

**AMENDED DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER REMOVING
PRECONDITION and ADDING CONDITIONS**

DATE OF ORDER: ~~December 24, 2007~~ July 8, 2008

PLAT/PROJECT NAME: *ALIEA*

APPLICANT/
LANDOWNER: CHB Development LLC

FILE NO.: 06 125845-000-00 SD

TYPE OF REQUEST: 21-lot subdivision of 72.78 acres utilizing lot size averaging

DECISION (SUMMARY): APPROVE WITH ~~PRECONDITION AND~~ CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: On the west side of McElroy Road at 156th Street NE, being about three miles southeast of Arlington in Section 31, Township 31 North, Range 6 East, W.M., Snohomish County, Washington.

ACREAGE: 72.78 acres

NUMBER OF LOTS: 21

AVERAGE LOT SIZE: 44,675 square feet

MINIMUM LOT SIZE: 43,560 square feet

DENSITY: .29 du/ac (gross)

OPEN SPACE: 46 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. 21

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on August 15, 2006. Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on November 26, 2007 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 24 (Affidavit of Mailing); Exhibit 25 (Affidavit of Notification by Publication); Exhibit 26(Posting Verification).

A SEPA determination was made on September 12, 2007. Exhibit 23. No appeal was filed.

The Examiner held an open record hearing on December 5, 2007, the 111th 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 December 5, 2007 at 11:56 a.m.

1. Representing PDS was Robert Pemberton, Senior Planner, Tom Sage, Engineer, and Patrick McGraner, Biologist.
2. Representing the Applicant was Noel Higa, Project Manager, from CHB Development, LLC.

The hearing concluded at 1:03 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available through 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 a 21-lot rural cluster subdivision of 72.8 acres. The proposed single-family residential lots range in size from 43,560 square feet to 49,900 square feet with 46 acres of open space. Access to the lots will be by a new, internal private road connecting to McElroy Road. The request is for two phases of development. Phase one consists of the three lots in the northeast corner of the site with attendant private road and open space. Phase two extends the road to serve the additional 18 lots in the rest of the subdivision. Extensive wetland areas occur extending north-south across the center of the site and in the northeast portion of the site. These wetlands will generally be preserved and protected with Native Growth Protection Area buffers with mitigation provided for minor impacts from proposed road construction. Mitigation fees are to be paid in accordance with Chapters 30.66A, B, and C, SCC, for project impacts to community parks, nearby road system traffic and to the Arlington School District No. 16.
3. Site description: The site is an “L” shaped; 73 acre parcel extending westerly from McElroy Road at 156th Street SE. Topography is variable throughout the site. The eastern portion is generally flat with several undulations. The northwestern portion contains a moderate southeast aspect slope while the rest of the site slopes down towards the south. There are currently no existing structures on site. Typical vegetation on-site is comprised of mixed mature and immature western hemlock, Douglas fir, western red cedar, red alder and black cottonwood in the canopy layer, with Douglas spirea, salmonberry, Himalayan blackberry, vine maple, willows, and skunk cabbage in the understory. There are eleven wetlands on site with several associated Type 4 streams.
4. Adjacent zoning and uses: This site and all surrounding properties are zoned Rural-5. The area is sparsely developed with large, five and ten acre lots with rural residential and agricultural uses predominating.

B. Issues of Concern

5. Neighborhood Concerns. One letter from a neighbor was received (Exhibit 27) expressing concerns with the proposed development. The letter expresses concerns mainly about wetland impacts but also about traffic, school impacts and open space. The PDS staff report comments on the concerns expressed in the letter with the following statement:

The wetland and streams on site are being preserved and protected in accordance the county’s Critical Areas Regulations. The proposal complies with the county’s Concurrency and Road Impact Mitigation ordinance (Chapter 30.66B) and School Impact Mitigation ordinance (Chapter 30.66C). The letter also objects to the use of rural cluster development provisions which allow the use of open space in the lot yield calculations. This is an aspect of the rural cluster subdivision ordinance which allows higher density as part of leaving, in this case, 46 acres of open space.

Exhibit 40 at 3.

