

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

DATE OF DECISION: May 8, 2008

PLAT/PROJECT NAME: Lake Riley Estates

APPLICANT/  
LANDOWNER: Dale Hylton  
Hylton Family Limited Partnership #2  
P O Box 5202  
Lynnwood, WA 98046

FILE NO.: 06-133486-000-00-SD

TYPE OF REQUEST: Petition for reconsideration of decision denying rural cluster subdivision

DECISION (SUMMARY): Petition for reconsideration granted, application for RCS **APPROVED**, subject to conditions

**BASIC INFORMATION**

GENERAL LOCATION: The property is located approximately 28001 Lake Riley Road, Arlington in Section 20, Township 32 North, Range 7 East, W.M., Snohomish County, Washington.

Acreage: 15.6 acres

Avg. Lot Area: 47,660 square feet

Gross Density: 0.45 d.u./ac

Lots: 7 lots

Smallest Lot Area: 43,762 square feet

Open Space: 6.8 acres

Zoning: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 d.u./5 acres)

School District: Arlington No. 16  
Fire District: No. 21  
Water Source: Individual on-site wells  
Sewer Service: Individual on-site systems

**INTRODUCTION**

After a public hearing conducted on November 13, 2007, Deputy Hearing Examiner Ed Good issued a decision on December 26, 2007, which denied without prejudice the application for a Rural Cluster subdivision. (Exhibit 39)

On January 8, 2008, the applicant filed a timely petition for reconsideration of said decision. (Exhibit 40)

On January 24, 2008, Deputy Hearing Examiner Ed Good ordered that the public record be reopened and that addition public hearing be conducted as authorized by SCC 2.02.170 (4)(d) in order to allow a complete and fair airing of the issues. (Exhibit 42)

The Office of the Hearing Examiner gave proper public notice of the open record hearing as required by the county code. (Exhibit 43)

The Deputy Examiner held an open record hearing on February 21, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

*By stipulation of the applicant dated March 19, 2008, Hearing Examiner Pro Tem James Densley listened to the electronic recordings of the November 13, 2007 and February 21, 2008 hearings and reviewed the file and rendered this decision thereon.*

**PUBLIC HEARING**

The public hearing resumed on February 21, 2008 at 3:33 p.m.

1. The Deputy Examiner, Ed Good, announced that he had read the PDS staff report, the petition for reconsideration, and citizen comment letters and viewed the area and therefore was generally apprised of the particular request involved. The Deputy Examiner announced that the issues upon which testimony would be taken were those issues brought up in the petition for reconsideration, to wit: The development pattern in the neighborhood, storm water drainage ways, potable water systems, sanitary waste (septic systems) and fire protection. He announced that he would not take testimony regarding the issues not subject to the petition for reconsideration.

2. The applicant, Hylton Family Limited Partnership #2, was represented by Mr. Jesse Jarrell. Snohomish County was represented by Paul MacCready of PDS.
3. Those present who expressed a desire to testify were administered the oath.
4. Appearing and giving testimony were Paul MacCready, Jesse Jarrell, Dale Hylton, Ms Katherine Matthews, Mr. Kyle Matthews, Mr. Loren Sand, Ms Cheryl Greenwood, Mr. Charles Greenwood, Ms. Esther Van Der Berg, Mr. Craig Young, and Mr. Scott Brainard.

The hearing concluded at 11:38 a.m.

