

**DECISION of the SNOHOMISH COUNTY  
HEARING EXAMINER on REMAND FROM  
COUNTY COUNCIL**

DATE OF DECISION: May 13, 2008

PROJECT NAME: *Maltby Meadows*

APPLICANT: Andy Ryssel

FILE NO.: 06 124975 SD

TYPE OF REQUEST: 8-lot Rural Cluster Subdivision (RCS) on 19 acres with an associated Setback variance

DECISION (SUMMARY): The requested setback variance is **DENIED**. The proposed subdivision is **APPROVED with a precondition and conditions**.

**BASIC INFORMATION**

GENERAL LOCATION: The property is located on the north side of Maltby Road, near the intersection of Maltby Road and 73<sup>rd</sup> Drive SE, Snohomish, Washington.

ACREAGE: 19 acres

NUMBER OF LOTS: 8

AVERAGE LOT SIZE: 52,713 square feet

MINIMUM LOT SIZE: 16,779 square feet

DENSITY: .41 du/ac (gross)

ZONING: R-5

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

UTILITIES:  
Water: Cross Valley Water District  
Sewer: Individual septic

SCHOOL DISTRICT: Monroe No. 103

FIRE DISTRICT: No. 7

## **INTRODUCTION**

The applicant filed the Master Application on June 15, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on August 27, 2007. (Exhibit 19) No appeal was filed.

The Deputy Examiner held an open record hearing on November 14, 2007, the 69<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Deputy Examiner, is hereby made a part of this file, as if set forth in full herein.

The Deputy Examiner denied the variance and denied the subdivision without prejudice. The applicant appealed the matter to the Snohomish County Council. The Council affirmed the denial of the variance, but remanded the Examiner's Office with instructions to grant the subdivision. The Deputy Examiner has since departed the Office. The Snohomish County Examiner has therefore read the file and listened to the recording of the open record hearing and entered the following decision in accordance with the Council's Motion 08-218.

## **PUBLIC HEARING**

The public hearing commenced on November 14, 2007 at 1:08 p.m.

1. The Deputy Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Andy Ryssel, acting for Maltby Meadows, LLC, was represented by himself and by David Carson John Bissell and Chuck Lindsey. Snohomish County was represented by David Radabaugh of the Department of Planning & Development Services.
3. Pre-hearing letters raising concern or opposition were filed by vicinity residents Gerald and Judith Andrist (Exhibit 27), Barbara Ball and Michael Potter (Exhibit 28) and Al and Jean Grieve (Exhibit 29). Testimony was taken at the hearing from Nancy Davis in support of the application and from Melanie Baird, who expressed concern or opposition. The staff report (Exhibit 39, p. 3) acknowledges and addresses each of the issues raised by the public.

The hearing concluded at 3:38 p.m.

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

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS OF FACT

#### A. Pre-Remand Findings of Fact

Based on all the evidence of record, the following findings of fact are entered.

1. The applicant, Andy Ryssel, through Maltby Meadows, LLC, filed an application (Exhibit 1) for an eight-lot rural cluster subdivision on 19 acres zoned R-5 located approximately one-half mile east of Highway 9 on the north side of Maltby Road. Without the rural cluster subdivision bonus, only four lots could be placed on-site. Proposed Lot 3 is to contain a mini-equestrian center to accommodate up to 24 horses. The setback variance requested for that facility is a contested issue herein. The variance must be decided by the Examiner before consideration of the plat because the preliminary plat plans would have to be modified significantly if the variance were denied. The Department of Planning & Development Services recommends that the variance be denied. (Exhibit 38)
2. The applicant had purchased the subject site on June 20, 2006 (Exhibit 13) and more than seven years later filed the instant application on June 15, 2006. (Exhibits 1, 38). About four months thereafter on October 24, 2006, the applicant filed an affidavit of innocent purchaser (Exhibit 13) attesting that he had not known at the time of purchase that the subject site had been divided from other property in violation of State and County subdivision laws. The County acknowledged that affidavit on January 11, 2007.
3. The application was resubmitted on November 14, 2006 and resubmitted again -- but with a setback variance request -- on March 22, 2007. On June 7, 2007, the applicant also requested a written but informal code interpretation on the setback required for the mini-equestrian facility. The code interpretation (Exhibit 37) was issued a month later on July 9, 2007 by the County's Chief Planning Officer, Linda Kuller. Ms. Kuller concluded that the equestrian facility must be set back 50 feet from any property line of the proposed Lot 3 on which the equestrian facility was to be located. The applicant had sought approval of one-tenth of that -- a five-foot setback -- from Lot 3's southern boundary. The language interpreted by Ms. Kuller is the following from Snohomish County Code 30.23.110(8):

