

**AMENDED DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER REMOVING
PRECONDITION and ADDING CONDITIONS**

DATE OF DECISION: ~~May 6, 2008~~ July 8, 2008

PLAT/PROJECT NAME: *Northridge Estates*

APPLICANT/
LANDOWNER: Timberland Development LLC

FILE NO.: 06-103921-SD

TYPE OF REQUEST: 19-lot rural cluster subdivision of 44.07 acres

DECISION (SUMMARY): **Approve with a ~~pre-condition and~~ conditions**

BASIC INFORMATION

GENERAL LOCATION: In Section 16, Township 32 North, Range 5 East, W.M.; 28829 State Route 9 NE, Arlington, Snohomish County, Washington.

ACREAGE: 44.07 acres

NUMBER OF LOTS: 19 lots

AVERAGE LOT SIZE: 43,946 square feet

MINIMUM LOT SIZE: 43,561 square feet

DENSITY: .43 du/ac (gross)

OPEN SPACE: 21.15 acres

ZONING: Rural-5 acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential (1du/5 acres, Basic)

UTILITIES:

Water: Individual Wells (proposed, but not approved)
Sewage: Individual Wastewater Septic

SCHOOL DISTRICT: Arlington School District No. 16

FIRE DISTRICT: No. 16

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services (PDS): Approve with conditions

INTRODUCTION

The applicant filed the Master Application on April 30, 2007. Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on March 7, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit 21 (Affidavit of Mailing); Exhibit 22 (Affidavit of Notification by Publication); Exhibit 23 (Posting Verification).

A SEPA determination was made on December 21, 2008. Exhibit 20. No appeal was filed.

The Examiner held an open record hearing on March 11, 2008, the 76th 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 March 11, 2008 at 1:09 p.m.

1. Representing PDS was Elbert Esparza, Senior Planner.
2. Representing the Applicant was Ms. Barbara Jones and Mr. Jacob Dahl of Cascade Surveying & Engineering, Inc.

The hearing concluded at 2:02 p.m.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

FINDINGS OF FACT

A. General

1. The master list of Exhibits and Witnesses are the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. Summary of the Proposal: The applicant, Timberland Development, has applied for a 19-lot Preliminary Rural Cluster Subdivision of an approximately 44.07 acre parcel. Applicant proposes domestic sewage disposal by on site septic systems and potable water from individual wells.
3. Site description: The site contains a single family home with a total of 9 existing structures, which appear to have been used for agricultural use, and 3 existing wells. A natural ridge runs along the eastern side of the property which runs gently down to the west. The site has a large amount of tree cover and vegetation along with three natural drainage basins which contain five Category 3 wetlands and an un-named Type 4 stream. All existing structures are to be removed from the site.
4. Adjacent zoning and uses: The majority of uses and zones to the north, west and south are R-5, with single family and accessory structures on large parcels and a rural cluster subdivision under construction to the south of the subject parcel. The majority of parcels abutting the property on the east are zoned Forestry and have several forest practices permits under review or issued for logging.

B. Issues of Concern

5. Request for an Archeological Study: The Stillaguamish Tribe (Exhibit 28) requested an archeological study be completed prior to the issuance of any grading/development/construction permits and tribal monitors be allowed access to the site on the day(s) of the study. A letter (Exhibit 31) between the Stillaguamish and the applicant has been furnished agreeing to make this a condition of preliminary approval.
6. Necessity for Applicant to Provide Water Rights Permit for Individual Wells or Some Alternative Method for Making Appropriate Provisions for Water: One letter from a neighbor raised the issue of adequate water supply for the plat, and whether new wells would cause neighboring wells to go dry. Exhibit 25. The Examiner raised a concern about the applicant's proposed use of "exempt wells" during the open record hearing. In response to the Examiner's concerns, applicants submitted Exhibit 37-48. The Examiner will discuss the water issue in detail in Finding of Fact 14A.