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

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

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

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. Nature of Application: The applicant in his Petition for Reconsideration asked that the language in the "Conclusions of Law" numbers 6 through 9, of the Report and Decision of the Snohomish County Hearing Examiner dated December 26, 2007, be reconsidered. These conclusions raised questions on the development pattern of the neighborhood, water drainage ways, potable water supply, sanitary waste, and fire protection facilities. The applicant submitted additional information in the petition to address and answer the questions and stated that the site has been designed to the best possible design methods available. The applicant asked for a reconsideration of the denial of the application.
3. The Petition for Reconsideration did not contest the findings in the Report and Decision of the Snohomish County Hearing Examiner dated December 26, 2007, and these findings are incorporated by reference into this decision. The conclusions not subject to the Petition for Reconsideration are likewise adopted in their entirety into this decision.
4. Adjacent Zoning/Uses: As previously found the subject site is outside the urban growth area (UGA) and is currently zoned Rural-5 Acre (R-5). It is located on the east side of Lake Riley Road approximately 700 feet southeast of Lake Riley. The property is largely surrounded by undeveloped forest and pasture land. Some residences on large acreage lots are situated near the subject site. All of the surrounding property is zoned R-5, although Commercial Forest lies within 1320 feet of the property. The neighboring

property abutting the eastern boundary lies within the Forest Transition Area (FTA). That property also lies within 2000 feet of a Mineral Resources Overlay (MRO). There are eight existing one to two acre lots in the R-5 zoned general area, about  $\frac{3}{4}$  miles to the southwest of the site.

5. Matters of Concern:

- A. In response to this petition for reconsideration, four letters of concern were received from the general public. (Exhibits 44 - 47) One letter expressed concern about storm water drainage, protection of a nearby salmon bearing creek, drinking water availability and traffic concerns. Two letters expressed concern for the loss of peace and tranquility which would result from development of the property. One letter supported the project by stating the applicant's proposal will bring attractive housing and preserve the rural nature of the area. The petition for reconsideration also included five letters of support of the project.
- B. Testimony given during the public hearing by citizens and neighbors showed that some were in favor of the project and some opposed. A local farmer welcomed new neighbors as potential customers to her vegetable stand. Another neighbor felt that it would be good to have additional residents to enjoy the rural lifestyle. Other neighbors and nearby landowners expressed opposition to the project. Some were concerned about the loss of the rural lifestyle and expressed concerns about bad drivers in the area. One nearby landowner expressed concerns that the residents of the proposed development would trespass into his property where he stores explosives. He said that some new neighbors would be upset with his use of helicopters to conduct logging. There were concerns expressed about storm water run off disturbing nearby creeks in which salmon breed. Concerns were brought up that this development may encourage further RCS to come to the community which additional growth would destroy the rural character of the area.

6. Specific Findings as to Conclusion 6. The applicant contests the sentence in the conclusion which states "Consequently there is no merit to a generalized claim that he rural cluster option will produce a more environmentally sensitive result." The Deputy Examiner called for a site specific analysis of that claim. In the petition for reconsideration and the Examiner's review of the file these additional factors were brought out which upon reconsideration the Examiner finds persuasive:

- a. Under lot by lot development approach there may be more clearing. There are no provisions for vegetative screening between the lots and the neighboring parcels under the lot by lot method. Under the RCS requirements vegetative screening is required, SCC 30.41C.200(2) and (11), which is not required by lot by lot development. Such additional vegetative screening is shown on the site plan (Exhibit 16) as tracts 992, 993, 995, 996, 997, and 999. See Comprehensive Policy Plan for Natural Environment NE Policy 1.A.5.
- b. This project proposes to increase wetland mitigation in the amount of 16:1. Under the lot by lot method the wetland mitigation would be only 1:1. Clearly the additional wetland mitigation is improved by the RCS method of development for this parcel.
- c. The homes proposed to be built by this development are clustered in two areas in the center of the parcel. In lot by lot method there is no provision for the placement in the lots which then would give an appearance of sprawl. See NE policy 1.B.4.

