

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

DATE OF DECISION: May 23, 2007

PLAT/PROJECT NAME: ***WHISPERWOOD ESTATES DIVISION II***

APPLICANT/
LANDOWNER: Troy Schmeil; Callidus Land, Inc

FILE NO.: 06-133579-000-00-SD

TYPE OF REQUEST: 17 lot rural cluster subdivision of approximately 38.63 acres

DECISION (SUMMARY): GRANTED, subject to conditions.

BASIC INFORMATION

LOCATION: North of the intersection of Nebraska and Mero Roads, adjacent to the WhisperWood Estates, Snohomish, in Section 6, Township 28 North, Range 7 East, W.M., Snohomish County, Washington.

ACREAGE: 38.63 acres

AVERAGE LOT AREA: 43,529 square feet

SMALLEST LOT AREA: 33,255 square feet

NUMBER OF LOTS: 17

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN: Rural Residential (1 du/5 acres Basic)

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 4

UTILITIES: WATER: Snohomish County PUD #1
SEWER: Individual On-Site Septic

INTRODUCTION

The applicant is requesting approval of a preliminary rural cluster subdivision of 38.63 acres for 17 single family lots as specified in Snohomish County Code (SCC) 30.41C. The property is currently zoned R-5. The subdivision would result in the creation of 17 building lots, three open space tracts and one tract for a private road. Three of the open space tracts would be used as recreational open space with critical areas protected as Native Growth Protection Area Easements (NGPA/E). They will also be used as site obscuring buffers. One open space tract would be used for detention. The largest of the proposed building lots is 55,185 square feet; the smallest is 33,255. The average building lot size is 43,529 square feet. Access to the development will be from the terminus of Nebraska Road north of Mero Road. Snohomish County PUD #1 would provide public water service. Private individual on-site septic systems are proposed for wastewater disposal.

The applicant filed the Master Application to Planning and Development Services (PDS) on December 4, 2006, and was determined to be complete as of the date of submittal. A resubmittal of the application was received on February 16, 2007. (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 17-19)

A SEPA determination was made on March 22, 2007. (Exhibit 16) No appeal was filed.

The Examiner visited the site of the proposed development on May 7, 2007.

The Examiner held an open record hearing on May 8, 2007, the 60th 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 10:05a.m.

1. The 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, Troy Schmeil; Callidus Land, Inc, was represented by Paul Villwock, Project Engineer for WhisperWood II. Snohomish County was represented by Paul McCray of the Department of Planning and Development Services.
3. Paul MacCready, planner for Snohomish County Department of Planning and Development Services appeared and testified. He said that Snohomish County Staff approved the proposed project, subject to certain conditions. The project complies with rural cluster subdivision ordinances. He said that all access to the subdivision will be from the plat of WhisperWood Division I through Nebraska Road. School children from both Division I and II will meet the school bus at Nebraska and Mero Roads. The issue of pedestrian access was already covered

with the plat of Division I. Fire flow has been approved and meets the standards of the fire district.

