

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

DATE OF ORDER: September 17, 2008

PLAT/PROJECT NAME: **Holly Ranch**

APPLICANT/
LANDOWNER: Jerry Erickson

FILE NO.: 07-111133 SD

TYPE OF REQUEST: 6-lot **SUBDIVISION** of 30.04 acres

DECISION (SUMMARY): Preliminary Approval **Granted** with Conditions

BASIC INFORMATION

GENERAL LOCATION: The subject property is located at 5305 171st Avenue SE, Snohomish; in Section 2, Township 28 North, Range 6 East, W.M., Snohomish County, Washington.

ACREAGE: 30.04 acres

NUMBER OF LOTS: 6

AVERAGE LOT SIZE: 208,973 square feet

MINIMUM LOT SIZE: 200,033 square feet

ZONING: Rural – 5 acres (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5

UTILITIES:

Water: Three Lakes Water Association

Sewer: On-site septic systems

SCHOOL DISTRICT: Snohomish School District No. 201

FIRE DISTRICT: Snohomish County Fire District No. 4

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on September 27, 2007. (Exhibit 1A)

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

Two EDDS deviations were granted by Public Works (PW), waiving the required frontage improvements along East Wishon and West Wishon roads on December 10, 2007. (Exhibit 7)

A SEPA determination was made on April 4, 2008. (Exhibits 5A and 5B). No appeal was filed.

The Examiner held an open record hearing on June 12, 2008, the 117th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The Hearing Examiner stated that although she did not perform a specific site visit prior to the open record hearing, she is familiar with the Panther Lake area.

On August 6, 2008, the Hearing Examiner sent a request to the parties for additional information relating to the issue of frontage improvements for the proposed development. (Exhibit 21) The request for additional information was sent to all parties of record by the Office of the Hearing Examiner. (Exhibit 21-A). In response to this request, the Hearing Examiner received Exhibit 22 (a letter from Gary MacFarlen), Exhibit 23 (a letter from Tom Adams, attorney for the applicant), Exhibit 24 (a Memorandum from Owen Carter, County Engineer) and Exhibit 25 (a letter from Bernice Coleman). The record was closed on August 29, 2008.

PUBLIC HEARING

The public hearing commenced on June 12, 2008 at 1:05 p.m.

1. Representing PDS was Elbert Esparza, Jack Hurley and Elizabeth Larsen.
2. Representing the Applicant was Jim McDaniel, Harmsen and Associates, Owner, Jerry Erickson, and his attorney, Tom Adams.
3. No other parties or members of the public were in attendance.

The hearing concluded at 1:35 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 and Witnesses, along with the testimony received at the public hearing, is 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. No additional Exhibits were entered during the open record hearing.

