

FOR OFFICE USE ONLY:
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**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF ORDER: February 7, 2008

PLAT/PROJECT NAME: *COUGAR ESTATES*

APPLICANT/
LANDOWNER: Casey Barnett

FILE NO.: 06 130785-000-00 SD

TYPE OF REQUEST: 9-lot rural cluster subdivision of 20.97 acres

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

BASIC INFORMATION

GENERAL LOCATION: The property is located at 28523 SR 9 NE, Arlington, on the east side of SR9 NE, less than 1 mile north of its intersection with Grandview Road in Section 16, Township 32 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 20.97 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 50,746 square feet

MINIMUM LOT SIZE: 43,561 square feet

DENSITY: .43 du/ac (gross)

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. 18

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on November 10, 2006. Exhibit 1.

The Hearing Examiner (Examiner) made a site familiarization visit on January 11, 2008 in the afternoon.

PDS gave proper public notice of the open record hearing as required by the county code. Exhibit 18 (Affidavit of Mailing); Exhibit 19 (Affidavit of Notification by Publication); Exhibit 20 (Posting Verification).

A SEPA determination was made on December 11, 2007. Exhibit 17. No appeal was filed.

The Examiner held an open record hearing on January 17, 2008, the 97th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on January 17, 2008 at 9:56 a.m.

1. Representing PDS was David Radabaugh, Senior Planner.
2. Representing the Applicant was Thomas Barry, Project Manager.

The hearing concluded at 11:23 a.m.

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

FINDINGS OF FACT

A. General

1. The master list of Exhibits and Witnesses are the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. Summary of the Proposal: The applicant proposes a 9-lot Rural Cluster Subdivision (RCS) on a 20.97 acre site within an R-5 zone. Lot sizes vary from 43,561 square feet to 52,352 square feet. Open space tracts consisting of a total of 9.92 acres are proposed. Access to the project will be from a new private road connecting to State Route 9, an existing public road. Water supply is to be provided by individual private wells. Sewage disposal is proposed to be by individual wastewater septic systems.
3. Site description: The subject property is an irregularly shaped parcel consisting of 20.97 acres. The parcel has 450 feet of frontage on State Route 9 (SR 9). The site consists of rolling and sloping topography. The slope extends uphill to the east beyond the boundaries of the site. The highest point of the site is in the northeast corner at 300 feet. The lowest point of the site is in the northwest corner of the site at 170 feet. The site contains a mixture of lawn, fenced pasture, forest, and forested wetlands. The site contains three Category 3 wetlands and one Type 4 stream. There is an existing single-family residence and an existing barn on-site. The existing access is a driveway shared with the neighbor to the south.
4. Adjacent zoning and uses: The subject property and the properties in the immediate vicinity are zoned R-5. The immediate area surrounding the subject property is characterized by low density residential development with associated rural uses such as pasture management or forested areas. Lot sizes in the immediate vicinity are typically between 5 and 20 acres. One notable exception is the property immediately to the southwest of the subject property. This property contains a single-family residence on 1.5 acres.

B. Issues of Concern

No public comments were received in response to the Notice of Application or the Notice of Threshold Determination. The Examiner has not identified any issues of concern in reviewing the file or in listening to the hearing testimony.

C. Compliance with Codes and Policies.

5. 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.

6. 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 single-family residences, which is 9.57. This rate comes from the 6th Edition of the *ITE Trip Generation Report* (code 210). As indicated above the number of new lots that will be created is 8. The development will generate 76.56 new ADT and has a road system capacity impact fee of \$20,211.84 (\$2,245.76/lot) based on \$264.00/ADT.

B. Concurrency [SCC 30.66B.120]

"Level-of-service" (LOS) means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. 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 LOS A representing the best operating condition, and LOS F the worst.

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with the Department of Public Works' (DPW) final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

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]

The subject property frontage is located along SR 9, which is under the jurisdiction of the Washington State Department of Transportation (WSDOT). The DPW will recommend as a condition of approval, any requirements made by WSDOT for frontage improvements. In its comments dated October 11, 2006, WSDOT did not discuss frontage improvement requirements (Exhibit 24).

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

Access is proposed from SR 9 via a private road. The submitted plat shows nine lots taking access from the private road. The plat also shows an existing single-family residence (SFR) located southwest and off-site of the subject plat that is taking access off of the private road via a tract, for a total of 10 SFRs accessing the private road. The road will serve over 90 ADT and thus the proposed private road shall be designed and constructed with a paved roadway and walkway per EDDS Standard Drawing 3-090.

