

**DECISION OF THE SNOHOMISH
COUNTY HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: May 21, 2008
PROJECT NAME: ***DUBUQUE RIDGE I***
APPLICANT/OWNER: LRNW III, LLC
FILE NO: 07-104292-000-00-SD
TYPE OF REQUEST: **RURAL CLUSTER SUBDIVISION**
DECISION: **APPROVE**, with conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located on the north side of Dubuque Road, northeast of its intersection with 211th Avenue SE, Snohomish, within portions of Sections 30, 31, and 32 in Township 29 North, Range 7 East, W.M.

ACREAGE: 52.41
NUMBER OF LOTS: 15
AVERAGE LOT SIZE: 27,469 square feet
SMALLEST LOT: 20.939 square feet
ZONING: R-5
GROSS DENSITY: 0.29 du/ac

COMPREHENSIVE PLAN

General Policy Plan: Rural-5 (1 du/5 ac)

UTILITIES

Water: Snohomish County PUD #1
Sewer: Individual on-site septic

SCHOOL DISTRICT: Snohomish #201

FIRE DISTRICT: #16

PDS RECOMMENDATION: Approve

INTRODUCTION

The applicant filed the Master Application on June 4, 2007 (Exhibit 1). The application was determined to be complete for regulatory purposes as of the date of submittal. Resubmittals were made on November 7, 2007, February 14, 2008, and March 25, 2008.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code (Exhibits 6A, 6B, and 6B).

The instant application and Dubuque Ridge II are closely related plats immediately adjacent to one another. They share ownership, zoning, comprehensive plan designation and vesting dates. A single Determination of Non-Significance (DNS) was completed for both projects. The DNS under the State Environmental Policy Act (SEPA) was issued on April 13, 2008. No appeal was filed.

The Examiner held an open record public hearing on April 30, 2008. The hearing was a combined consideration of Dubuque Ridge I (the instant application) and Dubuque Ridge II (treated in a companion decision). Witnesses were sworn, testimony was presented, and exhibits were entered. The record was held open through May 9, 2008, to allow parties to negotiate. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on April 30, 2008 at 1:03 p.m.

1. The applicant was represented by George Kresovich, Attorney at Law. Testifying for the applicant were George Newman, Principal, Triad; Carl Hadley, biologist, Cedarock Consultants; R. Allen Murray, senior project Engineer, Triad.
2. PDS was represented by David Radabaugh, Senior Planner. Also testifying for PDS was Michelle Newman.
3. Public testimony was offered by Eric Levine, Sally Abbey, Mary Lou White, Steve Ahmann, Gary Baker, and Elsie Sorgenfrei.

The hearing concluded at 4:53 p.m.

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

FINDINGS OF FACT

1. The master list of Exhibits is in 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. The application for Dubuque Ridge I was processed in parallel with the application for Dubuque Ridge II. The former is a proposed 15-residential lot Rural Cluster Subdivision (RCS) with access directly off of Dubuque Road. The latter is a proposed 27-residential lot RCS to the northwest of Dubuque Ridge I with access by an extension of the road through Dubuque Ridge I. Thus, Dubuque Ridge I needs to go in before Dubuque Ridge II can be developed.
3. The PDS Staff Report has correctly analyzed the nature of the subject application, (Dubuque Ridge I) and the application's consistency with adopted codes, policies and land use regulations. The PDS Staff Report is by this reference incorporated herein as if set forth in full. In some particulars, as noted herein, the Examiner has departed from or added to the findings and conclusions of the PDS Staff Report. Otherwise the PDS Staff Report is adopted by the Examiner.
4. Ten comment letters were received from members of the public. Several of the letter writers also testified at the hearing. The major concerns expressed related to the impact of drainage from the development on Sorgenfrei Creek, traffic safety on Dubuque Road, possible water pollution from septic drainfields, visibility of the new homes, conflicts between the development and existing easements, and access to landlocked properties to the west.
5. The Examiner finds that all of these concerns have been adequately addressed by the applicant or by PDS staff as shown in the findings set forth below.
6. The applicant seeks approval of a 15-residential lot RCS on a 52.34 acre parcel. There will be 31.04 acres of restricted open space. Wetlands, streams and steep slopes will be protected. Access is proposed via a new public road off of Dubuque Road. The lots will be served with public water (PUD #1) and individual on-site septic systems. The plan includes rural standard frontage improvements and payment of appropriate impact fees will be required. Stormwater detention and water quality treatment will be provided,
7. The residential lots will average 27,469 square feet in size, with the minimum lot size being 20,939 square feet. The gross density will be .29 du/ac. The lots will be clustered across the north end of the parcel and along the upper west side.
8. Dubuque Ridge I will be located on the north side of Dubuque Road, near its intersection with 211th Avenue SE. The site is about two miles west of Lake Roesiger, within portions of Sections 30, 31 and 32, Township 29 North, Range 7 East, W.M. The public access road will be located approximately 770 feet northeast of the southwestern property corner. This road will extend via reverse curves toward the northwest property corner where it will connect to the proposed Dubuque Ridge II access road. Two private roads will branch off the public road, providing access to all lots, except Lot #15. Lot #15 will be located directly adjacent to the public road.
9. A pasture area is proposed within Tract 993 of the Dubuque II Ridge plat. This pasture will serve both the Dubuque I and Dubuque II plats. The pasture will be established on excess fill material from the plat construction. The area will be used as an equestrian facility and will include a vehicle parking area and a