2. Summary of the Proposal: Jerry Erickson has applied for a 6-lot short plat of an approximately 30.04 acre tract. The existing single-family residence is in the process of being replaced with another, newer single-family structure which is under construction and will remain. The new lots will be served by a new private road. Stormwater runoff from the new road will be directed to two detention ponds, while all wetlands and critical areas will be protected by Native Growth Protections Areas/ Easements (NGPA/Es). The Subdivision application was originally submitted to Planning and Development Services (PDS) on September 24, 2007, and was determined to be complete for vesting purposes on October 22, 2007, but insufficient for further review.
3. Site description: The site generally slopes to the south and west, with a large central portion being used as a pasture area, while the north, south and western perimeters are forested. The property was previously logged and is zoned R-5, containing an existing single-family structure, pasture, two Category 4 Wetlands, one Category 3 Wetland an associated Type 4 stream, and one Category 4 Wetland.
4. Adjacent zoning and uses: The area is predominately zoned R-5, with single-family residences, while a number of lots are smaller than the square footage required in an R-5 zone (200,000 square feet). There are many newer developed lots in the vicinity that meet the lot area minimum. This development proposal is consistent with its R-5 zoning, and contains no lots smaller than 200,000 square feet.
5. Neighborhood Concerns: Several letters of concern were received by PDS regarding stormwater drainage on all three roads abutting or adjacent to the proposed plat (W. Wishon Road, E. Wishon Road, and 171st Ave. SE), as well as concerns regarding a separate Forest Practices permit which has been issued, differences between the SEPA checklist for the Forest Practices Permit and Plat SEPA checklist, and relating to critical areas. (Exhibits 9A through 9E)
 - A. Beginning with forest practices which occurred on the site in the recent past, Snohomish County does not issue such permits; forest practices are regulated by the State Department of Natural Resources. The activities of logging and clearing the site were performed under state permits and the Hearing Examiner does not have the authority to regulate those activities. As such, those issues are not before the Examiner in this application.
 - B. Similarly, with respect to the differences between SEPA checklists for the forest practices permit and the SEPA checklist issued as part of the record in this application, the DNR permit and its SEPA process are not applicable or relevant to the issues in this case. The Examiner does not and cannot consider what information was provided through the SEPA process which was completed for the forest practices permits issued by DNR. Here, there was a separate SEPA process specific to this subdivision proposal. Although concerns have been raised, no SEPA appeal was timely filed in this case. Accordingly, challenges raised by concerned citizens relating to the SEPA process or adequacy of the information provided are deemed to have been waived. Those issues are not before the Examiner here.
 - C. As to the drainage along the three roads adjacent to the plat, the Applicant addressed these concerns during the review process. Their response is set forth in a letter returned to PDS on November 30, 2007 (Exhibit 10). In short, the Applicant responded that they are not required to provide upgrades to stormwater facilities for drainage concerns that pre-dated their development application, or on roads which are not impacted by their development project. The Applicant notes that they will meet all requirements of the County's drainage regulations, as shown in the Targeted Drainage Plan (Exhibit 2B3). PDS staff reviewed the drainage issues raised by the citizens and have asserted in the Staff Report that the submitted plat as designed

complies with all applicable Snohomish County Codes, including the County's drainage and critical areas regulations. (Exhibit 20)

6. Provision of Adequate Water. Although the PDS Staff Report does not address the provision of water as part of its review, the Hearing Examiner finds that water for domestic use will be provided to the plat by the Three Lakes Water Association (TLWA) and that adequate water is available to the proposed development. The Applicant will be required to install, at his expense, 1,000 feet of water main built to the Association's specifications, in order to connect to their system, as well as meeting other requirements of the TLWA. (Exhibit 8H)
7. Parks and Recreation. The proposal is within Park District No. 306 and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. PDS has recommended that Examiner require payment of park mitigation fees as a condition of approval.
8. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC) PDS Traffic has reviewed the proposal for compliance with Title 13 SCC and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The Hearing Examiner makes the following specific findings with respect to the proposal's compliance with Title 13 SCC, EDDS, and Ch. 30.66B SCC:

A. Road System Capacity [SCC 30.66B.310] The development will generate 47.85 average daily trips (ADT) and has a road system impact fee of \$18,996.45 (\$3,166.07/SFR) based on \$397/ADT, the current fee rate for residential developments outside the Urban Growth Area, for TSA B. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report and are set forth in the PDS Staff Report (Exhibit 20).

B. Concurrency [SCC 30.66B.120] The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of November 14, 2007. The expiration date of the concurrency determination is six years from this date. The development has been deemed concurrent on the following basis:

The subject development is located in TSA B which, as of the date of submittal, had the following arterial units in arrears: Unit # 238 – 20 St SE from SR 204 to SR 9. Based on peak-hour trip distributions, the subject development does not add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined to be concurrent. The development generates 3.75 a.m. peak-hour trips and 5.05 p.m. peak-hour trips, which is below the 50 peak-hour trip threshold that would also require review under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210] The subject development proposal will not impact any IRC locations identified within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410] This development is required to provide frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

Here, according to DPW Rule 4222.020(1) full rural frontage improvements are required as follows:

(1) Along 171st Ave SE: Asphalt concrete pavement consisting of 12 feet width from roadway centerline with an 8 foot paved shoulder;

(2) Along East Wishon Road: Asphalt concrete pavement consisting of 11 feet width from roadway centerline with a 7 foot paved shoulder; and

(3) Along West Wishon Road: Asphalt concrete pavement consisting of 11 feet width from roadway centerline with a 7 foot paved shoulder.

