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**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 )  
**JAMES & LINDA EGGE** ) **FILE NO. 06 101726 SD**  
 )  
24 lot Rural Cluster Subdivision (RCS) on 81 acres )

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DATE OF DECISION: September 27, 2007

PROJECT NAME: *Overlook Hills*

DECISION (SUMMARY): The application for a 24-lot subdivision is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on Pilchuck Tree Farm Road, Lake Stevens, Washington.

ACREAGE: 81 acres

NUMBER OF LOTS: 24

AVERAGE LOT SIZE: 36,046 square feet

MINIMUM LOT SIZE: 32,558 square feet

DENSITY: .30 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/ 5 ac)

**UTILITIES:**

Water: Snohomish County PUD No. 1  
Sewer: Individual septic

**SCHOOL DISTRICT:** Granite Falls No. 332

**FIRE DISTRICT:** No. 17

**INTRODUCTION**

The applicant filed the Master Application on July 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 21, 22 and 23)

A SEPA determination was made on June 14, 2007. (Exhibit 20) No appeal was filed.

The Examiner held an open record, public hearing on July 31, 2007, the 87<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 July 31, 2007 at 10:23 a.m. and concluded at 12:18 p.m.

1. Two separate subdivision applications were consolidated for hearing: the subject 24-lot Overlook Hills and the 26-lot Ridge at Pilchuck Highlands (06-101724). The two proposed developments are presented by the same personnel of Peak Engineering, are separated only by Pilchuck Tree Farm Road, are concurrent in time, have common drainage, will both have access to and impact upon Pilchuck Tree Farm Road, are in the gated community of Pilchuck Highlands and may have common ownership in part. The Examiner announced that he had read the respective PDS staff reports, reviewed the files and viewed the area and therefore was generally apprised of the particular requests involved.
2. The applicants, James M. and Linda F. Egge, were represented by Debbie Rothfus and Scott Stewart of Peak Engineering. Snohomish County was represented by Mark Brown, Ed Caine and Ann Goetz of the Department of Planning and Development Services.
3. No citizen submitted pre-hearing documents expressing concern or opposition. However, three vicinity residents or owners appeared and testified at the hearing: Alan Cain, Ed Phelps and Mark Salser. Testimony was also given by Grady Helseth, the developer of Pilchuck Highlands Divisions I and II. Contested issues focused on the private road standards to be applied to the frontages of the two subject subdivisions.

4. As of the hearing date of July 31, 2007, 87 days of the 120-day decision-making period had elapsed. At the hearing, the applicants' representative asked if the Hearing Examiner could write a decision allowing flexibility for the Department of Public Works to set road shoulder standards by deviation at the construction phase. The Examiner refused that request and chose to follow the procedure described in a predecessor Hearing Examiner's decision issued August 10, 2004 in G. H. Forest Resources, LLC (03-108813). In that earlier matter, the applicant (also an applicant herein) had requested that the record be left open indefinitely for processing of a formal deviation. The open record public hearing had been held on July 7, 2004 on day 90 of the 120-day decision-making period. The deviation was granted on July 22 and, based thereon, a revised staff recommendation was issued on July 27, to which the applicant responded on August 4, 2004. The Examiner's decision was issued on August 10, 2004: four days beyond the 120-day decision-making period.
5. In the subject applications, no deviation request had been submitted pre-hearing. At the hearing on July 31, 2007, with concurrence by the applicant, the undersigned Examiner held the record open for up to 45 days for the County and the applicant to process any request for a formal deviation from road Engineering and Design Development Standards (EDDS) and drainage requirements. Approximately one week later on August 6, 2007, the applicant applied for the road deviation and the deviation was approved on that same date. Based thereon, ten days later on August 17, 2007 the applicant signed proposed amendments to conditions as to both applications. Those were subsequently signed by the Department of Planning & Development Services but not delivered to the Office of the Hearing Examiner until August 28. (Exhibit 36) No copy of the written deviation was submitted to the Hearing Examiner at that time. The Examiner's staff telephonically requested a copy of the deviation. A deviation approval letter dated August 28, 2007 was submitted to the Examiner approximately two weeks later on September 18, 2007 (Exhibit 37). On that date, the record closed. Consequently, the Examiner's decision would be due 15 days thereafter on October 3, 2007: 149 days into the 120-day decision-making period.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW 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 applicants, James and Linda Egge, filed an application for a 24-lot rural cluster subdivision on 81 acres zoned R-5. The subject site is located on Pilchuck Tree Farm Road (a private road) near the northern terminus of that road approximately 2.5 miles north of that Road's intersection with Newberg Road. The northernmost 1.7 miles of Pilchuck Tree Farm Road are gravel. Pilchuck Tree Farm Road where the proposed development fronts that road is a rural subcollector road with a 30 miles-per-hour design speed specified to have two 10-foot paved travel lanes, a seven-foot paved shoulder on one side and a three-foot paved shoulder on the other side. (See EDDS 3-090, and its note 6.) The result is 30 feet of asphalt.