4. Mark Villwock, the project engineer for WhisperWood, appeared and testified. He said that the applicants have reviewed the county staff report and accept the conditions contained therein. He testified that WhisperWood II is a 17 lot rural cluster subdivision proposed under the provisions of SCC Chapter 30.41C. He discussed the average lot size as being approximately 43,529 square feet and over 75% of the lots greater in size than one acre. He described the side buffers as being greater than 35 feet. Open spaces will be 51% of the project. There will be on site septic service which has been preliminarily approved by Snohomish County Health Department. Water will be provided by the PUD. There is already a water main going to WhisperWood I, which will be extended to the homes in Division II. He discussed road access to the lots including both a private road and a public road. School children will have a seven - foot wide paved and lighted shoulder to walk to the school bus stop.
5. Maxine Tuerk, P.O. Box 155, Monroe, appeared and testified. She represents herself and Snoporch. She introduced exhibit 33 which contains a letter to the hearing examiner, a letter to the planner, two photographs of the proposed project taken from the air, and excerpts of the Snohomish County Code. She owns property adjacent to WhisperWood II. She expressed opposition to the project and emphasized the contents of her letter. She feels Division I and Division II should be considered a single project. She reviewed portions of the county code pertaining to Rural Cluster Subdivisions. She expressed drainage and forest land protection concern.
6. David Lewis, 20631 63rd SE Snohomish appeared and testified. He introduced exhibit 34, a list of issues of WhisperWood Development along with a list of signatures of neighbors opposed to the proposed project. He owns property adjacent to the project. He represents himself and other property owners adjacent to the project. He wants to make certain that his current activities are not curtailed by the project. He wants to make certain that he doesn't have to connect to water or sewage as a result of the project. He is concerned about lot size. He says that he felt that the neighboring lots would be at least 5 acres. He described a salmon stream running from the project to his development. He was concerned that the higher density would harm the stream. He hoped the desires of the neighbors for larger lots would be considered.
7. Mark Villwock, reappeared and testified. He said the buffer meets and exceeds the code requirements. The storm water proposal meets the requirements of the code. The surface water drains to two separate basins. This project will not drain toward Mr. Lewis's site. There will be a riparian management plan to protect the streams and buffers. The density and lot sizes comply with the code.
8. Troy Schmeil, the applicant, appeared and testified. The building areas of the proposed project was placed as far as possible from the five acre lots. He talked to the utilities and no neighbors will be forced to connect. The geologists have concluded that the project will not effect the water table for neighboring well users.
9. Paul MacCready, reappeared and testified. This is a separate subdivision than WhisperWood I and stands on its own application as the regulations apply to it. He discussed the development

standards for rural cluster subdivisions. He said the county council set these rules applicable to the subdivision by enacting the county code. This project is vested under the RCS chapter of SCC. He said the county ordinance prefers use of RCS development over lot by lot development. R-5 zoning does not specifically mean that 5 acres is the minimum lot size. Smaller lot sizes are authorized under RCS. Mr. Lewis may continue his legal activities that he now enjoys. The county has no control over what the public utilities may require in the future. All the platting process requires is that the utilities indicate that the utilities will be available to the project. Nebraska will be considered a rural residential road, not a collector. He discussed open space, vegetation, forest land and steep slope protection conditions recommended by the county staff.

The hearing concluded at 10:37 a.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

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

1. The master list of exhibits and witnesses which is a part of this file and those exhibits introduced during the hearing which were considered by the Examiner are hereby made a part of this file, as if set forth in full herein.
2. The subject site is outside the urban growth area (UGA) and currently zoned R-5. The property is surrounded by mostly undeveloped forestland and wetland. Single family homes on large lots are situated west of the subject site. The proposed plat of WhisperWood, Division I is located directly east and north. WhisperWood Division I has received preliminary plat approval, but has not yet been recorded. The subject property is adjacent to designated commercial forestland along the northeastern corner. Disclosure text, as specified in SCC 30.32A.220, shall be included on all final developments within 500 feet of designated forestland. The adjacent forestland is zoned Forestry (F). All of the remaining surrounding property is zoned Rural 5-Acre (R-5).
3. Two letters were received during the public comment period. Concerns were expressed about density, road access, critical areas, and utilities. Likewise two citizens testified at the public hearing about the same concerns related to the proposed project

This development meets the density standards specified in SCC Chapter 30.41C, which regulates rural cluster subdivisions. Rural cluster subdivisions are the preferred type of development in rural areas, as noted in the purpose section of the SCC Chapter 30.41C. Staff is recommending a condition to improve Nebraska Road to accommodate the increased traffic. No access is proposed by way of the private roads bordering the property on the west side. The critical areas are proposed to be protected by Native Growth Protection Areas (NGPA) within restricted open

spaces. All utility companies providing services have indicated they have capacity to serve this development. The applicant is proposing protections to the wetlands, stream and related buffers areas which are in accordance to the County Code. While there is neighborhood opposition to the project, the courts have ruled that general neighborhood opposition to a project is not basis for denial, *Sunderland Family Treatment Services v. Pasco*, and *Maranatha Mining, Inc. v. Pierce County*, 801 P.2d 985 (1990).

4. Park Impact Fees

The proposal is within Centennial Park District No. 306 and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit. This payment is an acceptable mitigation for parks and recreation impacts in accordance with county policies.

5. 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 17 new single family residential lots at 9.57 adt/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 162.69 new ADT and has a road system capacity impact fee of \$27,006.54, based on \$166/ADT. The “per lot” amount will be \$1,588.62. This impact fee must be proportionally paid prior to the issuance of the building permits associated with this development.

b. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and a preliminary determination has been made that the development is concurrent as of March 3, 2007. The expiration date of the concurrency determination will be six years from the concurrency date, which is March 3, 2013.