Notwithstanding these requirements, the applicant submitted two EDDS deviation requests on November 30, 2007, requesting that the County waive the required frontage improvements on East Wishon and West Wishon Roads. (Exhibit #7) These deviation requests were reviewed and approved by the County Engineer on December 10, 2007. In approving the Applicant's requests, the County Engineer reviewed the traffic study and determined that the project will result in no increase to traffic on either East Wishon or West Wishon roads.

Accordingly, the County Engineer determined that, notwithstanding DPW Rule 4222.020(1), the facts of this specific case show that no direct impacts to East Wishon or West Wishon roads are caused by the Holly Ranch development proposal. Where no direct impacts are found, the County is barred from imposing the construction of frontage improvements on East Wishon and West Wishon roads pursuant to RCW 82.02.020. (Exhibits 23 and 24) Accordingly, PDS and the Applicant are recommending that no frontage improvements be required by the Hearing Examiner.

Although the Hearing Examiner does not review the propriety of EDDS deviation decisions in approving subdivisions, the result of those decisions is reviewable when the Examiner considers the subdivision as whole for preliminary plat approval, and considers the transportation impacts of a development along with the development's design and other potential impacts under the provisions of Chapter 30.41A SCC and RCW 58.17.100.

Here, the record did not contain the specific factual information relied on by the County Engineer in making his recommendation as to frontage improvements as required by SCC 30.66B.430(3). The Hearing Examiner issued a Request for Additional Information on August 6, 2008. (Exhibit 21) The parties were notified and the Examiner opened the record to receive information and comment until August 29, 2008. (Exhibit 21-A) In response, the record was supplemented with Exhibits 22, 23, 24 and 25.

Here, the record reveals that under the specific facts and circumstances of this case, there is substantial evidence to show that the proposed development will not place additional traffic or cause pedestrians or school children to walk on East and West Wishon Road. (Exhibit 23, 24) The Hearing Examiner therefore concludes that, although frontage improvements may be called for under Ch. 30.66B SCC, there is no legal basis to require frontage improvements under RCW 58.17.110 or Ch. 30.41A SCC in light of the provisions of RCW 82.02.020. However, frontage improvements are required on 171st Avenue SE, as described above.

The cost of these improvements are not within the County's impact fee cost basis (as described in Appendix D of the Transportation Needs Report). Therefore, the cost of such frontage improvements cannot be credited to other transportation impact fees that may apply.

E. Access and Circulation [SCC 30.66B.420] All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Here, the development fronts along 171st Ave SE, which is a Major Collector Arterial. The posted speed limit is 35 mph. The applicant proposes to provide access to all lots by means of a private road with 20 foot width of pavement within a 30 foot wide tract. The proposed private road will end in a cul de sac with a radius of 40 feet, which meets the requirements of the International Fire Code (IFC) and Ch. 30.53A SCC.

Based on the information in the record, the Hearing Examiner finds that as proposed, the existing stopping site distance and intersection site distance at the proposed site access private road intersection with 171st Ave SE is adequate.

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

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

The road serving this development, 171st Ave SE, is designated as a major collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 20 feet of additional right-of-way. This is adequately shown on the preliminary plat.

East Wishon Road, along which the development fronts, is designated as a non arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate additional right-of-way.

West Wishon Road is designated as a non arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate additional right-of-way.

