

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

DATE OF DECISION: May 19, 2008

PLAT/PROJECT NAME: ***MOUNTAIN MEADOW CREEK***

APPLICANT/
LANDOWNER: Timberland Development

FILE NO.: 07 100376 SD

TYPE OF REQUEST: 6 lot Rural Cluster Subdivision (RCS) of approximately 38.58 acres

DECISION (SUMMARY): APPROVED, subject to conditions.

BASIC INFORMATION

GENERAL LOCATION: The property is located at 13629 184th Street NE, Arlington, WA.

ACREAGE: 38.58 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 45,711 square feet

MINIMUM LOT SIZE: 43,564 square feet

DENSITY: 0.16 du/ac (gross)

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 and Rural Residential-10

UTILITIES:

Water: Individual wells
Sewer: Individual on-site septic systems

SCHOOL DISTRICT: Arlington

INTRODUCTION

The applicant filed the Master Application on June 5, 2007. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 25, 26 and 27)

A SEPA determination was made on March 4, 2008. (Exhibit 24) No appeal was filed.

The Examiner held an open record hearing on May 13, 2008, the 112th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on May 13, 2008 at 9:02 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Timberland Development, was represented by Barbara Jones. Snohomish County was represented by Bob Pemberton, PDS.
3. Those present who expressed a desire to testify were given the oath,
4. Appearing and giving testimony were, Barbara Jones, Bob Pemberton, Ann. Goetz, PDS (traffic) and Lana Vanderstoep, the property owner.

The hearing concluded at 9:30.

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:** Meadow Mountain Creek is a six-lot RCS of 38.5 acres. The proposed single-family residential lots range in size from 43,564 square feet to 50,710 square feet with 31.6 acres of open

space. Access to all lots will be by a new, internal private road connecting to 184th Street NE (Mattson Road). Individual private wells and on-site sewage disposal systems are proposed subject to approval of the Snohomish Health District. Mitigation fees are to be paid in accordance with Chapters 30.66A, B, and C, SCC, for project impacts to community parks, nearby road system traffic and to the Arlington School District No. 16.

3. **Site Description:** The 38.58 acres square site lies on the north side of 184th Street NE (Mattson Road). The majority of the site is grazed pasture. The site contains one single-family residence and out buildings. On-site vegetation consists mainly of Douglas fir and western hemlock. Western red cedar, red alder, pacific silver fir and big leaf maple occupy the site. The common understory plants are western sword fern, blacken fern, huckleberry, salal and trailing blackberry. There are eight Category 3 wetlands located on site, the largest in the center. A Type 3 ESA stream traverses the site from the southeast to northwest which is joined by another Type 3 ESA stream flowing westerly from the northeast corner of the site. These streams flow into Jim Creek 1500 feet to the northwest.
4. **Adjacent Zoning/Uses:** This site and surrounding properties to the west, south and east are zoned R-5. To the north is Forestry zoning and the land is in use as forestry. Other surrounding uses are low density, rural residential, agricultural and forestry uses.
5. **Matters of Concern:** No extraordinary issues, neighbor concerns or unresolved issues exist for this proposal. The Stillaguamish Tribe of Indians has commented that this area is located within the aboriginal or “Usual and Accustomed” areas of the Stillaguamish and is in close proximity to a significant cultural site for the tribe. (Exhibit 33) The applicant has entered into an agreement with the tribe that an archeological study be done prior to a construction permit being issued meaning that the archeological study will have to be performed before submittal of the construction permit. (Exhibit 37)
6. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of that review, the DPW determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$48.82 each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
9. Two Type 3 streams, a Category 3 wetland with four associated Type 5 streams and six small isolated wetlands exist on site. These natural features will be preserved with appropriate Native Growth Protection Area (NGPA) buffers; except that 1,197 square feet of buffer will be impacted, with mitigation provided in the form of additional buffer. PDS has reviewed the Critical Areas Study and Habitat Management Plan Revision 3 (Exhibit 18) and Mitigation Addendum (Exhibit 16) and determined that the project complies with the Critical Areas Regulations (CAR).

An evaluation of the information submitted with the application coupled with an on-site investigation has resulted in a determination that the application complies with Chapter 30.62, SCC (CAR) 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.

