

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: June 27, 2008

PLAT/PROJECT NAME: **HIGHLANDS RANCH NORTH**

APPLICANT/
LANDOWNER: Lifestyle Homes & Construction, Inc.

FILE NO.: 06-102833-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision

DECISION (SUMMARY): **APPROVAL WITH PRECONDITIONS AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: The property is located on the northeast side of Jim Creek Road, ¼ mile south of its intersection with 133rd Avenue NE, about five miles northeast of Arlington. The tax parcel numbers are 32-0628-001-003-00 (development parcel) and 32-0628-001-005-00 (off-site mitigation parcel)

ACREAGE: 27.27 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 56,555 square feet

MINIMUM LOT SIZE: 43,724 square feet

DENSITY: .33 du/ac (gross)

ZONING: Rural Conservation and R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-10 Resource Transition (1 du/10 ac)
Rural Residential (1 du/5 ac – Basic)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water: On-site exempt well
Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No.16

FIRE DISTRICT: FPD NO. 21

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Revised Master Application on February 28, 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 19, 20 and 21)

A SEPA determination was made on October 3, 2007. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on January 10, 2008, the 100th 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 January 10, 2008 at 10:04 a.m.

1. Examiner Ed Good 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, Lifestyle Homes and Construction, Inc. was represented by John Bissell of HBA Design Group. Snohomish County was represented by Robert Pemberton of the Department of Planning and Development Services.
3. The hearing concluded at 11:09 a.m.
4. By consent of the applicant dated February 29, 2008, Examiner Barbara Dykes listened to the record, reviewed the file and made a decision in this case.
5. On March 10, 2008, Examiner Barbara Dykes remanded the matter to PDS for further information on two issues: the forest practices moratorium and potable water supply.
6. The open record hearing was re-opened on June 4, 2008, and the applicant focused its presentation specifically on the forest practices and potable water supply issues.

NOTE: For a complete record, an electronic recording of the hearings in this case 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

A. Background Information

2. Applicant's Request: Highlands Ranch North is a 9-lot rural cluster subdivision of 27 acres. The proposed single-family residential lots range in size from 43,724 square feet to 85,336 square feet with 12.9 acres of open space. This proposal is adjacent to Highlands Ranch South, sharing the same internal road system which connects to Jim Creek Road. On-site wells are proposed for water supply and on-site sewage disposal systems are proposed.
3. Site Description: The site was historically used as a gravel pit. A wetland exists in the northwest corner of the site; the site slopes steeply up from this wetland to a plateau. The eastern portion mostly consists of steep slopes and rock cliffs. The center of the site, where most of the lots are proposed, lies on a terrace incised by deep ravines. The topography of the site varies drastically; the western frontage of the site is generally flat, while the eastern portion consists mostly of steep slopes. The site extends easterly from Jim Creek Road, through a canyon to the eastern portion of the site. To the north of the canyon sits a large plateau. A large cylindrical depression is located at the eastern end of the southern canyon wall. This 160-foot diameter pit was previously utilized for gravel excavation. A ravine is located north of this plateau, on the other side of which sits another smaller plateau. The site begins to ascend east of these plateaus. A Type 4 stream is located within the ravine between Jim Creek Road and the southern portion of the plateau. Portions of the site were logged within the past five years.
4. Adjacent Zoning/Uses: This area is a rural, residential agricultural area with very low-intensity development predominating. The zoning of the eastern part of the site is Rural Conservation and Rural-5 in the western portion. The zoning offsite to the east is Forestry and the zoning to the west is Rural-5. North and south of the site, the zoning is Rural Conservation. An easterly portion of the site is encumbered by a Mineral Resources Lands Overlay.
5. Issues of Concern:

One letter was received from neighbors (Exhibit 25). This letter notes the proposal's topography and states that there is not enough flat land to support the number of house sites. The letter also notes that the parcel has been recently logged and that there should be a six-year moratorium placed on the property. It also notes concern regarding potable water supply and adequate sewage disposal.

PDS responded to the letter in its staff report by stating:

This subdivision is using the rural subdivision technique which allows smaller lots as part of leaving open space so the lots are not required to meet the minimum lot size of the zone. The applicant has submitted information allowing the county to lift the moratorium imposed due to logging the site. Regarding water supply, the applicant has submitted information demonstrating a supply of potable water is available in the area.

