. Schoening stated that there were two signs and one was in the power company easement.
7. Mr. Webber stated that this plat has been extensively reviewed as to drainage issues.
8. Mr. Wayne Fortner appeared and stated that he had only seen one sign posting the property.
9. The Examiner asked if there was anyone here who lives on 113th Drive, and no one responded.

The hearing concluded at 11:35 a.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. Several letters of opposition were received from properties adjacent to, or in the immediate area. However, those letters were dated in the Fall of 1996. Other parties appearing at the hearing did not object to the development as such, but requested that the Old Siler Logging Road be retained for use by the public as it has been in the past.
4. This is a 13-lot RCS on a 22 acre site within a RC zone. The project will provide a new public segment and a new private road that will connect to 113th Drive SE, an existing road.
5. The preliminary plat was originally submitted in September of 1996 and has a history of submittals and re-submittals with the last one being March 23, 2005.
6. At the time the project was proposed, the zoning for the property and general vicinity was RC. This was subsequently changed to Rural-5 (R-5). The plat of *Country Meadows III* is located immediately north of the subject property. Parcels ranging in size from approximately one acre to five acres lie on the east and south sides of the property and many of these parcels are developed with single-family residences. The parcel to the west is approximately 20 acres and contains a large Category 1 wetland.

7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$771.00 for each new single-family home.
8. 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 3-5, Exhibit 54)
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
10. The site contains five delineated wetlands, with one of the wetlands being a Category 1, and the other being Category 3. The applicant has proposed an innovative development design with a part of the design being a .25 acre scrub/shrub wetland being created as replacement for filling two small Category 3 wetlands. PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with Chapter 32.10 SCC.
11. The plat proposes to direct stormwater to two detention ponds to be constructed on the site; one pond serving each cluster in the plat. 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).
12. The Snohomish County Health District, while originally having concerns, presently indicates that they have no objection to this proposal subject to the work being done in certain ways in accordance with the engineer's comments. (Exhibit 49)
13. Water will be furnished by the Cross Valley Water District. There will be individual septic systems.
14. The property is designated Rural Residential on the GPP Future Land Use Map and is located outside of any Urban Growth Area. The requested Rural Cluster Subdivision is consistent with the GPPs Rural Residential designation of the property and the 13 lots proposed are consistent with the density provisions. (SCC Title 30 GMA-based zoning regulations)

The proposal complies with the provisions of Section 32.30.040 SCC by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 67% (14.84 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 7 and 8 of the PDS staff report. (Exhibit 54)

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 Examiner had some concerns with regard to the posting and notification, but upon reviewing the information, it appears that the parties were notified properly.
18. Issues were raised with regard to the public use of the Old Siler Logging Road. This road appears to be in the wetlands and in some places, partially covered by water. It has been used by the public apparently for some time for walking and/or riding horseback. The applicant claims ownership to this road. However, upon viewing the road on the plat, Exhibit 55A, it appears to encircle part of the property and be an integral part of the buffer and the wetlands; and therefore should be maintained in its present open use to provide the consistency that is necessary to support the rural cluster development. It is noted that the applicant stated that they had no intention of interfering with the road where the wetlands are.
19. The aerial photograph (Exhibit 9) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
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 minor changes made to the recommendations of the staff report which are reflected in Exhibits 65 and 60.
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 for a RCS, while allowing 13 lots in this very attractive area, would allow for single-family homes, while at the same time preserving a large portion of the wetland area.
5. While the representative of the applicant indicated that the Examiner had no authority with regard to the Old Siler Logging Road, it is the conclusion of the Examiner that the road is so intertwined with the development of the plat, that in order to allow the plat to be properly developed as a RCS, the road should be maintained and allowed to be used as it has been in the past, thereby integrating the subdivision with the surrounding area in a consistent and pleasant way. If there are any changes to this, then the matter should come back to the Examiner for hearing and review of any proposed changes.

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

PRECONDITIONS

1. Obtain an updated letter of water availability from the Cross Valley Water District.
2. The plat shall be revised to show a 40 radius driving surface turnaround at the private road end in Tract 95.
3. Updated comments from the Monroe School District shall be obtained.

CONDITIONS

- A. The preliminary plat received by PDS on March 23, 2005 (Exhibit 25), as revised by precondition B, above, shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330, with the Old Siler Logging Road being maintained as open space as shown thereon, in accordance with Conclusion No. 5.
- 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. A detailed drainage plan shall have been submitted and approved pursuant to Chapter 24.16 SCC.
 - iii. At the sole discretion of the PDS's, limited site work may be allowed prior to approval of the full construction plans, if and only if a grading permit (if required) and Temporary Erosion and Sedimentation Control Plan (TESCP) have first been approved by the county for the limited site work. Any approved grading permit and TESCP for the limited site work must be consistent with any and all clearing limitations and/or other plans and conditions imposed and/or required herein.
 - iv. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - v. A final mitigation plan shall be submitted for review and approval during the construction review phase of this project. The final mitigation plan shall be based upon the conceptual mitigation plan prepared by Pentec Environmental, dated September 9, 1998 and the "Conceptual Mitigation Plan Addendum" dated February 17, 2000 by Adolfson Associates, Inc.

- C. All site development work must comply with the requirements of:
- i. The approved detailed drainage plan pursuant to Chapter 24.12 SCC.
 - ii. Any mandatory and special drainage requirements per Chapter 24.20 SCC.
- 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 Monroe School District No. 103 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 26C.20.020. Credit will be given for one existing lot to Lot 1 within the plat.
 - ii. 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."
 - iii. All structures shall be provided with fire suppression sprinklers to the satisfaction of the Fire Marshall's Office.
 - iv. The lots in this subdivision do not qualify as duplex lots.
- E. Prior to recording of the final plat:
- i. The developer shall pay the County \$771.00 per dwelling unit as mitigation for parks or recreation impacts in accordance with Title 26A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of building permits for the lots. 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. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area E in the amount of \$20,360.60 [SCC 26B.55.020]. Additional credit shall be given for Lot 2 if the applicant can demonstrate legal lot status for two underlying lots on the subject property approved by PDS.
 - iii. The cul-de-sac, at the current terminus of 113th Dr SE, shall be reconstructed as a through road to the satisfaction of the Department of Public Works (EDDS).
 - iv. The private road shall be provided with a 30 foot wide road easement (EDDS).
 - v. Pedestrian facilities shall be constructed along the south side of 113th Drive SE, to 204th Street SE, or other location identified by the school district, or other alternative provisions for safe pedestrian walkway and/or school bus stop shall be provided, to the specifications of the DPW. [RCW 58.17.110].

- 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 plattor 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.
- viii. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan, Exhibit 20.

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.

- 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 13-lot Rural Cluster Subdivision is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 6, above.

Decision issued this 1st day of December, 2005.

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 **December 12, 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 **December 15, 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.

Staff Distribution:

Department of Planning and Development Services: David Radabaugh
Department of Public Works: Mark Brown

<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>

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 December 1, 2006.

- 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)
