

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

DATE OF DECISION: January 8, 2009

PLAT/PROJECT NAME: **DUBUQUE WOOD CREEK ESTATES**

APPLICANT/  
LANDOWNER: Titan Operations, LLC

FILE NO.: 08-104140-000-00-SD

**TYPE OF REQUEST:** Rural Cluster Subdivisionp

**DECISION (SUMMARY): APPROVAL WITH CONDITIONS**

**BASIC INFORMATION**

GENERAL LOCATION: 20022 Dubuque Road, Snohomish, WA 98290-7405

ACREAGE: 10.4 acres

NUMBER OF LOTS: 5

AVERAGE LOT SIZE: 47,556 square feet

MINIMUM LOT SIZE: 44,584 square feet

DENSITY: .48 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 ac – Basic)

UTILITIES:

Water: On-site exempt well

Sewer: On-site septic

SCHOOL DISTRICT: Snohomish #201

FIRE DISTRICT: FPD NO. 16

PDS STAFF RECOMMENDATION: Approve with conditions

## **INTRODUCTION**

The applicant filed the Revised Master Application on April 21, 2008. (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 F-1, F-2 and F-3)

A SEPA determination was made on October 31, 2008. (Exhibit E-2) No appeal was filed.

The Examiner held an open record hearing on January 6, 2009, the 113<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**NOTE:** For a complete record, an electronic recording of the hearings in this case 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 which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

#### **A. Background Information**

2. Applicant's Request: Dubuque Wood Creek Estates is a 5-lot rural cluster subdivision of 10.4 acres. The proposed single-family residential lots range in size from 47,556 square feet to 44,584 square feet with 215,584 square feet (4.95 acres) of open space. On-site wells are proposed for water supply and on-site sewage disposal systems are proposed.
3. Site Description: The subject property is a single tax parcel, rectangular in shape, with the long axis in a north-south direction. The site is developed with a single-family residence, with outbuildings at the northern end of the property (along Dubuque Road). The southern end of the property is encumbered with Carpenter Creek; also known as Woods Creek, which is a fish-bearing stream presumed to carry ESA threatened species, and riparian wetlands. The area between the wetlands and the stream is forested.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Adjacent land is either undeveloped or developed into single-family residences on large parcels, most of which are in excess of five acres.
5. Issues of Concern: One public comment letter was received from Patricia O'Hanley, the property owner to the west of the subject property. Her concern was the actual location of the shared property line. Ms. O'Hanley stated that she had a survey done in 1994, and that survey showed a property line that differed from the person that owned the subject property at that time (Not the current owner). (Exhibit H-1) Mr. Caine, PDS staff at the hearing, testified that

boundary disputes of this type are normally treated by PDS as property disputes between private parties. He noted that the plans submitted for the project had been stamped and signed by a licensed surveyor and verified by the PDS Cartography Department.

The applicant's representative, Debbie Rothfus of Peak Engineering, Inc., testified that the company's surveyor, Dirk Weimann, PLS, had spoken with Ms. Hanley and had summarized the conversation in a confirming letter submitted to the record as Exhibit J-1. The letter indicates the parties agreed the two surveys are within acceptable tolerances, with the exception of the location of the unopened right-of-way adjacent to Dubuque Road. Both Ms. Rothfus and Mr. Caine testified that this discrepancy does not affect lot yield or open space calculations for the purposes of meeting the requirements of the rural cluster subdivision code.

In Washington State, the Court of Appeals, Division 1 found in the case of *Halverson v. Bellevue*, that the platting statute, Chapter 58.17 RCW, requires consent of owners to the subdivision of land in order to prevent future title disputes. In that case, a claimant notified the City of Bellevue that she had a partial ownership interest in property (via adverse possession) in the process of being platted. The city approved the plat, and on appeal, contended that the claimant had only a contingent ownership interest, since the adverse possession claim had not been adjudicated. To the contrary, the Court of Appeals found that "[o]nce the city was put on notice of Halverson's claim, approval of the plat as submitted was improper," RCW 58.17.170. (fn.2). The only remedy left when the city allowed the plat to go forward in the face of such a claim was invalidation of the plat. *Halverson*, 47 Wn. App. at 460.

While it sounds like this dispute may have already ended amicably, it is up to the applicant to assure that it does so prior to final plat approval. The Examiner will place a condition to be met before final plat approval that will require the applicant to provide an affidavit or declaration to the record from Ms. Hanley verifying that she claims no ownership interest in the property within the plat as documented in the final plat documents submitted to be recorded.

