

FOR OFFICE USE ONLY:
DB ID: 564301

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF ORDER: December 20, 2007

PLAT/PROJECT NAME: **GRAND FIRS**

APPLICANT/
LANDOWNER: David Edwards

FILE NO.: 06 103926-000-00 SD

TYPE OF REQUEST: 7-lot subdivision of 16.5 acres utilizing lot size averaging and landscape modification

DECISION (SUMMARY): Approve with conditions

BASIC INFORMATION

GENERAL LOCATION: 7401 284th Street NE, Arlington. Located on the north side of 284th Street NE and on the northeasterly side of Grandview Road near Arlington in Section 14, Township 32 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 16.5 acres

NUMBER OF LOTS: 7

AVERAGE LOT SIZE: 44,182 square feet

MINIMUM LOT SIZE: 43,567 square feet

DENSITY: 1.13 du/ac (gross)
.99 du/ac (net)

OPEN SPACE:

ZONING: Rural-5 acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Individual Wells
Sewage: Individual Wastewater Septic

SCHOOL DISTRICT: Arlington School District No. 16

FIRE DISTRICT: No. 18

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on October 6, 2006. Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on November 26, 2007 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 27 (Affidavit of Mailing); Exhibit 28 (Affidavit of Notification by Publication); Exhibit 29 (Posting Verification).

A SEPA determination was made on September 18, 2007. Exhibit 26. No appeal was filed.

The Examiner held an open record hearing on December 5, 2007, the 161st 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 December 5, 2007 at 9:02 a.m.

1. Representing PDS was David Radabaugh, Senior Planner, and Ann Goetz, Engineer II.
2. Representing the Applicant was Debbie Rothfus, Project Manager, from Peak Engineering.

The hearing concluded at 10:36 a.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 proposes a 7 lot rural cluster subdivision on a 16.54 acre site within an R-5 zone. Lot sizes vary from 43,567 square feet to 45,288 square feet. Open space tracts consisting of a total of 8.23 acres are proposed. Access to the project will be from a new private road connecting to 284th Street NE, an existing public road. Water supply is to be provided by individual private wells. Sewage disposal is proposed to be by individual wastewater septic systems. A landscape modification request has been made to utilize existing Native Growth Protection Area vegetation for a detention pond landscape buffer rather than Type A landscaping.
3. Site description: The subject property is an irregularly shaped 16.5 acre parcel fronting on Grandview Drive and 284th Street NE. The western third of the site contains a Type 4 stream and associated Category 3 wetland that runs roughly parallel to Grandview Road. A portion of a Category 2 wetland lies 450 feet east of the stream. The northeastern portion of the site contains a small portion of a Category 1 wetland. The southeastern portion of the site contains two Category 3 wetlands. The site contains rolling topography.

The site presently contains a single family residence and detached garage. The center portion of the site is maintained as lawn and is relatively level. Forested areas exist on the western portion of the site near the Type 4 stream system, and associated with the wetlands on site.

4. Adjacent zoning and uses: The subject property and all adjacent property is zoned R-5. Most parcels in the general vicinity range from 10 to 20 acres. An exception to this lies approximately 400 feet north of the subject property where 8 previously short platted lots are approximately one acre each. Many parcels in the area contain single family development. However, several parcels near the northeast corner of the subject property and south of the subject property are vacant.

B. Issues of Concern

Two comment letters were received in response to the Notice of Application. The primary concern raised is that of adequate water supply. One letter noted that many residences in the immediate area obtain water from shallow wells often 30 feet deep or less or obtain water from drilled wells 160 feet or deeper. The drilled wells typically yield 1 to 2 gallons per minute. Concern is expressed that 7 additional wells will cause wells in the area to dry up.

Concern has also been expressed regarding the volume of traffic and traffic safety on 284th Street. Letter writers noted that the existing 284th Street NE approaches Grandview Road at a slope and steep horizontal angle.

Concern has also been expressed about land clearing debris and a lack of erosion control measures on similar projects in the area.

5. Response to public concern: PDS responds by noting that a hydrogeology report was required of the applicant during the project review. *See Exhibit 22.* In addition, the applicant has supplied additional information documenting the adequacy of the aquifer under the plat to provide sufficient water supply. Exhibit 47

PDS will require that 284th Street NE be widened to a 27 foot pavement width (two 20 foot wide travel lanes and a 7 foot wide paved shoulder). The PDS traffic review found no Inadequate Road Condition relating to safety and accepted the existing road location for the widening of 284th Street NE.

C. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within Park District 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).

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 single family residences, which is 9.57. This rate comes from the 6th Edition of the ITE Trip Generation Report (code 210). As indicated above the number of new lots that will be created is 6. The development will generate 57.42 new ADT and has a road system capacity impact fee of \$15,158.88 (\$2,165.55/lot) based on \$264.00/ADT.

