

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

DATE OF DECISION: April 23, 2008

FILE NO.: 06-129169-000-00-SD

PLAT/PROJECT NAME: *Wonderland Park*

APPLICANT/
PROPERTY OWNER: Estate of Marjorie Laz

DECISION (SUMMARY): The preliminary plat for a 20-lot RURAL CLUSTER
SUBDIVISION is CONDITIONALLY APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at the intersection of Weber Road & Storm Lake Road, including a portion of the shoreline of Flowing Lake, in Snohomish County, Washington. Tax Parcel: 280601-001-003-00

ACREAGE: 55.17 acres

Avg. Lot Area: 26,410 square feet

Gross Density: 0.36 du/ac

Lots: 20

Smallest Lot Area: 18,811 square feet

Net Density: 0.40 du/ac

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 du/5 acres) and Rural Residential (1 du/5 acres, Basic)

UTILITIES:

School District:	Snohomish # 201
Fire District:	# 4
Water Source:	Three Lakes Water Assoc.
Sewer Service:	Individual Septic

INTRODUCTION

The applicant is requesting a 20-lot rural cluster subdivision on an approximate 55.17 acre parcel. Access will be provided by two new private roads off of Weber Road. Public water will be provided by Three Lakes Water Association. Each lot will be served by an individual septic system.

The Preliminary Plat application was originally submitted to Planning and Development Services (PDS) on January 9, 2007, and was determined on February 6, 2007 to be complete as of the date of submittal for regulatory purposes. A resubmittal of the application was received on November 1, 2007. The originally scheduled public hearing was for February 21, 2008, and the re-scheduled public hearing on April 23, 2008. The hearing was rescheduled so that better public notice could be provided.

The Department of Planning and Development Services (PDS) gave proper public notice of the April 23, 2008, open record hearing as required by the county code. (Exhibits 66 and 67)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on December 11, 2007 (Exhibit 14). The DNS was not appealed.

The Examiner held an open record hearing on April 23, 188th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses considered by the Examiner is hereby made a part of this file as if set forth in full herein.

The Examiner conducted a site visit on April 22, 2008.

PUBLIC HEARING

The public hearing commenced on April 23, 2008, at 9:05 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file visited the site and therefore was generally apprised of the particular request involved. Those expressing an interest in testifying were administered the oath.
2. The applicant, Merle Ash LCC, was represented by Merle Ash and Brad Cattle. They outlined the proposed project. Snohomish County was represented by Ed Caine, Senior Planner for PDS. He presented the staff report. Mr. Stone of PDS discussed traffic issues
3. Members of the public testifying were Mr. Thom Laz, Ms. JoAnne Laz, Ms. Mary Jane Galbraith, and Mr. John Galbraith.
4. Several public comment letters had been received and made exhibits part of the file on this case

The hearing concluded at 11:00 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available through the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

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

1. Site Description: The project is located in the Three Lakes area northeast of the City of Snohomish. It is located on the eastern shore of Flowing Lake and portions of the site are adjacent to Flowing lake Golf Course. Storm Lake Road, Mero Road and Wonderland Road all pass through or are adjacent to the proposed project. The portion of the site that is east of Wonderland Road is undeveloped and forested. The portion of the site that is west of Wonderland Road is partially developed with access to Flowing Lake and outbuildings. There are 8 Category 3 wetlands, a Category 1 wetland, and 2 Type 4 streams on the site. The western border of the site has frontage on Flowing Lake. This site is the location of the former Wonderland Park.
2. Project Description: The applicant is requesting a 20-lot rural cluster subdivision on a 55.28 acre parcel. Access will be provided by two new private roads off of Weber Road. Public water will be provided by Three Lakes Water Association. Each lot will be served by an individual septic system.
3. Adjacent Zoning: Adjacent parcels are zoned R-5. Adjacent parcels either are developed as single family residences or are undeveloped.
4. Park Mitigation: The proposal is within Park District No. 306 (Centennial) and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid 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.
5. School Mitigation: Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Snohomish School District No. 201, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 4 existing lots.
6. Traffic Mitigation: This application has been reviewed and approved as noted by PDS for traffic impacts. The applicant presented Exhibit 5 "Wonderland Park Single Family Residential Development Traffic Study" prepared by Northshore Traffic Consultants.