C. Compliance with Codes and Policies.

7. 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 mitigate impacts of the new development to the county park system. The impact fee is payable either prior to plat recording or prior to building permit issuance for each unit. Payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 172.26 new average daily trips (ADT) and has a road system impact fee of \$45,476.64 (\$2,393.51/lot) based on \$264/ADT, the current fee rate for residential developments outside the urban growth area, for TSA A. Consistent with SCC 30.66B.340, payment of this road system impact is required as a precondition to approval.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single Family Detached Residence (SFR)

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): SFR. Number of applicable measurement units for this development: 19

Trip Generation Calculations:

Trip Generation Based on Average Rates

New average daily trips = $(19 \text{ SFR} - 1 \text{ ex. SFR}) \times 9.57 \text{ ADT/SFR} = 172.26 \text{ ADT}$

New PM peak-hour trips = $(19 \text{ SFR} - 1 \text{ ex. SFR}) \times 1.01 \text{ PM PHT/SFR} = 18.18 \text{ PM PHT}$

New AM peak-hour trips = $(19 \text{ SFR} - 1 \text{ ex. SFR}) \times 0.75 \text{ AM PHT/SFR} = 13.50 \text{ AM PHT}$

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition, and level-of-service F the worst.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of September 20, 2007. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is August 27, 2007.

The development has been deemed concurrent on the following basis:

Development generating 50 or fewer peak-hour trips 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 13.50 a.m. peak-hour trips and 18.18 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.

This concurrency determination was based on the traffic study prepared by Perteet dated July 25, 2007, and received by PDS on August 27, 2007.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified 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]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

The subject development will take access from State Route (SR) 9, which is under the jurisdiction of WSDOT. Frontage improvements along the development's frontage on SR 9 will be determined by WSDOT.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

The proposed development will take access off of SR 9 from a new public road that will curve around the NGPA in the south portion of the property, and provide a road stub to the property to the north. The road stub is deemed necessary to facilitate the future development of neighboring parcels to the north, create roads that link neighborhoods and complementary land uses, and link future neighborhoods with efficient circulation as supported in the Snohomish County General Policy Plan Transportation Section TR Policies 1.B.5, and 1.C.2 through 5. Based on the ADT from the proposed development and the potential for connectivity to the proposed road should be classified as a rural public residential road as defined in the 2004 EDDS Revision as having 250-1000 ADT. The proposed road shall be designed to the current version of EDDS at the time the proposed development is submitted for construction plan review.

However, to ensure that the right-of-way to be dedicated at least meets current standards at the time of this review the 2004 EDDS will be applied. The 2004 EDDS requires a maximum 60 foot right-of-way width that has been provided on the preliminary plat. A 30 MPH design speed is required which requires a 275 foot minimum horizontal curve radius and a 90 foot minimum vertical curve.

Horizontal curves C29 and C30, as shown on the preliminary plat, do not meet the minimum curve radii specified in the 2004 EDDS. The applicant requested a deviation to the required design speed for the road. On September 19, 2007, the County Engineer conditionally approved a deviation to reduce the required curve radii for curves C29 and C30 as shown on the plans submitted provided that sight distance easements are provided as necessary for a 30 MPH design speed. A sight distance easement shall be shown on the final plat as needed. The proposed road at these locations approximates an uncontrolled road intersection, which a prudent motorist would approach as such. The critical design component at these locations is sight distance. Since sight distance easements will be provided, the Department of Public Works concluded that the interests of public safety would be maintained. Exhibit 35.

The public road section provided shows two 10 foot travel lanes, a 3 foot paved shoulder, and a 7 foot paved walkway as required by 2004 EDDS Standard Detail 3-060. The road ends with a 40 foot radius paved cul-de-sac in a 50 foot radius right-of-way section, which meets 2004 EDDS, according to the Department of Public Works and Planning and Development Services. Exhibit 35.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The subject development will take access from State Route (SR) 9, which is under the jurisdiction of WSDOT. Right-of-way requirements along the development's frontage on SR 9 have been determined by WSDOT. Based on an e-mail from WSDOT dated September 25, 2007, WSDOT does not require any additional right-of-way.

A 60 public road section with a 50 foot radius road end has been provided on the preliminary plat. The right-of-way provided is adequate to construct the required public road section.

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on SR 9 and the proposed public road with a 34 foot radius curve is required and has been adequately shown on the preliminary plat.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has not been received as of the date of this memorandum. The applicant's obligation to the State is as follows:

Proportionate Share Mitigation (ILA Section 5.2)

x Payment of \$6,192.00 based on standard rate of \$36/ADT

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received via an e-mail from WSDOT dated September 25, 2007. WSDOT accepts the proposed mitigation and has approved construction plans. This mitigation will be imposed as a condition of approval.

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

Mitigation requirements for impacts of a development on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements (ILA) between the County and the other jurisdictions.