6. Provision of Adequate Water. ~~An issue of concern to the Examiner is the use of individual wells within this subdivision. The applicant plans to sink 21 individual wells in this development, a practice that has long been tacitly allowed in this county, but which in fact violates the state water code. RCW 90.44.050. While there is a 5000 gallon per day exemption under the RCW, there is no question that this proposed subdivision will exceed that exemption level, which can accommodate somewhere in the neighborhood of eleven lots (the Snohomish Health District requires new wells to pump 450 gallons per day if they are one acre in size and do not have to meet fire flow requirements). Other alternatives include obtaining~~

adequate water rights permits to serve part or all of the subdivision (to allow permitted withdrawals of water) or extending water service from a certified private or public water purveyor to the development. To satisfy a precondition imposed relating to potable water supply, applicant has submitted into the record a copy of chapter 173-505 WAC, entitled “Stillaguamish River Basin Water Resources Inventory Area (WRIA) 5”. This chapter is better known as the Instream Flow Rule for the Stillaguamish River established by the Department of Ecology. This set of rules now provides a new set of requirements that must be met for any development wishing to use exempt wells within Water Resource Inventory Area (WRIA) 5, as the Examiner understands it (see WAC 173-505-010(2)). There is no question that it applies to Aliea.

Craig Ladiser, Director of Planning and Development Services, in a letter dated November 17, 2005, assured the Department of Ecology the following:

In partnership with Snohomish Health District, Snohomish County confirms that any legally required determinations of adequate potable water for subdivision approvals and for building permits for new dwellings will be consistent with the applicable provisions of Chapter 173-505 WAC.”

The Examiner takes official notice of this letter which is on file with the county. While the WAC does liberalize the requirement for water quite a bit, it comes with some significant restrictions on water usage.

WAC 173-505-020 sets forth the purpose of the chapter which is set instream flows for the Stillaguamish basin to protect wildlife, fish, recreation, water quality, potable water supply, stock watering, and other needs. It also sets forth the DOE’s policies to guide protection, utilization, and management of the river, including closures and a program of future water allocation.

Important to the Aliea development is the fact that under WAC 173-05-090 has allocated a total amount of water not to exceed 5 cubic feet per second (cfs) to provide adequate and safe supplies of water for year-round domestic uses. It is further defined for the North and South Fork of the Stillaguamish the supply at 2 cfs and 1.5 cfs respectively, as indicated on Table 8 at WAC 173-05-090(1). Use is only available under the following conditions specified at WAC 173-505-090(2):

(a) The reserved water shall be for ground water uses exempt from a water right permit application. This reservation is for either single or small group domestic uses, as defined in WAC 173-505-030(5).

(b) This reservation of ground water shall not exceed 3.23 million gallons of water per day (5 cfs).

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) This reservation shall be applicable only when the appropriate city(ies) or counties submit a written acknowledgment to the department that confirms that any legally required determinations of adequate potable water for building permits and subdivision approvals will be consistent with applicable provisions of this chapter.

Once this chapter is adopted and written acknowledgment is received, the department will promptly notify those city(ies) or counties, the tribes, water well

contractors and the public that the reserve is in effect in those jurisdictions where acknowledgments exist.

(e) It shall be the responsibility of an applicant for a building permit or subdivision approval proposing a water use under the reservation to comply with the conditions in (a), (c), (e), (f), (g) and (h) of this subsection and all other conditions of this chapter.

(f) A new ground water withdrawal under this reservation is not allowed in areas where a municipal water supply has been established and a connection can be provided by the municipal supplier. If an applicant for a building permit or subdivision approval cannot obtain water through a municipal supplier, the applicant must obtain a letter from a municipal supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.

(g) Outdoor water use is limited to the watering of an outdoor area not to exceed a total of 1/12th of an acre for all outdoor uses under each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

(h) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation. All other ground water users under the permit-exemption shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department.