*"Equestrian Center and Mini-Equestrian Center: Open or covered arenas must be at least 50 feet from any external property line."*

4. On July 11, 2007, two days after Ms. Kuller's code interpretation was published, the applicant submitted revised plans (Exhibits 21 A – E) Another set of revised plans (Exhibits 25 A – E) was submitted on September 24, 2007. Both submittals at Sheet B contain "Mini-equestrian Center Notes" reading:

*"...All structures shall be set back as required in SCC 30.23.110(8)."*

In contradiction of that note, at hearing the applicant submitted a subdivision schematic (Exhibit 45) showing the contested setback and labeling it: *"5-foot building setback at adjacent lot lines within the plat (TYP)"*

5. At hearing, the applicant argued extensively that, in the absence of any County Code definition of the term "external property line", the term should be interpreted to mean the "parent" plat boundary line. Ms. Kuller's interpretation disposes of that argument at her Finding No. 11 in which she notes that the standard application of setback provisions:

“...require[s] measurement of setbacks from the property lines of **the lot where the use is proposed.**” (Emphasis supplied.)

6. Ms. Kuller’s Finding No. 11 also notes that there is no indication that the language at issue was intended to apply to a mini-equestrian center only if located in a subdivision. The Deputy Examiner concurs. Because the language applies to a mini-equestrian center whether or not located in a subdivision, a setback measurement based on a subdivision’s parent parcel’s boundaries could not have been intended.
7. The final sentence of Ms. Kuller’s code interpretation reads, in part:

*“The building setback requirements...help to protect neighboring properties from potential adverse impacts that could be associated with a mini-equestrian center and associated arenas.”*

The neighbors who raised concerns in pre-hearing submittals all reside on 72<sup>nd</sup> Avenue SE, which abuts the western boundary of the subject site. (See Finding No. 11 below.)

8. The applicant argues (Exhibit 18) that the application meets the four requisites for approval of a variance set out at SCC 30.43B.100. All four requirements must be met in order for the Deputy Examiner to approve a variance, as follows.
9. A. There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;

The applicant asserts that an electrical powerline easement and related danger tree easement consume 32% of the 19.1-acre site, or 6.1 acres, and thus constrain realization of the potential residential density of eight lots, coupled with further constraints imposed by steep slopes, a Type 4 stream and Category 3 wetland and limited areas suitable for septic drainfields and reserve areas.

Analysis: The Department of Planning & Development Services’ staff report (Exhibit 38, p. 9) points out (1) that the stream, ravine and wetlands apply to some adjacent or nearby properties, (2) that many other lots in the vicinity are encumbered by the powerline easement and (3) alderwood soils are commonplace in the vicinity. The Deputy Examiner concurs and adds that the applicant is using the powerline easement as most of the five-acre minimum lot size required for the proposed mini-equestrian center but, instead of placing the equestrian facility near the center of the five acres, must locate it within 50 feet of the properties of the neighbors to the west along 72<sup>nd</sup> Avenue SE.

10. B. A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question.

Analysis: No other property in the vicinity or in the entire County has an absolute property right to achieve a doubled lot yield of eight lots instead of the four permitted by the underlying zoning while also devoting five acres or more to a mini-equestrian center. The applicant has chosen to do so, thus creating a self-imposed hardship. That does not warrant a variance from the setback imposed legislatively in order to supplement the normal setbacks required by the underlying zone for the mini-equestrian center use. (See SCC 30.23.110: *Special setbacks for certain uses.*) They applicant may choose fewer lots or smaller lots or loss of the equestrian facility but, whatever that choice, the applicant retains a reasonable, viable right to develop the subject site even if the requested variance is denied. The Deputy Examiner concurs with the following language from the staff report (Exhibit 38, p. 9):

*“Requiring a development to meet applicable setbacks and meet site design standards such that the subdivision lot yield may not be maximized does not deny a property right.”*

11. C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located.

The applicant asserts that by inserting the septic drainfield and reserve for proposed Lot 8 between the equestrian facility and other proposed lots, the distance between the equestrian facility and any dwelling will be at least 135 feet instead of the 50 feet required.