The City of Arlington has an ILA with the County to provide mitigation for impacts and will be subject to new trips from the Northridge Estates development. For impacts on the City of Arlington, and pursuant to the ILA and SCC 30.66B.055(4) a written proposal from the applicant proposing measures to mitigate impacts on city streets is required and has been received as of the date of this memorandum. The applicant has offered to provide the mitigation measures for impacts on city streets as follows:

Proportionate Share Mitigation: Mitigation as described in written proposal in Appendix C the traffic study prepared by Perteet dated July 25, 2007. Exhibit 16. The consultant determined that of the 18 pm peak hour trips generated by the development, approximately 45% would go to the City of Arlington. The calculation was as follows:

$$45\% \text{ (of trips)} \times 18 \text{ (pm PHT)} \times \$3,355 \text{ (Arlington fee rate)} = \$27,175.50$$

The City was provided notice of application for this project and an opportunity to comment. The offer was accepted during a phone conversation with Kelly Hale, Senior Engineer for the City, on December 13, 2007, and confirmed via e-mail from City Staff. Exhibit 29. The written proposal for mitigation submitted by the applicant shall be imposed on the development as a condition of approval.

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

SCC 30.66B.630 requires development inside the UGA to provide TDM measures. Since this development is outside of the UGA, TDM measures are not required.

9. Pedestrian Facilities [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority consider whether the development provides sidewalks and other planning features that assure safe walking conditions for students. RCW 58.17.110(1). Comments from the Arlington School District dated May 3, 2007 have been received stating that school children from the proposed development will walk to the bus stop at the intersection of SR 9 and the new plat road. The school district has requested safe pedestrian facilities to the bus stop and a safe waiting area for the bus off the roadways. Exhibit 26.

With respect to the safe waiting area, SR 9 is a rural state highway in this area. Having done a site visit and driven in the area recently, the Examiner will take official notice that SR 9 along this stretch has a posted speed limit of at least 50 mph. Being a rural state highway, there is no lighting. Given these circumstances, the Examiner will require the applicant to construct a shelter to provide a gathering spot for school children so that they can wait for the bus away from the highway and have shelter from inclement weather. The applicant shall be required to construct a bus shelter near the intersection of the plat road and SR 9 on Tract 999 as a condition of approval. *See* Exhibit 19.

The public road inside the subdivision requires construction of a 7-foot paved shoulder as a condition of approval. Therefore, if constructed as approved, the plat will assure safe walking conditions for students.

10. 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 1 existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

11. Drainage and grading.

Drainage.

The subject development proposes to subdivide approximately 44.07 acres as a 19-lot rural cluster subdivision with a proposed new public road. Treatment of runoff generated from the development will ultimately be dispersed by two infiltration ponds located adjacent to the western property line. Runoff from lots 8 through 13 is proposed to be treated and dispersed to the adjacent wetland to maintain the existing hydrology. Runoff from all other lots will be conveyed either directly or via the roadside ditches to the proposed infiltration ponds. Runoff from the proposed new public road will be intercepted by the roadside ditches and conveyed to the largest infiltration pond for treatment. Both ponds are designed to withstand runoff generated by the 100 year, 24 hour storm event and have a minimum freeboard of 1". There is also emergency overflow to a 12" culvert located under the proposed public road that will be sloped at 1% to the south. From there, runoff will be conveyed to the existing ponding area. Water will be conveyed to a low depression area between the two ponds, where water can be allowed to infiltrate into the ground. 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 40,000 cubic yards of cut and 40,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would 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.

12. Critical Areas Regulations (Chapter 30.62 SCC)

PDS Staff conducted a site visit to survey critical areas on April 17, 2006. Exhibit 35. Five Category 3 wetlands and a Type 4 stream were observed in the field. Staff agreed with the applicant's identification of the wetlands and the stream in the field. The west portion of the site contains a single family residence, several out buildings, gravel drives, and yard. The remainder of the site contains a mix of forested vegetation with areas of thick brush. Three of the Category 3 wetlands on site are small and appear to meet the criteria to allow certain development activities to occur using best management practices (BMP) pursuant to SCC 30.62.350(1) (b). One large Category 3 wetland is located in the southwest portion of the site. The Type 4 stream flows through this wetland and enters and exits the property along the southern property boundary. Several existing sheds, barns, and portions of the gravel drives are located within the large wetland and its buffer. Another Category 3 wetland is located along the east property boundary.