WAC 173-505-090. This section also emphasizes that the rule provides a single, one-time amount of water. Once the reserved water is fully allocated, it is no longer available. Finally, WAC 173-505-090(6)(a) addresses amount of water usage per residence. It states:

A record of all ground water withdrawals from the reservation shall be maintained by the department. The department will account for water use under the reservation based on the best available information reflecting actual water uses contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents. **When other sources of information are not readily available, the department may account for water use at a rate of three hundred fifty gallons per day (gpd) per residence or business. This figure may be adjusted down to one hundred seventy-five gpd if the residence or business is served by an on-site septic system.**

Emphasis added. At a rate of 175 gallons per day (gpd), assuming a development is on onsite septic, a 5000 gallon per day exempt well can accommodate 28 homes. Therefore, it is clear that the 21 homes in the Aliea development may be granted an exempt well pursuant to the rule. However, the approval must be conditioned in accordance with WAC 173-505-090(2)(a). Specifically,

(a) The use is for an exempt single domestic use;

(b) The use will use 3675 gpd, according to WAC 173-505-090((6)(a));

$$\underline{175 \text{ gpd} \times 21 = 3675 \text{ gpd}}$$

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any local or state requirements for conservation standards, therefore the project will be so conditioned;

(d) A written acknowledgement of this rule from Snohomish County exists and is on file with the county. The DOE has also notified the county that the reserve is in effect pursuant to WAC 173-505-090(2)(d).

(e) Subsection (e) states that conditions (a), (c), (e), (f), (g), and (h) are the responsibility of the applicant.

(f) Groundwater withdrawals are not allowed in areas where a municipal water supply has been established. There is no evidence of a municipal water supplier in the area.

(g) Outdoor water use is limited; total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre. The plat will be conditioned to not allow outdoor watering to exceed one-half acre for the entire plat. The Examiner will also condition the plat to disallow lawns and to require native vegetation on the lots, since lawns require a great deal of watering, especially when they are first established. Watering shall be controlled by the homeowners' association.

(h) Group ground water users under the permit-exemption shall be required to install and maintain water meters or measuring devices, in accordance with the specifications provided by the Department of Ecology, and report the data to the department. The plat will be so conditioned to require that meters be installed and that the homeowners association be responsible for reporting the data to DOE as required by this condition.

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 be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.

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

A. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 21 SFRs, which is 9.57/SFR. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 200.97 new ADT and has a road system capacity impact fee of \$53,056.08 (\$2,526.48/lot) based on \$264/ADT. This impact fee must be paid prior to building permit issuance.

	<i>Calculations</i>
ADT	(21 New SFRs) x (9.57 ADT/SFR) = 200.97
AM PHT	(21 New SFRs) x (0.75 AM PHT/SFR) = 15.75
PM PHT	(21 New SFRs) x (1.01 PM PHT/SFR) = 21.21

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing the best operating condition and level-of-service F the worst.

The Department of Public Works has made a preliminary determination that the development is concurrent as of February 16, 2007. The expiration date of the concurrency determination is six years from February 16, 2007. 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 15.15 a.m. peak-hour trips and 21.21 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, therefore the development is not required to be evaluated under SCC 30.66B.035.

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

The subject proposal will not impact any IRC locations identified at this time within TSA "A" with three or more of its p.m. peak hour trips, nor will it create any. Therefore, no mitigation is required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under SCC 30.66B.210.

D. Frontage Improvements [SCC 30.66B.410]

As per EDDS 4222.020(1), full rural frontage improvements are required along the subject parcel's frontage on McElroy Rd. and consist of:

- 11 foot travel lane width
- Seven (7) foot paved shoulder

Construction of frontage improvements is 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]

The subdivision proposes to provide private road access to the lots from McElroy Rd. This access road will form a tee intersection near the west boundary of the site, with private roads extending north and south and ending in cul de sacs. A proposed 50' easement extends from the end of each cul de sac to the northwest and southwest corners of the site to allow for possible future connections to 99th Ave. NE. 99th Ave. NE extends 3700' north from 132nd St. NE as a county maintained road, then continues another 1600' as a gravel trail access permit road in a deeded public right-of-way. The eastern boundary of the deeded right-of-way is 20' east of the Sec. 36, T. 31N R6E east section line; the western boundary is 30' west of the section line. North of the trail access permit road the portion of the right-of-way east of the section line ends. The 30' right-of-way west of the section line continues north to the southwestern corner of the project site. An unopened 20' deeded right-of-way extends south from 164th St. NE on the east side of the Sec. 36, T. 31N, R. 6E section line, ending at the southwestern corner of the section. This right-of-way extends south along the western boundary of the existing northern parcel of the project site. The offsite rights-of-way along the 99th Ave. NE alignment allow for the future extension of the public road system. The internal access roads within the project must be designed to meet public road standards for rural access roads. When 99th Ave. NE is extended as a public road to the project boundary, the private access roads within the development will need to be connected to it and conveyed to the County to improve public road circulation.