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

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 181.83 new average daily trips (ADT) and has a road system impact fee of \$72,186.51. The \$72,186.51 distributed over 20 lots is \$3,609.33/lot. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

2. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of March 2, 2007. The expiration date of the concurrency determination is six years from this date.

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

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

4. Frontage Improvements [SCC 30.66B.410]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

The application was submitted with 4 deviations to modify the frontage improvements standards for the rural roads fronting the development. Testimony presented at the public hearing justified the deviations as methods to lessen the impact on critical areas, to reduce the number of trees cut, and to reduce impervious pavement area while still maintaining safe passage for vehicles and pedestrians. On July 25, 2007, 4 deviations to the design standards were approved by Snohomish County PDS and Public works and modified the public road cross sections as follows:

Weber Road: The road cross section that was approved consists of two 10 foot travel paved lanes, two 3 foot paved shoulders and a 7 foot separated walkway on one side of the road.

Wonderland Road: The road cross section that was approved consists of two 10 foot travel paved lanes with the road ending in a hammerhead turn around built within the public right-of-way.

Storm Lake Road (Arterial section): The road cross section that was approved consists of two 10 foot travel paved lanes, a two foot paved shoulder, and a 4 foot paved shoulder.

Storm Lake Road (non-arterial collector section): The road cross section that was approved consists of two 10 foot travel paved lanes, a two foot paved shoulder, and a 4 foot paved shoulder.

The roads on which the development's frontage improvements are required, are 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. Testimony at the public hearing indicated that the applicant will construct a pull-out for school buses picking up and dropping off pupils and a shelter for the students at the intersection of Weber Road and Storm Lake Road.

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

5. 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.

The use of the private roads shown on the preliminary plat for the subject development is approved. Internal access to the development is proposed by two private roads each serving 10 lots. The private road access points are shown as opposing at their intersection with Weber Road. The private road standard for each of the private roads will be the Private Subcollector road shown on plate 3-060 of the EDDS consisting of 20 feet of driving surface, a 3 foot shoulder and a 7 foot paved shoulder to provide safe walking conditions for the school children.

Plat Entrance Road: On July 10, 2007 a deviation to the design standards was approved by the County Engineer approving the use of the elbow design near the plat entrance.

The applicant proposes to build approximately 6000 feet of fitness and interpretative walking trails within the project. These trails will connect the residential portions to both the recreational areas and a small neighborhood store. They will be grass or gravel surfaced. The use of the trails will reduce the need for short vehicle trips around the neighborhood.

The applicant proposes to build a turn-around radius at the end of Wonderland Road.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The arterial roads, Mero and Storm Lake, are required to have 35 feet or right-of-way from centerline. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Mero Road and Storm Lake Road shall be dedicated to the County along the development's frontage such that 40 feet of right-of-way exists from centerline.

The non-arterial roads, Weber, Wonderland and Storm Lake, are required to have 30 feet or right-of-way from centerline. Additional right-of-way, parallel and adjacent to the right-of-way centerlines of Weber, Wonderland and Storm Lake shall be dedicated to the County along the development's frontage such that 30 feet of right-of-way exists from centerline.

The county roads adjacent or within this development are not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

The additional right-of-way with a 50 foot radius connecting the new right-of-way deductions is now shown on the proposed preliminary plat.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority. This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received as of the date of this memorandum. The applicant has offered to provide the mitigation measures for impacts on state highways as follows:

Proportionate Share Mitigation (ILA Section 5.2): Payment of \$6,552.00 based on standard rate of \$36/ADT

WSDOT agreed to the mitigation measures proposed by the applicant. .

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

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

9. 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.

10. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision.

Comments from the Snohomish School District dated January 29, 2007 stated that the students will walk to and from the school bus stop on Weber Road. Adequate safe walking conditions will be provided with the required frontage improvements and walking paths specified in subparagraphs # 4 and #5, above.