manure storage area. No buildings are proposed. Access to the pasture will in part be over a city of Everett waterline easement which runs across both the Dubuque I and Dubuque II sites.

10. The development will be situated on a hillside that slopes uphill from Dubuque Road. The 52.34 acre parcel is on the side of the Sorgenfrei Creek Valley. Most of the Dubuque Ridge I area has been clear cut during the past 20 years. While the site has been restocked with fir, Red Alder has become the dominant tree on site. Dubuque Ridge I contains six wetlands and one stream as well as some areas where the slopes are greater than 40%. These areas will be incorporated into Native Growth Protection Areas (NGPAs).
11. The site and the adjoining properties are zoned R-5 and designated Rural 5 (1du/5 acres) in the General Policy Plan. Property east, north, and west of the site is vacant and historically has been used for timber production. To the southeast of the site, across Dubuque Road is the Sorgenfrei property, acreage with a single-family residence. The area to the southeast is located on the valley floor and largely devoted to pasture.
12. An unnamed stream (S-1) rises in a wetland near the northwest corner of the site and descends the western portion of the property to Dubuque Road. It exits the site through a 24" culvert under the road and then joins Sorgenfrei Creek. There are wetlands on both sides of the road in the area along the watercourse.
13. Sorgenfrei Creek is fish-bearing stream, with a documented coho salmon run and is presumed to contain both Puget Sound steelhead and Puget Sound bull trout, species listed as threatened under the federal Endangered Species Act. S-1 also contains habitat with primary association for listed species.
14. Concern was expressed that the development of Dubuque Ridge I will result insignificantly increased flows through the 24" culvert resulting in greater water force, turbidity and pollution in Sorgenfrei Creek to the detriment of fish. Concern was also expressed that the drainage plan will divert water from other small upstream tributaries to Sorgenfrei Creek causing a damaging decrease in flows in that creek above the 24" culvert.
15. The applicant commissioned and submitted a Habitat Management Plan to address these concerns. The plan is dated March 21, 2008. The plan details the relatively minor effect the development will have on fish habitat. The report lists a number of conservation measures to avoid or minimize impacts. Sorgenfrei Creek will not be physically disturbed. No lots are proposed within 300 feet of habitat conservation areas. Runoff from an area equivalent to the total of all new impervious surfaces will be collected and treated per applicable Department of Ecology standards. New riparian area adjacent to S-1 will be added in addition to standard buffer requirements.
16. Under the project's drainage plan storm flows from new impervious surfaces will be routed to one of two detention vaults. Dead storage will allow for sedimentation. The larger vault will be covered and contain five cells. A stormfilter will be added to provide water quality treatment. The smaller vault will

not be covered and will contain two cells. Cell 1 will use dead storage for sedimentation and Cell 2 will use planted vegetation for water quality treatment.