- d. The superseded site plan (Exhibit 4) and the Open Space Management Plan (Exhibit 13) both call for a pedestrian walkway. For some reason unknown to the Examiner the walkway is not shown on the later site plan (Exhibit 16). The applicants must provide such a walkway as a condition of approval. This walkway will be an amenity which would not otherwise be required in lot by lot development. This walkway shall be constructed as not to degrade the environment by interfering with buffers, wetlands, storm drainage or other factors. Encouraging walking rather than vehicle travel is better for the environment. Likewise the provision of recreational open space in tracts 992, 997 and 999 as provided (Exhibit 13) is another amenity which will be provided by the RCS method of development.
  - e. The proposal provides for more wetland buffers than required by law and that would be used by site-by-site development.
  - f. The drainage plan provided by the applicants (Exhibit 12) provides for appropriate drainage that would not be otherwise required in lot by lot development. This plan will be discussed in length below in this decision. This drainage plan provides an environmentally safe way of treating the run off while still hydrating the wetlands.
7. Specific Findings as to Conclusion 7. The applicant contests the sentence in the conclusion which states, "Dispersal and infiltration of storm drainage is not acceptable when the receptacle is wetland or wetland buffers which, in turn, drain to a salmon-bearing stream acknowledged by a government-funded salmon restoration facility." The Deputy Examiner called for a site specific analysis of the proposed drainage facility. In the petition for reconsideration, the hearing upon the petition and the Examiner's review of the file these additional factors were brought out which upon reconsideration the Examiner finds persuasive:
- a. The Critical Area Study for this project (Exhibit 14) comments upon the hydration of the wetlands. The hydration of the wetlands is dependant upon the infiltration run-off from the parcel. Said hydration is necessary for the salmon bearing stream to flow.
  - b. The testimony of Mr. Craig Young, Snohomish County DPW Surface Water Management, which was presented at the hearing on the petition for reconsideration was that the method proposed by the applicant to infiltrate and disburse the rain water when used in conjunction with vegetative and bioswales was the best available science. He said that experience has shown that detention ponds are not as effective in treating the rain water as the proposed infiltrative method. He testified that the storm water can be effectively treated on this site with the disbursal and vegetative treatment will properly hydrate the wetlands and not be a danger to wildlife "absolutely and without a doubt." He testified that the cumulative effects of the infiltration method are much better than the use of a detention pond. Nature keeps the infiltration methods working whereas the detention ponds tend to fail over time and require maintenance. He said this infiltration method would work over a larger area as long as proper care is taken in design. Nature and vegetation provide more bioswale protection with infiltration as opposed to detention ponds. Roof disbursal through a lawn and vegetative buffer to a wetland is better discharge to a wetland as opposed to a detention pond. He said the requirements imposed by RCS leads to cleaner water and safer fish environment.

- c. The surrounding area is not completely R-5 basic since the timber and mineral overlays of the McDonald and Van Der Berg property do not allow RCS developments. This reduces the potential development in the area. SCC 30.41C.020 describes the development of property by means of Rural Cluster Subdivisions. Among other things, SCC 30.41C.020(2) states that RCS may not be used in R-5 property if the property is zoned commercial forest, commercial forest –forest transition area. There may well not be as much development due to the presence of wetlands.
  - d. The wetland buffer for Category 3 Wetland is 50 feet. The proposal places the homes at least 125 feet from the wetland. This additional vegetation will absorb the stormwater. The nearby salmon bearing stream on Mr. Mc Donald's property is over 100 feet from the subject parcel according to both aerial photography and Mr. McDonald's testimony. The maximum protection areas of the stream are provided by this project. The proposed infiltration method complies with stormwater treatment for salmon bearing streams. There is an additional 100 foot buffer on the eastern side of the development due to the commercial forest transition nature of the land to the east which provides additional protection to the stream. From the eastern boundary to the closest house is 160 feet which is more than site by site development.
  - e. The proposed RCS provides additional wetland buffer than which would be required by the lot by lot method, especially in the South East areas around proposed lots 5 and 6. Clustering will preserve more native vegetation.
8. Specific Findings regarding Conclusion 8. The applicant contests the assumption in the decision that fire flow capacity water supply is required. Upon reconsideration the Examiner finds that fire flow requirements do not apply to this development since each of the residential lots will be greater in size than the 43,560 square foot rule of SCC 30.53A.315. Thus the calculations regarding fire flow in the original decision are inapplicable. The applicant points out in the petition for reconsideration that the Snohomish Health District requires that the plat demonstrate an approved source of water serving each proposed lot prior to final plat approval. In the event inadequate water is available from the watershed, then alternate methods must be used or the applicants will be unable to further develop the project. The applicant provided in the petition well logs for other wells in the vicinity which shows water availability.
9. Specific Findings regarding Conclusion 9. The applicant contests the conclusion that appropriate provision has not been made for sanitary waste. Upon reconsideration the Examiner finds that such provisions have been made. The applicant pointed the letter dated December 14, 2006, from the Snohomish Health District showing approval of the preliminary plat.
10. Specific Findings regarding Conclusion 10. The applicant contests the conclusion of the Deputy Examiner regarding fire flow. As previously found above, the homes are exempt from the county fire flow requirement due to the lot size. The fire marshal's comments attached to the petition for reconsideration confirm this. Thus, the Examiner finds that fire flow regulations are complied with by this RCS application subject to the conditions on the review of the Office of the County Fire marshal.