Impacts to critical areas on the site include filling three BMP wetlands and reducing a portion of the buffer of the large Category 3 wetland for the access road. According to the Critical Area Study and Buffer Mitigation Plan for North Ridge Estates prepared by Wetland Resources (Exhibit 9), the applicant will provide a total of 112,871 square feet of additional buffer on the site for the 6350 square feet of wetland that will be filled. The mitigation for all impacts is proposed at greater than 12.5:1. In addition, the existing buildings within the wetland and buffer of the large wetland will be removed. The critical areas and approved buffers will be designated as NGPA.

SCC 30.62.340 requires a critical area study for any activity allowed under SCC 30.62.350, 30.62.370 or 30.62.400. Although the Critical Area Study and Buffer Mitigation Plan for Northridge Estates prepared by Wetland Resources (January 30, 2007) did not specify which portion of code would be applied for the buffer reduction due to the access road, it appears that mitigation is being proposed under buffer averaging SCC 30.62.350(1)(c)(i). A mitigation plan is required under SCC 30.62.345 to address the loss of area or functional value of wetlands, streams, and buffers. The proposed project will impact wetlands and buffers; therefore, a mitigation plan was submitted within the critical area study.

In rural areas, the required buffer for a Type 4 stream is 50 feet and the required buffer of a Category 3 wetland is 50 feet per Table 30.62.310(1). These buffers have been applied to the critical areas on the site. Wetland and wetland buffer impacts are proposed for an access road into the development.

PDS is required to evaluate each proposed development activity within critical areas and buffer under the hierarchy of goals provided under SCC 30.62.365. Although an analysis of why the proposed access road could not be avoided was not provided by the applicant, staff noted that the critical areas and buffers which will be reduced are currently impacted by existing uses. The mitigation plan, which provides 112,781 square feet of additional wetland buffer, appears to exceed the requirements of buffer averaging under SCC 30.62.350(1)(c)(i) and what would be required if only the 50-foot buffer were applied.

The applicant appears to propose mitigation for the buffer impacts under buffer averaging SCC 30.62.350(1) (c) (i). According to the mitigation plan, a total of 2,355 square feet of wetland buffer (Wetland C) will be reduced due to the proposed access road, a total of 106 square feet of wetland (Wetland C) will be designated as "wetland treated as buffer", and a total of 6,350 square feet of BMP wetland will be filled. Mitigation for these impacts includes providing a total of 112,871 square feet of additional buffer to the large wetland (Wetland C). According to the approved mitigation plan, a majority of impacted areas are within areas of mown pasture grasses and old landscaping. The mitigation plan states that the additional buffer is comprised of the same variety of vegetation and is in similar condition; however, staff noted that based on aerial photos, the area of additional buffer appears to contain a mix of trees and shrubs and may be better habitat than what is being impacted.

In order to provide a consistent method for determining compliance with the requirement to replace the lost functions and values of the habitat that is being impacted, a formalized administrative rule was approved by the director of PDS in June of 1998. This administrative rule states that by utilizing a set of prescribed replacement ratios, that it will be assumed that all functions and values will be replaced and *thus will be assumed to comply* with SCC 30.62.345(1)(c). The replacement ratios are always expressed as replacement area to impact area with emergent conditions requiring a replacement ratio of 1:1, scrub-shrub at 1.5:1, forest at 2:1 and bogs at 3:1. The administrative rule has also been utilized by staff in the same manner for buffers because the assessment for vegetative habitat is comparable. Based on the information provided, staff believes that the mitigation proposal has met, if not exceeded, the requirements of SCC 30.62.350(1) (c) (i) (A-C).

Three Category 3 “BMP” wetlands are proposed to be filled. Under SCC 30.62.360(6), development activities are allowed within Category 3 wetlands smaller than 5,000 square feet in size, provided that such activities are conducted pursuant to best management practices. According to SCC 30.62B.090, best management practices are required to mitigate adverse impacts to the function and values of critical areas. Critical areas are defined in SCC 30.91C.340 and include wetlands, but do not include buffers unless they meet the requirement for fish and wildlife habitat conservation areas or primary association area for critical species. Mitigation for the proposed wetland impact is included in the 112,871 square feet of additional buffer which is being provided along Wetland C. Water storage functions of the wetland will be replaced within the stormwater detention facilities as stated in the mitigation plan (page 9). Based on this analysis, the applicant meets the requirements of the critical areas regulations for this subdivision, subject to the condition that it submit and implement a final mitigation plan as part of final plat review.