## **B. Compliance with Codes and Policies.**

6. Parks Mitigation. The proposal is within Park District No. 306 (Centennial) and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66A SCC.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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 four (4) single-family residences, which is 9.57 ADT/SFR. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 38.28 new ADT and has a road system capacity impact fee of \$6,354.48 (\$1,270.90/lot) based on

\$166/ADT. The Examiner has included a condition of approval for inclusion within the project decision to comply with this requirement.

**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 June 18, 2008. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is April 21, 2008. The expiration date of the concurrency determination will be April 21, 2014.

The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in Transportation Service Area (TSA) with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA C which, as of the date of submittal, had the following arterial units in arrears: AU#198, 353. 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 3.00 a.m. peak-hour trips and 4.04 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, which would require evaluation under SCC 30.66B.035.

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

The subject development proposal will not impact any IRC locations identified 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 SCC.

**D. Frontage Improvements [SCC 30.66B.410]**

As per DPW Rule 4222.020(1), full rural frontage improvements are required along the subject parcel's frontage on Dubuque Road and consist of a 24-foot wide asphalt concrete pavement from roadway/right-of-way centerline with an eight-foot paved shoulder.

Dubuque Road is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee is not applicable. Dubuque Road was recently preleveled with asphalt and chipped seal along the property's frontage by the County annual paving program. Construction of frontage improvements are required prior to recording unless bonding of improvements is allowed by PDS, 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 Dubuque Road via an EDDS's Private Low Volume Access Road. The roadway pavement shall be constructed to EDDS standards. A 20 ft. minimum road width and 30 ft. minimum easement width are required.

PDS has approved the private road as shown on the preliminary plat (Exhibit B-1 REVISED) as permitted by SCC 30.41A.210(3)(c) based on the following:

- a) The small development will generate less than 90 ADT;
- b) Road connectivity is unlikely because of onsite critical areas (wetland and stream) bounding the property to the south;
- c) Adjacent parcels lack large scale development potential, so the necessity for public road connections is not anticipated; and
- d) It is unlikely that the lots could be further subdivided.

EDDS 3-10 requires permanent road end for all roads longer than 150 ft. is a cul-de-sac, with a minimum paved radius of 40 feet, which is shown on the plan (Exhibit B-1 REVISED). The Stopping Sight Distance at the proposed access meets EDDS. (Exhibit B-4)

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

Dubuque Road, the road serving this development, is designated as a Major Arterial Collector 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. Currently, more than 40 feet of right-of-way exists on the development's side of the right-of-way. Therefore, no additional right-of-way will be required. (Exhibit I)

**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 has offered to meet this obligation by submitting an offer for zero dollars (\$0.00) towards any state project, option "b". The State has commented in an e-mail dated April 28, 2008 (Exhibit G-2.), and agreed that no traffic mitigation for state highways was required for this project. (Exhibit I)

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

The proposed development is subject to SEPA and thus is subject to the ILA that the County has with the City of Monroe for mitigation of traffic impacts. City streets will be impacted by the new trips from the proposed development and therefore, pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate traffic impacts is required.

The applicant has offered to provide the proportionate share mitigation of \$4,974.45 (\$994.89/lot) based on a percentage of the City's adopted impact fee. The City has agreed to the mitigation measures proposed by the applicant. (Exhibit G-1) The County has determined that the proposed mitigation measures are reasonably related to the impacts of the development. The Examiner has included a condition of approval for inclusion within the project decision to comply with this requirement.

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

All new developments in the urban growth area shall provide transportation demand management measures. The proposed development is located outside the urban growth area and therefore is not subject to the mitigation measures of this code.

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 subdivision. School comments, dated August 12, 2008 (Exhibit G-5), stated that all students will be provided with school bus service at the entrance to the plat. Students within the plat will be required to walk to the bus stop. The proposed private road, which will be 20 ft. wide paved, is an adequate pedestrian facility, since the road will have only five homes.