11. One person testifying commented that the lack of outdoor recreational opportunities within the RCS would lead to trespassing into his commercial forest. He further commented that he was concerned that there would be complaints about the noise of the commercial operations of logging from this forest. Since each residential lot within the parcel will be approximately one acre in size there will be outdoor activities available on the lots. This decision will condition the approval of the RCS having the recreational walking trail as described in Exhibit 13.
12. The southeastern corner of the subject property is within 2,000 feet of Mineral Resources Overlay (MRO). Development permits for land that is within 2,000 feet of designated mineral resource land shall include the notice contained in SCC 30.32C.210. The notice requirement shall apply to the real property which is subject to the development or building permit only so long as the subject property is designated or is within 2,000 feet of land that is designated mineral resource land (SCC 30.32C.200).
13. The property is also adjacent to a Forest Transition Area. SCC 30.32A.110 requires builders of new structures proposed to be located on parcels adjacent to forest lands to establish and maintain a minimum 100-foot setback, which shall be a resource protection area, from the property boundaries of adjacent forest lands. The applicant has proposed such an easement along the eastern boundary of the plat. SCC 30.32A.210 specifies that development permits adjacent to designated forest land shall include or have attached the disclosure text in SCC 30.32A.220 on the final development. The disclosure notice shall apply to the real property upon development or building permit approval, and may not be applicable thereafter if areas designated forest land are changed from designated forest land.
14. Furthermore as found above the decision will require disclosures upon the title of the each lot within the RCS of the proximity of the commercial forest and designated mineral resource land. In addition to the permanent signage about Native Growth Protection Areas which is a condition of this decision, the applicant shall also be required to place permanent signage along the perimeter of the RCS with signage prohibiting trespassing upon neighboring parcels. Such signage shall be maintained by the homeowner's association.
15. As found above there are commercial logging and mineral extraction activities which are permitted near the proposed RCS. These are indeed rural based types of activities. The Examiner also finds that such activities are such that make the area far from being in an undisturbed area. The proposed RCS may be a quieter use than some of these activities and thus will also be an appropriate use of the R-5 zoned neighborhood.
16. As found by the Deputy Examiner in finding 15 of the decision dated December 26, 2007, there has been adequate review as to the road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads and Transportation Demand Management.
17. As found by the Deputy Examiner in finding 16 of the decision dated December 26, 2007, there will be no park mitigation payment in White Horse Park District No. 304 in which the subject property is located.