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 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 4.50 a.m. peak-hour trips and 6.06 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.

The County performed an IRC analysis of Grandview Road and 284th Street NE, based on citizen concern regarding the safety of the intersection. The Department of Public Works found that there was no apparent operational problems and declined to classify it as an inadequate road condition. Exhibit 49.

D. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along both Grandview Road and 284th Street NE. A deviation request was submitted by the applicant to eliminate the requirement for frontage improvements on both Grandview Road and 284th Street NE (except for a section of frontage east of the development access road on 284th Street). The request was approved for both roads; however, the school district sent in comments that indicated that the school bus stop for the development would be located at the intersection of Grandview Road and 284th Street NE, so per RCW 58.17.110 an offsite walkway will be required from 75th Drive NE at 284th Street NE to Grandview Road.

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

The access is proposed via a new private road (called 75th Drive NE on the plans) ending in a cul-de-sac off of 284th Street NE, a county road. A provision for a future road connection is not needed in this case so the access road may be private.

The private road design specified by EDDS is 3-080, 20-foot wide gravel, with a 40-foot radius cul-de-sac. The applicant proposes to pave the road and cul-de-sac, which is acceptable.

Sight distance at 75th Drive NE/284th Street NE and 284th Street NE/Grandview Road was checked, and it was determined that both locations must have a sight distance analysis due to the configuration of the roads.

The applicant requested approval of a reduced intersection sight distance on Grandview Road from 284th Street NE looking south. EDDS gives a choice of using the posted speed (which is 35 mph in this case) with a modifier added (which would be 43 mph) to determine the required stopping sight distance. As an alternative method to determine stopping sight distance a speed study can be performed, which is what the applicant opted for in this case. The speed study showed that the 85th percentile speed for vehicles traveling north towards 284th Street was 37 mph. The required stopping sight distance for 37 mph per EDDS Table 3-6 is 272 feet. A plan view of the intersection submitted by the applicant showed that 310 feet of stopping and intersection sight distance was available from the required vehicle and object positions and heights on Grandview Road and 284th Street. The request asked that DPW accept the 310 feet of intersection sight distance rather than require 390 feet as is specified by EDDS Table 3-9. The request was approved because it was shown that stopping sight distance will exist, and intersection sight distance is related to level of service on the road rather than safety.

Deviation requests were submitted pertaining to the configuration of 284th Street NE east of Grandview Road regarding design speed and operating speed. The first approximately 250 feet east of Grandview Road has been constructed outside of the right-of-way. The topography of both the right-of-way area and the section of road outside of the right-of-way have a steep vertical sag curve with a Type 4 stream located in the bottom. The deviation requests asked that a design speed of 20 mph be accepted so that the existing horizontal and vertical curves on 284th Street NE would meet the requirements of EDDS. The County Engineer opted to have an Inadequate Road Condition evaluation done instead. It was determined that it was not, nor forecast to be an IRC

after the development is occupied, so no requirements related to 284th will be needed, but the sight distance on 284th Street NE from 75th Drive NE still had to be addressed. The deviation request was approved.

A deviation to EDDS was submitted requesting that the assumed operating speed for 284th Street NE is 30 mph due to the horizontal and vertical curves, and because it is a fairly short dead end road currently serving 7 homes. (There is no posted speed sign on the road, so the County assumes the posted speed is 35mph in that situation.) The request was approved because an operating speed of 30 mph is reasonable considering the configuration, length, and number of users for the road. The applicant submitted a sight distance analysis stamped by a Professional Engineer that showed stopping and intersection sight distance can be achieved from 70th Drive NE for an assumed operating speed of 30 mph on 284th Street NE.

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

284th Street NE is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 20 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 10 feet of additional right-of-way is required, which has been shown on the plans. A section of 284th Street east of the intersection with Grandview Road is not located within the right-of-way for approximately 170 feet of the property frontage.

Grandview Road is designated as a minor 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. 20 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 15 feet of additional right-of-way is required, which has been shown on the plans.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement, 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 $57.42 \text{ ADT} \times \$36.00/\text{ADT} = \$2,067.12$.

Comments dated October 13, 2006 have been received from WSDOT that do not request a traffic mitigation fee, so none will be required.

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 copy of a voluntary offer to pay the city mitigation requirements signed by the applicant was submitted with the application for the amount of \$16,265.04. Comments dated October 26, 2006 have been received from the City of Arlington that indicate agreement with the \$16,265.04 amount offered for traffic mitigation.

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]

This proposal lies outside of the Urban Growth Area. Therefore, the provisions of this section do not apply.