17. The drainage system engineer explained that the detention facilities were provided because the soils on site will not permit full infiltration of the run-off.
18. Stormwater outfall pipes from the two proposed detention facilities will be connected to the existing 24" culvert pipe so as not to impact any on-site stream channels. The outflows from the ponds will be controlled so that peak discharges will be less than or equal to existing conditions for designed storm events. The slight increase in base flows that will occur as detained stormwater is released between storm events, will be on the order of a fraction of a cfs. No impact to any defined channels is anticipated. The Habitat Management Plan therefore concludes that overall, the effect of the slight changes in flow on aquatic habitat and species in S-1 and in Sorgenfrei Creek below the 24" culvert will be negligible.
19. Similarly, analysis of the impact of diversions from small upstream tributaries to Sorgenfrei Creek concludes that the reductions in flow will be too small to effectively measure. A waiver was granted allowing the diversion of some runoff from existing discharge locations.
20. Based on the entire record, the Examiner finds that the Dubuque Ridge I development is not likely to impose a detectable adverse impact in terms of either water quantity or quality on fish habitat in S-1 or Sorgenfrei Creek.
21. The Dubuque Ridge I proposal is largely planned to avoid and protect wetlands, stream and fish and wildlife critical areas by providing standard buffer requirements within NGPAs. Where wetlands or a stream must be crossed by the public access road or by intersection improvements or by stormwater conveyance pipes, compensatory wetland mitigation will be provided. Protected critical areas and buffers account for over 17.6 acres in required NGPAs. Additional restricted open space tracts will serve to connect wetland NGPAs and help maintain contiguous habitat area. This kind of restricted open space will comprise 14.1 acres, meaning a total of 31.79 acres will remain undeveloped and provide habitat functions. This is about 60 percent of the site. Steep slopes are also protected within NGPA tracts. The Examiner agrees with PDS Staff that the provisions of the Critical Areas Ordinance will be met.
22. A professional traffic impact analysis was prepared for this project by the Transpo Group, dated June 2, 2007. Anticipated trip generation was found to be 144 net new daily trips with 11 trips occurring during the weekday AM peak hour and 15 trips occurring during the weekday PM peak hour. This traffic was assigned to the roadways in the vicinity of the site. The roads have adequate capacity to accommodate the traffic generated. The report found no inadequate road conditions currently existing in the area. The development was deemed to meet concurrency requirements, meaning that the operational conditions or "level of service" will not decline on any arterial unit. Sight distance from the site access roadway is met for both intersection and stopping sight distance.

23. Standard rural frontage improvements will be required to the development's side of Dubuque Road, consisting of 11 feet of asphalt concrete pavement width from the roadway centerline with an eight-foot shoulder. Internal access roads will be built to County standards, subject to the current EDDS at the time of construction plan review. The requisite right-of-way will be dedicated to the county for public road development. Included will be some additional right-of-way along Dubuque Road. Impact fees will be paid for road system capacity impacts and State highway impacts. The Examiner agrees with PDS Staff that adverse traffic impacts were not shown to be likely.
24. The Dubuque Ridge I and II sites are adjacent to the area proposed for the Lake Roesiger Fully Contained Community. Tracts 974, 975, 979, 980, 993, and 998 in Dubuque Ridge I and Tracts 975, 981, 984, 985 and 989 in Dubuque Ridge II are designed to allow for future widening of the public road in the plat to allow access to the future fully contained community. Such additional road widening is not proposed as a part of this plat.
25. The Snohomish Health District has reviewed the plat application as to septic drainfields and recommended approval. There is no evidence that down-gradient wells will be adversely affected. As noted, water will be provided by the Snohomish County PUD No. 1. The PUD will also provide electricity to the project.
26. Because of the topography the proposed homes may be visible from other properties. However, the homes will be located on the most buildable and least environmentally sensitive portions of the site. Other less visible locations are not available. Visual buffers are required along the exterior boundaries. The retention of existing native vegetation will meet requirements for sight obscuring buffers.
27. Pacific Forestland LLC holds a recorded easement (Auditor's File # 199907270614) for access to their lands to the north of Dubuque Ridge I. This easement meanders north from Dubuque Road through the easterly portion of the property. The layout of the project as proposed cannot go forward without interfering with this easement. The easement has been used in the past as a logging road although not in recent years. The County in its initial recommendation set forth a condition (B.iv) requiring that, prior to the initiation of site work or further permits, this easement shall have been extinguished.
28. At the hearing the applicant proposed an alternative condition that would permit them to proceed if they could not secure an agreement to extinguish the Pacific Forestland easement. The proposed change stated that, absent agreement on extinguishing the easement, the applicant may reconfigure the lots in the area of the easement to leave it undisturbed. The plan could not result in an increase in lots or a reduction in width of the perimeter buffer. The applicant submitted a conceptual plan showing that such a reconfiguration is possible, but noted that the plan has not been subject to detailed review. They asked, in essence, to be able to move forward elsewhere on the site while such a reconfiguration is under consideration, accepting the burden of demonstrating compliance with applicable standards.