B. Compliance with Codes and Policies.

- 6. Parks Mitigation. The proposal is within the River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
- 7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

A. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 9 new single family residential lots (SFRs), which is 9.57/SFR. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 86.13 new ADT and has a road system capacity impact fee of \$22,738.32 (or \$2,526.48/SFR), based on \$264/ADT. This impact fee must be paid prior to building permit issuance.

Trips	Calculations	
ADT	$(9 \text{ New SFR}) \times (9.57 \text{ ADT/SFR}) =$	86.13
AM PHT	$(9 \text{ New SFR}) \times (0.75 \text{ AM PHT/SFR}) =$	6.00
PM PHT	$(9 \text{ New SFR}) \times (1.01 \text{ PM PHT/SFR}) =$	9.09

B. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a preliminary determination that the development is concurrent as of April 11, 2006. A record of developer obligations documenting the concurrency determination will be prepared by DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from April 11, 2006.

The development has been deemed concurrent on the following basis:

Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130(4). The subject development is located in TSA A, which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 6.00 a.m. peak-hour trips and 9.09 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210]

The subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along Jim Creek Road. Rural standard frontage improvements are required consisting of 18 feet of pavement (11ft. lane & 7 ft. shoulder = 18 ft.) from centerline of right-of-way. Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

E. Access and Circulation [SCC 30.66B.420]

Access to the plat is provided from Jim Creek Road. The plat access is a single public road with two private roads with turnaround cul-de-sacs as spurs off the main road. One of the private roads provides as a stub to the adjacent parcel to the south where an additional 10 lots will access the private road.

Per UDC 30.41A.210 (3) (a) private roads may be permitted as part of a rural cluster subdivision where specifically approved by the County engineer. DPW has determined that the private roads are allowed in this development.

The maximum road length of a road ending in a permanent road end shall be 1320 feet in rural areas. The proposed main access public road is approximately 1410 feet, which doesn't meet EDDS. A deviation was conditionally approved by the County Engineer on October 11, 2006 for a rural road longer than 1320 feet with one access. The road length is allowed only if approved by the County Fire Marshall. An approval was given on December 21, 2006.

The private road to the south requires a walkway for school children to the school bus stop, which is located on Jim Creek Road. A 7 foot shoulder on one side is needed for a walkway for school children and is shown on the plan. A 30 foot pavement section is shown on the plan and cross-section view for the private road proposed to the south located in Private Road Tract 995. The horizontal curves for the private roads to the north and south have been revised to meet EDDS requirements consisting of R=90 feet for a design speed of 20 mph and R=275 feet for 30 mph.

Dense vegetation consisting of trees and shrubs were observed along the subject property's frontage. The existing vegetation appears to obstruct the sight distance within the clear sight triangles at the proposed access to Jim Creek Road. Clear sight triangles shall be provided. See EDDS 3-08 E. and Standard Plan 3-140. It shall be the applicant's responsibility to accomplish any activities necessary to provide sight distance, such as trimming or removal of vegetation or re-grading of earth. The applicant shall address how the clear sight triangles will be provided. Adequately show the clear sight triangles and indicate on the construction plans how it will be achieved. The posted speed is 45 mph and 500 feet of intersection sight distance is required. The plan shows 350 feet of sight distance, which was used for the sight triangles. The sight triangles shall be revised for review at construction plan review.

F. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

Jim Creek Road is designated as a Collector Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 5 feet of additional right-of-way is required.

Five feet of additional right-of-way to be dedicated is shown on the plan.

The plan was revised to show a uniform 48 feet of right-of-way for the entire length of the proposed public main access road.

G. State Highway Impacts [SCC 30.66B.710]

This development is subject to the Washington State Department of Transportation (WSDOT)/County Inter-local Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at

$$86.13 \text{ ADT} \times \$36.00/\text{ADT} = \$3,100.68$$

The applicant has chosen option d) and has submitted a mitigation offer for 3,445.52 received by PDS on July 21, 2006. The offer should be for \$3,100.68 based on mitigation for 9 lots instead of 10. A new offer is not required from the applicant. Comments from WSDOT accepting the applicant's offer was received.