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 Snohomish School District No. 201, 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. The proposal seeks to construct five single-family residences with access provided by a private low volume road from Dubuque Road. Storm water runoff from the proposed development will be infiltrated on site. A biofiltration swale will collect and convey runoff to the proposed infiltration site for the road. Roof downspout systems will collect and convey runoff to the proposed individual infiltration trenches. Soils on the development area of the site area Winston gravelly loam (Hydrologic Group 'A') as indicated in the Soil Survey of Snohomish County. Runoff is slow, and the hazard of erosion is moderate. Winston soils are well suited for infiltration. (Exhibit C-1 at 1)

The infiltration trenches have been designed with washed drain rock wrapped in filter fabric and will be backfilled with one foot of native gravel sand. The access road area tributary to the proposed infiltration trench is 0.56 acres of impervious and 0.12 acres of pervious ditch section. The bottom of the proposed infiltration trench will be approximately six feet below the existing grade. An infiltration area of 1000 square feet (100 x 10 feet by 4 feet deep) will infiltrate the runoff from the frontage and access road. A design infiltration rate of 5.0 inches per hour that includes a minimum safety factor of four was utilized for sizing the infiltration trench. (Exhibit C-1 at 1)

The individual single family residence infiltration trenches have been sized for 0.16 acres (7000 square feet) of impervious surface area per residence. An infiltration area of 1000 square feet

(50' x 5' x 4') will infiltrate the runoff from the residence, parking and driveway. A design infiltration rate of 5.0 inches per hour that includes a minimum safety factor of four was utilized for sizing the infiltration trench. (Exhibit C-1 at 1)

Grading. Grading quantities are anticipated to be approximately 2,600 cubic yards of cut and 3,500 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 applicant is proposing a five-lot rural cluster subdivision with a north-south access road near the western property line. A Type F stream and a Category 2 wetland, with associated buffers are in the southern portion of the site. When the site is developed, no disturbance of any of the critical areas or their buffers is proposed. They will be permanently protected as a critical area protection area (CAPA) as required per Chapter 30.62A.160 SCC. No impervious surfaces are proposed within 300 feet of the ordinary high water mark of Woods Creek, a Type F stream containing anadromous fish and presumed to be bull trout habitat as required per Chapter 30.62A.320(3) SCC.

PDS has evaluated the Wetland Delineation and Habitat Management Plan (Exhibit C-2) received on April 21, 2008, coupled with the preliminary plat plan (Exhibit B-1 REVISED) and completed an on-site investigation. The staff report indicates that staff has concluded the proposal is in conformance with Chapter 30.62A SCC (Critical Areas Regulations). (Exhibit I) The Examiner concurs with staff's evaluation.

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

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. 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.

The five (5) lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2 of the County Code.

13. Utilities

A. Water.

Individual wells are being proposed on each of the five lots in the proposed subdivision. A development such as Dubuque Wood Creek Estates may be considered a group use that can pump groundwater from an exempt well as an exception to the general requirement that wells require permits under the state water code, RCW 90.44.050. The limitation for an exempt well

is 5000 gallons per day. The Snohomish Health District requires each individual well to pump 400 gallons per day, meaning that one exempt well may serve a maximum of 12 homes. Since this development is only five homes, provision for adequate potable water supply is made, as long as each meets the Health District requirements at final plat approval. (Exhibit G-3)

The applicant also had to obtain a variance from the Department of Ecology for a waiver from WAC 173-160-171(3)(b)(vi), which requires a water well to be located a minimum of 1000 feet from the boundary of a solid waste landfill. As testified to by Ms. Rothfus at the hearing and confirmed in the March 25, 2008 Department of Ecology letter, the actual landfill site was more than 1000 feet from the property boundary; but the edges of the parcel upon which the landfill was located was less than 1000 feet. It was this measurement that first brought about the issue with the WAC requirement, according to Ms. Rothfus. (Exhibit G-3)

B. On-Site Septic.

The applicant proposes onsite septic systems on each of the five lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated June 27, 2008. (Exhibit G-3)

C. Electricity.

On May 6, 2008, the Snohomish County Public Utility District No. 1 provided correspondence indicating that they can provide electricity to the proposed development. (Exhibit G-4)

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

Basic lot yield: 453,363 square feet/100,000 square feet	= 4.53 lots
Total lot yield	= 4.53 lots
Total lot yield-rounded	= 5 lots
Total lots proposed	<u>= 5 lots</u>

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on October 31, 2008. (Exhibit E-2) The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on November 10, 2006. The following general subdivision standards have been met:

A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. Finding of Fact 7 addresses how the applicant is meeting county road requirements. 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. The Staff Report (Exhibit I) provides the following information on compliance with fire code:

PDS sent a request for review document to Fire District # 16 on April 22, 2008. PDS did not receive a response from Fire District # 16.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on June 26, 2008. The conclusions of the review were that:

- (a) Each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office.
- (b) If there is a gate installed at the entrance of the private roadway the gate shall be activated by the emergency vehicle opticom strobe that opens the gate automatically with the approach of an emergency vehicle in either direction or by a means acceptable to the local fire district. In the event of power failure the gate shall open automatically and remain in the open position until the power is restored. The gate shall provide a minimum 20' clear opening for fire apparatus access. It shall be noted as a restriction on the recording of the final plat.
- (c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and [PDS has] no further requirements.