18. As found by the Deputy Examiner in finding 17 of the decision dated December 26, 2007, the Arlington School District reports are adopted by this decision.
19. As found by the Deputy Examiner in finding 18 of the decision dated December 26, 2007, there is compliance with the R-5 zone in the area.
20. As found by the Deputy Examiner in finding 19 of the decision dated December 26, 2007, as conditioned the plat will meet design standards for roads and is outside all regulated flood hazard areas.
21. As found by the Deputy Examiner in finding 20 of the decision dated December 26, 2007, the RCS was reviewed for compliance with RCS standards. However as found above, the proposed development plan and preliminary plat (Exhibit 16) does not conform precisely to the Open Space Management Plan (Exhibit 13) since the walkway is not shown on Exhibit 16. A condition of approval of this RCS application is that such walkway be provided within the plat as an environmentally sensitive recreational amenity. The precise location, design, construction methods and materials of this environmentally sensitive recreational walking trail shall be approved by PDS in advance of any construction upon the site.
22. Drainage and Grading: Infiltration/dispersion is proposed to meet the detention requirements of the Snohomish County Code Chapter 30.63A SCC. Roof and footing drains for all the building lots will drain directly to splash blocks and will naturally infiltrate into the ground. Driveway runoff will naturally sheet flow into open ditches, which will drain to bioswales/rain gardens located on the western boundaries of Lots 3 and 7. The bioswales will provide water quality and partial detention for the driveway runoff before entering the wetlands located on the property. As found above this is the best available method to treat the water for quality purposes and to hydrate the wetlands in a manner mimicking the natural process.

Planning and Development Services (Engineering) has reviewed the concept offered and is 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 2,000 cubic yards of cut and 2,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC

23. Critical Areas: The subject property contains one Category 1 wetland and three Category 3 wetlands. The Category 1 wetland is located along the northwestern boundary of the site and is associated with Lake Riley. One of the Category 3 wetlands lies across the entire center of the property and extends off-site to the east. The other two Category 3 wetlands straddle the southeastern boundary. A fish bearing tributary to Lake Riley is located approximately 250 feet off-site to the east.

The applicant is proposing to impact 890 square feet of Category 1 buffer, Wetland A, in order to accommodate the access road to Lots 1 through 3 (Exhibit 14). As mitigation for the buffer impact, designation of an additional 33,405 square feet of forested area is proposed. This is better than a 37 to 1 ratio and will improve the overall level of

functions and values provided by the site. All the wetlands and their buffers will be protected by Native Growth Protection Area (NGPA) tracts or easements. All mitigation has been completed through buffer averaging. No mitigation plantings are required.

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 in conformance with Chapter 30.62 SCC (Critical Areas Regulations) and is consistent with the purpose and objectives of the chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare.

24. Zoning: This project meets zoning code requirements for lot size, including rural cluster subdivision provisions, bulk regulations and other zoning code requirements. The 11 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.
25. Subdivision Code: The proposed plat meets Chapter 30.41A SCC requirements. The proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community.
26. Plats – Subdivisions – Dedications (Chapter 58.17 RCW): The proposed plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of walking trail, 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 30.63A SCC and Washington State Department of Ecology 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 supply will be by individual on-site wells and sewer service will be by individual on-site sewage disposal systems subject to approval by the Snohomish Health District.
27. 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 jurisdiction to hear this case and render a decision thereon.
2. This development will provide housing in compliance with Snohomish County Regulations. The public interest will be served as there will be compliance with health and safety, regulations, including parks, schools, fire department, internal circulation, public roads, utilities, GMA, critical areas and drainage and grading.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.

4. 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 petition for reconsideration is **GRANTED**. The decision of the Hearing Examiner is hereby amended to provide:

The request for a seven lot **RURAL CLUSTER SUBDIVISION** on 15.6 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### CONDITIONS:

- A. The revised preliminary plat/rural cluster subdivision received by PDS on August 8, 2007 (Exhibit 16) shall be the approved plat configuration **SUBJECT TO A REQUIREMENT OF AMENDMENT TO INCLUDE THE ENVIRONMENTALLY SENSITIVE RECREATIONAL WALKING TRAIL**. Changes to the approved plat are governed by SCC 30.41A.330. The precise location, design, construction methods and materials of this environmentally sensitive recreational walking trail shall be approved by PDS in advance of any site work; and/or prior to issuance of any development/construction permits by the county.
- B. Prior to initiation of any 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. A landscape plan sheet with all areas of the Vegetated Sight Obscuring Buffer identified, with dimensions, and a "typical" detail that shows the planting plan for the Vegetated Sight Obscuring Buffer where the existing vegetation does not provide the required function shall be submitted for review and approval during the construction review phase of this project.
  - iii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the County.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. "The dwelling units within this development are subject to park impact fees in the amount of \$0.00 (no payment) per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building

permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”

- ii. “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.”
- iii. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$2,526.48 per lot for mitigation of impacts on county roads paid to the County,  
\$344.52 per lot for mitigation of impacts on state highways paid to the County,  
\$2,710.84 per lot for mitigation of impacts on city streets for the City of Arlington paid to the City. Proof of payment shall be provided.  
These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”
- iv. Provide the following note on the face of the final plat:  
“Where existing vegetation fails to meet the intended function of the Vegetated Sight Obscuring Buffer, then supplemental planting of native vegetation shall be made, with the ultimate density of trees at 10 feet on center and shrubs at 3 feet on center. A minimum of 75% of the trees shall be conifers.”
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;  
"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”
- vi. The following disclosure language shall be indicated on the face of the final plat.  
“Your real property is on or within 2,000 feet of designated mineral resource land, on which mineral extraction, or a variety of activities related to mineral extraction, may occur that are not compatible with residential development for certain periods of limited duration. An application might be made on the designated mineral resource land for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.”

- vii. The following disclosure language shall be indicated on the face of the final plat.

“Your real property is on, adjacent to, or within 500 feet of designated forest land, on which a variety of forest management activities could occur that may not be compatible with residential development for certain periods of limited duration. These forest management activities include, but are not limited to, timber harvest, road and trail construction, the operation of machinery, trucks and aircraft, brush control, slash burning, the application by spraying of forest chemicals, and other forest management activities, which activities are lawful if conducted in compliance with Title 222 WAC. In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including falling timber and increased fire hazard. Due to these risks, Snohomish County encourages landowners to locate structures at least 200 feet from adjacent forest land boundaries. Snohomish County has adopted Forest Lands Regulations (chapter 30.32A SCC) which may affect you and your land. You may obtain a copy of chapter 30.32A SCC from Snohomish County. A provision of chapter 30.32A SCC provides that "forest management activities conducted on the designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington's pesticide regulations (WAC 16-228-1220(5)), and established prior to surrounding non-forestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health, safety, or environment." This disclosure applies to real property upon any development or building permit approval; or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated forest land are changed from designated forest land. Nothing in Chapter 30.32A SCC shall affect or impair any right to sue for damages.”

- viii. The following statement shall appear on the face of the plat and be recorded with the final plat restrictions, as required by Snohomish Health District;

“For Proposed Wells:

Well protection zones are shown in the Snohomish Health District records for lots 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 owners. After installation of any water well to serve lots within this subdivision, all owners 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.”

- D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Lake Riley Road to the satisfaction of the County.

- ii. 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 platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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 Development Review & Construction Division for review and approval prior to installation.

- iii. "No trespassing" signs shall be placed within the development along the perimeter placed to keep people in the development from entering the adjacent properties. The methodology described above in subparagraph ii shall be followed regarding location and type of signage.

E. In conformity with applicable standards and timing requirements:

- i. The open space management plan (Exhibit 13) shall be implemented by a homeowner's association. This shall include the construction of the environmentally sensitive recreational walking trail described above.

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

Nothing in this 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 8<sup>th</sup> day of May, 2008.

---

James Densley, Hearing Examiner Pro Tem

## **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

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

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 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, 2<sup>nd</sup> 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 22, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

---

Staff Distribution:

Department of Planning and Development Services: Paul MacCready

|   |
|---|
| <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> |
|---|