H. Other Streets and Roads [SCC 30.66B.720]

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency. An interlocal agreement has been executed between the County and the City of Arlington for traffic mitigation for impacts on the City's road system. A mitigation offer for traffic impact to the City of Arlington was received for \$7,548.34 and has been accepted by the City.

There are no other jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

All new developments in the urban area shall provide transportation demand management measures. The proposed development is located outside the urban growth area and therefore is not subject to the mitigation measures of this code.

8. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments from the Arlington School District were received by PDS dated March 15, 2006. The school district indicated that students of all grade levels will be provided with bus service to school, and that the bus stop will be located on Jim Creek Road at the proposed entrance to the subdivision.

The school district has also requested that a safe waiting area be provided at the bus stop that is off of Jim Creek Road. An 8 ft. x 10ft. ACP waiting area will be provided and shown the plan.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Arlington School District No. 16, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot.

10. Drainage and grading.

Drainage. All roads will have thickened edges to convey stormwater runoff and will be graded to direct runoff to a series of catch basins and storm drain pipes to a water quality pond and infiltration pond. Roof runoff on each lot will be conveyed via yard drains to individual infiltration trenches on each lot. Driveways and frontage improvements will disperse runoff as sheet flow into adjacent sandy soil and vegetation for infiltration. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 7,000 cubic yards of cut and 8,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality will be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations (Chapter 30.62 SCC) The staff report provides the following explanation of site conditions and critical areas regulations compliance:

The western frontage of the site is generally flat, while the eastern portion of the site consists mostly of steep slopes and rock cliffs. The center of the site, where most of the lots are proposed, lies on a terrace incised by deep ravines. The site was historically used as a gravel pit. Topography consists of a large eastern plateau fingering out to the northwest and southwest with a steep west aspect slope. A Type 5 stream is located in the ravine between the north land south fingers of the plateau. A large Category 3 wetland covers the northern portion of the property extending west along the Type 5 stream. Portions of the site have been logged within the past five years under a Class 3 forest practices permit including the buffer areas of the on-site stream. Vegetation within the cleared portions of the site is beginning to revegetate naturally. The stream area and adjacent steep slopes are designated Native Growth Protection Areas and 341,809 square feet of enhanced buffer and 63,470 square feet of additional Native Growth Protection Area/Easement will be provided. Additionally, 524,695 square feet of off-site buffer will be provided. PDS has reviewed the Critical Areas Study (Exhibit 10) and determined that the project complies with the critical areas regulations.

In examining the file, however, the Examiner could find no indication of any critical area site plan for parcel number #32-0628-001-005-00, which is the identified parcel for off-site mitigation. The applicant applied for a single family permit as a means of lifting the forest practices moratorium. The As-Built for the single family permit which was applied for identifies the parcel but does not provide a recordable critical areas site plan for the parcel. The applicant must provide a recorded critical areas site plan for Parcel #32-0628-001-005-00 as a pre-condition of this approval.

12. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. This application was complete on February 28, 2006 after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, and as revised through the completeness date of the application.

The eastern portion of the subject property is designated Rural Residential-10 Resource Transition (1 DU/10 Acres) with a Mineral Resource Overlay and Rural Residential (1 DU/5ac Basic) and is not located within an Urban Growth Area (UGA). No subdivision development is allowed or proposed in the Mineral Resource Overlay areas. The site is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential – 10 (Resource Transition) designation “includes lands which were included in Forestry designations on pre-GMA subarea plans but not zoned Forestry...” At pp. 92-93, the GPP states:

The implementing zone is the RRT-10 zone. Existing zones within this designation, except where located on the Tulalip Reservation, may remain, but zoning regulations shall limit the minimum lot size in new subdivisions within this designation to 10 acres with an option for using the rural cluster subdivision technique with a lot yield determined by utilizing a minimum lot area of 200,000 square feet.”