Because there is a potential for a public road in this right-of-way, as well as the 99th Ave. NE right-of-way extending north to 164th St. NE, the internal access roads within this subdivision must be built to public standards within a 60' easement extending to the northeast and southeast corners of the project site in such a manner as to allow connections to 99th Ave. NE in the event that public roads are constructed in these rights-of-way in the future.

DPW has recommended a "no-protest" condition appear on the face of the plat requiring the roads to become public at the time the county determines it necessary:

"In consideration of the subdivision access approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the private road to a public road at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to said road. The owners of the subdivision lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road."

The revised plat received by PDS on Jan 16, 2007 shows the requested 60 foot easement. *See Exhibit 17.* The private road section shown on the plans do not meet public road standards and are not applicable.

The proposed access roads within the subdivision end in temporary cul de sacs that exceed the maximum length of 1320' for a dead end road with only 1 access point on a public road. This does not meet EDDS 3-01. The applicant submitted a deviation request to allow a 1900 foot road section between intersections, with private roads continuing to temporary cul de sacs near the northeast and southeast corners of the project as shown on the revised plat dated Jan 16, 2007, has been approved subject to approval from the Fire Marshall. Exhibit 41.

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

McElroy Rd is designated as a rural collector non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. The McElroy Road centerline is collinear with the east line of the southeast quarter of the southwest quarter of Section 30 township 31 Range 6. Forty feet of right-of-way currently exists on the west side of the quarter section line. No additional right-of-way dedication is required from the applicant.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through one of the following:

- (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 chosen to meet this obligation by option "d". The applicant's obligation to the State is calculated at $200.97 \text{ ADT} \times \$36.00/\text{ADT} = \$7,234.92$ (\$344.52/lot).

A voluntary offer of \$7,234.92 has been accepted by WSDOT in correspondence dated 08/24/06. The original offer was unsigned, however. A signed offer dated Jan 1, 2007, for the requested amount has been received by DPW, fulfilling their mitigation requirement under the ILA. Payment of that amount will be included as a condition of approval.

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

Under this code provision DPW recommends 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.

For the Aliea subdivision, the County has ILAs with the Cities of Arlington and Marysville and this development is within the influence areas that require traffic mitigation be considered for both of those cities. The applicant's traffic study indicates that trips will pass through the cities to such an extent that traffic mitigation is required. The City of Arlington has indicated in correspondence dated 08/31/06 that an offer of \$49,524.75 has been accepted as fulfilling the applicant's traffic mitigation requirement. The City of Marysville has indicated in correspondence dated 08/28/06 that an offer of \$16,835.44 would

satisfy the applicant's traffic mitigation requirement per the ILA. The applicant submitted a signed mitigation offer dated Jan 8, 2007, to the City of Marysville for \$16,835.44. Payment of these amounts to the cities will be included as a condition of approval.

There are no other City jurisdictions that have an ILA with the County that will be significantly impacted by the subject development.

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

This proposal lies outside of the Urban Growth Area. Therefore, the provisions of this section do not apply.

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). Comments from the Arlington School dated Sept 12, 2007, have been received by PDS indicating that the students will be picked up by a bus at the intersection of McElroy Road and the entrance to the development. Exhibit 36. The school district has required a safe bus waiting area, which applicant shall provide. No offsite improvements are required.

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 two existing lots. 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. The intent of the drainage proposal is to create a "low impact" development pursuant to chapter 30.53C SCC. The main roadway through the development will be constructed of porous concrete and stormwater runoff from the individual lots will be infiltrated and dispersed to dedicated, downstream 50-foot vegetated areas. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 26,000 cubic yards of cut and 5,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

12. Critical Areas Regulations (Chapter 30.62 SCC)

Extensive wetland areas occur extending north-south across the center of the site and in the northeast portion of the site. These wetlands will generally be preserved and protected with Native Growth Protection Area buffers with mitigation provided for minor impacts from proposed road construction. An evaluation of the information submitted with the application, including the Critical Area Study and Mitigation Plan (Exhibit 15) coupled with an on-site investigation has resulted in a determination that the application complies with Chapter 30.62 SCC (Critical Area Regulations) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare. Critical areas compliance is discussed further under Finding of Fact 19.A.