The application complies with the requirements contained in Chapter 30.53A SCC, including fire flow and emergency vehicle access.

(Exhibit I), The Examiner concludes that the subdivision meets the requirements of the fire code.

17. Rural Cluster Subdivision Standards—General.

The Dubuque Wood Creek Estates rural cluster subdivision (RCS) application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on January 6, 2008 (Exhibit B-1 REVISED), and in an open space management plan (Exhibit A-4 REVISED) 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 45% (4.95 acres) of the property in restricted open space. The proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts. The use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties and reducing the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage-related problems. Finally, the project complies with

critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

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 development concept protects critical areas on site, as explained in Finding of Fact 11 under the heading "Critical Areas Regulations". The applicant has avoided all impacts to critical areas in developing this site plan and will infiltrate stormwater, further protecting critical areas and water quality. Exhibits C-1 and C-2.

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);*

This development will provide for a 50-foot sight-obscuring buffer around the perimeter of the cluster on the north, west, and east sides of the property consisting of native vegetation, in accordance with the provisions of Table 30.41C.210(1). See Exhibit B-1 REVISED and Exhibit A-4 REVISED at 3. On the south side, the perimeter is buffered by the Critical Area Protection Area for Woods Creek. The site is characterized by a number of large conifer trees, and other existing native vegetation. However, it will be necessary to supplement existing vegetation with Type A vegetation landscaping pursuant to Chapter 30.25 SCC. The content of the landscaping plan is within the open space management plan. The following conditions will implement the landscaping provisions:

- The landscaping plan as indicated at page 3 of the open space management plan shall be implemented along with the conditions below.
- Existing vegetation shall be supplemented with Type A landscaping as required pursuant to chapter 30.25 SCC.

- Selective logging is allowed within the perimeter buffer for the purpose of providing an effective visual screen and eliminating hazardous trees.
- Significant trees that provide a visual screen, especially those along the frontage of Dubuque Road, should be retained to the extent feasible.
- PDS shall review the site obscuring buffer for adequacy. Additional plantings shall be required for areas where vegetation is removed or damaged within the site obscuring buffer.
- All required landscaping shall be installed in accordance with the above requirements and PDS final review.

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;*

A private road with a cul-de-sac bulb that meets EDDS requirements provides access to the cluster development. The road has one access point to Dubuque Road, which also meets EDDS requirements. See Finding of Fact 7.

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 I) The plat will be so conditioned.

E. SCC 30.41C.200(5)—Unbuildable land.

*(5) All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;*

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. This requirement has been met by applicant. (Exhibit I)

F. SCC 30.41C.200(6)—Buffers for Resource Land.

*(6) When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;*

Not applicable.

G. SCC 30.41C.200(7)—Disclosure Statement Required.

*(7) When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure statement shall apply to the real property that is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.*

Not applicable.

H. SCC 30.41C.200(8)—Mineral Resource Land Disclosure Statement.

*The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:*

*...  
(b) Notice for mineral uses within required or optional open space:  
Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.*

Not applicable.

I. SCC 30.41C.200(9)—Physical Separation of Clusters.

*(9) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;*

Not applicable.

J. SCC 30.41C.200(10)—Open Space Management Plan.

*(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 A-4 REVISED. These areas will be used as passive recreation areas, CAPAs, and critical areas. The management plan provides guidance for maintenance and use of the open space in a manner that will maximize the homeowners' enjoyment of the site. Management objectives include:

- Preserve and enhance appropriate wildlife habitat;
- Maximize native vegetation;
- Create quality recreational opportunities;
- Maximize an attractive natural visual screen along the exterior limits of the development; and

- Provide for the protection of water quality through the protection of the wetland and stream ecosystems.

The Open Space Management Plan specifies that tree removal will be restricted to removal of hazardous, dead or dying trees/shrubs. (Exhibit A-4 REVISED)

K. SCC 30.41C.200 (11)—Physical Separation of Clusters.

*(11) Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));*

This requirement is not applicable, since this is a five-lot development.

L. 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. (Exhibit B-1 REVISED)

M. 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 subject site does not impose impacts to critical areas or their setbacks. The lots have been centralized as much as possible, considering the long, narrow shape of the parcel. The house located on lot 1 is approximately 200 feet from the right-of-way. Since Dubuque Road is above the parcel and the 50-foot visual screen contains significant conifers, the site obscuring buffer area already significantly screens the parcel from the road. Grading will be fairly minimal.