3. The applicant's representative, Scott Stewart of Peak Engineering, testifies that the staff recommendations to the Hearing Examiner require an additional four feet of paving for a total of 34 feet by requiring a seven-foot paved shoulder on each side of Pilchuck Tree Farm Road as a result of applying EDDS 3-090 to the subject paved proposal and also to the proposed 26-lot Ridge at Pilchuck Highlands (06-101724). Mr. Stewart testifies that the additional four feet were a "surprise" unexpected until the staff recommendation was published approximately two weeks prior to the hearing of July 31, 2007. Mr. Stewart states: "*That is not acceptable to us.*" He points out that the road standard for the existing as-built portion of Pilchuck Tree Farm Road which begins at the entrance gate is two 10-foot traveled lanes with a four-foot paved shoulder walkway on one side only. Thus, he states, the staff now recommends to the Hearing Examiner 10 more feet of pavement, and he adds: "*We are not comfortable with that.*"
4. Mr. Stewart points out that the Department of Public Works (DPW) has indicated that it might possibly accept a five-foot walkway on each side of the two 10-foot lanes, which would yield the 30-foot paved width sought by the applicant. However, Mr. Stewart notes that no formal agreement had been reached pre-hearing and, thus, it is also unresolved whether one side of the shoulder might be allowed to be gravel, as desired by local equestrians and whether students might safely have a walkway only on one side of the road. He notes that the shoulder walkway issue will be determined in consultation between the School District and the DPW dependent, in part, on where the school bus stops are to be.
5. Because of the unknowns asserted by Mr. Stewart (above), he testifies:

*"But the bottom line is that we have seen in the past, and we don't want to see it happen here today, where a condition is written in to the Hearing Examiner where it spells out too much detail exactly what's going to be done and we don't agree to that."*

He continues by suggesting that the Examiner allow him to go through the formal deviation request process without the Examiner deciding the road details. That request is substantially similar to the request of his co-worker, Debbie Rothfus, also of Peak Engineering, earlier in the hearing. Ms. Rothfus had asked the Examiner to allow DPW to deal with any deviation request concerning road standards at the construction plan phase. She said her fear was that the Examiner's decision of road standards at this point could lock in requirements that neither party wants.

6. In response to Ms. Rothfus, Ed Caine of the Department of Planning & Development Services (PDS) testified that the contested issue is solely whether the road shoulder should be five feet or seven feet in width and whether the shoulder on one or both sides should be paved or gravel. He notes that there is no contest as to the requirement that there be two paved, traveled lanes and that they be ten feet each in width. He notes that there is no contested issue about curbs, gutters or sidewalks.
7. The Examiner asked why the staff recommendation in this instant application is not for the same road standard as was required for the existing portion of Pilchuck Tree Farm Road. Mr. Cain responded that the existing portion is substandard and was approved by a deviation. That matter was Pilchuck Highlands (03-108813) approved by Examiner Donahue's decision issued on August 10, 2004. That document points out (p. 2) that a July 6, 2004 hearing record had been left open indefinitely for further evidence on the applicant's request for a deviation. Subsequently, the requested deviation had been approved by DPS on July 22, 2004 and a revised recommendation to Examiner Donahue had been issued on July 27, 2004. After having received the applicant's response to the amended recommendation on August 4, 2004, the Examiner had issued the final decision on August 10, 2004.