Analysis: The argument is without merit. The 50-foot setback required by SCC 30.23B.110(8) is from the property line, not from any dwelling, presumably because the County Council intended the residents adjacent to be able to enjoy their lawns as well as their dwellings. The Andrists (Exhibit 27) ask about odor and noise control: *“Especially when we are downwind for both.”* The Andrists’ neighbors (Ball & Potter, Exhibit 28) raise concern about disposition of animal waste. Al and Jean Grieve (Exhibit 29) assert that adjacent properties should not be asked to absorb the negative impacts associated with manure disposal and state: *“A minimal setback should not be allowed.”*

Moreover, the proposed septic drainfield and reserve area for proposed Lot 8 is located approximately 500 feet from proposed Lot 8 (center to center) and 48 feet higher (358’ cf. 310’) than proposed Lot 8 and will have to be pumped that distance and that height is order to “drain”. (Exhibits 43 and 45). The evidence of record does not establish whether that proposal for septic design is acceptable.

12. D. The granting of the variance will not adversely affect the comprehensive plan.

The proposed use is allowed in the Rural Residential designation of the General Policy Plan. The proposal implements the Comprehensive Plan.

13. Any finding of fact above which should be deemed a conclusion of law is adopted as such.

**B. Post-Remand Findings of Fact- 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 requests approval of an 8 lot rural cluster subdivision on a 19.1 acre site within the R-5 zone. A setback variance is also proposed to allow for a mini-equestrian center to be located within 50 feet of a lot line, but in the prior proceedings, that variance was denied by the Deputy Hearing Examiner and that denial was affirmed by the County Council in Motion 08-218. Lot sizes vary from 16,779 square feet to 217,800 square feet. Restricted Open Space tracts consisting of a total of 8.5 acres are proposed. Access to lots in the project will be from a new private road connecting to Maltby Road (SR 524). Water supply is to be provided by the Cross Valley Water District. Sewage disposal is proposed to be by individual wastewater septic systems.

3. Site description: The subject property consists of 19.1 acres. The site is rectangular shaped, except for a 150 foot by 290 foot exception at the site's southeast corner. The subject property was found to be a legal lot by virtue of an innocent purchaser review (Exhibit 13). The subject property is incised by a ravine containing a Class 4 stream and associated Category 3 wetlands. The higher elevations of the site contain rolling topography. A Bonneville Power Administration electricity transmission line crosses the north 350 feet of the site. Except for the BPA transmission line, the site is forested with a mix of fir, Big leaf maple, and Red alder. The BPA transmission line is mostly cleared of trees and contains grass and shrubs.
4. Adjacent zoning and uses: The subject property and vicinity properties are located in an R-5 zone. Adjoining properties have all been subdivided to varying degrees. Property to the west has been short platted and contains single family residences on lots ranging from approximately one to five acres. North of the site is the rural cluster plat of Turner's Crossing. East of the site are a number of single family residences on short platted property on lots ranging from one to ten acres. Single family residences on platted property also lie south of Maltby Road opposite the subject property.

**C. Issues of Concern**

5. Three public comment letters or emails were received in response to the Notice of Application. See Exhibits 27, 28 and 29.

One letter identified the traffic volumes and narrow roadway of Maltby Road as an issue. PDS notes that this project was deemed to be concurrent and that the plat will be required to provide a shoulder on Maltby Road. Access to all uses in the plat will be by a private road that accesses Maltby Road.

It is noted that a seasonal creek crosses that plat. This is correct. The stream is shown and buffered on the plat map.

Concern has been raised that the proposed lots may not be suitable for septic drainfields. The Snohomish Health District has reviewed the proposal and found that the soils are adequate for septic systems.

Concern has been expressed regarding odor and noise from the mini-equestrian center. One commenter specifically opposes a setback variance where there are existing residences. The land use code calls for minimum setbacks and landscaping for mini-equestrian centers.

One letter expresses concern regarding increased stormwater runoff. Concern has also been expressed that drainage patterns on-site will be altered. Stormwater will be directed to one of two stormwater detention vaults or one of several detention pipes.

It has been noted that tree cutting has been done on the site. Some clearing has occurred. However, the clearing has not been to the extent that it would require a permit from Snohomish County.

A 50 foot to 100 foot vegetation buffer was requested. County Code requires a site obscuring buffer averaging 50 feet with no part less than 35 feet.

