

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 21, 2007

PLAT NAME: *MONTECITO ESTATES*

APPLICANT/
LANDOWNER: Eagle Creek Land & Development

FILE NO.: 06-125154-000-00-SD

TAX ACCOUNT NUMBER: 003730-008-005-00

NATURE OF REQUEST: Montecito Estates is an 18-lot subdivision of 8.26 acres. The proposed single-family residential lots range in size from 4,676 square feet to 15,432 square feet with three acres of open space. Access to the new lots will be provided by a new public road extending from Poppy Road. Public water and sewer service will be provided by the Alderwood Water and Wastewater District. Mitigation fees are to be paid in accordance with Chapters 30.66A, B, and C, SCC, for project impacts to community parks, nearby road system traffic and to the Everett School District No. 2.

DECISION (SUMMARY): GRANTED subject to CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: At the eastern terminus of Poppy Road, ¼ east of its intersection with Winesap Road, about one mile south of Mill Creek, in Section 18, Township 27 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 8.26

NUMBER OF LOTS: 18

AVERAGE LOT AREA: 7,958 square feet

MINIMUM LOT SIZE: 4,676 square feet

GROSS DENSITY: 2.2 du/ac

NET DENSITY: 5.5 du/ac

ZONING: R-9600

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 10

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The Montecito Estates application was originally submitted to Planning and Development Services (PDS) on June 26, 2006, and was determined on June 26, 2006 to be complete as of the date of submittal for regulatory purposes, but insufficient for further review. The application was returned on August 29, 2006 (Day 33). A resubmittal of the application was received on November 1, 2006, which was returned on November 22, 2006 (Day 40). A final submittal on February 7, 2007 was determined on February 21, 2007 to be sufficient for further review. As of the hearing date, 116 days of the 120-day review period will have elapsed.

The Hearing Examiner (Examiner) made a site familiarization visit on May 7, 2007.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20-22)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 9, 2007. (Exhibit 19).No appeal was filed.

The Examiner held an open record hearing on May 8, 2007, the 116th 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 May 8, 2007 at 11:03.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and would view the area and therefore has a general idea of the particular request involved. Exhibits 1-36 were admitted.
2. Witnesses expressing an interest to testify were administered the oath/affirmation
3. Robert Pemberton, a planner for Snohomish County Planning and Development Services, appeared and testified. He is the planner for the project. The County recommends approval. The project complies with applicable county ordinances. There are no unresolved issues pending on the application. He introduced additional exhibit 37, the certificate of sewer availability
4. David Casey, a P.E. at Baima & Holmberg, Inc., appeared and testified. He is the applicant's representative. He concurs with the staff report and the conditions contained therein. He described how a civil engineer took soil samples to determine how to best protect the bank. In some of the locations the houses' location will be set back from the edge of the bank. Stormwater treatment relies upon a controlled release system which will discharge the water down the bank in a pipe where the energy and water will be dissipated.
5. Brian Menz, 19005 4th Ave SE, appeared and testified under oath. He is a neighbor to the proposed project and president of Brookcrest Home Owners' Association. His concerns include the creation and maintenance of a greenbelt between the current homes and the development. He wants to be certain that during construction dust and noise are kept to a minimum. He would like to have the views from the current homes preserved by the new homes being staggered within the lots.
6. David Casey reappeared and testified regarding the concerns raised by Mr. Menz. The plans have made to preserve about 7 ½ feet between the sidewalk serving the proposed development and the houses up hill. During construction steps will be taken to preserve as many of the trees as possible in this strip. The developer must balance tree retention and view retention. Dust control during construction is covered with the grading and clearing permit. Water trucks to keep the dust down will be on site as required by the county code. The use of a stump grinder on the site is up to the contractor. As there are no easements covering the project there are no guarantees that the views can be protected. However, the county building code regulates the building height.
7. Robert Pemberton reappeared and testified. The proposed project complies with county codes. Noise, erosion and dust control during construction are covered by county code. County code provides no authority for view protection. The only authority for native growth retention is on steep slopes and in wetlands.