8. It is important to note as a finding of fact that Examiner Donahue had thus refused to issue a final decision until a requested deviation to road standards had been decided upon and, based thereon, an amended staff recommendation had been submitted to Examiner Donahue. The undersigned Examiner followed substantially the same process herein, as described under “Public Hearing” above.
9. Ann Goetz of PDS testified that she was the reviewer for the County of Pilchuck Highlands in 2003 and that an issue then had been the language of the EDDS which seems to provide that any road carrying 1,000 or more average daily trips must be a public road. However, Ms. Goetz testifies that the County did not know the subgrade conditions for Pilchuck Tree Farm Road and so did not want to have to maintain it as a public road.
10. Grady Helseth, an applicant herein and the developer of Pilchuck Highlands’ first two divisions, testified herein that his group had wanted a gated community and a private road. He feels other such communities in this County are working out well. Vicinity resident Alan Cain owns 20 acres zoned R-5 and testified that his home is the first house beyond where the existing pavement ends. He points out that a six-lot subdivision is approved (on only 20 acres zoned R-5, as a rural cluster) near his home and the two subdivisions herein add 50 more for a total of 56 more homes. The Examiner notes that at 9.57 average daily trips each, those 56 homes generate 536 daily trips. The earlier divisions add more trips, so the Pilchuck Tree Farm Road can be expected to now or soon carry 1,000 or more trips per day. As witness Alan Cain puts it, the bonus density of the rural cluster subdivisions will cause this road to be carrying more traffic than intended. He indicates that approval of the proposed road shoulders will result in two more miles of road not being built to standards. He asks: “*So who is the voice of the people?*” Vicinity resident Ed Phelps asks:

*“If school buses go all the way in on a 24-foot road, where will the kids be walking?...There was [sic] only a few houses at the start of the road when you got the deviation for the narrow road, now we’re talking hundreds of houses back in there. So I think the design standards should be upheld.”*
11. Because of the number of vehicular trips now and soon to be generated on Pilchuck Tree Farm Road, it is important to note that SCC 30.66B.420(3) provides that that road must be brought into compliance with the EDDS when the director of DPW determines it necessary to provide for safety and the operational efficiency of the road. For that reason, the former Hearing Examiner required by a condition upon approval in the decision issued August 10, 2004 (03-108813) that owners of the lots in that subdivision agree to take actions required to convert the road to a public road. That condition is added herein by the Examiner.
12. Vicinity resident Alan Cain expresses concern about the road base. He asserts that areas of the first section of road are already collapsing. He testifies that the road has been repaired once and that it has collapsed again. He argues that he and other homeowners are liable because the County will not maintain the road.
13. Witness Mark Salser testifies that the staff recommendation to the Hearing Examiner is silent as to how and where school buses will be available for student riders. He believes the busses may only pick up students at the gate. (See Exhibit 28, School District.) If so, he points out that residents of the two subject subdivisions will have to drive their children two miles to and from the bus stop. The Examiner notes that would add significant traffic to the road on which children who live closer to the gate may be walking both ways each school day rather than being driven. The School District states (Exhibit 28) that there should be no parking allowed if only a 10-foot traveled lane is provided. Enforcement of a no-parking rule on a private road is a challenge.

14. In the presence of the three citizen witnesses identified above, the Examiner granted the DPW and the applicants up to 45 days to agree upon the road shoulder design for Pilchuck Tree Farm Road, the internal plat road, and any drainage issues. Ed Caine of PDS pointed out that in that negotiation and formal deviation request process, the existing road's as-built standards would be considered the absolute minimum standard for the improvements to be required of the two subject development applications.
15. As described under "Public Hearing" above, the applicant and the County completed a formal deviation process for which the Examiner had held the record open. The agreed language provides that Pilchuck Tree Farm Road shall be built with 27 feet of asphalt consisting in two 20-foot travel lanes, one seven-foot wide paved shoulder walkway delineated with a four-inch white stripe and one three-foot wide gravel shoulder. (Exhibit 36)
16. In the deviation approval letter (Exhibit 37), the County notes that the eliminated seven-foot paved shoulder walkway on both sides of the 20-foot paved road:

*"...had been required in order to provide safe walking conditions for children walking to the bus stop from the homes in the proposed development.*

*"The request was approved based on the information you provided that the development is near the current end of the road and there is not likely to be additional trips traveling through that section of Pilchuck Tree Farm Road, so the proposed improvements will be adequate for the situation. In addition, there is interest from residents in the area for a gravel shoulder, which is more conducive to equestrian traffic."*
17. The Examiner finds no evidence in this record to support a finding that any citizen of the vicinity expressed the desire that students whose homes are on the horse walking path side of the road should have to cross the road to walk to and from the school bus stop. However, in this instance, in deference to the long-term experience and expertise of Ken Crossman, P.E., who wrote the quoted language immediately above, the Examiner accepts the rationale for the deviation.
18. As to the internal plat roadway (Private Road Tract 993) and any drainage-related deviation, the Examiner concurs with the jointly-proposed language as now embodied in the conditions upon approval listed below herein.
19. The DPW reviewed the request with regard to compliance with 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.
20. The proposal is within Park District No. 303 (Robe Canyon), which requires no payment for park mitigation fees.
21. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.

22. The site is undeveloped and forested. There is a Category 3 wetland that traverses the western portion of the site. A second Category 3 wetland is in the northeast corner of the site. There are steep slopes in the northwestern corner of the site. All onsite critical areas and critical slopes are designated as NGPA/E and located within Tract 999. The applicant submitted a Critical Area Study and IDD Wetland Mitigation Plan prepared by Wetland Resources, Inc. dated July 21, 2006. The proposed buffer averaging per innovative development as proposed is acceptable and consistent with county code. No additional mitigation is required based upon the proposed impacts.
23. 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. The subject Overlook Hills subdivision contains the drainage infrastructure to serve itself and the adjacent, concurrently processed Ridge at Pilchuck Highlands.
24. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water will be supplied by PUD No. 1. Each lot will be served by an individual septic system and drainfield.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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 relationship to the request except where specifically stated otherwise herein.
2. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, and (3) the permitted density.
3. The Engineering Design and Development Standards provide at Section 1.05:

*“Known deviation requests that affect lot yield or scope of development must be decided prior to any public hearing or official decision on the application. This is important for public notice and participation in the decision process.”*

The quoted paragraph then separately discusses deviations that affect only engineering design. Consistent with that distinction made by the EDDS, this Examiner announced during the hearing that a deviation that determines the basic layout of the roads and the basic requirements for public health, safety and welfare must be presented for review at the preliminary plat stage.

4. RCW 58.17.110(2) provides:

*“A proposed subdivision...shall not be approved unless the...county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety and general welfare...and (b) the public use and interest will be served....”*

5. RCW 58.17.330 provides that a county legislative body may adopt a hearing examiner system for subdivisions. Snohomish County’s adoption of a hearing examiner system is codified as SCC 2.02 and 30.72. In turn, SCC 30.41A.215 provides for design standards modifications for roads and provides, inter alia, at subsection (3):

*“The hearing examiner shall consider a modification request concurrently with the preliminary subdivision to which it applies.”*

6. Obviously, a modification request cannot be considered concurrently with the preliminary plat if the modification is presented for the first time at the construction plan stage.
7. It follows that deviations approved post-hearing are limited to engineering details. If not, the public hearing process is rendered meaningless. That is, a citizen could attend a public hearing, give testimony, see that testimony considered in a written decision, then discover that the as-built development is contrary to the decision rendered. That degrades faith in government. A private negotiation altering a publicly reached subdivision approval is akin to the granting of a zoning conditional use permit by post-hearing settlement, an agreement recently held invalid and unenforceable by the United States Court of Appeals for the Ninth Circuit in *The League of Residential Neighborhood Advocates v. City of Los Angeles*, CV-03-04890-CAS (Filed August 21, 2007). The court holds (p. 10192) that contractual exemptions from zoning requirements are illegal.