It was noted that numerous wildlife species have been seen in the area. However, the site has not been identified as habitat for any threatened or endangered species. Therefore, wildlife is not protected under the version of the Critical Area Rules to which this project is vested.

Concern has been expressed that topography has not been shown correctly. However, any errors are not readily apparent. Specific errors were not identified.

One letter suggested that Maltby Road should have a left turn lane. The traffic review identified standard road improvements as being appropriate for this project.

**D. Compliance with Codes and Policies.**

6. Parks Mitigation. The proposal is within Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 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 residences that will be created is 8. The development will generate 76.56 new ADT and has a road system capacity impact fee of \$19,293.12 (\$2,411.64/lot) based on \$252.00/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 one or more arterial unit in arrears, SCC 30.66B.160. The subject development is located in TSA E which, as of the date of submittal, had the following arterial units in arrears: Unit #262, 180<sup>th</sup> Street SE between SR 9 and Broadway Avenue and Unit #350, 180<sup>th</sup> Street SE between SW County UGB and SR 9. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 6.00 a.m. peak-hour trips and 8.08 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 E with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along SR 524. Rural standard frontage improvements are required consisting of 24 feet of pavement from right-of-way centerline, which consists of a 12 foot travel lane, 8 foot paved shoulder and a 4 foot bike lane. In addition, the school district has requested that a bus pullout be provided along SR 524 in the vicinity of the site access. These frontage improvements are adequately shown on the preliminary plans. Construction of frontage improvements is required prior to recording of the plat unless bonding of improvements is allowed, in which case construction is required prior to any occupancy of the development.

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

Access is proposed from one access as a private road onto SR 524. The private road is in conformance with the minimum standards in EDDS.

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

SR 524 is designated as a major collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Thirty 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. Twenty feet of right-of-way dedication is currently shown. While the proposed right-of-way dedication meets the requirements of County Code, a condition will be included allowing for a minimum dedication of 40 feet from the centerline of SR 524.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA), which became effective on applications determined complete on or after December 21, 1997. The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through (a) voluntary negotiated construction of improvements, (b) voluntary negotiated payment in lieu of construction, (c) transfer of land from the developer to the State, or (d) a voluntary payment in the amount of \$36.00 per ADT.

Comments from WSDOT were received by PDS on September 13, 2006. WSDOT indicated that the project will not impact any WSDOT projects with more than 3 directional peak hour trips and therefore, mitigation will not be required for this development. However, WSDOT indicated that an access permit will be required prior to issuance of any permits for the site.

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

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]

The county is required to make findings regarding safe walking conditions for school children who may reside in the subject development. School comments were received by PDS on July 6, 2006. The school district indicated that a 60-foot by 12-foot bus pull-out area is required along the frontage near the access of the development. A bus pull-out is adequately shown on the plans.

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 Monroe School District No. 103, 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 roads, driveways, and most rooftop areas will be detained in one of two detention vaults or one of several detention pipes and then released. A small amount of stormwater will be dispersed. Water quality will be accomplished with dead storage in the detention vaults.

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. *See* Exhibit 12, 38 & 39.

Grading. Grading quantities are anticipated to be approximately 3,300 cubic yards of cut and 7,000 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.

11. Critical Areas Regulations (Chapter 30.62 SCC)

The site is bisected by a Type 4 stream and an associated Category 3 wetland. The private road access to lots in the plat is proposed to cross the wetland and stream. A mitigation plan which includes additional buffer to mitigate for the road crossing the stream and wetland has been proposed. PDS has reviewed the

Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations. See Exhibit 14, 38 & 39.

12. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively.

This application was complete on June 15, 2006 after the effective date of the Amended Ordinances. This 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: 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.” PDS finds the requested preliminary plat to be consistent with the General Policy Plan’s Rural Residential designation of the property.

13. Utilities

A. Water

The Cross Valley Water District has provided letters of water availability for the project dated June 26, 2006 and April 23, 2007 (Exhibit 35).