10. The PDS Engineering Division reviewed the concept of the proposed grading and drainage and recommended approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 1680 cubic yards of cut and 305 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) (Exhibit 20B) required by Chapter 30.63A SCC.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. On-site individual wells and septic sewer service and will be available for this development. (Exhibit 36) Electrical power is available. (Exhibit 32)
12. The subject property is designated Rural Residential-5 (R-5) on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the R-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
13. The subject property is designated R-5 (in the majority southwest portion) and Rural Residential-10 (R-10) Resource Transition (over the rest of the site) on the GPP Future Land Use map, and is not located within a UGA. It is not located within a mapped Growth Phasing Overlay. The site is adjacent to a Forestry zoned; Commercial Forestry Transition Area along the northern boundary. A Mineral Resources Overlay touches the northeast corner of the site. According to the GPP, the R-5 designation includes lands that were designated Rural on pre-GMA subarea plans and zoned Rural-5. The implementing zone in this designation will continue to be the R-5 zone. In the R-10 Resource Transition designation a minimum lot size of ten acres is used in the RCS calculations. The requested subdivision is consistent with the General Policy Plan's designation of the property.
14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17. The proposed plat 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.
15. The proposed plat also meets Chapter 30.41A SCC requirements. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on January 24, 2008 (Exhibit 21), and in an Open Space Management Plan (Exhibit 5) that is to be implemented by a homeowner's association. 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 76.41% (29.5 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; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage

related problems; the project complies with CAR, thereby minimizing the loss of the county's environmentally sensitive areas.

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

The 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 as noted in this report. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots, as proposed, are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads.

16. The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on January 24, 2008 (Exhibit 21), and in an Open Space Management Plan (Exhibit 5) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
17. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
18. 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 having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their relationship to the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.

3. The request is consistent with: (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 request for a 6-lot **RURAL CLUSTER SUBDIVISION** on 38.58 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on January 24, 2008 (Exhibit 22) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. An archeological study shall have been performed under the auspices of the Stillaguamish Tribe of Indians. (Exhibit 37)
- 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 six shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,526.48 per lot for mitigation of impacts on county roads paid to the county,
\$2,710.84 per lot for mitigation of impacts on City of Arlington streets paid to the city.
\$344.52 per lot for mitigation of impacts on State roads paid to the county.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, or the lots

therein. Once a building permit has been issued on a lot, all mitigation payments for that lot shall be deemed paid by PDS.

- iii. The final plat shall show a 30-foot right-of-way dedication along the property frontage with 184th Street NE to total 30 feet from the right-of-way centerline.
- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) 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."

- v. "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 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."
- vi. "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 applies to Lots 4 and 5. 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 is changed from designated forest land.

Nothing in Chapter 30.32A SCC shall affect or impair any right to sue for damages.

D. Prior to recording of the final plat:

- i. The private road and the turnaround shall have been constructed per EDDS 3-060 and EDDS 3-150.
- ii. If the developer does not opt to pave the private road, a paved approach shall have been constructed per EDDS 3-100.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iv. The line of sight for the proposed private road shall be identified in the construction plans and the sight triangle shall have been cleared and graded.
- v. Prior to final plat approval the following must be submitted for Snohomish Health District review and approval: Two copies of the proposed final plat map along with the required recording fees; accurate to scale designs for each proposed lot, demonstrating area for a minimum 450 gallon/day on-site sewage disposal facility, plus 100% reserve drainfield area. Drainfields must be located with areas of approved test holes and meet all setback requirements. Designs must show all features that may affect placement of sewage disposal facilities.
- vi. Well protection zones are shown in the Snohomish Health District records for lots 1-5 of this plat. The well protection zones are not based upon 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 the 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 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.
- vii. A 100 foot radius well protection covenant is hereby established on lot 6 around the existing well as located on the plat. The well protection zone is based on the actual constructed well. Any owner of property shown agrees to comply with current and local well site construction measures, which at a minimum prohibit the installation of drainfields within the well protection zone. If the well is moved, a 100 foot radius well protection zone shall not extend beyond the subdivision

boundaries without written consent and recorded well protection covenant from the affected property owner(s).

E. In conformity with applicable standards and timing requirements:

i. The preliminary landscape plan (Exhibit 8) shall be implemented.

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

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

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

Decision issued this 19th day of May, 2008.

James A. 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **May 29, 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, Bob Drewel Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JUNE 2, 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: Bob Pemberton

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.