

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF ORDER: May 2, 2008

PLAT/PROJECT NAME: **PINEBROOK**

APPLICANT/
LANDOWNER: AAD Investments Co., Ltd.

FILE NO.: 06-125486-SD
TYPE OF REQUEST: 11-lot rural cluster subdivision of 35.47 acres

DECISION (SUMMARY): **Approve with pre-conditions and conditions**

BASIC INFORMATION

GENERAL LOCATION: On the west side of 39th Avenue NE, ¼ to ½ mile north of its intersection with 252nd Street NE (Kackman Road) in the southwest quarter of Section 28, Township 32 North, Range 5 East, W.M., about three miles northwest of Arlington, Snohomish County, Washington.

ACREAGE: 35.47 acres

NUMBER OF LOTS: 11

AVERAGE LOT SIZE: 47,199 square feet

MINIMUM LOT SIZE: 43,568 square feet

DENSITY: .31 du/ac (gross)

OPEN SPACE: 21 acres

ZONING: Rural-5 acre (R-5)

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

UTILITIES:

Water: Individual Wells
Sewage: Individual Wastewater Septic

SCHOOL DISTRICT: Arlington School District No. 16

FIRE DISTRICT: No. 16

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on July 5, 2006. Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on March 7, 2008 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit 21 (Affidavit of Mailing); Exhibit 22 (Affidavit of Notification by Publication); Exhibit 23 (Posting Verification).

A SEPA determination was made on January 17, 2008. Exhibit 20. No appeal was filed.

The Examiner held an open record hearing on March 11, 2008, the 112th 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 January 11, 2008 at 9:01 a.m.

1. Representing PDS was Robert Pemberton, Senior Planner and Elizabeth Larsen, Staff Biologist.
2. Representing the Applicant was Ms. Emily Fuller and Mr. Brian Kaleb of Insight Engineering, and Ms. Joni Urbanski of WaterMark Critical Areas, LLC.
3. Members of the public Ms. Angelina Keller, Mr. Ron Frashure, and Ms. Pam Queen also testified.

The hearing concluded at 10:12 a.m.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

FINDINGS OF FACT

A. General

1. The master list of Exhibits and Witnesses are the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. Summary of the Proposal: The applicant proposes an 11-lot rural cluster subdivision on a 35.47 acre site within an R-5 zone. The proposed single-family residential lots range in size from 43,568 square feet to 72,309 square feet with 21 acres of open space. Access to all lots will be by an internal private road connecting to 39th Avenue NE, also a private road. Extensive wetland areas exist on the western half of the site, with a small area of wetland adjacent to the northeast corner of the site and several wetlands along the east side of the site. These wetland areas are proposed to be preserved and protected with Native Growth Protection Area buffers and with mitigation provided for impacts from proposed road construction. Water supply is to be provided by individual private wells. Sewage disposal is proposed to be by individual wastewater septic systems.
3. Site description: This 35.47 acre site lies on the west side of 39th Avenue NE and is square with a portion extracted from the northeast portion of the site. This site is currently undeveloped and the majority of the site is forested. There are 14 wetlands on the site. Per the Soil Conservation Service survey of Snohomish County, the soils on site are Everett gravelly sandy loam that has a hydrologic classification of Type "A" and a high permeability.
4. Adjacent zoning and uses: This site and all surrounding properties are zoned Rural-5. The site is bordered by single-family residential, rural and agricultural uses on lots ranging in size from five to 40 acres. The recently developed rural cluster subdivision of Kackman Creek (PFN: 95-108588) lies ¼ mile to the east.

B. Issues of Concern

5. Access Road Issues: Two letters from neighbors were received in response to this application (Exhibits 31 and 32). The concern raised by both letters is about the condition of 39th Avenue NE, the access road to the proposed plat. Several members of the public testified concerning the road and about issues related to removal of fencing and wetland mitigation due to unavoidable impacts to wetlands due to the road widening. Applicant's representatives answered questions asked by the witnesses.