B. On-Site Septic

The applicant proposes onsite septic systems on each of the 8 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated September 24, 2007. The applicant must submit final accurate to scale designs prior to final plat approval. (Exhibit 34)

C. Electricity

On July 2, 2006, The Snohomish County Public Utility District No. 1 has provided correspondence indicating that it can provide electricity to the proposal. (Exhibit 30)

D. Bonneville Power Administration Easement

Comment was received from the Bonneville Power Administration (BPA) on November 2, 2007 noting that no structures are allowed within the 300 foot wide power line easement, that BPA has the right to remove certain vegetation at its discretion within the power line easement, and that BPA wants to review proposed uses in the power line easement. BPA’s easements rights will be included as a condition on the face of the plat.

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including rural cluster subdivision provisions, bulk regulations and other zoning code requirements. The 8 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2. Exhibit 38 at 7.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on August 27, 2007 (Exhibit 19). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on June 15, 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, that the plat, as conditioned meets the design standards for roads. *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.

Snohomish Fire District #7 requested the following:

- 1. Ensure adequate flow/hydrants
- 2. Ensure all hydrants are equipped with 4" STORTZ" adaptors
- 3. Ensure all road signs are posted prior to construction
- 4. Ensure all building addresses are clearly marked
- 5. Post no parking in 20" fire lane access roads
- 6. This development does not provide for any guest parking (including trailer parking near equestrian center). Ensure no parking on the fire lane (drive isle)
- 7. Prohibit fencing between structures. Fencing will interfere with fire department operations in this development during an emergency
- 8. Do not allow secondary egress windows from upper level rooms to be between structures with 10' building setbacks (firefighters cannot meet climbing angles in these reduced setback developments). Place these windows in front and rear.

These requirements will need to be implemented during the construction phase and Condition 7 above will have to be placed on the face of the final plat.

17. Rural Cluster Subdivision Standards—General.

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 September 24, 2007 (Exhibit 25), and in an open space management plan (Exhibit 20) that is to be implemented by a homeowner's association. The RCS application (without the variance) 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 45% (8.5 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.

18. 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 has identified and designated critical areas as required by chapter 30.62 SCC. Exhibit 38.

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 is providing a sight –obscuring buffer around the perimeter of the development in accordance with the provisions of Table 30.41C.210(1). Exhibit 38.

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 is providing a public road has outlined in the Findings of Fact and in the staff recommendation. See Exhibit 38.

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 38.

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. 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. Exhibit 38.

F. SCC 30.41C.200 (10)—Open Space Management Plan.<sup>1</sup>

*(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 20. The designated “restricted open space” will be used for buffering, critical area protection, resource production, conservation, recreation, or general preservation. Exhibit 20. Maintenance and management responsibilities will fall to the homeowners’ association. Exhibit 20.

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));*

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<sup>1</sup> Criteria 6-9 are not applicable to this application.  
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This requirement is not applicable, since this is an eight-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 25A.

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 minimized site disturbance and topographic alteration. Exhibit 38.

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 34.

K. SCC 30.41C.200 (16)—Fire District.<sup>2</sup>

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

Maltby Meadows is located in Snohomish County Fire District No. 7. Exhibit 33.

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 8B, *supra*.

19. 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: 829,869 square feet/100,000 square feet	= 8.29 lots
Total lot yield	= 8.29 lots
Total lot yield-rounded	= 8 lots

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<sup>2</sup> Criteria 15 is not applicable.  
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Total lots proposed = 8 lots

See Exhibit 38.

20. 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, 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 is to be provided by the Cross Valley Water District. Sanitary sewerage is to be provided by individual wastewater septic systems.

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

## CONCLUSIONS OF LAW

### **A. Pre-Remand Conclusions of Law**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Hearing Examiner has jurisdiction to decide upon a variance which, as in this instance, is submitted with another application requiring a predecision hearing by the Hearing Examiner. (SCC 30.43B.020(2))
2. The code interpretation discussed in the Findings of Fact above is not before this Deputy Examiner on appeal. The interpretation of language in the Snohomish County Code by the Chief Planning Officer is owed substantial weight by the Hearing Examiner in deference to the administrative expertise and experience of that officer. Thus, the Deputy Examiner is not to substitute her/his judgment for that of the Chief Planning Officer unless a preponderance of the evidence provides good cause to do so. In this instance, the reasoning and analytical method demonstrated by the code interpretation document (Exhibit 37) result in a preponderance of the evidence supporting the interpretation. Thus, the Deputy Examiner accords persuasive weight to the code interpretation to the extent that the code interpretation bears on the issue of whether a related variance is warranted.
3. Further, if enacted language is clear in its face, the language should neither be construed nor interpreted. In this instance, had there been no code interpretation, the Deputy Examiner would have concluded independently that the language of SCC 30.23.110(8) unarguably requires setbacks to be measured from Lot 3 lot lines. The result is that a proposed five-foot setback instead of the required 50-foot setback requires approval of a variance. The Examiner so ruled orally at hearing.