8. 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 24-lot rural cluster subdivision on 81 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

**CONDITIONS:**

- A. The preliminary plat received by PDS on May 24, 2007 (Exhibit 13A-F) 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 Granite Falls School District No. 332 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 2 existing parcels. Lots 1 and 2 shall receive credit."
  - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for a single-family residence:  
  
\$3,799.29 per lot for mitigation of impacts on county roads paid to the county,  
\$631.25 per lot for mitigation of impacts on city roads paid to the City of Granite Falls.  
  
These payments are due prior to or at the time of 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. A sight distance easement shall be shown on the recorded plat along the line of sight for minimum stopping sight distance from the driveways of lots 22 and 23 on the north side of Pilchuck Tree Farm Road.

- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

- v. The developer shall pay the County \$0.00 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.
- vi. The forestry use disclosure statement contained in SCC 30.41C.200 shall be recorded on the face of the plat.
- vii. In consideration of the subdivision access approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the internal plat road and also Pilchuck Tree Farm Road, to a public road at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to said road. The owners of the short subdivision lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road.

D. Prior to recording of the final plat:

- i. Pilchuck Tree Farm Road shall have been improved as follows: 27' of asphalt (1-7' wide paved shoulder walkway delineated with a 4-inch white stripe (as specified by EDDS plat 3-090, note 6 and 2-10' travel lanes) and 1-3' wide gravel shoulder, per deviation request approved on August 6, 2007.
- ii. Pilchuck Tree Farm Road between the development and Newberg Road (offsite) shall have been improved to a minimum 20-foot pavement width; 1-foot minimum gravel shoulder on each side.
- iii. Hills Loop Road (Private Road Tract 993) shall have been improved as follows: 27' of asphalt (1-7' wide paved shoulder walkway delineated with a 4-inch white stripe (as specified by EDDS plat 3-090, note 6) and 2-10' travel lanes) and 1-3' wide gravel shoulder.
- iv. Brush within the clear sight triangle right-of-way area obscuring stopping sight distance at the 90 degree bend in Newberg Road at Pilchuck Tree Farm Road must be cleared.

- <sup>1</sup>v. ~~This project's drainage system construction shall be completed and the plat recorded before the upstream plat (The Ridge at Pilchuck Highlands; 06-101724 SD) can be recorded.~~ The shared portion of this project's drainage system shall be completed, functioning and the plat recorded or the shared downstream drainage system completed, functioning and drainage easements recorded, before the plat of The Ridge at Pilchuck Highlands (06-101724 SD) can be recorded.
- <sup>2</sup>vi. ~~This project's Homeowner's Association shall provide written consent/easement for the use of their drainage system, before the upstream plat (The Ridge at Pilchuck Highlands; 06-101724 SD) can be recorded.~~ The owners of the downstream drainage system located within this plat of Overlook Hills shall provide written consent/easement for the use of their drainage system before the upstream plat of The Ridge at Pilchuck Highlands (06-101724 SD) can be recorded.
- vii. Frontage road construction on Pilchuck Tree Farm Road shall be completed and approved for final plat before The Ridge at Pilchuck Highlands (PFN 06-101724) can be approved for final plat.
- viii. The runoff calculations for the proposed upstream project The Ridge at Pilchuck Highlands (PFN 06-101724) shall be included in the design of this project.
- ix. Clear delineation and agreement of Operations and Maintenance (O&M) responsibility and cost-sharing of the combined drainage system O&M will need to be provided by the Owners of both developments, before this plat can be recorded.
- x. 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.

- E. In conformity with applicable standards and timing requirements:
  - i. The preliminary landscape plan (Exhibit 14) 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.

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<sup>1</sup> Scrivener's error – Condition D.v. corrected as agreed upon during the 7/31/07 hearing. (10/10/07)

<sup>2</sup> Scrivener's error – Condition D.vi. corrected as agreed upon during the 7/31/07 hearing. (10/10/07)

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 12<sup>th</sup> day of September, 2007.

(A separate but substantially identical decision as to the Ridge at Pilchuck Highlands (06-101724) will be issued with deliberate speed.)

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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 **OCTOBER 8, 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, 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 **OCTOBER 11, 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.

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### **Staff Distribution:**

Department of Planning and Development Services: Ed Caine

<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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