As noted above, 171st Ave SE, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

G. State Highway Impacts [SCC 30.66B.710] This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) between the County and the Washington State Department of Transportation (WSDOT) that became effective on December 21, 1997, and as amended. According to the Applicant's Traffic Study dated June 5, 2007, this development will not impact WSDOT roads with 3 or more directional PM peak hour trips (PHT). Therefore, no traffic mitigation fee to WSDOT is required. WSDOT concurred with the Applicant's Traffic Study findings in an email sent to PDS on October 1, 2007. (Exhibit 8B)

H. Other Streets and Roads [SCC 30.66B.720] Where an application is subject to SEPA, transportation impact mitigation requirements for impacts to city streets or county roads in adjacent counties will be established consistent with the terms of existing interlocal agreements between the County and those other jurisdictions.

Here, The proposed development is subject to SEPA and thus is subject to the interlocal agreement between the County and the City of Granite Falls for impacts to City streets. The interlocal agreement provides for mitigation fees to the City of Granite Falls based on zones and traffic shed areas. However, the Applicant's Traffic Study dated September 21, 2007 concluded that the subject development does not fit into any of the City's traffic shed areas. Therefore, PDS has determined that the subject development is not required to contribute any road impact mitigation fees to the City of Granite Falls. On January 31, 2008, PDS received a faxed memo stating that the City of Granite Falls had "No Comments" in response to the County's request for review dated September 26, 2007. (Exhibit 8A2) The City of Snohomish also declined to comment in its October 2, 2007 response memo. (Exhibit 8A1) No other cities that have interlocal agreements with the County will be significantly impacted by traffic impacts from the subject development.

Accordingly, the Hearing Examiner finds that no traffic impact fees must be paid by the Applicant to the County on behalf of other cities or adjacent counties as a result of the subject development proposal.

I. Transportation Demand Management (TDM) [SCC 30.66B.630] SCC 30.66B.630 requires development inside the UGA to provide TDM measures. Since this development is outside of the UGA TDM measures are not required.

9. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. On November 9, 2007, PDS received comments from the Snohomish School District (dated October 26, 2007). (Exhibit 8F) In its comments, the School District noted that it would drive school children to areas schools for all grade levels. The District identified the cul-de-sac inside the subject development as the bus stop location for Dutch Hill Elementary, Centennial Middle, and Snohomish High Schools. Based on the School District's designation of the school bus stop location, off-site pedestrian facilities are not required for the purpose of providing safe walking conditions for school children. The Hearing Examiner finds that safe walking conditions for pedestrians and students are provided by the development as designed.

10. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Snohomish School District No. 201, at the time of building permit submittal, and collected at the time of building permit issuance for the proposed units. Credit is to be given for one pre-existing lot. PDS has requested that the Hearing Examiner impose a condition requiring that the Applicant comply with Chapter 30.66C SCC at the time of building permit submittal and pay any applicable school impact fees prior to building permit issuance.

11. Drainage and grading.

Drainage. Drainage impacts are addressed by the required adherence to the County's drainage regulations set forth in Ch. 30.63A SCC and other, related regulations such as the County's grading and critical areas regulations.

Pursuant to Ch. 30.63A SCC, the Applicant is required to submit and implement a drainage plan for this proposal.

According to the Applicant's downstream analysis, stormwater runoff from the site flows into two basins: (1) an eastern drainage basin, which then flows to the northeast of the site into an existing drainage channel and into Flowing Lake; and (2) a western drainage basin, which flows to the southwest of the site through two culverts and then into an existing drainage channel and into Panther Lake. (Exhibit 3C)

According to the Applicant's Targeted Drainage Plan (Exhibit 3C) and Targeted Drainage and Road Plan (Exhibit 2B3), stormwater runoff from new impervious areas and the majority of yard areas will be collected in a storm drainage system and conveyed to a detention and water quality wet ponds proposed at the intersection of the plat road and the existing county road. From there the flows will be controlled at the pre-developed flow rates for the regulated storm events.