Any divergence from these standards requires approval by the county engineer. A private road in a RCS may be permitted if approved by the county engineer as per SCC 30.41A.210. The county engineer approved a private road in the subject plat on November 27, 2006.

As per an e-mail to PDS from WSDOT dated October 19, 2006, the applicant is required to obtain an access permit from WSDOT for the development access prior to issuance of any building permit, and any conditions of the access permit must be met prior to occupancy of any building.

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

The development abuts SR 9, which is designated as a state highway. As per WSDOT comments dated October 19, 2006, this development has to acquire an access permit prior to building permit (see previous section) and the applicant is required to provide mitigation for state highway impacts (see following section for details). No county frontage improvements are required.

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

This development is subject to the WSDOT/County Interlocal Agreement, which became effective on applications determined complete on or after December 21, 1997. The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through (a) voluntary negotiated construction of improvements, (b) voluntary negotiated payment in lieu of construction, (c) transfer of land from the developer to the State, or (d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at $76.56 \text{ ADT} \times \$36.00/\text{ADT} = \$2,756.16$.

A copy of a voluntary offer was submitted with the application for \$2,756.16. In a letter dated October 3, 2006, WSDOT indicated acceptance of that amount, and enclosed a copy of an

executed voluntary agreement. Payment of that amount will be a DPW recommended condition of approval.

In addition, WSDOT will require the applicant to provide the following:

- Application for a new access permit
- Hydraulics and Drainage Report
- Application to set up a JA Account to cover WSDOT review costs.

H. 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.

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.

7. 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). The development does include internal walkways, so students will have sidewalks within the subdivision.

Arlington School District comments dated October 23, 2006 were received by PDS on November 7, 2006. Exhibit 26. The District indicated that buses will pick up all school children at the entrance to the development and therefore no off-site pedestrian facilities are required. The District has required a safe waiting area for the bus, which the applicant shall provide in the form of a shelter off the travel portion of the road.

8. 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 1 existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

9. Drainage and grading.

Drainage. Presently, stormwater flows towards the stream that bisects the property. Stormwater runoff from the plat access road and individual lots will be directed to a stormwater detention wetpond. The detention system will be designed to detain the 100 year, 10 year, and one-half of the 2 year 24 hour storm events. The detention pond will have 5:1 sideslopes. Thus, no fence will be required around the detention pond. Landscaping will be required as provided in SCC 30.25.023(4). The detention pond will consist of a two cell system for water quality. The first cell will trap sediment and the second cell will be planted with wetland vegetation to filter finer pollutants (Exhibit 12, page 6). The water will then be released back at pre-existing rates back into the existing drainage system.

Grading. Grading quantities are anticipated to be approximately 9332 cubic yards of cut and 1094 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.

10. Critical Areas Regulations (Chapter 30.62 SCC) The staff report provides the following explanation of site conditions and critical areas regulations compliance:

A Type 4 stream flows north across the western third of the property entering the south property line in a forested condition, then transitions to a disturbed pasture low scrub-shrub condition where it turns westerly through a young forest scrub-shrub community before it exits the site to the west under SR 9 through an existing 36” culvert. There is an associated Category 3 riparian wetland along the length of the stream which extends to the east and the north in a mostly forested condition near the south central portion of the site. Portions of two other Category 3 wetlands are found on the site in the east and the north. The wetland areas have been historically disturbed and contain existing pasture, scrub-shrub and a few scattered trees. An existing farm road crosses the western riparian Category 3 wetland at an existing 18” culvert on the Type 4 stream through the most degraded portion of the wetland.

The applicant proposes a private road crossing the riparian Category 3 wetland and Type 4 stream in the vicinity of and within the footprint of the existing farm road where the wetland and buffer are severely degraded. A total of 4283 s.f. of degraded pasture wetland is proposed to be filled for the access road as allowed per SCC 30.62.350. The access needs to cross the wetland and stream in order to access the eastern portion of the site and is considered to be unavoidable. The applicant has minimized the impacts as required per SCC 30.62.365 by choosing the most degraded portion of the site along the existing farm road. Mitigation for the wetland and buffer impacts is proposed in the form of wetland and buffer enhancement and additional wetland buffer via innovative development as allowed per SCC 30.62.370.

Innovative development is required because the applicant is not proposing to create an additional (emergent) wetland to replace the (emergent) wetland being filled and thus the application does not meet the standard requirements per SCC 30.62.345(1)(c). Instead, the applicant is proposing to enhance 22,186 s.f. of existing degraded pasture wetland for road fill impacts of 4283 s.f. for a replacement ratio > 5:1. The standard requirement for emergent fill is 1:1 creation. In addition, the applicant is proposing to enhance another 11,429 s.f. of wetland and 15,431 s.f. of buffer adjacent to the road as well as buffer additions in seven scattered locations totaling 53,114 s.f. for reductions of degraded areas totaling 21,875 s.f. (a 2.4:1 replacement ratio).