13. 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 Plan; and the Comprehensive Park & 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 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 subject property is designated Rural Residential (RR: Base density of 1 dwelling unit per 5 or more acres) 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 designation “includes lands which were designated as 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.” Since this subdivision is being developed as a rural cluster subdivision with a density of less than 1 dwelling per 2.3 acres, it conforms to Policy LU 6.B.9.

14. Utilities

A. Water

Individual wells are being proposed on each of the 19 lots in the proposed subdivision. RCW 90.44.050 governs groundwater withdrawals, and generally requires a water rights permit to withdraw “public groundwaters of the state” from the Department of Ecology. There is an exception for single or group domestic uses in an amount not exceeding 5000 gallons per day, an exemption more commonly known as the “exempt well” provision. ~~Applicant contends that it can serve all 19 lots under this exemption.~~

Applicant provides the following argument, which is provided in detail in Exhibit 37.

~~[I]f Northridge Estates as a collective development draws less than 5000 gpd, then the development would be exempt from permit requirements. The variable that is not defined by WAC, RCW, Department of Health, or by the Department of Ecology is how much water an individual consumes on a daily basis or what defines an adequate water supply for each individual lot.~~

~~Applicant goes on to argue that the 400 gallon per day well standard used by the Snohomish Health District should not be applicable, because that standard is merely the amount the well must be able to produce within a 24 hour period to meet fire flow standards. See WAC 173-160-321. (Test yield must equal 400 gallons per day in a 24 hour period.) Exhibit 37 at page 4. Instead, the applicant argues that the Examiner should look at numbers that the applicant provided from the Snohomish County PUD Water Resources division to determine a gallon per day number for individual wells based on average daily amounts of water consumed by single family households. In averaging the gallons per day from the years 1996-2000, applicant comes up with 221 gpd, which if multiplied by 19, would total 4199 gpd. Since that is less than 5000 gpd, applicant argues, it should be exempt from permit requirements.~~

~~While the Examiner appreciates the effort the applicant put into constructing this logic path, the Examiner cannot accept a number of applicant's basic premises. First of all, the Department of Health standard has commonly been used as a measure of what constitutes consumption from an individual well. For instance, Whatcom County Code uses the 800 gallon per day standard adopted by the Department of Health. See WCC 21.05.080 (allows only six or fewer residences on an exempt well). King County does the same. See KCC13.24.138.~~

~~Furthermore, while the average Snohomish County PUD single family user may use an average of 221 gallons per day, users in rural cluster subdivisions are not likely to fit the profile of average users. The homes in a rural cluster subdivision are larger homes on large lots, usually for larger families. The yards are larger in this case around an acre in size. Many homeowners are likely to use extra water to keep landscaping irrigated during the dry summer months.~~

~~Moreover, where dealing with an exemption for a permit for water resources, the Examiner is not willing to take a less than conservative approach. The 400 gallons per day standard is required by the Snohomish Health District. It may be more than the average use demonstrated by applicant, but is half that required by nearby jurisdictions. Because the Health District standard creates an objective and reasonable benchmark, and represents a conservative but reasonable number given the size of the homes and the lots, the Examiner will use the 400 gallon per day standard in the absence of something more definitive from the Snohomish Health District or the Department of Ecology. Because the applicant's proposal would exceed the 5000 gallon per day exemption, assuming that each individual well would draw 400 gallons per day, applicant has not shown an adequate provision of potable water supply.~~

~~Since imposing the precondition in the earlier decision, the Examiner has become aware 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. 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)). The Northridge RCS proposal is within this area.~~

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.”

The Examiner takes official notice of this letter which is on file with the county. While the WAC 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 a program of future water allocation.

Important to the Northridge 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 the supply 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 19 homes in the Northridge 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 3325 gpd, according to WAC 173-505-090((6)(a);

$$175 \text{ gpd} \times 19 = 3325 \text{ gpd}$$

(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 with the county. 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 19 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated May 7, 2007. The applicant must submit final accurate to scale designs prior to final plat approval. (Exhibit 32)

C. Electricity

On May 7, 2007, the Snohomish County Public Utility District No. 1 provided correspondence indicating that they can provide electricity to the proposal. (Exhibit 27)

15. 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. The 19 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on December 21, 2007 (Exhibit 20). The DNS was not appealed.