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 August 15, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

This area is designated Rural Residential-5 by the GMA Comprehensive Plan. According to the Plan, this designation includes lands that were designated Rural on pre-GMA subarea comprehensive plans and zoned Rural-5. The implementing zone in this designation will continue to be the R-5 zone.

14. Utilities

A. Water

Individual wells are being proposed on each of the 21 lots in the proposed subdivision. 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 37)

B. On-Site Septic

The applicant proposes onsite septic systems on each of the 21 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated October 23, 2006. (Exhibit 37)

C. Electricity

On October 24, 2006, The Snohomish County Public Utility District No. 1 has provided correspondence indicating that they can provide electricity to the proposal. (Exhibit 36)

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 21-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 September 12, 2007 (Exhibit 236). The DNS was not appealed.

17. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on October 6, 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. Exhibit 41 includes a memo from the Fire Marshall's office which indicates that the site plan for this project demonstrates compliance with minimum access requirements. *See* SCC 30.41A.160. The Office of the Fire Marshall notes the following requirements for construction review:
 - (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. The water purveyor may require that fire hydrants be installed.
 - (b) Approved numbers and addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background. Provide address signage for the panhandle lots that is visible from the public way.
 - (d) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

Exhibit 41.

18. Rural Cluster Subdivision Standards—General.

The Aliea 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 16, 2007 (Exhibit 17), and in an open space management plan (Exhibit 30) that is to be implemented by a homeowner's association. 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 63.3% (46.1 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 from adjoining properties. The use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems. This is especially true in this case, since the applicant has voluntarily made use of the low impact development ordinance, Chapter 30.63C SCC.

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 is to maintain the rural characteristic of the geographic area, while maintaining environmentally sensitive and scenic portions of the surrounding environment, in accordance with the purpose of the rural subdivision code. Exhibit 3. The existing road on the property is being moved to lessen impacts to critical areas and that area will be mitigated and restored. The internal road will follow the layout with the least impacts to wetlands, although it will involve crossing wetlands, filling a Class III wetland as permitted through SCC 30.62.360 and using innovative development design. Testimony of Noel Higa. The applicant projects and PDS Biologist Patrick McGraner concurs that implementation of the mitigation plan will improve the functional capacity of the wetlands and buffers on site, resulting in a net improvement as required by SCC 30.62.370. At the hearing, the Examiner voiced some concern over the filling of wetland K without adequately articulated mitigation. The Examiner questioned whether a new wetland should be created to satisfy the "like-kind" mitigation requirement of the critical areas regulations to replace wetland K, when there would be no stormwater detention facility to replace the wetland storage functions of wetland K. Mr. Graner answered the question in a supplemental report:

Staff also noted that on many sites, especially rural sites proposed for RCW development, that the existing habitat is often relatively intact and of high quality value and therefore wetland creation for relatively minor wetland fill is often considered counterproductive because it would required the destruction of good upland forest to create a relatively small area of replacement wetland. This is one of the most common reasons why applicants use IDD per SCC 30.62.370. Applicants can often show a net improvement to the critical areas and buffers on the site by dedicating large areas of relatively high quality upland habitat in lieu of wetland creation.

Exhibit 41. In addition, because the innovative development design provision, SCC 30.62.370, allows deviations from SCC 30.62.345, this kind of demonstrated net benefit can allow an exception to the “in-kind” requirement. Because this project does adequately protect critical areas, it meets SCC 30.41C.200(1).

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 provides for a 35 foot sight –obscuring buffer around the perimeter of the clusters on the edges of the property, which meets the criteria. See Exhibit 17.

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;

Private roads have been provide within the subdivision with sixty feet future right of way easements extending to the boundaries of adjacent parcels have been provided (per DPW request) for possible future connection of 99th Avenue NE. Connection and conversion from private to public of the internal private road tract and easement areas in the NW and SW corners would be implemented when 99th Ave NE is opened and constructed. Exhibit 41. DPW has approved of the design and allowed for a deviation for road length. Exhibit 41. The applicant has met the criteria.

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 40.

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 40.

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 19, 30 & 40.