The applicant has demonstrated compliance with SCC 30.62.370(2) because the enhancement of the degraded wetland and buffer areas along the proposed private road, coupled with the addition of buffer on the site, will substantially improve the functions and values of the wetland and buffer over that which would have occurred through the creation of an emergent wetland and the expansion of buffers in existing pasture areas. The proposed plantings will provide structure, ecological diversity and wildlife habitat in areas that otherwise may have remained relatively degraded for many years. The value of a low functioning degraded emergent wetland is minimal and the value in the construction of an emergent wetland to replace such a wetland makes less ecological sense than the considerable enhancement that is being proposed.

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

Exhibit 31 at 5-6.

D GMA Comprehensive Plan

11. 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.

The subject property is designated Rural Residential (RR: 1 DU/5 Ac, Basic) on the GPP Future Land Use map, and is located outside of an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential designation “includes lands which were designated Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing zones within this designation are the Rural-5 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 LU6.B.9.” PDS finds the requested preliminary plat to be consistent with the General Policy Plan’s Rural Residential designation of the property.

12. Utilities

A. Water

Individual wells are being proposed on each of the 9 lots in the proposed subdivision. The file contains a letter from the Snohomish Health District (SHD) 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 28)

The applicant has provided well logs at Exhibit 22 and Exhibit 15. In response to the well logs provided in Exhibit 29, PDS noted:

Well logs provided for the same quarter section as the subject property either show very poor yield or rapid drawdown. If there are additional well logs for the immediate area, we can review those as part of a resubmittal. However, if water yields are poor, then please provide a hydrogeological assessment of the groundwater potential for the project. The assessment must address whether 9 individual wells can provide adequate potable water for the proposed development. The assessment must also address impacts that the development and use of the 9 new water wells on site will have on other water wells in the vicinity. Please include well logs from wells in the quarter section.

On January 3, 2008, the applicant provided PDS with additional well log information (Exhibit 22). The applicant’s well driller conducted a pump test for the well discussed in Exhibit 15 (received by PDS on October 30, 2007). The one hour pump test showed that the well can produce 2.5 gallons per minute (GPM). Drawdown from the static water level of 19 feet was 101 feet. Recovery was measured at .584 GPM. A minimum yield of 400 gallons of water per day is considered to be minimally adequate for one residential dwelling unit. Based on the data provided in Exhibit 22, PDS concluded that it is feasible to provide adequate potable water supply to lots within the proposed plat.

B. On-Site Septic

The applicant proposes on-site septic systems on each of the 9 lots in the proposed subdivision. The SHD has provided a letter recommending approval of the plat dated May 7, 2007. (Exhibit 28)

C. Electricity

On October 16, 2006, Snohomish County Public Utility District No. 1 provided correspondence indicating that they can provide electricity to the proposal. (Exhibit 25)

13. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. The 9 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on December 11, 2007 (Exhibit 17). The DNS was not appealed.

15. Subdivision Code (Chapter 30.41A SCC)

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

- A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. *See* SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. *See* 30.41A.110.
- C. Fire Code. The Staff Report (Exhibit 31) provides the following information on compliance with fire code:

- 1. Access

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

Width

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

Section 902.2.2.4 requires that “dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with a turnaround unless a modification is granted by the fire marshal.” SCC 30.53A.115, Section 221 defines turnaround as a cul-de-sac with a minimum outside radius of 40 feet. Section 902.2.2.3 requires that “turns, bends, or sweeps in fire apparatus access roadways shall be designed at not less than twenty foot inside-turning radii nor less than forty foot outside-turning radius.”

Grade

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

Review

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

2. Fire Flow

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

Review

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

The Examiner concludes that the subdivision meets the requirements of the fire code.

16. Rural Cluster Subdivision Standards — General.

The Cougar Estates 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 October 30, 2007 (Exhibit 16), and in an open space management plan (Exhibit 21) 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 47.2% (9.9 acres) of the property in restricted open space. The proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts. The use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties and reducing the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems. Finally, the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

17. Rural Cluster Subdivision Code Design Standards (SCC 30.41C.200)

The rural cluster subdivision code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

A. SCC 30.41A.200(1)-- Critical Areas Compliance.

(1) When environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to chapters 30.62 and/or other applicable county ordinances or policies, the areas shall be designated as critical area protection areas;

Applicant's development concept does a commendable job of protecting and enhancing critical areas on-site, as explained in the text above under the heading "Critical Areas Regulations". While there are unavoidable impacts due to road construction on the site, the applicant is using innovative development design to enhance some low functioning wetland areas into better functioning areas, and maintaining other environmentally sensitive portions of the site. See Exhibit 11.