Access to the development is proposed via an existing private road (39th Ave NE) that intersects with a new proposed private road at the entrance to the development, on the east side of the subject rural cluster subdivision that terminates in a 40 foot radius paved cul-de-sac. Per SCC 30.41A.210 (15), access to the boundary of a rural cluster subdivision by a private road may be permitted in accordance with the EDDS, where specifically approved by the County Engineer. The Department of Public Works approves the use of the private road for access to the boundary of the rural cluster subdivision. Since access to the boundary of the subject development is through a private road, 39th Ave NE, rural improvements are required on 39th Ave NE in the area between 252nd St NE (Kackman Road) and the south boundary of the subject development and shall consist of twenty (20) foot of paved roadway, a 7 foot paved shoulder, and a 3-foot gravel shoulder for a total of 30 feet. Construction of frontage improvements is required prior to recording the final plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

6. Critical Areas Issues. There was testimony at the hearing by a neighborhood resident claiming that the applicant had not properly identified all the wetlands on the project site and that the applicant had failed to identify a bald eagle nesting site on the subject property. As a result of the testimony, the applicant offered to go back and do additional investigation of these two items. The applicant and staff made additional submittals as a result of these investigations which are marked as Exhibits 43-50 in the record. Their findings are discussed in Finding of Fact 12.

C. Compliance with Codes and Policies.

7. Parks Mitigation. The proposal is within the River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to mitigate impacts of the new development to the county park system. The impact fee is payable either prior to plat recording or prior to building permit issuance for each unit. Payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.

8. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 105.27 average daily trips (ADT) and has a road system impact fee of \$27,791.28 (\$2,526.48/lot) based on \$264/ADT, the current fee rate for residential developments outside the urban growth area, for TSA A. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Single-Family Detached Housing
 ITE Land Use Code: 210

| | <i>Calculations</i> |
|--------|--|
| ADT | $(11 \text{ New SFRs}) \times (9.57 \text{ ADT/SFR}) = 105.27$ |
| AM PHT | $(11 \text{ New SFRs}) \times (0.75 \text{ AM PHT/SFR}) = 8.25$ |
| PM PHT | $(11 \text{ New SFRs}) \times (1.01 \text{ PM PHT/SFR}) = 11.11$ |

A. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a preliminary determination that the development is concurrent as of August 18, 2006. The expiration date of the concurrency determination is six years from August 18, 2006.

The development has been deemed concurrent on the following basis:
Small or Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130(4).

The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 8.25 a.m. peak-hour trips and 11.11 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.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

C. Frontage Improvements [SCC 30.66B.410]

As per rule 4222.020(1) full rural frontage improvements are required along the subject parcel's frontage on 39th Ave NE, and per the EDDS 3-060 Private Road Standards – Rural, shall consist of:

- Twenty (20) foot of paved roadway, a 7 foot paved shoulder, and a 3-foot gravel shoulder for a total of 30 feet.

The road, 39th Ave NE, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore, credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

Construction of frontage improvements is required prior to recording the final plat unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access to the development is proposed via an existing private road (39th Ave NE) that intersects with a new proposed private road at the entrance to the development, on the east side of the subject rural cluster subdivision that terminates in a 40 foot radius paved cul-de-sac. Per SCC 30.41A.210 (15), access to the boundary of a rural cluster subdivision by a private road may be permitted in accordance with the EDDS, where specifically approved by the County Engineer. The DPW approves the use of the private road for access to the boundary of the rural cluster subdivision [SCC 30.41A.210 (15)].

The new private road will provide future access to lots one through eleven. Per SCC 30.41A.210 (3) (C), private roads may be permitted as part of a rural cluster subdivision where specifically approved by the county engineer. The new private road shall be constructed in accordance with EDDS with 30 feet of asphalt concrete pavement.

The DPW approves the use of the private road as shown on the preliminary plat for the subject rural cluster subdivision [SCC 30.41A.210 (3) (C)].

Per (EDDS) table 3-2, the future private road is a Sub-Collector with a design speed of 30 mph.

Since access to the boundary of the subject development is through a private road, 39th Ave NE, rural improvements are required on 39th Ave NE in the area between 252nd St NE (Kackman Road) and the south boundary of the subject development and shall consist of:

Twenty (27) foot of paved roadway and 3-foot gravel shoulder for a total of 30 feet.

On September 5, 2007, the Department of Planning and Development Services received a deviation request from the standard to reduce the speed on 39th Ave NE from 30 mph to 25 mph and allow horizontal curve radii that are less than 275 feet.

This deviation was reviewed and approved by the County Traffic Engineer on September 6, 2007 on condition that the design speed on 39th Ave NE remains at 30 mph, and curves C4 and C5 have a radius of 165.0 feet and 171.6 feet respectively, as shown on the preliminary road and utility plan sheet C1 of C3.