8. 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 dated October 23, 2006 have been received from the Arlington School District indicating that bus service will be provided to all grade levels of public school children that would live in the development, and the bus stop was identified as the intersection of Grandview Road and 284th Street NE, which is offsite to the west approximately 170 feet. A safe walkway meeting the requirements of EDDS will be required to be constructed to that location as a condition of development approval.

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

10. Drainage and grading.

Drainage. Stormwater from lots 3 and 4 and the plat road will be directed to a biofiltration swale and then a detention pond. Rooftop and driveway runoff from lots 1, 2, 5, 6, and 7 will be directed to individual dispersion trenches within the lots.

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 2,800 cubic yards of cut and 2,800 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.

11. Critical Areas Regulations (Chapter 30.62 SCC)

The western third of the site contains a Type 4 stream and associated Category 3 wetland that runs roughly parallel to Grandview Road. A portion of a Category 2 wetland lies 450 feet east of the stream. The northeastern portion of the site contains a small portion of a Category 1 wetland. The southeastern portion of the site contains two Category 3 wetlands. Prescriptive buffers are proposed except for the wetland in the southeast corner of the site which has an existing driveway encroaching into the buffer. Road construction will encroach into approximately 150 square feet of wetland and 9,100 square feet of wetland buffer. Mitigation for these impacts will take the form of additional wetland buffer. Approximately 65,681 square feet of additional wetland buffer area will be preserved.

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. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on October 6, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

The subject property is designated Rural Residential (RR: 1 DU/5 Ac, Basic) on the GPP Future Land Use map, and is located outside of 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 Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing zones within this designation are the Rural-5 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 LU6.B.9.” The preliminary plat is consistent with the General Policy Plan’s Rural Residential designation of the property.

The 7 lots proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

13. Utilities

A. Water

In its December 4, 2006 Review Completion Memo, PDS requested a hydrogeological assessment of the groundwater potential for the project. The hydrogeological assessment was provided to PDS on May 24, 2007 (Exhibit 22). The hydrogeological report recommended approval of the subdivision with a variety of conditions (on Page 3) including:

1. Individual wells be placed as far apart as practical to reduce the amount of interference that will be experienced.
2. Each well should be metered. Excess water use should be avoided. The installation of low-flow and water conserving appliances by each homeowner is recommended.
3. The storage of all chemicals should be with secondary containment or stored indoors in a building with a concrete floor.
4. Application of disposal of all chemicals must be according to the manufactures' label directions or best available County disposal practice.
5. No industrial, commercial or agricultural activities utilizing chemicals that could potentially injure the aquifer or flow into nearby ditches will be conducted on the property.

The report also recommended:

that a follow-up report be prepared after a minimum of two wells have been drilled at the site to assess the ground water situation in light of firsthand geologic and hydrogeologic knowledge under the subject site. Specifically, at a minimum, the following information:

- a) Total depth of each of the wells.
- b) Depth to the top and bottom of each aquifer encountered.
- c) Detailed description of the sediments penetrated during drilling.
- d) Size and length of screened interval of the completed well.
- e) Yield of the new well and method for determining the output.
- f) Surveyed elevation on the top of casing for each well.

On August 27, 2007, a letter discussing a well test on the subject property was provided to PDS (Exhibit 23) by Doug Dillenberger of Northwest HydroGeo Consultants. The well test pumped the well for 2 hours at 5 gallons per minute. No information regarding the drawdown of the water level in the well was provided. Based on this test, Mr. Dillenberger concluded that:

1. Based on the results of the limited two-hour pumping test, that the aquifer under the site is capable of meeting the needs of the proposed Grand Firs 7 lot development and that downgradient users of the aquifer will not be negatively affected.
2. As a result of this limited test of the existing well, we feel that the original recommendation of the drilling two wells to verify the capacity of the aquifer is unnecessary for approval of this 7-lot Development. The data available from the existing well has provided enough information to conclude that the aquifer is capable of supplying the proposed needs for the development.

PDS noted that the well test did not provide any information regarding the geological material through which the well penetrates, drawdown or recharge information. Prior to hearing, PDS recommended a precondition is proposed to address this concern. At the hearing on December 5, 2007, Mr. Dillenberger testified that the drawdown during the February 9, 2007 well test of the existing onsite well was 48 feet. Based on this information, PDS withdrew the request for a pre-condition.

B. On-Site Septic

The Snohomish Health District has provided a letter recommending approval of the plat dated June 14, 2007 (Exhibit 38).

C. Electricity

On October 24, 2006, The Snohomish County Public Utility District No. 1 has provided correspondence indicating that they can provide electricity to the proposal (Exhibit 36).

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, 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 September 17, 2007 (Exhibit 26). The DNS was not appealed.