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. *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.

Chapter 30.53A SCC was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007. This application was complete as of April 30, 2007 and is therefore subject to that version of Chapter 30.53A SCC in effect prior to September 21, 2007.

The Public Road shown on the preliminary plat map meets the minimum requirements of Chapter 30.53A.140 and the UFC for width, slope and turn around radii for the cul-de-sac shown at the end of the Public Road.

Per SCC 30.53A.315 exemption (1) each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by the Fire Marshall.

The Fire Marshall requires approved numbers or addresses to be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. The numbers shall contrast with their background per Article 9 UFC.

18. Rural Cluster Subdivision Standards—General.

The Northridge Estates 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 August 27, 2007 (Exhibit 17a), and in an open space management plan (Exhibit 6) 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 ~~except that of adequate provision of potable water supply.~~ 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 47.98% (22.92 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 identifies and protects critical areas on site as required by code. As explained in the Mitigation Plan (Exhibit 9), the applicant has provided more mitigation than is strictly required to mitigate unavoidable impacts from fill required by the road and for fill of two BMP wetlands.

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);

Applicant has provided a landscaping plan at Exhibit 18 to meet the requirements of this section of the code. The detention ponds will both be located adjacent to Highway 9 with natural vegetation planted around each of the ponds to buffer the appearance of the subdivision from the highway. In addition, more than half of the frontage will be occupied by the wetland and stream portion of the site. A 50 foot site obscuring buffer will shield all other lots that are not already buffered by the landscaped ponds. It appears that the applicants have met the requirements of this section.

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;

The applicant has provided a public road with one access point and a stub out for a possible future access road to the next property to the north. Exhibit 17a.

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 35 at 10.

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 35 at 10.

F. 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;

The applicant prepared an Open Space Management Plan which has been accepted by PDS. See Exhibit 6. The designated “restricted open space” will be used for buffering, critical area protection, resource production, conservation, recreation, community utility purposes, or general preservation. Exhibit 6. Maintenance and management responsibilities will fall to the homeowners’ association. Exhibit 35 at 10.

G. 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 nineteen-lot development.

H. 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.

¹ Criteria 6-9 are not applicable to this application.

I. 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 applicant has done a good job of minimizing site disturbance and topographic alteration. By placing the bulk of the lots in the rear of the parcel, applicant has lessened the visual impact of the development from SR 9.

J. 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 1.

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

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

Northridge Estates is located in Arlington Fire District No. 16. Exhibit 35 at 1.

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

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

PDS Traffic has determined that the application meets concurrency. See Finding 8A, *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:

Basic lot yield: 1,919,645 square feet/100,000 square feet	= 19.19 lots
Total lot yield	= 19.19 lots
Total lot yield-rounded	= 19 lots
Total lots proposed	= <u>19 lots</u>

See Exhibit 35 at 10-11.

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

The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. These 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, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students. The only issue that remains to be rectified is adequate provision for potable water supply.

The proposed plat conforms to applicable zoning codes and the comprehensive plan. There is open space provided within the plat 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 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. Individual on-site sewage disposal systems will be used subject to approval by the Snohomish Health District.

22. Any Finding of Fact in this Decision, 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 Northridge Estates 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. ~~Unfortunately, the applicant has failed to demonstrate appropriate provision of a potable water supply as required by RCW 58.17.110. RCW 90.44.050, which governs groundwater withdrawals, requires a water rights permit to withdraw “public groundwaters of the state” from the Department of Ecology. There is an exception for single or group domestic uses in an amount not exceeding 5000 gallons per day, an exemption more commonly known as the “exempt well” provision or “six pack well” provision.~~
4. ~~For some period of time, there was legal uncertainty about the status of multiple exempt wells in a development. An attorney general opinion in 1997 opined that a development using multiple wells that cumulatively pumped more than 5000 gallons per day were not exempt from the permit requirement of chapter 90.44 RCW. AGO 1997 No. 6. Then, in 2002, the Washington Supreme Court issued *State of Washington Department of Ecology v. Campbell & Gwinn et al*, 146 Wn.2d 1, 43 P.3d 4 (2002), which~~

~~squar~~ely addressed the issue of multiple exempt wells in a single subdivision. The Supreme Court held the following:

~~Here, the plain meaning of the domestic uses exemption is apparent from the language in 90.44.050 and related statutes. RCW 90.44.050 plainly says that the exemption applies provided 5,000 gpd or less is used for domestic purposes. This is true, the statute provides, whether the use is to be a single use or group uses. That is, whether or not the use is a single use, by a single home, or a group use, by several homes or a multiunit residence, the exemption remains at one 5,000 gpd limit, according to the plain language of the statute. **The developer of a subdivision is, necessarily, planning for adequate water for group uses, rather than a single use, and accordingly is entitled to only one 5,000 gpd exemption for the project.**~~

~~Campbell at 8.~~ The court explicitly defeated the argument that determination of applicability of the exemption could be delayed until building permit, thereby allowing the question of water availability to bypass preliminary plat approval. The court further stated:

~~———— Nevertheless, the Legislature’s limits on the exemption, particularly the 5,000 gpd limit on the group uses exemption, establishes that the Legislature did not intend unlimited use of the exemption for domestic uses, and did not intend that water appropriation for such uses be wholly unregulated. The balance which the Legislature struck in RCW 90.44.050 allows small exempt withdrawals for domestic uses, but does not contemplate use of the exemption as a device to circumvent statutory review of permit applications generally. The parties here dispute the potential impacts if RCW 90.44.050 is read to allow the exemption to apply to each individual well in a development such as Rambling Brooks Estates. The question is more basic, i.e., whether the Legislature even contemplated the possibility that developments of the size in this case, or even larger, would be entitled to exempt withdrawals of 5,000 gpd for each of their lots. **Given the limitation on single and group uses, and the overall goal of regulation to assure protection of existing rights and the public interest, it is clear that the Legislature did not intend that possibility when this statute was enacted.**~~

~~Campbell at 10 (emphasis added).~~ Because the Examiner is charged under state law with finding that the preliminary subdivision makes appropriate provision for potable water supply, the Examiner must address this issue, whether or not it has been addressed in the past. “Appropriate provision” of water cannot mean a water source that violates the state water code. It is squarely in the original jurisdiction of the Hearing Examiner to ensure that the provisions of county code and state law are being followed during the preliminary subdivision process. While it may be convenient to urge that either the Health District or the Department of Ecology should be enforcing this law, RCW 58.17.110 puts this burden squarely in the province of counties, as does the Washington Supreme Court. It has been so interpreted by other counties in this state. *See, e.g.,* Whatcom County Code 21.05.080 (reproduced below in footnote);³ Island County Code 8.09.060 (reproduced below in footnote).⁴

³ 21.05.080 Water supply. (Whatcom County Code)

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

-
- (a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and
 - (b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and
 - (c) The water source is ground water and not surface water; and
 - (d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the Coordinated Water System Plan map or within one-half mile of an existing water purveyor's water lines:
 - (i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or
 - (ii) The purveyor states in writing that it is unable or unwilling to provide the service; or
 - (iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.
- (3) The applicant shall demonstrate that adequate water right(s) exist to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.
- (4) If a group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.
- (5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

⁴ 8.09.060 Subdivision Requirements (Island County Code)

A. Prior to preliminary approval of a subdivision, the applicant must provide to the Island County Planning Department the following:

1. For a public water system, an Island County Health Department or Washington State Department of Health well site approval, or a letter of commitment from the water purveyor to supply water and documentation of compliance with WAC 248-56 (Public Water System Coordination); and
2. For an individual water system, an Island County Health Department well site approval or a well site certification performed by a Washington State Department of Ecology licensed well driller pursuant to ICC 8.09.070.B.

B. Prior to final approval of a subdivision, the applicant must provide the Island County Health Department evidence that the following has been accomplished:

1. For a public water system, the system must be approved by the appropriate agency or agencies for the ultimate number of anticipated hookups, including current connections, the proposed extension, and all outstanding water share certificates or any other agreements to supply water. Unless exempted by RCW 90.44, such approval shall include application for water rights filed with the Washington State Department of Ecology and a written commitment from the Department of Ecology that water rights will be granted. Any water system required by this section shall be installed, or appropriate bonds shall be provided and approved by the Island County Engineer and the Washington State Department of Health; or
2. For an individual water system, evidence of an adequate water supply must be provided by the applicant to the Island County Health Department to include:
 - a) A scaled plot plan of the project site including representations of structures (both proposed and existing), roads, sewage disposal systems, property lines, underground storage tanks, possible sources of contamination, indication of North, surface water, and other prominent features;
 - b) A well log;
 - c) The written results of a bailer test, or air lift test, or pump test, any of which is performed for minimum of one (1) hour, verifying a minimum well yield of four-hundred (400) gallons per day;
 - d) Water quality results, analyzed by a Washington State Department of Health certified laboratory, verifying compliance to standards listed in WAC 248-54 including bacteriological, nitrate, chloride, conductivity, and such other parameters the Health Officer deems significant based upon local trends of water quality;
 - e) Provision of sanitary control area pursuant to ICC 8.09.070.D;
 - f) Additional information deemed necessary by the Health Officer;
 - g) Except that proposed subdivision(s) where each resulting parcel is two and one-half (2.5) acres or larger will be exempt from the requirements to drill wells and determine water quality, as prescribed in section 8.09.060.B.2.b).c) and d). Those exempted parcels will be required to provide a scaled plot plan, sanitary control area and additional information deemed necessary by the Health Officer in accordance with ICC 8.09.060.B.2.a).e) and f).

C. Minimum requirements prescribed in Island County Code 8.07B.100 must be met for any subdivision.

5. ~~Further the Examiner concludes as a matter of law, based on Finding 14A, that each individual well must be assumed to draw 400 gallons per day (gpd), as based on the Snohomish Health District standard. See WAC 173-160-321. Therefore, the maximum number of residential lots an applicant could place on an exempt well is 12 lots (12 x 400 gpd = 4800 gpd).~~
6. ~~Without appropriate provision for water supply the Examiner must add a pre-condition to the subdivision as follows:~~

~~Applicant shall submit to PDS evidence of appropriate provision of potable water supply consistent with the decision for preliminary plat approval. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules.~~
7. ~~Alternatives the applicant could pursue include developing only part of the rural cluster subdivision (twelve lots) on an exempt well, extending water from a certified purveyor, or buying or getting water rights certificates for some or all of the necessary water.~~
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 Decision, 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, the application for preliminary subdivision approval is hereby GRANTED subject to the following ~~PRECONDITION~~ and CONDITIONS:

PRECONDITION

~~Applicant shall submit to PDS evidence of appropriate provision of potable water supply consistent with the decision for preliminary plat approval. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules.~~

CONDITIONS

- A. The preliminary plat received by PDS on 11/16/2007 (Exhibit 19) 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. An archeological study shall be completed prior to the issuance of any grading/development/construction permits. Also, tribal monitors of the Stillaguamish Tribe shall be allowed access to the site on the day(s) of study and a letter from a representative of the Stillaguamish Tribe shall be submitted to Snohomish County PDS prior to issuance of any grading/development/construction permits saying said study has been completed.

- ii. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above and this decision.
- iii. The plat shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- iv. A final mitigation plan based on the Critical Areas Study and Buffer Mitigation Plan for North Ridge Estates prepared by Wetland Resources dated January 30, 2007 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. 18 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(s). 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:

\$2,393.51 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

\$325.89 per lot for mitigation of impacts on state highways paid to the County.

\$1,430.29 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

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

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 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. 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 site obscuring buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.”

THE FOLLOWING CONDITION VII MUST BE PLACED ON THE FINAL PLAT IF THERE ARE ANY NEW WELLS PLACED IN THIS SUBDIVISION (WITH LOT NUMBERS FILLED IN):

- vii. Well protection zones are shown in the Snohomish Health District records for lots 1 through 19 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.
- viii. 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;
- ix. Outdoor water use is limited; total outdoor watering for all 19 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.
- x. 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.
- xi. All utilities shall be underground.

D. Prior to recording of the final plat:

- i. Sight distance easements shall be shown on the final plat as needed.
- ii. 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.

- iii. 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.
 - iv. The final mitigation plan (additional buffers) shall be completely implemented.
 - v. The bus-stop shelter for school children shall be constructed in a safe area near the intersection of the plat road and SR 9 on Tract 999 to provide shelter from inclement weather.
 - 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 6), enforcing watering limits and reporting water meter data to the Department of Ecology as required by law (WAC Chapter 173-505).
 - vii. The preliminary landscape plan (Exhibit 18) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- 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.

Order issued this ~~6th day of May~~ 8th day of July, 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 18, 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 22, 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: David Radabaugh

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.
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