The western portion of the subject property is designated Rural Residential (RR: Base density of 1 dwelling unit per 5 acres or more acres). This designation includes lands that were designated Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9. Policy 6.B.9 states that within this designation subdivisions may exceed the base density of 1 lot per 5 acres if the rural cluster subdivision technique is used, all of its criteria and requirements for the maintenance and enhancement of the rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres. This proposal is being developed in accordance with the rural cluster subdivision requirements and the lot yield is 1 lot per 2.9 acres.

13. Utilities

A. Water

Individual wells are being proposed on each of the 9 lots in the proposed subdivision. This issue was the subject of a previous order dated March 11, 2008 (Exhibit 39) and a re-opened open record hearing held June 4, 2008 by the undersigned Examiner. Two issues were discussed at the open record hearing held June 4, 2008- the legal issue of whether *State of Washington Department of Ecology v. Campbell & Gwinn et al*, 146 Wn.2d 1, 43 P.3d 4 (2002), would allow the use of one exempt well for Highlands Ranch North and one exempt well for Highlands Ranch South, or whether under that decision they should be considered a single "development". The second issue that was raised was a submission into the record of chapter 173-505 WAC, entitled "*Stillaguamish River Basin Water Resources Inventory Area (WRIA) 5*". This chapter is better known as the Instream Flow Rule for the Stillaguamish River established by the Department of Ecology.

(1) *Campbell & Gwinn*

As to the first issue, Ed Caine of the Department of Planning and Development Services relayed to the Examiner that after consultation with the Prosecuting Attorney's office, it is the position of PDS that Highlands North should be treated as an independent "development" under *Campbell & Gwinn* and receive an exempt well; in other words, even though Highlands Ranch North and South are closely connected in that they share the same developer, the same access road, went to hearing on the same day, they are separate developments within the meaning of the decision. The Examiner will acquiesce to that decision, since it was made in consultation with the Prosecuting Attorney's office. Highlands North is entitled to an exempt well by virtue of the fact that it is a separate subdivision.

(2) *Instream Flow Rule for WRIA 5*

The second issue, the Instream Flow Rule, must also be addressed. This set of rules now provides a new set of requirements that must be met for any development wishing to use exempt wells within Water Resource Inventory Area (WRIA) 5, as the Examiner understands it (see WAC 173-505-010(2)). Exhibit 54, a letter from the Department of Ecology pertaining to the Instream Flow Rule states that it is applicable to the portion of the Stillaguamish Basin wherein Snohomish County and/or City of Arlington approve permits for buildings that rely upon a permit exempt round water well for potable water supply. There is no question that it applies to Highland Ranch North and South.

Craig Ladiser, Director of Planning and Development Services, in a letter dated November 17, 2005, assured the Department of Ecology the following: "

In partnership with Snohomish Health District, Snohomish County confirms that any legally required determinations of adequate potable water for subdivision approvals and for building permits for new dwellings will be consistent with the applicable provisions of Chapter 173-505 WAC."

Exhibit 53. Unfortunately, June 4, 2008 is the first time the Examiner has been presented with this letter or with this WAC chapter. While it does liberalize the requirement for water quite a bit, it comes with some significant restrictions on water usage.

WAC 173-505-020 sets forth the purpose of the chapter which is set instream flows for the Stillaguamish basin to protect wildlife, fish, recreation, water quality, potable water supply, stock watering, and other needs. It also sets forth the DOE's policies to guide protection, utilization, and management of the river, including closures and sets forth a program of future water allocation.

Important to the Highlands Ranch North development is the fact that under WAC 173-05-090 has allocated a total amount of water not to exceed 5 cubic feet per second (cfs) to provide adequate and safe supplies of water for year-round domestic uses. It is further defined for the North and South Fork of the Stillaguamish at 2 cfs and 1.5 cfs respectively, as indicated on Table 8 at WAC 173-05-090(1). Use is only available under the following conditions specified at WAC 173-505-090(2):

(a) The reserved water shall be for ground water uses exempt from a water right permit application. This reservation is for either single or small group domestic uses, as defined in WAC 173-505-030(5).

(b) This reservation of ground water shall not exceed 3.23 million gallons of water per day (5 cfs).

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) This reservation shall be applicable only when the appropriate city(ies) or counties submit a written acknowledgment to the department that confirms that any legally required determinations of adequate potable water for building permits and subdivision approvals will be consistent with applicable provisions of this chapter.