The hearing concluded at 11:24 a.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Letters of concern and testimony of concern: The issue of view preservation was brought up. There are no known restrictive covenants controlling this issue, however the county code regulates building height. The issue of a green belt between the proposed development and Brookcrest was brought up. The plans propose 7 ½ feet between the sidewalk and Brookcrest which will act as a vegetation barrier. Noise and dust control issues were brought up. The standard provisions of county code are the authority available to regulate these construction effects and are deemed adequate mitigation
4. There are currently three residences and several outbuildings onsite. The central portion of the site is mostly vegetated with grass with several clumps of trees. The southern portion is covered with a mix of mature deciduous and coniferous trees. The southwestern portion of the site slopes gently to moderately down toward the east to northeast. Most of this area has been cleared and landscaped. The ground surface slopes down steeply in the northeast half of the site to a wetland area in the eastern portion.
5. Zoning: This site and most surrounding properties are zoned R-9,600. The area to the southwest is zoned PRD-7,200 and is developed with a higher density single-family residential subdivision. An older apartment complex exists to the north. To the south are developed low-density single family residential neighborhoods. The areas to the southeast and east are much lower density, wooded residential areas.
6. Parks Mitigation (Chapter 30.66A SCC) The proposal is within the Naketta Beach Park Service Area 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. PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.
 - a. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 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 16. The development will generate 153.12 new ADT and has a road system capacity impact fee of \$35,217.60 (\$2,071.62/lot) based on \$230.00/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. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a preliminary determination that the development is concurrent as of November 17, 2006. The expiration date of the concurrency determination is six years from November 17, 2006. 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:

Small or Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130(4). The subject development is located in TSA F which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 12.00 a.m. peak-hour trips and 16.16 p.m. peak-hour trips which is less 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]

There are two IRC locations identified at this time within TSA F: York at Jewel, and Locust Way at 15th Ave W. The traffic impact study indicates traffic distribution generated by this development will not impact these IRC's with three or more p.m. peak hour trips. Therefore, 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 will take access off of the current terminus of Poppy Road. Therefore, urban frontage improvements per EDDS are required as necessary to make an acceptable connection to Poppy Road

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

Access to the development is proposed via an existing public road (Poppy Road) that intersects with a proposed future public road at the south west corner of the plat, 5th Place SE that terminates in a cul-de-sac. 5th Place SE will provide future access to all 18 lots.

The DPW finds the proposed road layout to be acceptable.

The new public road, 5th Place SE, shall be constructed in accordance with EDDS.

The final plat needs to show off site right of way dedication in the vicinity of the new public road where it connects to Poppy Road.

The applicant submitted the following deviations for review and approval:

The first deviation was to eliminate the 5 foot planter strip on the west side of the new public road, 5th Place SE. This deviation request has been approved.

The second deviation was to provide an intersection angle of 110 degrees in the vicinity of the new public road where it connects to Poppy Road. The standard per EDDS 3-105 is a 90 degree angle plus or minus 5 degrees. This deviation request has been approved.

The third deviation was to slope the sidewalk at 2% away from the curb instead of towards the curb in the vicinity of the new public road where it connects to Poppy Road. This deviation has been approved.

The fourth deviation was to deviate from EDDS 3-105 by reducing the right of way from 55.5 feet to 50.5 feet at the entrance to the project and locate the sidewalk at the back of the curb.

This design would allow the construction of the elbow to match the existing apartment complex access paving as close as possible. This deviation has been approved.

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

Access to site is provided via Poppy Road and a future public road 5th Place SE which is designated as residential on the County's Arterial Circulation Map. This requires a right-of-way width of 51 to 55 feet. The applicant is dedicating 25.5 feet and 27.5 feet respectively on each side of the right-of-way centerline. The right of way shown is acceptable.

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. The applicant chose the voluntary payment option (d) to mitigate their impact to the state highway system. The payment is calculated at $153.12 \text{ ADT} \times \$36.00/\text{ADT} = \$5512.32$ (\$324.25/lot).

A copy of a voluntary offer was submitted for \$5512.32. In a letter dated November 15, 2006, WSDOT indicated acceptance of that amount, and enclosed a copy of an executed voluntary agreement. Payment of that amount will be a recommended condition of approval.

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

Traffic 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 Mill Creek for traffic mitigation for impacts on the City's road system. Comments were received from the city of Mill Creek on June 29, 2006 indicating that no traffic impact mitigation is required.

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

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

All new developments in the urban area shall provide TDM. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. [SCC 30.66B.650].

