

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

DATE OF DECISION: July 11, 2007

PLAT/PROJECT NAME: **TROMBLEY RIDGE**

APPLICANT/
LANDOWNER: Mission Beach, LLC

FILE NO.: 06 100498 SD

TYPE OF REQUEST: 25 lot Rural Cluster Subdivision of approximately 85.7 acres

DECISION (SUMMARY): **APPROVED SUBJECT TO PRECONDITIONS AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: The property is located at the western terminus of 112th Street SE, Monroe, WA.

ACREAGE: 85.7 acres

NUMBER OF LOTS: 25

AVERAGE LOT SIZE: 19,325 square feet

MINIMUM LOT SIZE: 18,021 square feet

DENSITY: .29 du/ac (gross)
.3 du/ac (net)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential 5 (RR-5)
Within a Rural/Urban Transition Area

UTILITIES:

Water: Roosevelt Water District
Sewer: On-site septic

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 3

INTRODUCTION

The applicant filed the Master Application on July 25, 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 17, 18 and 19)

A SEPA determination of nonsignificance was made on April 25, 2007. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on June 20, 2007, the 113th 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 June 20, 2007 at 2:04 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, Ross Miller, Mission Beach, LLC, was represented by Rick McArdle of Triad Associates. Snohomish County was represented by David Radabaugh of the Department of Planning and Development Services.

The hearing concluded at 4:16 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 DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.

3. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1361.22 for each new single-family home.
4. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
5. Several wetlands are on the site, one Category 2 wetland and six Category 3. Two streams, Class 4 and 5, are also on the site.
6. 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.
7. The site is located in a Rural/Urban Transition Area (RUTA) and is subject to the provisions of SCC 30.41C.220. Open space in a RUTA is considered “interim open space” which is to be included in a separate tract to be reserved for future use at an urban development level. The open space must contain 65% or more of the gross area of the original parcels and the usual open space provisions of SCC 30.41.210(1) do not apply. The open space shall be configured to such shape and dimensions as to allow for future land division. The open space tract shall accommodate future public roadway access to the lot upon re-division and facilitate the clustering of the rural cluster lots near the periphery of the subdivision. The interim open space tract may be used for any use permitted in “restricted open space” as defined in SCC 30.41C.210 except that no permanent structures shall be allowed. A roadway is a permanent structure according to PDS and is not permitted in interim open space.
8. 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.
9. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A 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.
10. 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 homeowners’ association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
11. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.

12. The project was vigorously opposed by residents of the area. Their principal concern was for safety of motorists and pedestrians on Butler road. Several persons suggested that access to the plat be from Trombley Road to the south, rather than from Butler Road. Butler Road is narrow and winding, they say, and pedestrians are at risk when walking on the shoulder. A three-way stop at the Butler/Trombley intersection was suggested, to ease the potential conflicts there. Others felt that adding 25 new residences would alter the character of the vicinity as well as make the road less safe.
13. Any Conclusion of Law in this decision which should be deemed a Finding of Fact 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 relationship to 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 principal objection of the residents is that additional traffic on Butler Road would make unsafe conditions worse. Their request that the project take its access from Trombley Road to the south is not possible, however. The area adjacent to Trombley Road is "interim open space" which is subject to the restrictions of SCC 30.41C.220 and no permanent structures such as a roadway can be allowed. Interim open space is reserved for eventual urban level development and the department considers a roadway inconsistent with that intent. The purpose of the code section is to insure that the site can be developed at an urban level if and when the site is included in an Urban Growth Area.
5. The risks of adding 25 new homes which will use Butler Road have been exaggerated. Residents of the project will have safe walking conditions on 112th Avenue SE to Butler Road, and Butler Road has only 300 average daily trips. Only three accidents have been reported on Butler Road in the last three years, although some others may have occurred and not been reported. Butler road scored low on the County's Inadequate Road Condition matrix.
6. Any Finding of Fact in this decision which should be deemed a Conclusion of Law 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 25-lot **RURAL CLUSTER SUBDIVISION** on 85.7 acres is hereby **APPROVED**, subject to the following **PRECONDITIONS and CONDITIONS**.