PDS has reviewed the Applicant's Targeted Drainage Plan and report articulating the drainage concept described above, from which it concludes that the proposal can conform to drainage code requirements. (Exhibit 3C, and 2B3) Full drainage plan review will be conducted by PDS during the construction permitting phase of the project to ensure that the project complies with Ch. 30.63A SCC.

For review at the preliminary plat stage, the Hearing Examiner considers whether the Applicant's drainage design, as shown in the Targeted Drainage Plan, shows that the development can feasibly conform to the County's drainage regulations. PDS has concluded that it can and the Hearing Examiner agrees.

In the construction phase of the project the applicant shall submit revised drawings showing the clearing limits of the recent forest practice action. This information will be used by PDS to establish the post-development runoff rates from the site.

Grading. Grading impacts associated with the proposed application were not addressed by PDS in its Staff Report. However, the Applicant provided some information in its SEPA Checklist disclosing its grading plans. There, the Applicant stated that there will be grading for the proposed road, stormwater detention system, and residential construction. The on-site cut is estimated to be at 5,500 cubic yards for plat infrastructure and an additional 6,000 cubic yards for residential construction (500 c.u. yards per residence). On-site fill is estimated to be 725 cubic yards. Excess spoils will be spread on the site. (Exhibit 5B) According to the County's Soil Survey, the majority of the site consists of moderately well-drained Tokul gravelly loam, with slopes of 0 to 8 percent and 8 to 15 percent. In the SEPA Checklist, the Applicant stated that there are no unstable soils known in the immediate vicinity. Soil logs were submitted for each of the proposed lots, which states that the soil on each proposed lot is Class 4 Type Soil (brown sandy loam). (Exhibit 3D) The Applicant's Erosion Control Risk Assessment set forth in its Road Profiles and Notes (Exhibit 2B4), confirms the soil types and states that there is a risk of erosion if grading is conducted in winter months, which will require specific approval from PDS during the construction phase. The Applicant's proposed erosion control best management practices (BMPs) are described in Exhibit 2B4 for grading related to road construction. BMPs shall be used to control all erosion from the site caused by grading or other construction activities in accordance with the County's regulations and the 1992 DOE Stormwater Management Manual for the Western Washington or as amended, and as applicable.

Based on the preliminary information provided by the Applicant, the Hearing Examiner finds that the development proposal can meet the requirements the requirements of Chapters 30.63A and 30.63B SCC. Specific requirements to mitigate any grading and/or erosion impacts will be imposed by PDS during the construction phase of the plat's development.

12. Critical Areas Regulations (Chapters 30.62A, 30.62B and 30.62C SCC)

According to the PDS Staff Recommendation, this development proposal is vested to the Critical Areas Regulations (CAR) which were in effect prior to October 7, 2008. The Applicant submitted its Master Application on September 27, 2007; however, without any explanation, the application was not deemed to be "complete" by PDS for purposes of vesting until October 22, 2007, several weeks *after* the new regulations took effect. (See Exhibit 20 at p. 2). This raises a question of fact as to whether the 2003 or 2007 version of CAR applies to this development proposal. Granting vested rights retroactively to the Applicant, PDS assumed it was the earlier (2003) version of CAR and processed the application accordingly. But, using the PDS Staff Recommendation and given the complete lack of explanation as to why completeness was not made until October 22, 2007, and lack of citation to legal authority giving PDS the ability to grant vested rights retroactively, the Examiner can also argue equally that the 2007 version of CAR should have applied to this development application. Reviewing the material submitted in the record which were filed on September 27, 2007, and the minor revisions which were made in later submittals, the Hearing Examiner concludes that the preponderance of the evidence supports a finding that the application was vested on September 27, 2007. Accordingly, the application was properly reviewed under the 2003 version of the Critical Areas Regulations.

(a) Fish and Wildlife Habitat Conservation Areas and Wetlands.