11. Right-of-Way Vacation

The applicant has submitted a right-of-way vacation request to the DPW for a portion of the right-of-way of Storm Lake Road and located within Tract 997.

7. Critical Areas: There are 8 Category 3 wetlands, a Category 1 wetland, and 2 Type 4 streams on the site. The western border of the site has frontage on Flowing Lake. Frontage improvements are required on Storm Lake Road, Mero Road, and Weber Road which will result in permanent impacts to 10,478 square feet of forested buffer. Installing the walking trail along the northern side of Storm Lake Road and Weber Road will impact 290 square feet of wetland and 3,127 square feet of buffer. Straightening the road within Tract 996, approximately 300 feet from the OHWM of Flowing Lake, will result in 175 square feet of wetland and 844 square feet of buffer impacts.

Mitigation for the wetland and buffer impacts include the designation of 260,304 square feet of additional forested areas within Tracts 998 and 999 as NGPA, removal of existing gravel roadway and restoration of that area to wetland and buffer. (Exhibit 12) Because the site is largely comprised of dense forest, the applicant will not mitigate for the permanent wetland impacts by creating new wetlands at the expense of destroying the forest. Rather, mitigation will be pursuant to Innovative Development Design as authorized by SCC 30.62.370. The project complies with the critical areas regulations.

8. Shoreline Designation: The boundaries of the proposed project area include a portion of Flowing Lake designated as Suburban Shoreline Environment. The majority of site development would occur on the upland portions of the site removed from the designated shoreline environment. The courts have previously held that a project having an interrelated effect on both uplands (non-shoreline jurisdictional areas) and shoreline areas cannot be segmented for purposes of complying with the Shoreline Management Act (SMA). Therefore, the entire site shall be treated as a whole in determining SMA compliance.

The project, as proposed, does not require the issuance of a shoreline substantial development permit by Snohomish County. However, the proposal is required to meet the relevant policies for Residential Development. The policies are:

Policy 1. Encourage the use of the planned residential development and rural cluster concept in all shoreline subdivision. RESPONSE: The proposal is for a Rural Cluster subdivision and is in compliance.

Policy 2. Require that subdivisions be designed at a level of density, site coverage, and occupancy compatible with the physical capabilities and aesthetic characteristics of the shoreline and water body. RESPONSE: The residential lots are located over 400 feet from the OHWM of Flowing Lake. No ground disturbing activities are proposed to occur within 300 feet of the OHWM of Flowing Lake. The shoreline will not be developed beyond the existing conditions. The applicant will clean up the existing structures located in tract 996, but this proposal does not call for further development. Any future development proposals will be reviewed and considered according the regulations at the time of application. The application covered by this decision does not vest the current rules to any future application.

Policy 3. Encourage subdividers to provide public pedestrian access to the shorelines within the subdivision. RESPONSE: Public access is not being provided. There is no public parking within a reasonable distance and shoulder parking is not feasible. The site currently provides for private access, and there will be neither removal nor restriction of existing public access by this development. Public access to Flowing Lake is already accommodated by an existing public park with public parking.

Policy 4. Encourage subdividers to provide all residents within the subdivision with adequate easily accessible and usable access to the water when topographical feasible. RESPONSE: This is being provided within Tract 996. As found previously there will be walking fitness trails linking the residential portions of the development to the open space near the water. Vehicle access will be possible via Wonderland Road.

Policy 5. Prohibit residential development over water. RESPONSE: No development is occurring over water. There is no proposed development to occur within 300 feet of the OHWM of the lake.

Policy 6. Residential development on shorelines should not be allowed which would be dependent on future bulkheading or other shoreline fortification for protection. RESPONSE: No future bulkheading will be required by this development.

Policy 7. Houseboats (mobile vessels) are to be located at moorage slips approved in accordance with the guidelines dealing with marinas, piers, and docks. RESPONSE: No additional moorage facilities, including marinas, piers, and docks, are proposed as part of this application. There is an existing dock and an existing boat house on Tract 996.