29. The applicant argued that this alternative formulation would leave to the County to determination of whether such a proposed reconfiguration was a major modification requiring a further public hearing.
30. After a week provided for discussions, the parties advised the Examiner that no agreement had been reached on extinguishing the easement. The applicant thereupon presented a revised proposal for Condition B.iv. , as follows:

Prior to initiation of site work or issuance of any construction permits by the county, the application will either present to the county an agreement with the owner of the property benefited by the easement recorded under Auditor's File Number 199907270614 to extinguish that easement upon final plat approval (with acceptable alternative access provided to that property) or the applicant will reconfigure the lots in the area of the easement to leave the easement undisturbed.

This revised version appears still to give the County the option to decide what process to follow in dealing with any proposed reconfiguration.

31. Counsel for Pacific Forestlands advised that they oppose the applicants' revised condition because the reconfiguration, if handled as a minor revision, would not require a hearing giving the public the opportunity to comment. They also noted that the conceptual drawings submitted still show a significant impact on the easement. In their view, the law does not allow approval of the Dubuque Ridge applications with the easement in place.
32. The County (PDS) responded that they had reviewed the applicant's proposed changes in the condition and that they concurred with the applicants. PDS recommended that the Hearing Examiner adopt the proposed alternative condition.
33. After consideration, the Examiner finds no compelling reason not to allow the applicant to reconfigure his proposal and try to get the reconfiguration approved. However, he notes that a considerable risk is thereby taken. If the easement is not extinguished and if the reconfiguration is not approved, the applicant may be faced with having to repair the effects of some site work. However, the Examiner notes that the public road that will serve as the access to Dubuque Ridge II does not appear to interfere with the Pacific Forestlands' easement.
34. One citizen wrote a letter and testified about his desire to obtain access to his landlocked property to the west of Dubuque Ridge II. PDS responded that it is beyond its power to require an applicant to provide private road access to an adjacent property. A County reviewer testified to this effect, pointing to the design standard for RCSs that restricts the number of access points per cluster.
35. In its Staff Report, PDS recommended three pre-conditions to approval of this preliminary plat. The applicant requested that these be eliminated. The three pre-conditions are:

- A. Landslide hazard area analysis and identification of slopes greater than 40 percent be completed and shown on a revised preliminary plat map.
 - B. Written acceptance of the proposed access location to the pasture facility shall be obtained from the City of Everett for access over the City of Everett waterline easement.
 - C. Steep slopes in the vicinity of the southern boundaries of Lots 3 and 4 shall be evaluated for landslide hazard areas and erosion hazard areas. Appropriate Native Growth Protection Area buffers and building setbacks shall be added to the plat map
36. The City of Everett's waterline easement runs east-west across both the Dubuque I and Dubuque II plats. Lot owners in Dubuque Ridge I will have rights to use the pasture facility proposed for Dubuque Ridge II. Access to the pasture will be across Everett's waterline easement. A letter from the Everett Department of Public Works was accepted into evidence (Exhibit 35) showing that Pre-Condition B, above, has been accomplished. Everett's letter outlined the City's understanding of the proposal for access – terms which can be included as conditions of approval for the plat.
37. As to Pre-Conditions A and C, the applicant argued that precise topographic mapping is not usually required until the final engineering stage of a plat. They asked for a plat approval condition stating:
- Prior to road and storm drainage construction plan approval, the approximate Native Growth Protection Area Easements (NGPA/E) shown hereon having slopes that require being designated as NGPA/E by county code shall be confirmed by field topographic survey. Those verified areas will be designated as NGPA/E on the construction Plans, as well as the final plat.
38. They went on to propose modifying the note on steep slopes on the cover sheet for both Dubuque Ridge I and Dubuque Ridge II as follows:
- Prior to road and storm drainage construction approval, the approximate Native Growth Protection Area Easements (NGPA/E) areas shown hereon having slopes that require being designated as NGPA/E by county code will be confirmed by field survey. Those verified areas will be designated as NGPA/E on the construction plans, as well as the final plat.
39. The County presented no convincing reasons why the topographic details and corresponding designations could not be worked out during the post-preliminary plat approval period.
40. The Cascade Land Conservancy (Conservancy) which holds a conservation easement on land immediately east of the subject site expressed concern over trespass onto the easement and asked for a fence along the eastern property line. The applicant noted that the area near the boundary is mostly NGPA and

that it falls along a topographic break which should discourage trespass. They offered to put up “No Trespassing” signs in lieu of a fence.