Based on the above, the proposed layout is acceptable to the DPW.

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

Right of way is not required for this development.

F. 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.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received by PDS via email on July 11, 2006. WSDOT reviewed the applicant's proposal and determined that this development will not have a significant adverse traffic impact upon state highways. WSDOT does not request any traffic mitigation for state highways from the applicant

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

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency.

Snohomish County has an ILA with the City of Arlington and this development is within the influence area that requires traffic mitigation be considered for the City. The City of Arlington's mitigation fee is \$1,038 per PM PHT. Based on Exhibit 3 of the interlocal agreement (ILA), for Sub Area #CO-ARL-4 (north of Stillaguamish River, west of SR 9, east of I-5, and south of the Stanwood Bryant Road), 60% of the development's trips will pass through the City of Arlington. The applicant's obligation to the City of Arlington is 11 New SFRs x 1.01 PM PHT/SFR x \$1,038 per PM PHT x 0.60 = \$6,919.31 (\$629.03/lot). Comments dated July 26, 2006 have been received from the City of Arlington. The City accepted the applicant's offer. It will be a recommended condition of approval that this amount is paid.

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

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

SCC 30.66B.630 requires development inside the UGA to provide TDM measures. Since this development is outside of the UGA TDM measures are not required.

9. Pedestrian Facilities [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority consider whether the development provides sidewalks and other planning features that assure safe walking conditions for students. RCW 58.17.110(1). Revised comments from the Arlington School District have been received by email on June 19, 2007. The comments dated June 19, 2007 state that the bus stop location for President's Elementary School, Haller Middle School, and Arlington High School will be at the intersection of 39th Ave NE and 252nd St NE (Kackman Road). The school district has required a safe bus waiting area, which the applicant shall provide in the form of a shelter off the travel portion of the road. Exhibit 41. Therefore, off-site pedestrian facilities and a bus shelter are required.

The applicant is showing on the preliminary plat a 7 foot paved shoulder from the subject development to the intersection of 39th Ave NE and 252nd St NE (Kackman Road). The construction of this 7 foot paved shoulder shall be a condition of approval. The applicant shall also be required to construct a bus shelter at this intersection at the inside edge of the right-of-way as a condition of approval.

10. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Arlington School District No. 16, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

11. Drainage and grading.

Drainage. Applicants were granted a waiver from the requirements of SCC 30.63A.210 and allowed to achieve alternative methods to treat stormwater runoff through the Low Impact Development Ordinance, Chapter 30.63C SCC. Exhibit 46. Drainage through detention and water quality control will be achieved by dispersion. Exhibit 14. The applicant will be applying the 2005 Department of Ecology Manual BMP T5.30 to control stormwater runoff, which allows for full dispersion management. The total site area is 35.47 acres of which 6.82 acres are Category III wetlands. The area to be disturbed is 14.85 acres of which 2.08 acres will be impervious surface. The percentage site disturbance area is 51.8% (less than the threshold of approximately 53%); the development leaves 48.2% undisturbed in native vegetation. Under Section 7.2.2. of the Low Impact Development Technical Guidance Manual,

Developments that cannot preserve 65 percent or more of the site in a forested or native condition may disperse runoff into a forested or native area in accordance with the BMPs cited in BMP T5.30 of the 2005 SMMWW if:

- The effective impervious surface of the area draining into the native vegetation area is \leq 10 percent; and
- The development maintains ratios proportional to the 65 percent forested or native condition and 10 percent effective impervious area.

The proposal to leave 48.2% in native vegetation and to only allow 7.26% effective impervious surface meets the necessary ratio. Stormwater runoff from the proposed impervious surfaces will be dispersed into the natural vegetation to the maximum extent possible. The roof runoff will flow to splash blocks and disperse into the natural vegetation. Water quality will be maintained by dispersing the runoff through lawn and vegetated areas. In addition, the native vegetation areas will be protected in Native Growth Protection Areas as required by Section 7.2 of the L.I.D. Manual. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which will be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 10,000 cubic yards of cut and 10,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

The Stillaguamish Tribe submitted a comment letter stating that the site was near a known OAHP Site. The letter states:

With earth movement and development there is a possibility of cultural impact on the Tribe. The Tribe urges extreme caution during any excavation work. If the scope of this project changes, or if any artifacts or culturally relevant items are found, please contact us. Please use caution due to the wetlands and any streams that may contain habitat for salmon, if applicable to this permit.