PRECONDITIONS

1. Exhibit 15 shall be revised, in a manner consistent with county code, as follows:
 - (a) The area of interim open space Tract 101 shall be increased to a minimum 65% of the gross site area in a single tract.
 - (b) A minimum 30-foot setback shall be provided from the boundary of Tract 102 to the existing stable.
 - (c) Road and drainage system improvements shall be removed from the interim open space Tract 101.
 - (d) The lot area of proposed Lots 1 and 25 shall be reduced to a maximum of 20,000 square feet.
2. Soil shall not be stockpiled in the interim open space tract.
3. Either lot status shall be demonstrated for tax parcel 280623-004-016-00, or the credit for school mitigation fees provided in Condition C.i., below, shall be reduced from seven to six existing parcels.

CONDITIONS

- A. Except as required by the preconditions, the preliminary plat received by PDS on March 28, 2007 (Exhibit 15) 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 Report and Conceptual Mitigation Plan, prepared by Shockey Brent, Inc. revised March 2007 shall be submitted for review and approval during the construction review phase of this project.
 - iv. Landscape plans shall be prepared for each of the detention ponds.
- 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 Snohomish School District No. 201 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 7 existing parcels. Lots 1 through 7 shall receive credit.”
- ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

\$1,588.62 per lot for mitigation of impacts on county roads paid to the county,

\$344.52 per lot for mitigation of impacts on State highways paid to the county,

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
- iii. The developer shall pay the County \$1,361.22 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.
- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

"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."
- v. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- vi. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
- vii. “The final plat map shall show a road reservation area connecting the end of the plat public road system to the plat’s west boundary. This road reservation area may be included in the interim open space tract. The road reservation area shall meet the requirements of the Department of Planning and Development Services and the Department of Public Works. At such time as any development occurs within the interim open space tract, the road reservation area shall be dedicated or deeded as public road in a manner satisfactory to Snohomish County. The developer of area within the restricted open space shall construct a public road extension that shall meet the standards of Department of Planning and Development Services and the Department of Public Works. In consideration of the subdivision approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the road reservation area to a public road.
- viii. Interim open space Tract 101 shall remain in a single ownership. Removal of vegetation shall be only for a use that is in conformance with 30.41C.220(2)(b)(i) SCC, the approved plat configuration as shown on Exhibit 15, and the approved Open Space Management Plan.

Construction of permanent structures is prohibited. Tract 101 is not eligible for further subdivision until it is removed from the Rural/Urban Transition Area and located in an Urban Growth Area.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements shall have been constructed along Trombley Road and Butler Road unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. The extension of 112th Street SE, between the development property and 178th Avenue SE shall be designed and constructed in accordance with EDDS 3-040 for a public non-arterial rural subcollector road and in accordance with an approved deviation request.
- iii. Construction of an offsite walkway to the nearest bus stop location for the public school students as identified by the Snohomish School District (currently the intersection of 178th Avenue/112th Street SE and Butler Road) must have been completed along a legal and the most direct route in any location where none exist. The road between 178th Avenue SE and Butler Road must have a minimum pavement width of 20 feet for vehicle travel lanes.
- iv. 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 19).
- v. 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.
- vi. The final mitigation plan (wetland creation and additional buffer) shall be completely implemented.
- vii. A Subdivision Binder shall be recorded pursuant to Snohomish County code 30.41C.220(7).
- viii. All necessary landscaping in the sight-obscuring buffer shall be installed.

- E. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit 8) 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.

Decision issued this 11th day of July, 2007.

Gordon Crandall, Hearing Examiner Pro Tem

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, 2nd 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 23, 2007**. 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **July 25, 2007** 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.

Staff Distribution:

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 July 11, 2008.

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)