The development has been deemed concurrent on the following basis:

Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160

The subject development is located in TSA C, which as of the date of submittal had the following arterial units in arrears; Arterial Units 198 and 353. Based on peak-hour trip distributions, the subject development did not add three 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 12.75 a.m. peak-hour trips and 17.17 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 C 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.

d. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located at the end of Nebraska Road, which will be improved and extended with new construction to rural public road standards. Rural standard improvements will consist of 30 feet of pavement, (rural residential road standard) a 7 foot shoulder, a 3 foot shoulder and 2-10 foot driving lanes. Standard frontage improvements will not be required.

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

As stated above, access to and through the site will be a public road constructed to the residential public road standard shown on EDDS Plate 3-060 as constructed by the plat of WhisperWood Division #1. Road A is proposed as a private road serving 13 lots. The private road section in the EDDS that will serve the 13 lots is the private subcollector road shown on Plate 3-060, which is 30 feet of pavement (two 10 foot driving lanes with a 7 foot shoulder on one side and a 3 foot shoulder on the other side.) Lots 14 through 17 will be served by the public road constructed within the plat of WhisperWood. The seven foot shoulder required for both the public and private road will provide safe walking conditions for the school children from this development when delineated as a walkway. The plat of WhisperWood (Division #1) must be recorded before WhisperWood Division #2.

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

No additional right-of-way deeding is required.

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. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at $162.69 \text{ ADT} \times \$36.00/\text{ADT} = \$5,856.40$.

A voluntary offer, acceptable to the State, signed the applicant has been submitted to the WSDOT. Comments from the WSDOT were received by email on December 15, 2007 agreeing with the applicant's offer to pay the above amount (Exhibit 30).

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

There are no local jurisdictions that have an interlocal agreement with Snohomish County for traffic mitigation; therefore the provisions of this section of code do not apply to this project.

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

This proposal lies outside of the Urban Growth Area; so therefore, the provisions of this section do not apply to this project.

j. Pedestrian Facilities [RCW 58.17.110]

Comments have been received from the Snohomish School District received on March 1, 2007 (Exhibit 24) stating that bus stop locations will be at the intersection of Nebraska and Mero Roads. The school district is requesting a safe waiting area for the students and lighting at the bus pick up point.

6. Drainage and Grading(Chapters 30.63A and 30.63B SCC)

Flow control will be obtained using a detention pond system. The pond will be constructed in a detention tract located in the northeast corner of the site (Tract 999). Water quality will be achieved using a wet-pond. Stormwater will exit the detention facility and enter the new conveyance system to be built on the adjacent WhisperWood Division I development. The stormwater will bypass the adjacent plat's detention and be dispersed on a rock splash pad downstream.

A preliminary landscaping plan (Exhibits 14F) show a living fence will be provided to buffer the drainage facility. The plan, which includes the use of existing vegetation, complies with SCC 30.25.023.

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 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.

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

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

The subject property is designated Rural Residential (1 du/5 acres Basic) on the GPP Future Land Use map, and is located outside the Urban Growth Area (UGA). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9. Policy LU 6.B.9 states that within the Rural Residential designation subdivisions may exceed the basic density of 1 lot per 5 acres if the rural cluster subdivision technique is used, all of its criteria and requirements for the maintenance and enhancement of the rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres.

The 17 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

8. School impact fees

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 Snohomish School District No. 203, 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.

9. Critical Areas Regulations(Chapter 30.62 SCC)

A Type 2 ESA stream and an associated Category 2 wetland and are located in the southwest corner of the site. The stream flows through the wetland and continues off-site to the west. The stream is a tributary of the West Fork of Woods Creek. The entire stream and wetland system and their buffers, including the 150 foot Fish and Wildlife Habitat Conservation Area (F&WHCA) are contained within Native Growth Protection Area Easement (NGPA/E) located in Restricted Open Space Tract 997.

A few isolated areas with slopes over 40 percent are located in Restricted Open Space 998 in the northeastern area of the lot. Those slopes, which are considered "unbuildable land" as defined in SCC 30.91U.060, must be contained within a NGPA/E per SCC 30.41C.200(5).