16. Landscaping (Chapter 30.25 SCC)

Applicant must construct a detention pond as a part of the project. If a detention pond requires a perimeter fence, then SCC 30.25.023 requires a six foot width of Type A landscaping or a living fence. The applicant has requested a landscape modification to utilize existing vegetation which will be in a Native Growth Protection Area to provide landscape screening on the west side of the detention pond. This will result in a landscape buffer superior to the prescriptive code requirements on the west side of the pond and fulfills the intended purpose of the landscape code. PDS has recommended approval of the landscape modification in the staff report. *See* Exhibit 42.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on October 6, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. Specifically, the following are 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. Exhibit 47 from the Fire Marshall's office indicates that the site plan for this project demonstrates compliance with width and grade standards for access under the Uniform Fire Code and recommends project approvals. *See* SCC 30.41A.160. The Office of the Fire Marshall notes the following requirements for construction review:

- (a) Each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office. **The water purveyor may require that fire hydrants be installed.**
- (b) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. You shall provide signage stating ‘NO PARKING – FIRE LANE’ to ensure access availability. **Indicate on the site plan the location for the signage and/or pavement striping. Be sure to include the area around the fire hydrants.**
- (c) Approved numbers and addresses shall 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. Numbers shall contrast with their background.
- (d) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

Exhibit 47.

18. Rural Cluster Subdivision Standards (Chapter 30.41C SCC)

The subject rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on May 24, 2007 (Exhibit 17), and in an open space management plan (Exhibit 18) 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 50% (8.23 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county’s environmentally sensitive areas.

The application has been reviewed for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas; a sight obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW has indicated that the public roads shall be constructed to EDSS standards; all utility lines are to be located underground; there is no unbuildable land as defined by Chapter 30.41C SCC located on site which would be required to be included in native growth protection areas; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; physical separation of clusters is provided; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road; the proposal

is not served by public sanitary sewer; clusters of lots are located near the interior of the site and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

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

Basic lot yield: 720,412 square feet/100,000 square feet = 7.2 lots

Total lot yield = 7.2 lots

Total lot yield-rounded = 7 lots

Total lots proposed = 7 lots

19. 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. Such 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 plat conforms with 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. Water will be provided by individual wells. Sewage disposal will be provided by individual wastewater septic systems.

20. 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 legal standard the Examiner must review a preliminary subdivision under the state subdivision code, chapter 58.17 RCW, is:

whether 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. The Examiner also agrees with PDS's recommendation that the landscape modification should be approved because the modification represents an equal or better result than what would be achieved by strictly following the code. *See* SCC 30.25.040(2)(a).
4. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

The **7-LOT SUBDIVISION OF 16.5 ACRES UTILIZING LOT SIZE AVERAGING AND the LANDSCAPE MODIFICATION** are granted pursuant to SCC 30.25.040. 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 conditions:

CONDITIONS

- A. The preliminary plat received by PDS on May 24, 2007 (Exhibit 17), shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Critical Area Study and Mitigation Plan for Grand Firs prepared by Curran Environmental Services, LLC revised August 15, 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. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 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:

\$2,165.55 per lot for mitigation of impacts on county roads paid to the county,
\$2,323.58 per lot for mitigation of impacts on Arlington streets paid to the city.

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. 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.
- v. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.
- vi. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- vii. The final plat shall show a 10-foot right-of-way dedication along the property frontage with 284th Street NE to total 30 feet from the right-of-way centerline.
- viii. The final plat shall show a 15-foot right-of-way dedication along the property frontage with Grandview Road to total 35 feet from the right-of-way centerline.
- ix. No lot shall have direct access to Grandview Road.
- x. Well protection zones are shown in the Snohomish Health District records for lots 1 through 7 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.
- xi. A 100-foot radius well protection zone is hereby established around the existing well(s) as located on the plat. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which, at a minimum, prevent installation of drainfields within the protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s).
- xii. All utilities shall be underground.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements shall be constructed along the property frontage with 284th Street NE east of 75th Drive NE in accordance with the EDDS deviation request.
- ii. If the applicant opts to not pave 75th Drive NE, a paved approach per EDDS Plate 3-100 shall have been completed.
- iii. 284th Street NE shall have been constructed to a 27-foot pavement width from 75th Drive NE to Grandview Road; for two 10-foot travel lanes and one 7-foot paved shoulder walkway for safe walking conditions for children walking to the designated bus stop. The applicant shall acquire any necessary right-of-way for dedication to Snohomish County.
- iv. 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 plat 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.

- v. The final mitigation plan (additional buffer and buffer enhancement) 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 18).
- vii. The landscape plan (Exhibit 16) shall be implemented.
- viii. Verification of existing well abandonment per the requirements of Chapter 173-160 WAC.

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 20th day of December, 2007.

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 **DECEMBER 31, 2007**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JANUARY 3, 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
Department of Public Works: Ann Goetz

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