Exhibit 36. The plat will be conditioned to require all excavation to stop if cultural artifacts are found until PDS and the Tribe can make a determination of the significance of the find.

12. Critical Areas Regulations (Chapter 30.62 SCC)

All or portions of fourteen Category 3 wetlands are found within the property ranging in size from 447 square feet to 3.7 acres. A Category 2 wetland is located north of the northeastern edge of the site, is part of a larger wetland mapped on the National Wetlands Inventory Map and estimated at over 400 acres in size. Exhibit 15. Two wetlands are found along the 39th Avenue NE easement.

At the hearing, a neighbor testified that the applicant had failed to identify some wetlands, particularly in an area along the eastern property line. The applicant's representative agreed to go back and investigate. The biologist filed additional reports, marked as Exhibits 43-45. Exhibit 44 is an addendum to the Pinebrook Critical Areas Study and Mitigation Plan. In the document, the consultant identifies two new wetlands and designates them as category 3 with a 50-foot buffer. These new wetlands (N and O) are shown on the new preliminary plat map filed as Exhibit 48. Because of issues with drainfield placement on lot 3, applicants propose buffer reduction of the buffer on Wetland "N" to 25 to 27 feet and increase to the buffer of Wetland O, increasing the buffer to 70 feet. The addition of buffer is at a 1:1:1 ratio, according to the biologist. Wetlands B, N, O and J will be connected by buffer designated as NGPA and result in the visual screening and enhancement of the wetland buffer function on the east side of Wetlands O and N. Staff has approved of the mitigation, according to the memo submitted by Elizabeth Larsen, Biologist. *See* Exhibit 50.

Citizens at the hearing also testified that there was a bald eagle nest on site or in the vicinity. As a part of the follow-up critical area review, consultant Joni Urbanski contacted Washington State Department of Fish and Wildlife. She received an email from Jay Shepard stating that the nearest nests are on the "Stilly" around 2 miles away from the parcel. He also stated that the parcel "would be an odd place for a nest." Exhibit 45. During the site visit on March 14, 2008, both the consultant and the staff biologist looked for and did not see any evidence of an eagle's nest. Exhibit 44 & 50.

13. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on July 5, 2006 after the effective date of Amended Ordinances 96-074 and 96-071, and is therefore vested to this version of the Comprehensive Plan. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

The subject property is designated Rural Residential (RR: Base density of 1 dwelling unit per 5 or more acres) on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential designation "includes lands which were designated as Rural or Residential Estates on pre-GMA subarea comprehensive plans. 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 one dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9." Since this subdivision is being developed as a rural cluster subdivision with a density of less than one dwelling per 2.3 acres, it conforms to Policy LU 6.B.9.

14. Utilities

A. Water

Individual wells are being proposed on each of the 11 lots in the proposed subdivision. RCW 90.44.050 governs groundwater withdrawals, and generally requires a water rights permit to withdraw “public groundwaters of the state” from the Department of Ecology. There is an exception for single or group domestic uses in an amount not exceeding 5000 gallons per day, an exemption more commonly known as the “exempt well” provision. Because each well must produce at least 400 gallons per day as required by the Snohomish Health District per the Department of Ecology WAC’s, the Examiner will use that number to determine the number of lots that can be approved on an exempt well (although the Examiner has seen much higher estimates of gallons per day in Department of Ecology literature for Western Washington well usage). As the development is assumed to only use 4400 gallons per day of water in congregate (11 x 400 = 4400), the Examiner finds that the applicant has shown adequate provision for water. The file contains a letter from the Snohomish Health District recommending approval based on a site/soil review. The Health District requires specific conditions regarding the wells appear on the face of the final plat. (Exhibit 33). Applicant has submitted a water well report to Snohomish Health District and has conducted the necessary test yield per WAC 173-160-321 (400 gallon/per day minimum). *See* Exhibit 9.

B. On-Site Septic

The applicant proposes onsite septic systems on each of the 11 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated May 7, 2007. The applicant must submit final accurate to scale designs prior to final plat approval. (Exhibit 33)

C. Electricity

On July 19, 2006, The Snohomish County Public Utility District No. 1 has provided correspondence indicating that they can provide electricity to the proposal. (Exhibit 35)

15. 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 11 lots proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 17, 2008 (Exhibit 20). The DNS was not appealed.

17. 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. *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.