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 of native vegetation, in accordance with the provisions of Table 30.41C.210(1). *See* Exhibit 14.

Portions of the sight-obscuring buffer, shown on Exhibit 14, require supplemental landscaping. SCC 30.41C.200(2) requires that:

“The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1).”

The landscape plan depicts trees planted generally in excess of 20 feet apart in the sight-obscuring buffer. The landscape key does not identify what species are to be planted. These plantings will not create a sight-obscuring buffer across the required buffer width. *See* Exhibit 31 at 10. The plat will be conditioned to require that the buffers be maintained with sight-obscuring vegetation.

C. SCC 30.41C.200(3)—Internal Roads.

(3) All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;

A private road with a cul-de-sac bulb provides access to the RCS. The road meanders with the topography of the hillside, and has one access point to SR 9.

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 31.

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 11.

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 21. The designated “restricted open space” will be used for buffering, critical area protection, resource production, conservation, recreation, community utility purposes, or general preservation. The plat will be conditioned to required a Homeowner’s Association to be established for maintenance purposes. Exhibit 21; see Supplemental Staff Report dated January 10, 2008. Exhibit 32.

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

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

This requirement is not applicable, since this is a 9-lot development.

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

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

This requirement has been met by the proposed preliminary subdivision. See Exhibit 13b.

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

¹ Criteria 6-9 are not applicable to this application.
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character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

The applicant has done a good job of minimizing site disturbance and topographic alteration. The placement of the landscaped pond next to SR 9 will be visually appealing and lessen the visual impact of the development.

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

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

The applicant proposes on-site septic systems for this development. See Exhibit 28.

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

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

Cougar Estates is located in Fire District No. 18. Exhibit 31.

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 6B, *supra*.

18. RCS Lot Yield Calculations.

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

Basic lot yield: 913,557 square feet/100,000 square feet = 9.13 lots

Total lot yield = 9.13 lots

Total lot yield-rounded = 9 lots

Total lots proposed = 9 lots

See Exhibit 31.

² Criteria 15 is not applicable.
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19. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

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

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC, Chapter 30.63C SCC, and State DOE drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Sewage disposal will be provided by individual wastewater septic systems. Potable water will be provided through individual wells.

20. 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 Cougar Estates application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

RCW 58.17.110.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.

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

DECISION

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

CONDITIONS

- A. The preliminary plat received by PDS on October 30, 2007 (Exhibit 16) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above and this decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Critical Area Study and Conceptual Mitigation Plan for Cougar Estates prepared by Wetland Resources, Inc. dated Revision #1 March 6, 2007 (submitted to PDS on 04/24/07) in conjunction with the revised conceptual mitigation site plan map dated 11/26/07 shall be submitted for review and approval during the construction review phase of this project.
 - iv. A revised landscape plan shall be provided showing necessary landscaping for the detention pond, consistent with SCC 30.25.023, and the site perimeter landscaping. The site perimeter landscaping shall meet the following standard:

The revised landscape plan shall be provided for review and approval by PDS that provides supplemental plantings in portions of the sight-obscuring buffer where sight-obscuring vegetation does not exist. The sight-obscuring buffer shall include supplemental plantings of native vegetation with the ultimate density of trees at 10 feet on center and shrubs at 3 feet on center. A minimum of 75 percent of the trees shall be conifers.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."

- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,245.76 per lot for mitigation of impacts on county roads paid to the county,
\$306.24 per lot for mitigation of impacts on the state highway system.

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

- iii. 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 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.

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

- vi. The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation.

- vii. Well protection zones are shown in the Snohomish Health District records for lots 2 through 9 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.

- viii. A 100 foot radius well protection zone covenant is hereby established on lot 1 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owners of the property shown within this protection zone agree to

comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners.

ix. All utilities shall be underground.

D. Prior to recording of the final plat:

- i. Applicant shall submit an approval letter from WSDOT regarding access requirements.
- ii. Native Growth Protection Area (NGPA) boundaries 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.

- iii. The final critical area mitigation plan shall be completely implemented.
- iv. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan (Exhibit 19).
- v. The approved landscape plan shall be implemented.
- vi. The bus-stop shelter for school children shall be constructed in a safe area away from the roadway with a roof to provide shelter from inclement weather.

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.

Order issued this 7th day of February, 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 **FEBRUARY 19, 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 **FEBRUARY 21, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: David Radabaugh

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.