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));

There are two clusters in this development: one with three lots at the east end next to the entrance and the other 18 at the west end of the property. The clusters are physically separated by a number of wetlands and buffers. This requirement has been met.

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 18a.

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;

PDS finds that this criterion is met. Exhibit 40.

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;

¹ Criteria 6-9 are not applicable to this application.
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The applicant proposes onsite septic systems for this development. See Exhibit 18a.

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

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

Aliea is located in Fire District No. 21. Exhibit 40.

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 7B, *infra*.

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:

Total Site Area= 3,170,626 square feet (72.78 acres)
Restricted Open Space Required (60%) = 1,902,375 square feet
Restricted Open Space Proposed (63.3%) = 2,007,823 square feet
Base Density= 72.78 Acres/4.6= 15.82 lots
Bonus Density 30% (15.82 x 1.30= 20.56) 21 lots

See Exhibit 17.

21. 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.

² Criteria 15 is not applicable.

~~The only issue with this proposed subdivision is the appropriate provision of potable water supply. Applicant proposes to use 21 individual wells—one on each lot in the subdivision. At the hearing, the Examiner questioned applicant’s representative about the use of this many individual wells. Applicant acknowledged that while they had looked at other possibilities, such as extending water lines, no other feasible alternative had yet materialized.~~

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 Aliea 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. Overall, the applicant has done an exceptional job of presenting a proposal that in many ways is a model rural cluster subdivision. It is exemplary in that it provides for low impact development and protects critical areas above and beyond the requirements of the code. Nearly 64% of the site is permanently protected, which is important since this area is part of the headwaters for Portage Creek. The applicant has also dedicated a sixty-foot right of way to provide for adequate road connections in the future should that become necessary.
4. ~~However, there is a glaring problem with this proposal: the applicant has failed to demonstrate appropriate provision of a potable water supply as required by RCW 58.17.110. RCW 90.44.050, which governs groundwater withdrawals, 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 or “six pack well” provision. In Snohomish County and certain places elsewhere in the state, this exemption has been used to supply a development with domestic water from a number of “exempt wells”, which individually pump less than 5000 gallons per day, but collectively will pump more than 5000 gallons per day. There is no dispute that the wells planned for the Aliea proposal will collectively pump more than 5000 gallons per day.~~
5. ~~For some period of time, there was legal uncertainty about the status of multiple exempt wells in a development. An attorney general opinion in 1997 opined that a development using multiple wells that cumulatively pumped more than 5000 gallons per day was not exempt from the permit requirement of chapter 90.44 RCW. AGO 1997 No. 6. Then, in 2002, the Washington Supreme Court issued *State of Washington Department of Ecology v. Campbell & Gwinn et al*, 146 Wn.2d 1, 43 P.3d 4 (2002), which squarely addressed the issue of multiple exempt wells in a single subdivision. The Supreme Court held the following:~~

Here, the plain meaning of the domestic uses exemption is apparent from the language in 90.44.050 and related statutes. RCW 90.44.050 plainly says that the exemption applies provided 5,000 gpd or less is used for domestic purposes. This is true, the statute provides, whether the use is to be a single use or group uses. That is, whether or not the use is a single use, by a single home, or a group use, by several homes or a multiunit residence, the exemption remains at one 5,000 gpd limit, according to the plain language of the statute. **The developer of a subdivision is, necessarily, planning for adequate water for group uses, rather than a single use, and accordingly is entitled to only one 5,000 gpd exemption for the project.**

Campbell at 8. The court explicitly rejected the argument that determination of applicability of the exemption could be delayed until building permit, thereby allowing the question of water availability to bypass preliminary plat approval. The court further stated:

Nevertheless, the Legislature's limits on the exemption, particularly the 5,000 gpd limit on the group uses exemption, establishes that the Legislature did not intend unlimited use of the exemption for domestic uses, and did not intend that water appropriation for such uses be wholly unregulated. The balance which the Legislature struck in RCW 90.44.050 allows small exempt withdrawals for domestic uses, but does not contemplate use of the exemption as a device to circumvent statutory review of permit applications generally. The parties here dispute the potential impacts if RCW 90.44.050 is read to allow the exemption to apply to each individual well in a development such as Rambling Brooks Estates. The question is more basic, i.e., whether the Legislature even contemplated the possibility that developments of the size in this case, or even larger, would be entitled to exempt withdrawals of 5,000 gpd for each of their lots. **Given the limitation on single and group uses, and the overall goal of regulation to assure protection of existing rights and the public interest, it is clear that the Legislature did not intend that possibility when this statute was enacted.**