Once this chapter is adopted and written acknowledgment is received, the department will promptly notify those city(ies) or counties, the tribes, water well contractors and the public that the reserve is in effect in those jurisdictions where acknowledgments exist.

(e) It shall be the responsibility of an applicant for a building permit or subdivision approval proposing a water use under the reservation to comply with the conditions in (a), (c), (e), (f), (g) and (h) of this subsection and all other conditions of this chapter.

(f) A new ground water withdrawal under this reservation is not allowed in areas where a municipal water supply has been established and a connection can be provided by the municipal supplier. If an applicant for a building permit or subdivision approval cannot obtain water through a municipal supplier, the applicant must obtain a letter from a municipal supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.

(g) Outdoor water use is limited to the watering of an outdoor area not to exceed a total of 1/12th of an acre for all outdoor uses under each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

(h) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation. All other ground water users under the permit-exemption shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department.

WAC 173-505-090. This section also emphasizes that the rule provides a single, one-time amount of water. Once the reserved water is fully allocated, it is no longer available. Finally, WAC 173-505-090(6)(a) addresses amount of water usage per residence. It states:

A record of all ground water withdrawals from the reservation shall be maintained by the department. The department will account for water use under the reservation based on the best available information reflecting actual water uses contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents. **When other sources of information are not readily available, the department may account for water use at a rate of three hundred fifty gallons per day (gpd) per residence or business. This figure may be adjusted down to one hundred seventy-five gpd if the residence or business is served by an on-site septic system.**

Emphasis added. At a rate of 175 gallons per day (gpd), assuming a development is on onsite septic, a 5000 gallon per day exempt well can accommodate 28 homes. Therefore, it is clear that the nine homes in the Highland Ranch North development may be granted an exempt well pursuant to the rule. However, the approval must be conditioned in accordance with WAC 173-505-090(2)(a). Specifically,

- (a) The use is for an exempt single domestic use;
- (b) The use will use 1575 gpd, according to WAC 173-505-090((6)(a);

$$175 \text{ gpd} \times 9 = 1575 \text{ gpd}$$

- (c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any local or state requirements for conservation standards, therefore the project will be so conditioned;
- (d) A written acknowledgement of this rule from Snohomish County exists and is on file in this case (Exhibit 53). The DOE has also notified the county that the reserve is in effect pursuant to WAC 173-505-090(2)(d).

(e) Subsection (e) states that conditions (a), (c), (e), (f), (g), and (h) are the responsibility of the applicant.

(f) Groundwater withdrawals are not allowed in areas where a municipal water supply has been established. There is no evidence of a municipal water supplier in the area.

(g) Outdoor water use is limited; total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre. The plat will be conditioned to not allow outdoor watering to exceed one-half acre for the entire plat. The Examiner will also condition the plat to disallow lawns and to require native vegetation on the lots, since lawns require a great deal of watering, especially when they are first established. Watering shall be controlled by the homeowners' association.

(h) Group ground water users under the permit-exemption shall be required to install and maintain water meters or measuring devices, in accordance with the specifications provided by the Department of Ecology, and report the data to the department. The plat will be so conditioned to require that meters be installed and that the homeowners association be responsible for reporting the data to DOE as required by this condition.

B. On-Site Septic.

The applicant proposes onsite septic systems on each of the 9 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated June 11, 2007, but stating that availability of area to place on-site sewage disposal facilities is limited and that verification of area would have to be part of final plat review. (Exhibit 25)

C. Electricity.

On March 15 2006, The Snohomish County Public Utility District No. 1 has provided correspondence indicating that they can provide electricity to the proposal. (Exhibit 29)

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including rural cluster subdivision provisions, bulk regulations and other zoning code requirements.

15. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on October 3, 2007 (Exhibit 18). The DNS was not appealed.

16. Forest Practices Act Issues (Chapter 76.09 RCW)

The undersigned Examiner remanded this application for further information on the forest practices issues in this case. As indicated in Exhibits 48 and 50, an application for a Class III-30 Forest Practices Permit, and the associated six-year development moratorium on the nonforestry use of land, were recorded with the property on May 14, 1999. The permit and the associated moratorium were renewed twice—June 11, 2001 and June 11, 2003.