A PDS Biological Technician conducted a site visit on June 26, 2007 to review critical areas for a pre-application meeting on July 5, 2007. One Category 4 wetland, one Category 3 wetland and its associated Type 4 stream, and two Category 2 wetlands were observed in the field. PDS found that the wetlands and stream were accurately flagged in the field and identified on the site plan. A critical area study was prepared by Altmann Oliver Associates, LLC dated September 19, 2007 to address development impacts on wetlands.

The required 75-foot buffer for the Category 2 wetlands has been previously reduced to a 40-foot buffer with enhancement per CASP #200709200103 approved under a DNR forest practices permit.

One BMP wetland is proposed to be filled and additional forested buffer has been provided along Wetland B. The Category 3 wetland, located outside the Urban Growth Area (UGA), has the required 50-foot buffer, with additional buffers provided along its east boundary as mitigation for the BMP wetland fill.

Critical areas and their approved buffers will be set aside as NGPA/E.

According to the critical area study, Wetland C, a 4,667 square foot Category 4 wetland within an existing pasture, would be filled under the County's Best Management Practices provision SCC 30.62.360(6). Under SCC 30.62.360(6), development activities are allowed within Category 4 wetlands smaller than 10,000 square feet in size, provided that such activities are conducted pursuant to best management practices. According to SCC 30.62B.090, best management practices are required to mitigate adverse impacts to the function and values of critical areas. Critical areas are defined in SCC 30.91C.340 and include wetlands, but do not include buffers unless they meet the requirement for fish and wildlife habitat conservation areas or primary association area for critical species. Proposed mitigation for filling Wetland C includes preserving 13,159 square feet of additional high value forested buffer adjacent to the east side of Wetland B. The hydrologic functions lost through the filling of Wetland C would be replaced within the stormwater facilities in the western portion of the project site. This exceeds the requirements of SCC 30.62.345(1)(c) which requires the functions and values of a wetland to be replaced in kind at a minimum 1:1 ratio. The hydrologic functions lost through the filling of Wetland C would be replaced within the stormwater facilities in the western portion of the project site.

A small area of the northeast portion of the site is within the 300-foot management zone of Panther Creek. No impervious surfaces are proposed within this area.

Based on the submitted site plans, it appears that Wetland E may be hydraulically connected to Panther Creek. In response to questions by a PDS staff biologist, Altmann Oliver Associates provided a letter entitled Supplemental Information for Type 4 Stream (Exhibit #3B) concluding that fish are not able to access Wetland E from the his stream and wetland from Panther Creek.

The development proposal as designed will avoid all other wetlands identified on or near the subject property. The hearing examiner finds that the proposal is in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

PDS staff recommended that the following conditions of approval:

- A. Prior to any development activity (e.g: clearing, grading or filling) on the site and/or prior to issuance of any development permits by the county:
 - 1. 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.
 - 2. A final mitigation plan based on the Critical Areas Study for Holly Ranch prepared by Altmann Oliver Associates dated September 19, 2007 shall be submitted for review and approval during the construction review phase of this project.

- B. The following additional restrictions and/or items shall be indicated on the face of the final plat:

All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

"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 UDC 30.91N.010 are allowed when approved by the County."

- C. Prior to recording of the final plat:

- 1. 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 Land Use Division for review and approval prior to installation.

- 2. The final mitigation plan (additional buffer) shall be completely implemented.

13. Consistency with the GMA Comprehensive Plan.

The application was evaluated for consistency with the County's adopted GMA Comprehensive Plan. The subject property is designated Rural Residential (RR- 5) on the General Policy Plan (GPP) Future Land Use map, and is located outside an urban growth area, and it is not located within a mapped Growth Phasing Overlay area. According to the GPP, the RR-5 designation "includes lands that were designated Rural on pre-GMA subarea comprehensive plans and

zoned Rural 5.” “The implementing zone in this designation will continue to be the R-5 zone.” The 6 lots proposed in the Application are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2 SCC.

14. Utilities

A. Water. Water will be supplied by the Three Lakes Water Association, which indicated in a letter received by PDS that water is available to the proposed development. (Exhibit 8H).