41. The Conservancy also asked that provision be made for maintenance of NGPAs and buffers to keep invasives and non-native plants out of the forest areas. The applicant responded that County rules require such areas to be left alone.
42. An Open Space Management Plan was submitted. The plan calls for open space maintenance responsibilities to be undertaken by the developer and then eventually to be transferred to a homeowners or similar association of owners. Vegetation damaged within the visual buffer during installation of septic drainfields or utilities will be restored according to the approved conceptual visual buffer landscape plan shown on the face of the plat.
43. Comments received from the Snohomish School District state that school children will be bussed to their respective schools from bus stops located within the development. The EDDS road standards provide for safe pedestrian facilities within the plat in consideration of anticipated traffic.
44. PDS proposes a condition of approval to address landscaping around detention ponds. Other agency review comments are also reflected as conditions of approval.
45. The PDS Staff Report finds the requested preliminary plat to be consistent with the General Policy Plan’s Rural Residential-5 designation. It is located outside of any Urban Growth Area and is not located within a mapped Growth Phasing Overlay. The Examiner concurs with staff.
46. The PDS Staff Report thoroughly discusses the conformity of this proposal with the code requirements for RCSs (Chapter 30.41C SCC). The Examiner concurs that the development complies with all of the criteria for preliminary approval. The requirements for restricted open space, lot yield, and bonus residential density are met.
47. The plat, as conditioned, makes “appropriate provisions” for the public health, safety and general welfare, for open spaces, drainage ways, streets and roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
48. The public use and interest will be served by the platting of the subdivision.
49. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding. SCC 30.72.020(5) (Type 2).
2. The requirements of SEPA have been met.

3. The proposal is consistent with the GMA-Comprehensive Plan and with development regulations. RCW 58.100, 195. In particular, the proposal meets the requirements of Chapter 30.41C SCC, Rural Cluster Subdivisions.
4. The proposal provides for items of design and infrastructure as required by RCW 58.17.110. Adequate public services are available to serve the proposal.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for approval of the **RURAL CLUSTER SUBDIVISION** of *Dubuque Ridge I* is **GRANTED**, subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary plat received by PDS on March 25, 2008 (Exhibit 2B) 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. A final mitigation plan based on the Wetland and Stream Critical Area Study and Conceptual Mitigation Plan for Dubuque Ridge I prepared by A. C. Kindig & Company dated March 25, 2008 (Exhibit 3F) shall be submitted for review and approval during the construction review phase of this project. The final mitigation plan was prepared in conjunction with the Habitat Management Plan for Dubuque Ridge I by Cedarock Consultants, Inc. dated March 25, 2008 (Exhibit 3E).
 - iv. The applicant will either present to the County an agreement with the owner of the property benefited by the easement recorded under Auditor's File Number 199907270614 to extinguish that easement upon final plat approval (with acceptable alternative access provided to that property), or the applicant will reconfigure the lots in the area of the easement to leave the easement undisturbed.

- v. A revised landscape plan for each fenced detention facility shall be provided demonstrating a minimum of a 6 foot wide perimeter area of Type A landscaping.
 - vi. Prior to road and storm drainage construction plan approval, the approximate Native Growth Protection Area Easements (NGPA/E) shown on the preliminary plat having slopes that require being designated NGPA/E by county code, shall be confirmed by field topographic survey. Those verified areas will be designated as NGPA/E on the construction plans, as well as on the final plat. The note on steep slopes on the cover sheet (Sheet 1) shall be modified as shown on the Triad Associates letter of April 30, 2008 (Exhibit 25).
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 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:
 - \$3,799.29 per lot for mitigation of impacts on county roads paid to the county,
 - \$ 261.12 per lot for mitigation of impacts on state highways paid to the County,

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.
 - iii. Any grading and/or sight distance easements necessary to obtain sight distance.
 - iv. 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."

- v. Residents and guests within the subdivision shall be subject to the terms and conditions imposed by the City of Everett in regard to access to Tract 993, the equestrian pasture area, as set forth in the City's right-of-way permit. (The issued date and any file number for the permit shall be shown.)

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$0.00 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.
- ii. Rural frontage improvements shall be constructed along the parcel's frontage on Dubuque Road to the satisfaction of the County.
- 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 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 PDS for review and approval prior to installation.

- iv. The final wetland mitigation plan shall be completely implemented.
- v. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
 - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - b. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan (Exhibit 1D).

- vi. No Trespassing signs shall be erected near the eastern boundary in order to discourage persons on the plat from trespassing onto the conservation easement held by Cascade Land Conservancy
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
 - ii. PDS shall review the site obscuring buffer for adequacy. Additional plantings shall be required for areas where vegetation is removed or damaged within the site obscuring buffer.
- 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 21st day of May, 2008.



Philip Wickstrand Dufford, Hearing Examiner Pro Tempore

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 **JUNE 2, 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 **JUNE 4, 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

<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>