PDS had a practice through an administrative policy known as Policy 6300 of purporting to lift the moratorium under the state statutory scheme in place at that time under a single-family building permit application. Accordingly, to lift the moratorium, applicants applied for a single family residence they never intended to build and submitted a critical areas site mitigation plan to provide mitigation for the forest practices violation. PDS lifted the moratorium and proceeded to process this subdivision application.

This process was deeply flawed. It did not meet the state statutory requirements, nor did the administrative lift even appear to meet the requirements of the administrative policy itself. Nevertheless, since that time the statute has changed, and the question the Examiner is faced with today is whether this subdivision can go forward in the face of a moratorium that was placed on June 3, 2003 and on its face extends until June 11, 2009. Exhibit 50.

The Forest Practices Act legislation on the how the six-year moratorium may be administratively lifted was substantially changed in 2007. RCW 76.09.460 states:

If a county, city, town or regional government receives a notice of conversion to nonforestry use by the department under RCW 76.09.060, then the county, city, town, or regional governmental entity must deny all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land that is the subject of the notification. The prohibition created by this section must be enforced by the county, city, town, or regional governmental entity:

- (1) For a period of six years from the approval date of the applicable forest practices application or notification or the date that the department was made aware of the harvest activities; or
- (2) Until the following activities are completed for the land that is the subject of the notice of conversion to a nonforestry use:
 - (a) Full compliance with chapter 43.21C RCW, if applicable;
 - (b) The department has notified the county, city, town, or regional governmental entity that the landowner has resolved any outstanding final orders or decisions issued by the department; and
 - (c) A determination is made by the county, city, town, or regional governmental entity as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

Emphasis added. This process is very different from the old statutory requirement for lifting a moratorium for a subdivision, which included a public hearing. The first question for the Examiner is whether this new process applies retroactively, since this moratorium was in place before the new legislation was enacted. Because the statute is remedial in nature, and does not impair vested rights, the Examiner concludes that it should apply retroactively. See *In re F.D. Processing, Inc.*, 119 Wn.2d, 452, 462-63, 832 P.2d 1303 (1992); *Bayless v. Community College Dist. XIX*, 84 Wn.App. 309, 927 P.2d 254 (1996).

The question then becomes whether the applicant has met the statutory criteria. As stated above, the applicant has fully complied with both SEPA and with the critical areas regulations. The staff has found the mitigation plan more than adequate to address restoration of areas that were logged on the site. The only issue is whether there are any outstanding issues or orders with the Department of Natural Resources [subsection (2)(b)]. The Examiner will require as a precondition of the plat that applicant supply a letter from the DNR indicating that there are no outstanding issues or orders to be resolved within the meaning of RCW 76.09.460 in relation to the forest practices permit and that the Department has no objection to the County administratively lifting the moratorium.

17. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on November 10, 2006. The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. Finding of Fact 7 addresses how the applicant is meeting county road requirements. See SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. See 30.41A.110.
- C. Fire Code. The Staff Report (Exhibit 30) provides the following information on compliance with fire code:

The Snohomish County Marshal has commented stating that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150. The Fire Marshal notes that each lot is a minimum of one acre in size and is therefore exempt from hydrant and fire flow requirements. The Fire Marshal also notes the requirement that approved address numbers must be placed on all buildings and street signage must be provided.

The Examiner concludes that the subdivision meets the requirements of the fire code.

18. Rural Cluster Subdivision Standards—General.

The Highland Ranch North 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 October 30, 2007 (Exhibit 33), and in an open space management plan (Exhibit 8) that is to be implemented by a homeowner's association. The

RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 47.2% (9.9 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 and reducing the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems. Finally, the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

19. Rural Cluster Subdivision Code Design Standards (SCC 30.41C.200)

The rural cluster subdivision code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

A. SCC 30.41A.200(1)-- Critical Areas Compliance.

(1) When environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to chapters 30.62 and/or other applicable county ordinances or policies, the areas shall be designated as critical area protection areas;

Applicant's development concept protects critical areas on site, as explained in Finding of Fact 11 under the heading "Critical Areas Regulations". While there are unavoidable impacts due to road construction on the site, the applicant is using innovative development design to enhance some low functioning wetland areas into better functioning areas, and maintaining other environmentally sensitive portions of the site. See Exhibit 11.