Campbell at 10 (emphasis added). Applicant's representative, Noel Higa, argues passionately that he believes this case was decided wrongly, that Snohomish County appropriately has not enforced this "interpretation" of the law in the past, and urges this Examiner to continue that trend. But whether or not the case is wrongly decided is not the province of the Examiner. It is the law. *Campbell & Gwinn* is unambiguous in its interpretation of RCW 90.44.050, and accordingly, the applicant's proposal to provide for water through the use of 21 individual wells without a water rights permit or some other means of providing for adequate water supply is in violation of RCW 90.44.050. The subdivision cannot go forward without appropriate provision for potable water in a manner that meets the law. As Mr. Higa himself testified on the record, there are any number of ways CHB might accomplish securing water supply for the property, including extending water from a certified purveyor, or buying or getting water rights certificates for some or all of the necessary water.

Because the Examiner is charged under state law with finding that the preliminary subdivision makes appropriate provision for potable water supply, the Examiner must address this issue, whether or not it has been addressed in the past. "Appropriate provision" of water cannot mean a water source that violates the state water code. It is squarely in the original jurisdiction of the Hearing Examiner to ensure that the provisions of county code and state law are being followed during the preliminary subdivision process. While it may be convenient to urge that either the Health District or the Department of Ecology should be enforcing this law, RCW 58.17.110 puts this burden squarely in the province of counties, as does the Washington Supreme Court. It has been so interpreted by other counties in this state. *See, e.g., Whatcom*

County Code 21.05.080 (reproduced below in footnote); ³Island County Code 8.09.060(reproduced below in footnote).⁴ And it is time for the same result to occur in Snohomish County.—

6. —Without appropriate provision for water supply the Examiner must add a pre-condition to the subdivision as follows:

Applicant shall submit to PDS evidence of appropriate provision of potable water supply consistent with the decision for preliminary plat approval. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules.

³-21.05.080 Water supply. (Whatcom County Code)

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the Coordinated Water System Plan map or within one half mile of an existing water purveyor's water lines:

(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) exist to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.

—(5) If a public water supply is required, all the requirements of Chapter 246 290 WAC, Group A Public Water Systems, or Chapter 246 291 WAC, Group B Public Water Systems, must be met prior to final plat approval.

⁴ 8.09.060 Subdivision Requirements (Island County Code)

A. Prior to preliminary approval of a subdivision, the applicant must provide to the Island County Planning Department the following:

—1. For a public water system, an Island County Health Department or Washington State Department of Health well site approval, or a letter of commitment from the water purveyor to supply water and documentation of compliance with WAC 248 56 (Public Water System Coordination); and

—2. For an individual water system, an Island County Health Department well site approval or a well site certification performed by a Washington State Department of Ecology licensed well driller pursuant to ICC 8.09.070.B.

B. Prior to final approval of a subdivision, the applicant must provide the Island County Health Department evidence that the following has been accomplished:

—1. For a public water system, the system must be approved by the appropriate agency or agencies for the ultimate number of anticipated hookups, including current connections, the proposed extension, and all outstanding water share certificates or any other agreements to supply water. Unless exempted by RCW 90.44, such approval shall include application for water rights filed with the Washington State Department of Ecology and a written commitment from the Department of Ecology that water rights will be granted. Any water system required by this section shall be installed, or appropriate bonds shall be provided and approved by the Island County Engineer and the Washington State Department of Health; or

—2. For an individual water system, evidence of an adequate water supply must be provided by the applicant to the Island County Health Department to include:

—a) A sealed plot plan of the project site including representations of structures (both proposed and existing), roads, sewage disposal systems, property lines,

underground storage tanks, possible sources of contamination, indication of North, surface water, and other prominent features;

—b) A well log;

—c) The written results of a bailer test, or air lift test, or pump test, any of which is performed for minimum of one (1) hour, verifying a minimum well yield of four hundred (400) gallons per day;