~~<sup>3</sup>4. Analysis now turns to the requested variance. The variance requested fails to meet three of the four decision criteria set out at SCC 30.43B.100 as described at Findings of Fact eight through 12 above.~~

5. Any conclusion of law above which should be deemed a finding of fact is adopted as such.
- <sup>4</sup>6. The Chief Planning Officer's code interpretation and staff report by the Planning and Development Services Department correctly interpret the setback provisions of SCC 30.23.110(8). The code section requires that setbacks be measured from the lot lines of the lot on which the use is located, not from the outer boundary of the plat.

**B. Post-Remand Conclusions of Law**

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

the proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . . .

RCW 58.17.110.

3. Given the information provided in the record and the findings of fact made above, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.
4. The applicant will need to submit a modified preliminary plat map to show that all setback requirements are met under county code, as required by the County Council's decision in Motion 08-218. The County Council has concluded as a matter of law that its decision on appeal does not prohibit a mini-equestrian center if the subdivision is reconfigured to meet setback requirements and appropriate requirements are made by the Examiner on remand. Even if the applicant chooses to eliminate the mini-equestrian center the preliminary plat map must be modified and a new one put into place meeting setback requirements. Therefore, a precondition will be added requiring the applicant to provide a new preliminary plat map.
5. Any Conclusion in this Order, which should be deemed a Finding of Fact, is hereby adopted as such.

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<sup>3</sup> Ordered stricken by Council Motion 08-218.

<sup>4</sup> Added by Council Motion 08-218.

## 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:

- A. Applicant must submit a new preliminary plat map meeting the requirements of this decision and depicting all proposed structures on the map meeting setback requirements. Applicant may include the mini-equestrian center if it meets applicable setback requirements as outlined in previous decisions.

### CONDITIONS

- A. The new preliminary plat that is received by PDS in response to Precondition A, 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 and this decision.
  - 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 IDD Mitigation Plan prepared by Wetland Resources revised February 20, 2007 shall be submitted for review and approval during the construction review phase of this project.
  - iv. The applicant shall obtain written approval from the Bonneville Power Administration (BPA) for activities construction shown within BPA easements.
- 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 Monroe School District No. 103 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:  
  
\$2,411.64 per lot for mitigation of impacts on county roads paid to the county,

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. 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. Twenty feet of right-of-way, or adequate right-of-way to create 40 feet of right-of-way on the development's side of the centerline of SR 524, shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on north side of SR 524 on the final recorded plat [SCC 26B.55.060].
- v. The developer shall pay the County \$1,244.49 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. Bonneville Power Administration (BPA) imposes certain conditions on the use of properties encumbered by high voltage transmission line right-of-ways. There can be no structures built on the BPA right-of-ways. Proposed uses of the right-of-way must be reviewed, approved and permitted by BPA prior to installation. BPA Real Estate Field Service can be contacted at 1-800-836-6619.
- vii. No fencing is permitted between structures. Fencing will interfere with fire department operations in this development during an emergency.

D. Prior to recording of the final plat:

- i. An approved WSDOT access permit.
- ii. Construction plan approval to the specifications of DPW.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

- iv. 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 wetland mitigation plan 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 20).
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 25E) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
  - ii. The applicant shall ensure that the following Fire District requirements are implemented:
    1. Ensure adequate flow/hydrants
    2. Ensure all hydrants are equipped with 4" STORTZ" adaptors
    3. Ensure all road signs are posted prior to construction
    4. Ensure all building addresses are clearly marked
    5. Post no parking in 20" fire lane access roads
    6. Ensure no parking on the fire lane (drive isle)
    7. Prohibit fencing between structures. Fencing will interfere with fire department operations in this development during an emergency
    8. Do not allow secondary egress windows from upper level rooms to be between structures with 10' building setbacks (firefighters cannot meet climbing angles in these reduced setback developments). Place these windows in front and rear.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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

Decision on Remand issued May 13, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 23, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MAY 27, 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.

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### Staff Distribution:

Department of Planning and Development Services: David Radabaugh

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
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**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MAY 13, 2009.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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