B. SCC 30.41C.200(2)-- Sight Obscuring Buffers.

(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210(1);

This development provides for a 35 foot sight –obscuring buffer around the perimeter of the clusters on the edges of the property of native vegetation, in accordance with the provisions of Table 30.41C.210(1). See Exhibit 17A. In many places the buffer is much larger due to the fact that the edge of the property contains an NGPA.

C. SCC 30.41C.200(3)—Internal Roads.

(3) All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;

A private road with several cul-de-sac bulbs provides access to the cluster development. The road has one access point to Jim Creek Road.

D. SCC 30.41C.200(4)—Utilities.

(4) Electric, telephone, and other utility lines shall be designed, located, and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;

Applicant will be placing all utilities underground. Exhibit 33.

E. SCC 30.41C.200(5)—Unbuildable land.

(5) All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. This requirement has been met by applicant. Exhibit 30.

F. SCC 30.41C.200(6)—Buffers for Resource Land.

(6) When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;

A 100 foot buffer is required for an adjacent mineral resource use in an open space area. Applicant has complied with the requirement because critical area buffers are adjacent to the mineral resource area and exceed the 100 foot requirement.

G. SCC 30.41C.200(7)—Disclosure Statement Required.

(7) When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure

statement shall apply to the real property that is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.

The applicant states in Exhibit 33 that

The MRO is not currently proposed for mineral resource extraction. However, it the MRO does allow this as a potential in the future. Therefore, the applicant does not protest the requirement to place the required disclosure statement on the final plat plans.

Accordingly, the Examiner will place the disclosure statement, as indicated in (H) below, in a condition.

H. SCC 30.41C.200(8)—Mineral Resource Land Disclosure Statement.

The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:

...

*(8) Notice for mineral uses within required or optional open space:
Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.*

The above notice will be placed in a condition on the final plat.

I. SCC 30.41C.200(9)—Physical Separation of Clusters.

(9) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;

According to the applicant, no open space tracts exist on properties neighboring Highland Ranch North and South. The applicant indicates that where topography has allowed, the open space tracts are adjacent to one another.

J. SCC 30.41C.200(10)—Open Space Management Plan.¹

(10) A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all restricted open space and other open space areas which require continuing maintenance or management;

¹ Criteria 6-9 are not applicable to this application.
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The applicant prepared an Open Space Management Plan which has been accepted by PDS. See Exhibit 8. These areas will be used as passive recreation areas, NGPA, and critical areas. The management plan provides guidance for maintenance and use of the open space in a manner that will maximize the homeowners' enjoyment of the site. Management objectives include:

- Minimize negative effects of soil disturbance
- Minimize the potential impacts of development on water quality
- Minimize stormwater runoff impacts of development
- Preserve and enhance vegetation and wildlife habitat
- Maintain open space and environmentally sensitive areas for conservation purposes
- Preserve the rural character of the site
- Provide passive recreational opportunities for the community

The Open Space Management Plan specifies that the property shall not be used for commercial forestry production.

K. SCC 30.41C.200 (11)—Physical Separation of Clusters.

(11) Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));

This requirement is not applicable, since this is a nine-lot development.

L. SCC 30.41C.200 (12)—Lots abut open space or buffer.

(12) At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;

This requirement has been met by the proposed preliminary subdivision. See Exhibit 17a.

M. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character.

(13) The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

The subject site has several very steep sections and a few sections that are buildable. By designing the lots and roadways in conformance with the natural topography, the applicant has been able to reduce the amount of grading and contour the development with the land.

N. SCC 30.41C.200 (14)—Sanitary Sewers.

(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;

The applicant proposes onsite septic systems for this development. See Exhibit 30.

O. SCC 30.41C.200 (16)—Fire District.²

(15) Rural cluster subdivisions or short subdivisions shall be located in a rural fire district;

Highland Ranch North is located in Fire District No. 21. Exhibit 33.