1. Access

Snohomish County Code 30.53A.150 incorporates subsections 902.2 through 902.4.1 of the Uniform Fire Code, 1997 Edition.

Width

Section 902.2.2.1 requires that fire apparatus access road shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet, 6 inches.

Section 902.2.2.4 requires that “dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with a turnaround unless a modification is granted by the fire marshal.” SCC 30.53A.115, Section 221 defines turnaround as a cul-de-sac with a minimum outside radius of 40 feet. Section 902.2.2.3 requires that “turns, bends, or sweeps in fire apparatus access roadways shall be designed at not less than twenty foot inside-turning radii or less than forty foot outside-turning radius.”

Grade

Section 902.2.2.6 requires that “the gradient for a fire apparatus access road shall not exceed fifteen (15) percent.

Review

A review of the plans indicates that fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150. Exhibit 48.

2. Fire Flow

SCC 30.53A.310 requires that all land upon which buildings or portions of buildings are or may be constructed shall meet fire flow standards specified in Appendix III-A of the Uniform Fire Code. SCC 30.53A.315 specifies when permits or approvals are exempt from this standard.

Review

All lots in the proposed subdivision are greater than 43,560 square feet. This project is exempt from fire flow requirements in accordance with SCC 30.53A.315 (1). Exhibit 48.

18. Rural Cluster Subdivision Standards—General.

The Pinebrook 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 March 25, 2008 (Exhibit 48), and in an open space management plan (Exhibit 6) 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 59.4% (21.06 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, especially with use of the Low Impact Development Ordinance. Finally, the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

19. 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 does a commendable job of protecting and enhancing critical areas on site. As explained in the Mitigation Plan (Exhibit 15), the applicant has done a good job of avoiding the mosaic of wetlands that cover the west side of the property. While there are unavoidable impacts due to road construction on the site, the applicant is using innovative development design to enhance some low functioning wetland areas into better functioning areas, and maintaining other environmentally sensitive portions of the site. See Exhibit 15.

B. SCC 30.41C.200 (2) -- Sight Obscuring Buffers.

(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210 (1);

Applicant's representative testified that this development provides for a 50 foot sight –obscuring buffer around the perimeter of the development adjacent to the home sites. While the area is depicted on the map, it is not labeled as a site- obscuring buffer. There are notes which state:

2. All buffers along the property boundary are site obstructing buffers.
3. [Sic] Natvie vegetation must be maintained in the site obstructing buffers; in event this function is not met, trees will be planted 10 feet on center and shrubs 3 feet on center.

The Examiner could find no landscaping plan in the file, although one may have been submitted and not placed in the hearing file. *See* SCC 30.41C.040 (8). If one has not been submitted already, it will need to be submitted along with a new preliminary plat map clearly identifying the site obscuring buffers. The preliminary plat map should label the site obscuring buffer on the face of the plat map, and if supplemental plantings are required, as there likely are, the landscape plan will need to depict the placement and type of trees and shrubs to be planted. SCC 30.41C.200 (2) requires that:

“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).”

The plat will be conditioned to require that the applicant supply a new map labeling and identifying with cross-hatching or other marking the site obscuring buffers explicitly as such and providing that native vegetation will be maintained in site obscuring buffers, and to the extent necessary, it will be supplemented with native site obscuring vegetation, including trees planted 10 feet on center and shrubs planted 3 feet on center.

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 provides access to the cluster development. The road meanders and has one access point to 39th Avenue NE. Exhibit 48.

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. Testimony at hearing.

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 48.

F. SCC 30.41C.200 (10)—Open Space Management Plan.¹

(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 6. The designated “restricted open space” will be used for buffering, critical area protection, resource production, conservation, recreation, community utility purposes, or general preservation. Exhibit 6. Maintenance and management responsibilities will fall to the homeowners’ association. Testimony at hearing.

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

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

This requirement is not applicable, since this is an eleven-lot development.

H. SCC 30.41C.200 (12)—Lots abut open space or buffer.

(12) At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;

This requirement has been met by the proposed preliminary subdivision. See Exhibit 48.

I. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character.

(13) The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

The applicant has done a good job of minimizing site disturbance and topographic alteration. The placement of the lots between wetland buffers will lessen the visual impact of the development.

¹ Criteria 6-9 are not applicable to this application.

J. SCC 30.41C.200 (14)—Sanitary Sewers.

(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;

The applicant proposes onsite septic systems for this development. See Exhibit 33.