No ground disturbing activities are proposed to occur within 200 feet of the ordinary high water mark (OHWM) of Flowing Lake, which is the limit of shoreline jurisdiction. The closest ground disturbing activities are on Wonderland Road, which is over 300 feet from the OHWM of Flowing Lake. The project, as proposed, does not require the issuance of a shoreline substantial development permit by Snohomish County.

9. Drainage and Grading: Stormwater runoff will be treated through the Low Impact Development (LID) standards of SCC 30.63C. Stormwater runoff from the residences and yards will be directed to a level spreader that is located on each lot. From the level spreader, the water will sheet flow through a minimum of 100 feet of native vegetation prior to either entering into critical areas, including buffers, or reaching the plat boundaries. Stormwater runoff from each of the private roads will be collected in roadside ditches and carried to a level spreader located immediately south of the junction of the private road with Weber Road. Stormwater runoff from Weber Road will be allowed to flow north in the existing stormwater runoff pattern. PDS determined that the project complies with the requirements of the chapter, including dispersion of stormwater and appropriate flow pathway lengths.

Planning and Development Services (Engineering) reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 5,400 cubic yards of cut and 5,400 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 applicant presented Exhibit 11, "Targeted Drainage Report" prepared by Lervik Engineering. This report indicated that the proposed drainage will keep the existing wetlands sufficiently hydrated. The report concludes the waters reaching such wetlands will enjoy quality control measures due to full site dispersion best management practices.

10. GMA Comprehensive Plan: A portion of the subject property is designated Rural Residential (RR: 1 du/5 acre Basic. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9.

A portion of the subject property is designated Rural Residential - 5 (RR-5: 1 du/5 ac). The implementing zone in this designation will continue to be the R-5 zone.

The 20 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

11. Utilities: The proposed RCS will be served by the following utilities:

Water: Water will be supplied by the Three Lakes Water Association. A Certificate of Water Availability was received from the Three Lakes Water Association on January 17, 2007 (Exhibit 53).

Sewer: The applicant supplied information regarding septic drainfields and reserve areas. The Snohomish Health District recommended approval on August 15, 2007 (Exhibit 56).

Electricity: Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on January 26, 2007 (Exhibit 54)

12. Rural Cluster Subdivision Standards: The subject rural cluster subdivision (RCS) application is in conformance with the RCS standards in Chapter 30.41C SCC. The applicant provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on November 1, 2007 (Exhibit 13B, C, and D), 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 59.1% (15.75 acres) of the property designated RR Basic and 77.1% (22.1 acres) of the property designated as RR-5 in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas. The proposal is also better for preserving the rural nature of the neighborhood than logging activities which were considered as an option by the applicant. There is more screening by native vegetation in a RCS than is required by a lot by lot development. This vegetative screening will also assist in preserving the rural nature of the neighborhood. The walking trails and recreational open spaces will assist in making this a more

attractive use of the land than site lot by lot development which would not necessarily have such shared amenities.

The application is in compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas; a sight obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW indicated that the public roads shall be constructed to EDDS standards; all utility lines are to be located underground; there is no unbuildable land as defined by Chapter 30.41C SCC located on site which would be required to be included in native growth protection areas; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; physical separation of clusters is provided; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road; the proposal is not served by public sanitary sewer; clusters of lots are located near the interior of the site and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

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

For the portion that is designated RR Basic:

Basic lot yield: 1,160,708 square feet/100,000 square feet	= 11.6 lots
Lot yield, rounded	= 12 lots

For the portion that is designated RR-5:

Basic lot yield: 51,247,327 square feet/200,000 square feet	= 6.24 lots
Bonus residential density	= 15%
Additional bonus density	= 20%
Total lot yield	= 8.42 lots
Total lot yield-rounded	= 8 lots

Total lots proposed	<u>= 20 lots</u>
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The total lot yield for the development is 20 lots, with a split of 12 lots within the area that is designated as RR Basic and 8 lots within the area that is designated as RR-5. Two lots have been transferred from the area designated as RR Basic to the area that is designated as RR-5 in order to increase the stormwater and water quality aspects of the Low Impact Development (LID) drainage plan. The lots are being transferred to a location that is more distant from Flowing Lake. The transfer of the lots was evaluated and approved by PDS under the provisions of the LID code (SCC 30.63C.030(2)) and is the final decision on the modification.