P. SCC 30.41.C.200 (17)—Rural Concurrency Standards.

(16) Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.

PDS Traffic has determined that the application meets concurrency. See Finding 7B, *supra*.

20. Rural Cluster Subdivision Lot Yield Calculations.

The application complies with the provisions of SCC 30.41C.230 and SCC 30.41C.240 based on the following analysis:

776,088 square feet of the site is designated Rural Residential -10 Resource Transition and is zoned Rural Conservation

Basic lot yield: 776,088 square feet/200,000 square feet = 3.88 lots

Bonus residential density (SCC 30.41C.240(1)) = 15%

Additional bonus density (SCC 30.41C.240(2)) = 4%

3.88 x 19% = 4.61 lots

Lot yield = 4.61 lots

412,878 square feet of the site is designated Rural Residential – Basic and is zoned R-5

Basic lot yield: 412,878 square feet/100,000 square feet in = 4.13 lots

T Bonus residential density = N/A

Additional bonus density = N/A

Lot yield = 4.13 lots

Total lots allowed: 8.74

Total lots proposed: 9 lots

See Exhibit 17C.

² Criteria 15 is not applicable.
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21. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the 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.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC, Chapter 30.63C SCC, and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Sewage disposal will be provided by individual wastewater septic systems. Potable water will be provided through individual wells.

22. Any Finding of Fact in this Order, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to chapter 30.72 SCC and chapter 2.02 SCC.
2. The Examiner must review the Highland Ranch North application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

the proposed subdivision 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

RCW 58.17.110.

3. Given the information provided in the record and the findings of fact made above, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.
4. Any Conclusion in this Order, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary subdivision approval is hereby **GRANTED** subject to the following preconditions and conditions:

PRECONDITIONS:

- A. The applicant will provide a recorded critical areas site plan for Parcel #32-0628-001-005-00.
- B. The applicant will supply a letter from the State Department of Natural Resources to the Examiner indicating that there are no outstanding issues or orders to be resolved with respect to FPA #2802709 and that the Department has no objection to Snohomish County administratively lifting the six-year moratorium.

CONDITIONS:

- A. The rural cluster subdivision/preliminary plat received by PDS on May 7, 2007 (Exhibit 17A-F) shall be the approved rural cluster subdivision and 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 and this decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the *Critical Areas Study and Wetland Mitigation Plan* prepared by Wetland Resources, Inc. dated Revision 3: May 3, 2007 (Exhibit 11) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:**
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,526 per lot for mitigation of impacts on county roads paid to the County,
\$838.70 per lot for mitigation of impacts on the City of Arlington streets paid to the City.
\$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 and the lots therein. Once a building permit has been issued for a lot, all mitigation payments for that lot shall be deemed paid.

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

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

- iv. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- v. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- vi. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
- vii. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- viii. Well protection zones are shown in the Snohomish Health District records for lots 1 through 9 of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.

- ix. All utilities shall be underground.
- x. Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any local or state requirements for conservation standards;
- xi. Outdoor water use is limited; total outdoor watering for all nine residences under the water permit exemption (RCW 90.44.050) shall not exceed one-half acre as required by state law (WAC 173-505-090(g)). Only native vegetation and low maintenance landscaping requiring little or no water are permitted on lots; no grass lawns are permitted. Watering limits shall be enforced by the homeowners association.
- xii. Water meters or measuring devices shall be installed on all homes prior to occupancy. The homeowner's association will be responsible for reporting the data to the Department of Ecology Water Resources Program, NW Regional Office, c/o Metering Program, 3190 160th Avenue SE, Bellevue, WA 98008-5452.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements on Jim Creek Road shall have been constructed unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. A waiting area to the specification of DPW shall be provided at the bus stop that is off of Jim Creek Road.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The 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 wetland mitigation plan shall be completely implemented.
- v. The proposed Landscape Plan (Exhibit 17D) shall be completely implemented.
- vi. 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 8).

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 27th day of June, 2008.

Barbara Dykes, 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, 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 10, 2008**. 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 11, 2008** 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:

Department of Planning and Development Services: Ed Caine

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 JUNE 27, 2009.

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)