—d) Water quality results, analyzed by a Washington State Department of Health certified laboratory, verifying compliance to standards listed in WAC 248 54 including bacteriological, nitrate, chloride, conductivity, and such other parameters the Health Officer deems significant based upon local trends of water quality;

—e) Provision of sanitary control area pursuant to ICC 8.09.070.D;

—f) Additional information deemed necessary by the Health Officer;

—g) Except that proposed subdivision(s) where each resulting parcel is two and one half (2.5) acres or larger will be exempt from the requirements to drill wells and determine water quality, as prescribed in section 8.09.060.B.2.b).e) and d). Those exempted parcels will be required to provide a sealed plot plan, sanitary control area and additional information deemed necessary by the Health Officer in accordance with ICC 8.09.060.B.2.a).e) and f).

C. Minimum requirements prescribed in Island County Code 8.07B.100 must be met for any subdivision.

4. 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.
5. 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 ~~PRECONDITION~~ and CONDITIONS:

PRECONDITION

~~Applicant shall submit to PDS evidence of appropriate provision of potable water supply consistent with the decision for preliminary plat approval. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules.~~

CONDITIONS

- A. The preliminary plat received by PDS on January 16, 2007 (Exhibit 17) shall be the approved plat configuration. The proposal may be developed in two phases, as shown. Revisions after the approved preliminary subdivision approval 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 conceptual *Critical Areas Study and Mitigation Plan for Plat of Aliea* prepared by Wetland Resources, Inc. dated revised January 11, 2007 (Exhibit 15) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the 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 two existing parcels. Lots one and two 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,

\$2,358.32 per lot for mitigation of impacts on the City of Arlington streets paid to the city.

\$801.68 per lot for mitigation of impacts on the City of Marysville streets paid to the city.

\$344.52 per lot for mitigation of impacts on state highways.

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 a building permit has been issued for a lot, all mitigation payments for that lot shall be deemed paid.

- ~~5iii. "A paved approach will be required through an access permit at the time of building permit issuance unless one has already been provided."~~

- iv. "In consideration of the subdivision access approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the sixty. (60) foot easements and private roads to a public road at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to said road. The owners of the subdivision lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road."

- v. 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."

- vi. 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.

- vii. The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.

- viii. All utilities shall be underground.

⁵ Scrivener's error – condition should have been removed per the request of PDS during the open record hearing. (1/17/08)
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THE FOLLOWING CONDITIONS IX AND X MUST BE PLACED ON THE FINAL PLAT IF THERE ARE ANY WELLS PLACED IN THIS SUBDIVISION (WITH LOT NUMBERS FILLED IN):

- ix. Well protection zones are shown in the Snohomish Health District records for lots 1 through 21 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 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.
- x. A 100-foot radius well protection zone covenant is hereby established on lot(s) around the existing well(s) as located on the plat. 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 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).
- xi. Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any local or state requirements for conservation standards;
- xii. Outdoor water use is limited; total outdoor watering for all 21 residences under the water permit exemption (RCW 90.44.050) shall not exceed one-half acre as required by state law (WAC 173-505-090(g)). Only native vegetation and low maintenance landscaping requiring little or no water are permitted on lots; no grass lawns are permitted. Watering limits shall be enforced by the homeowners association.
- xii. Water meters or measuring devices shall be installed on all homes prior to occupancy. The homeowner's association will be responsible for reporting the data to the Department of Ecology Water Resources Program, NW Regional Office, c/o Metering Program, 3190 160th Avenue SE, Bellevue, WA 98008-5452.
- xiii. 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 McElroy Road to the satisfaction of the DPW.
- ii. Applicant shall construct a safe bus waiting area, including a rain shelter, at the area designated by the school district for school-age children to wait for the bus.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an

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

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

- iv. The final wetland mitigation plan shall be completely implemented.
 - v. 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 with duties as required by the Open Space Management Plan and Maintenance Agreement (Exhibits 19 and 30), enforcing watering limits and reporting water meter data to the Department of Ecology as required by law (WAC Chapter 173-505).
- E. All development activity shall conform to the requirements of Chapter 30.63A SCC as may be modified by chapter 30.63C.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.

Order issued this ~~24th day of December, 2007~~ 8th of July, 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 **JULY 18, 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 **JULY 22, 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: Robert Pemberton, Tom Sage & Patrick McGraner

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.