B. Sewer. Sanitary sewer will be provided by individual septic systems for each lot, and the Snohomish Health District has approved the preliminary development application. (Exhibit 8G).

C. Electricity. Snohomish County Public Utility District No. 1 has provided a letter indicating that electrical power is available to the proposed development. (Exhibit 8D).

15. Uniform Fire Code

Chapter 30.53A SCC was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007 (which amendment adopted the International Fire Code “(IFC)”). This application was reviewed under the new International Fire Code standards. The subject short plat has been reviewed by the County Fire Marshal’s Office. The Fire Marshal provided the following comments and proposed conditions:

a. The private road shown on the preliminary plat map (Exhibit #2B1) meets the minimum requirements of Chapter 30.53A and the IFC for width and slope and turn around radii for the cull de sac shown at the ends of the private road.

b. Each lot exceeds one acre in size and therefore this project is exempt from fire hydrant and fire flow requirements per SCC 30.53A.514 Exemption (1).

c. According to Section 505.1 of the International Fire Code, each new dwellings shall be provided with approved address numbers placed in a position that is plainly legible and visible from the street or road fronting the property. The numbers shall contrast with their background.

The short plat Application meets the applicable requirements of Chapter 30.53A SCC, and the IFC.

16. Zoning (Chapter 30.2 SCC)

The Hearing Examiner finds that this project meets the requirements of the Zoning Code for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements. The minimum zoning requirement is 200,000 square feet. No lot is less than 200,000 square feet, and all lots comply with minimum lot width and setback requirements.

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

PDS issued a Threshold Determination of Nonsignificance (DNS) for the subject application on April 4, 2008 (Exhibit 5A and 5B). The DNS was not appealed.

18. Subdivision Code (Chapter 30.41A SCC)

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

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on September 24, 2007. 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 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. The proposed plat conforms to applicable zoning codes and the comprehensive plan.

19. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

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

Having reviewed the entirety of the record, the Hearing Examiner finds that the proposed plat conforms with the applicable zoning and the comprehensive plan designation. The Examiner further finds that the development application has made adequate provision for public health, safety and general welfare, drainage ways, streets or roads, potable water supplies, sanitary wastes, parks and recreation, schools, and other planning features including safe walking conditions for students.

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

CONCLUSIONS OF LAW

1. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
2. Adequate public utility services exist to serve the proposal.
3. If approved with the recommended conditions, the proposal makes adequate provisions for the public health, safety and general welfare as required by Chapter 58.17 RCW and Ch. 30.41A SCC.

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

DECISION

The Applicant's request for preliminary subdivision approval of a 6-Lot Subdivision known as Holly Ranch is hereby **GRANTED** subject to the following CONDITIONS:

CONDITIONS

- A. The preliminary plat received by PDS on February 27, 2008 (Exhibit 2B1) 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 plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Critical Areas Study for Holly Ranch prepared by Altmann Oliver Associates dated September 19, 2007 (Exhibit #3A) shall be submitted for review and approval during the construction review phase of this project.
 - iv. An additional twenty (20') feet of right-of-way from the centerline on 171st Ave. NE, as depicted in the submitted plat, is required to be dedicated to the county.
- 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(s). Lot 1 shall receive credit."
 - ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex: \$18,996.45 (\$3,166.07/SFR) for mitigation of impacts on County roads 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 payments shall be contained in any deeds involving this subdivision or the lot[s] therein. Once building permits have been issued all mitigation payments shall be deemed paid.

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA).
"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 UDC 30.91N.010 are allowed when approved by the County."
- iv. The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 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.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on 171st Street SE to the satisfaction of the County, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- 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 Land Use Division for review and approval prior to installation.

- iii. The final mitigation plan (additional buffer) shall be completely implemented.

E. 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.

Ordered this 17th day of September, 2008.

Millie M. Judge, 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 **SEPTEMBER 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, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 1, 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: Elbert Esparza

<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>