K. SCC 30.41C.200 (16)—Fire District.²

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

Cougar Estates is located in Arlington Fire District No. 16. Exhibit 41.

L. SCC 30.41.C.200 (17)—Rural Concurrency Standards.

(17) Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.

PDS Traffic has determined that the application meets concurrency. See Finding 8A, *supra*.

20. Rural Cluster Subdivision Lot Yield Calculations.

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

| | | |
|---------------------------|---|------------------|
| Basic lot yield: | 1,545,198 square feet/100,000 square feet | = 15.45 lots |
| Bonus residential density | | = N/A |
| Additional bonus density | | = N/A |
| Total lot yield | | = 15.45 |
| Total lot yield-rounded | | = 15 lots |
| Total lots proposed | | = <u>11 lots</u> |

See Exhibit 41.

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

The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. These criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

² Criteria 15 is not applicable.

The proposed plat conforms to applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and State DOE drainage standards, as modified through the Low Impact Development Guidance Manual. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water will be supplied by individual wells and individual on-site sewage disposal systems will be used subject to approval by the Snohomish Health District.

22. 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 Pinebrook 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 is hereby GRANTED subject to the following PRECONDITIONS and CONDITIONS:

PRECONDITIONS:

- A. Applicant must submit a new preliminary plat map depicting the site-obscuring buffer on the face of the plat map, including a clear label with cross hatching or other identifying marking of the buffer as a site-obscuring buffer. Notes on the map shall include note 3 as depicted on Exhibit 48.

- B. If applicant did not submit a landscape plan in accordance with SCC 30.41C.040 (8), it must do so with details of where the site-obscuring buffer will need supplemental plantings and the types and sizes of trees and shrubs that will be used.

CONDITIONS

- A. The preliminary plat received by PDS pursuant to Precondition A shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above, and this decision.
 - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Mitigation Plan for Modanza Development, LLC, prepared by Skagit Wetlands & Critical Areas, Inc., submitted June 29, 2006, and Addendum prepared for the Northwood Group, LLC, prepared by WaterMark Critical Areas, LLC for Wetlands, Inc. dated March 18, 2008 shall be submitted for review and approval during the construction phase of this project.
 - iv. All grading permits shall be conditioned to require work to cease immediately if any native cultural artifacts are found during excavation to allow PDS and the Stillaguamish Tribe to assess the significance of the find.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,526.48 per lot for mitigation of impacts on county roads paid to the county,
 - \$629.03 per lot for mitigation of impacts on the City of Arlington streets paid to the city. Proof of payment shall be required.These payments are due prior to or 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 or the lot[s] therein. Once a building permit has been issued on a lot, all mitigation payments for that lot shall be deemed paid by PDS.

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

- iv. "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. 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."
- v. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- vi. The site obscuring buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation.
- vii. Well protection zones are shown in the Snohomish Health District records for lots 1-11 of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision 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 property owners and does not require a plat alteration.
- viii. All utilities shall be underground.

D. Prior to recording of the final plat:

- i. Rural frontage improvements along the subject development's frontage on 39th Ave NE shall be constructed per the EDDS 3-060 Private Road Standards – Rural, to the satisfaction of the engineer and shall consist of a 20 foot of paved roadway, a 7 foot paved shoulder, and a 3 foot gravel shoulder for a total of 30 feet.
- ii. Rural improvements on 39th Ave NE in the area between 252nd St NE (Kackman Road) and the south boundary of the subject development shall be constructed to the satisfaction of the engineer and shall consist of 27 feet of paved roadway and 3-foot gravel shoulder for a total of 30 feet.
- iii. Pedestrian facilities shall be constructed from the subject development to the intersection of 39th Ave NE and 252nd St NE (Kackman Road) to the satisfaction of the DPW.

- iv. The bus-stop shelter for school children shall be constructed in a safe area at the edge of the right-of-way with a roof to provide shelter from inclement weather.
- v. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
- vi. NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.
- vii. The final wetland mitigation plan (and additional buffer) shall be completely implemented.
- viii. 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 19).
- ix. The approved landscape plan shall be implemented.
- x. The full drainage plan shall be fully implemented as required by the Department of Planning and Services.

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.

Order issued this 2nd day of May, 2008.

Barbara Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 12, 2008**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 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 **MAY 16, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other

than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: David Radabaugh

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| 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. |
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This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MAY 2, 2009.

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

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

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

_____.

Certified by:

(Name)

(Title)