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500.00. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500.00 times the required trip reduction percentage times, the development's peak hour trip generation.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 16.16 new PM peak hour trips x \$1,500.00, which equals \$1,212.00 (\$71.29/lot). The applicant has offered in writing to pay this amount.

j. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments were received from the Everett School District on August 14, 2006. The school district will pick up students for Woodside Elementary, Heatherwood Middle and Henry M Jackson High Schools in the development and use the cul-de-sac as a turn around. Based on that, offsite pedestrian facilities are not required.

9. School Mitigation (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 Everett School District No. 2, 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 two existing lot(s). 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(Chapters 30.63A and 30.63B SCC)

Stormwater runoff from the proposed impervious surfaces on the majority of the site will be collected by a series of pipes and catch basins to Tract 20 which will contain a combined Detention/Water Quality facility that will release stormwater at or below developed rates. The facility will also contain additional water quantity storage to mitigate for stormwater storage within a small wetland on site which will be filled. A portion of the rear yards of lot 4 through 17 will continue to flow directly down slope to the northeast. The file contains a Geotechnical Engineering Report - Poppy Road Residential Development dated March 20, 2006 by Cornerstone Geotechnical (Exhibit 8). This report contains recommendations regarding the development which are considered part of the proposal. The preliminary plat shows building setback lines from the top of the slopes in response to geotechnical concerns.

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 quantities are anticipated to be approximately 5,000 cubic yards of cut and 5,000 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)

Two wetlands and steep slopes occur on site. A small 3,601 square foot, isolated, Category 3 wetland is located near the southeast corner of the site. A portion of the west edge of a large wetland associated with North Creek is located at the toe of the slope located near the east property line. The smaller wetland will be filled to accommodate drainage facility construction with mitigation in the form of additional storm water storage and wetland plantings. The larger wetland will remain undisturbed as will the steep slopes above it.

PDS has reviewed the Critical Areas Report (Exhibit 7) and Conceptual Mitigation Plan (Exhibit 17A) and determined that the project complies with the critical areas regulations.

12. GMA Comprehensive Plan (General Policy Plan, GPP)

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 June 26, 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 Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.”

The current zoning of the site is R-9,600. No rezone is requested. PDS and the Hearing Examiner find the requested subdivision to be consistent with implementing zoning of the General Policy Plan’s Urban Low Density Residential designation of the property.

13. Zoning(Chapter 30.2 SCC)

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

The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may

not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%

The LSA calculation is as follows: Area in Lots (143,247square feet) + Critical Areas and Buffers (136,092 square feet) + Open Space (3,749 square feet) = 283,088 square feet ÷ 18 (lots proposed) = 15,727 square foot average lot size

The minimum zoning requirement is 9,600 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

The 18 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Environmental Policy (Chapter 30.61 SCC)

There is compliance with the environmental policy as the Determination of Non Significance was issued and not appealed.

15. 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 June 26, 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. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

16. 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. 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.

17. Water and sewer are to be provided by the Alderwood Water and Wastewater District.
18. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The Hearing Examiner has jurisdiction to hear this matter and render this decision.
5. Adequate public services exist to serve the proposal.
6. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
7. The request should be approved subject to compliance by the applicant with the following Conditions:
 - A. The preliminary plat received by PDS on March 9, 2007 (Exhibit 18) shall be the approved preliminary plat configuration. Changes to the approved preliminary 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 plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

- iii. A final mitigation plan based on the Montecito Estates Conceptual Mitigation Plan prepared by Sewall Wetland Consulting, Inc. received February 7, 2007 (Exhibit 17A) 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 Everett School District No. 2 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 two existing parcels. Lots 1 and 8 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:
 - \$2,071.62 per lot for mitigation of impacts on county roads paid to the county,
 - \$71.29 per lot for transportation demand management paid to the county,
 - \$324.25 per lot for WSDOT 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); "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 \$1244.49 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.
- D. Prior to recording of the final plat:

- i. 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.
 - ii. The final wetland mitigation plan shall be completely implemented.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 15C-D) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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.

8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for an 18-lot subdivision of 8.26 acres utilizing lot size averaging is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 21st day of May, 2007.

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 **May 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 **June 4, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Robert Pemberton

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.