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

10. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, bulk regulations and other zoning code requirements and meets the standards for a rural cluster subdivision as specified in Chapter 30.41C SCC. The project is currently zoned R-5 and the will continue to be the R-5 zone.

11. Environmental Policy (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 22, 2006 (Exhibit 16). The DNS was not appealed.

12. 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 December 4, 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.

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

The subject rural cluster subdivision (RCS) application has been reviewed by PDS 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 February 16, 2007 (Exhibit 14A-C), and in an open space management plan (Exhibit 10) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 51% (19.75 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

The application has been reviewed by PDS for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas; a sight obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW has indicated that the public roads shall be constructed to EDDS standards; all utility lines are to be located underground; there is no

unbuildable land as defined by Chapter 30.41C SCC located on site which would be required to be included in native growth protection areas; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; physical separation of clusters is provided; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road; the proposal is not served by public sanitary sewer; clusters of lots are located near the interior of the site and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

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

Basic lot yield: 1,682,800 square feet/100,000 square feet = 17 lots

Bonus residential density	= 0%
Additional bonus density	= 0%
Total lot yield	= 16.8 lots
Total lot yield-rounded	= 17 lots

Total lots proposed = 17 lots

14. 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 steep slopes, and 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.

15. Water service would be provided by Snohomish County PUD #1.

16. Private on-site septic systems would provide wastewater disposal, as approved with conditions by Snohomish Health District.

17. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

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

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 relationship to 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.
2. The Examiner has jurisdiction to hear this matter and to render this decision.
3. PDS Traffic recommends that the request be approved as to traffic use subject to conditions specified below herein.
4. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
5. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
6. Adequate public services exist to support the proposed development.
7. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 17-lot rural cluster subdivision known as *WhisperWood II* on 38.63 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The revised preliminary plat/rural cluster subdivision received by PDS on February 16, 2007 (Exhibit 14A-C) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any 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.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
 - ii. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 203 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. Lots 1 shall receive credit.”
 - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,588.62 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$344.25 per lot for mitigation of impacts on state highways paid to the County.

These payments are due at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.”
 - iv. 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.”
 - v. A resource protection area, a minimum of 100 feet in width, adjacent to the forest land boundary shall be recorded on the face of the final plat. No structures shall be located in

the resource protection area and this use restriction shall be considered in calculating the assessed value of the property.

- vi. The following statements shall appear on the face of the plat:
“Your real property is on, adjacent to, or within 500 feet of designated forest land, on which a variety of forest management activities could occur that may not be compatible with residential development for certain periods of limited duration. These forest management activities include, but are not limited to, timber harvest, road and trail construction, the operation of machinery, trucks and aircraft, brush control, slash burning, the application by spraying of forest chemicals, and other forest management activities, which activities are lawful if conducted in compliance with Title 222 WAC. In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including falling timber and increased fire hazard. Due to these risks, Snohomish County encourages landowners to locate structures at least 200 feet from adjacent forest land boundaries. Snohomish County has adopted Forest Lands Regulations (chapter 30.32A SCC) which may affect you and your land. You may obtain a copy of chapter 30.32A SCC from Snohomish County. A provision of chapter 30.32A SCC provides that forest management activities conducted on the designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington's pesticide regulations (WAC 16-228-1220(5)), and established prior to surrounding non-forestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health, safety, or environment.”

This disclosure applies to real property upon any development or building permit approval; or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated forest land is changed from designated forest land.

Nothing in chapter 30.32A SCC shall affect or impair any right to sue for damages.”

- vii. All areas within the restricted open space with slopes over 40%, which are designated as “unbuildable land” as defined in SCC 30.91U.060, shall be contained within a Native Growth Protection Area Easement (NGPA/E).

D. Prior to recording of the final plat:

- i. Private road interior to the plat shall have been constructed to the private road subcollector standards or as modified by an approved deviation to the design standards.
- ii. The plat of Whisperwood, PFN 05-126472 SD, shall have been recorded.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved

by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Development Review & Construction Division for review and approval prior to installation.

- E. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibits 14F & 14G) shall be implemented. All required 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 approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

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

Decision issued this 23rd day of May, 2007.

James Densley, Hearing Examiner Pro Tem

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 **JUNE 4, 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 6, 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: Paul MacCready

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.