N. 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 I.

O. SCC 30.41C.200 (15)—Location of clusters.

*(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters - 30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent*

*topographic features visible to adjacent and vicinity properties when other locations are available;*

The five lots in this small development are located in the interior of this parcel to the extent possible. The development avoids significant critical areas, and provides an obscuring visual buffer from Dubuque Road.

P. SCC 30.41C.200 (16)—Fire District.

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

Dubuque Wood Creek Estates is located in Fire District No. 16. (Exhibit I) The Fire Marshall has approved the development as meeting chapter 30.53A SCC and the preliminary plat map as detailed in Finding of Fact 16C.

Q. 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 7B, *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:

453,363 square feet of the site is designated Rural Residential (Basic) is zoned Rural -5

Basic lot yield: 453,363 square feet/100,000 square feet = 4.53 lots

Bonus residential density = N/A

Additional bonus density = N/A

Lot yield = 4.53 lots

Rounded = 5.00 lots

See Exhibit I at p.9.

20. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The 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 subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision 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, Chapter 30.63C 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. Sewage disposal will be provided by individual wastewater septic systems. Potable water will be provided through individual wells.

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

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to chapter 30.72 SCC and chapter 2.02 SCC.
2. The Examiner must review the Dubuque Wood Creek Estates application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

RCW 58.17.110.

3. Given the information provided in the record and the findings of fact made above, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.
4. Any Conclusion in this Order, which should be deemed a Finding of Fact, is hereby adopted as such.

### **DECISION**

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary subdivision approval and rural cluster subdivision approval is hereby **GRANTED** subject to the following conditions:

**CONDITIONS:**

- A. The rural cluster subdivision/preliminary plat received by PDS on January 7, 2009 (Exhibit B-1-REVISED) shall be the approved rural cluster subdivision and 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. A Full Drainage Plan and Report will be required to be submitted for review and approval (Chapter 30.63A.155 SCC).
  - iii. The plattor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, 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 (Centennial, # 306) in the amount of \$1,361.22 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$1,270.90 per lot for mitigation of impacts on County roads paid to the County,  
\$994.89 per lot for mitigation of impacts on city streets for the City of Monroe paid to the City. Proof of payment shall be provided.  
  
These payments are due prior to or at the time of building permit issuance for each single family residence. 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. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit."
  - iv. All Critical Areas shall be designated Critical Area Protection Areas (CAPA) with the following language on the face of the plat;

**"All CRITICAL AREA 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. "Well protection zones are shown in the Snohomish Health District records for Lots 2-5 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100-foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100-foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration."
- vi. "A 100-foot radius well protection zone covenant is hereby established on Lot 1 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100-foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s)."
- vii. "The Open Space Management Plan (Exhibit A-4 REVISED) shall be fully implemented."
- viii. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- ix. "The lots in this subdivision do not qualify as duplex lots per Snohomish County Code."
- x. "The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation."
- xi. "All utilities shall be underground."

**D. Prior to recording of the final plat:**

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Dubuque Road to the satisfaction of the County.
- ii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the county, with both CAPA 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.

CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. 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 CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.

- iii. The applicant shall provide an affidavit or declaration from Ms. Hanley or her representative verifying that she claims no ownership interest in the property within the plat as documented in the final plat documents submitted to be recorded.

**E. In conformity with applicable standards and timing requirements:**

- i. The landscaping plan as indicated at page 3 of the open space management plan shall be implemented along with the conditions below.
- ii. Existing vegetation shall be supplemented with Type A landscaping as required pursuant to chapter 30.25 SCC.
- iii. Selective logging is allowed within the perimeter buffer for the purpose of providing an effective visual screen and eliminating hazardous trees.
- iv. Significant trees that provide a visual screen, especially those along the frontage of Dubuque Road, should be retained to the extent feasible.
- v. PDS shall review the site obscuring buffer for adequacy. Additional plantings shall be required for areas where vegetation is removed or damaged within the site obscuring buffer.
- vi. All required landscaping shall be installed in accordance with the above requirements and PDS final review.
- vii. 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 A-4 REVISED)

- 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 issued this 8th day of January, 2009.

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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 **JANUARY 20, 2009**. 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, Robert J. Drewel Building (Admin-East), 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JANUARY 22, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); for each appeal filed; provided that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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: Ed Caine

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.