13. Fire Code: The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on July 2, 2007. The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access. (Exhibit 70)

14. Plats-Subdivisions-Dedications: The plat is in conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to 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. Water will be provided by Three Lakes Water Association and sewer is to be provided by individual septic systems.

15. Public Comments: Public comments were received from 26 interested individuals, households and groups. (Exhibits 21-38, 41-47, 69) Testimony from members of the public was taken at the public hearing. PDS staff report addressed the written public comments as did the applicant in Exhibit 71. The substance of these comments and responses are as follows:

Objection to Rural Cluster Ordinance. RESPONSE: Rural Cluster subdivisions are allowed under SCC 30.41C. The Examiner's responsibility is not to make law; rather, it is to apply the law to the facts presented.

Objection to lots that are less than 5 acres in size. RESPONSE: Rural Cluster subdivisions are allowed under SCC 30.41C. The Examiner's responsibility is not to make law; rather, it is to apply the law to the facts presented.

Loss of timber and detriment to wildlife. RESPONSE: No listed species are being impacted by the development. All critical areas are being provided with buffers and the project has been determined to comply with the requirements of SCC 30.62 and with the relevant policies of Snohomish County. The proposal provides more protection to timber and wildlife than the potential options available to the property which include out right logging and lot by lot development which would not provide as much native growth protection area as the 37.8 acres in restricted open space provided by the RCS. The RCS is also protecting the shore of the lake from the construction of additional houses next to the water. The houses to be constructed are more than 200 feet from the shore. As previously found the quality of storm water is fully addressed by Exhibit 11. The high technology septic systems proposed are designed not to pollute the ground water.

Increased traffic and impacts to roads, especially the intersection of Weber Road and Storm Lake Road. RESPONSE: DPW identified no roadways that are in arrears that would be impacted by this development and the project was determined to be concurrent. Concurrency was determined on March 2, 2007. No comments were received regarding sight distance problems with the identified intersection, and traffic review did not identify a problem with sight distance. As previously found, the applicant is required to make frontage improvements. The applicant will construct walking paths to reduce the need for vehicular travel and to separate pedestrians from automobiles. The applicant will construct a school bus pullout at the intersection of Weber and Storm Lake Road. The traffic impacts to Wonderland Road are not anticipated to be within peak hours, rather during recreational periods.

Soil contamination and groundwater impacts. RESPONSE: SHD has reviewed the proposed location for the septic systems on each lot and recommended approval on August 15, 2007 (Exhibit 56). The development will be served with public water from Three Lakes Water Association (Exhibit 53). The area has not been identified as an Aquifer Recharge area. Stormwater runoff is being treated using Low Impact Development (LID) techniques. It is the position of PDS that the project will not detrimentally impact the groundwater and will not cause soil contamination. There was no evidence before the Examiner that there are any drinking water wells within 100 feet of the proposed development.

Development will result in increased boat traffic on Flowing Lake and access to the lake should be restricted: PDS does not have any codes or policies to regulate development based upon potential increases in the use of a lake that is classified as Waters of the State. The project is proposing no impacts within 200 feet of the ordinary high water mark of Flowing Lake and has been determined to be exempt from a shoreline permit.

The distribution of lots in the proposed subdivision should be apportioned to each tax parcel based upon the relative size of each tax parcel. RESPONSE: The project is reviewed as a whole and the distribution of lots is not required to be proportionate to the pre-development tax parcel sizes. This project is using Low Impact Development (LID) techniques and is subject to SCC 30.63C. The distribution of lots was based upon the requirement to minimize impacts to critical areas (SCC 30.62.365(1)) and maximize LID criteria (30.63C.030(2)).

The project does not comply with the Snohomish County Shoreline Management Master Program. RESPONSE: No ground disturbing activities are proposed to occur within 200 feet of the ordinary high water mark (OHWM) of Flowing Lake. The closest ground disturbing activities are on Wonderland Road, which is over 350 feet from the OHWM of Flowing Lake. PDS has determined that the project is exempt from obtaining a Shoreline Permit for the project.

Access for 10 homes will come from Storm Lake Road and access for 10 homes will come from Weber Road. RESPONSE: The comments refer to an early submittal restricted. RESPONSE: PDS does not have any codes or policies to regulate development based upon potential increases in the use of a lake that is classified as Waters of the State. The lake is open for use by all citizens and currently includes a public park and boat launching ramp. The project proposes no impacts within 200 feet of the ordinary high water mark of Flowing Lake and is exempt from a shoreline permit. The applicant is not proposing to construct another boat launching ramp. The applicant will impose Conditions, Covenants, and Restrictions (CCR) to prohibit long-term moorage of power boats at the existing dock.

The Zoning Map that was used to notify neighbors did not use all four parcels that constitute this development and the notice was inadequate. RESPONSE: This assertion is not correct. All parcels within 1,000 feet of the entire development were identified and both the Notice of Application and the Notice of SEPA Determination and Public Hearing were mailed to the identified property owners (Exhibit 15). The Notice for the rescheduled hearing was mailed to all parties of record (Exhibit 58), and the new hearing date was announced during the open record portion of the public hearing and prior to the hearing being cancelled.

Access for 10 homes will come from Storm Lake Road and access for 10 homes will come from Weber Road. RESPONSE: The comments refer to an early submittal that has been revised. Current plans are for access to all of the proposed lots will come from two private roads off of Weber Road.

An EIS should be required. RESPONSE: PDS issued a SEPA DNS decision on December 11, 2007 (Exhibit 14). The decision was not appealed. An EIS is not required.

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

CONCLUSIONS OF LAW

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

1. The Examiner has authority to hear this matter and render a decision thereon.
2. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. With conditions, the proposal will make adequate provisions for the public health, safety and general welfare as well as provide attractive housing in a rural setting which protects critical areas and native growth.
5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

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

The request for a 20-lot **RURAL CLUSTER SUBDIVISION** on 55.17 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on November 1, 2007 (Exhibit 13 B, C, and D) 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.

- ii. The plat 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 Area Study, Habitat Management Plan and Wetland buffer Mitigation Plan for Wonderland Park prepared by Wetland Resources, Inc. dated Revision #2, dated November 1, 2007 (Exhibit 12) 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 Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 4 existing parcels. Lots 1 through 4 shall receive credit."

- ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for a single-family residence.

\$3,609.33 per lot for mitigation of impacts on county roads paid to the county,
 \$327.60 per lot for mitigation of impacts to state highways paid to the county for the state.

Notice of these mitigation payment obligations shall be contained in any deeds involving this short subdivision or the lots(s) therein. Once a building permit has been issued, all mitigation payments shall be deemed paid."

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) 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. The arterial roads, Mero and Storm Lake, are required to have 35 feet or right-of-way from centerline. Additional right-of-way, parallel and adjacent to the right-of-way centerline of the arterial portions Mero Road and Storm Lake Road shall be dedicated to the County along the development's frontage such that 35 feet of right-of-way exists from centerline.

- v. The non-arterial roads, Weber, Wonderland and Storm Lake, are required to have 30 feet or right-of-way from centerline. Additional right-of-way, parallel and adjacent to the right-of-way centerlines of the non-arterial portions of Weber, Wonderland and Storm Lake shall be dedicated to the County along the development's frontage such that 30 feet of right-of-way exists from centerline.

- vi. The developer shall pay the County \$1,361.22 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. The vacation of the public road right-of-way within Tract 997 shall have completed and approved by Snohomish County.
- ii. Frontage improvements along the development frontage on Weber road, Wonderland Road, and Storm Lake Road conforming to the deviations to the design standards approved by the county or any subsequent deviation approved shall have been constructed and approved.
- 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 plattor 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 13B) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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

Decision issued this 24th day of April, 2008.

James A. Densley, Pro-Tem 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 5, 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 7, 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: Ed Caine

<p>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.</p>
