

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the HEARING EXAMINER Pro Tem**

In the Matter of the Application of )  
 )  
**Mark and Georgia Hopkins** ) **FILE NO. 07 111297 SD**  
 )  
21-lot Rural Cluster Subdivision (RCS) on 47.87 acres )

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DATE OF DECISION: October 17, 2008

PROJECT NAME: *Cascade View Estates*

DECISION (SUMMARY): The preliminary plat for a 21-lot rural cluster subdivision is **CONDITIONALLY APPROVED with a precondition.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 41504 May Creek Road, Gold Bar, WA 98251.

ACREAGE: 47.87 acres

NUMBER OF LOTS: 21

AVERAGE LOT SIZE: 42,003 square feet

MINIMUM LOT SIZE: 29,609 square feet

DENSITY: 0.44 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres, Basic)

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewer: Individual on-site septic

SCHOOL DISTRICT: Sultan No. 311

FIRE DISTRICT: No. 26

### **INTRODUCTION**

The applicant filed the Revised Master Application on September 21, 2007. (Exhibit A-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 F-1-3)

A SEPA determination of non-significance was made on September 1, 2008. (Exhibit E-2) It was not appealed.

The Examiner held an open record hearing on October 15, 2008, the 153rd day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses considered by the Examiner is hereby made a part of this file as if set forth in full herein.

### **PUBLIC HEARING**

The public hearing commenced on October 15, 2008 at 11:13 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 applicants, Mark and Georgia Hopkins, were represented by Neil Latta. Snohomish County was represented by Ed Caine of the Department of Planning and Development Services. No citizens from the general public appeared.
3. One public comment was received. It dealt with connecting the current development's public roads with the private roads in a development to the south. The applicant proposes to dedicate tract 993 to the county to open as a road when the county chooses to make connection with the roads in the other development. The applicant voluntarily is making this dedication.

The hearing concluded at 11:30 a.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available through 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 applicant is requesting a 21 lot rural cluster subdivision on a 47.87. Access is provided by two new public roads off of May Creek Road. Public water will be supplied to each lot by Snohomish County PUD No. 1. Each lot will be served by individual septic systems.
2. The fairly flat site is an irregular rectangular parcel consisting of three parcels. There are scattered trees associated with the two onsite wetlands, with a majority of the site as grasses and shrubs. One of the parcels in the proposed plat contains a single-family residence. A 110-foot power line easement is located on the southern property line.
3. Adjacent parcels to the west, north, and east are either developed as single-family residences on large lots or undeveloped. Land to the south is developed in smaller lots within the May Creek Mountain View Tracts and developed as single-family residences. Adjacent Zoning is R-5.
4. The proposal is within Park District No. 305 (Lords Hill) and is subject to Chapter 30.66A SCC, which requires payment of \$344.52 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit.
5. 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 has determined that the development is concurrent and has no objection to the requests subject to various conditions. As indicated above Tract 993 is also being voluntarily dedicated to the county for road purposes in the event the county elects to make connectivity to the roads in the development to the south. Comments from the school district dated April 8, 2008 (Exhibit G.8.), indicate that all students will be picked up at the entrance to the development. Based on this communication no off-site pedestrian facilities are required. The comments also request that a bus pull-out be provided. The bus pull-out is included as a condition of approval. The internal road plan contained in Exhibit B1 at page 6 shows a paved shoulder/walkway for students to walk to the bus stop.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Credit is given for the three existing lots.
7. The Snohomish County Health District expressed approval for the preliminary plat on September 11, 2008, Exhibit G4. Individual septic systems will serve each lot. Snohomish County PUD No. 1 will provide electrical service, Exhibit G6. Snohomish County PUD No. 1 will provide water service, Exhibit G7.
8. The subject property is designated Rural Residential-5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). The implementing zone in this designation will continue to be the R-5 zone.

9. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC and 30.41C SCC as well as the State Subdivision Code, RCW 58.17, as conditioned herein. 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.
10. The subject rural cluster subdivision (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 (Exhibit B.1) and in an open space management plan (Exhibit A.4) 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. There will be adequate site obscuring buffers with vegetation. The landscape plan found in Exhibit B1, sheets L1.0 and L1.1 has been approved by PDS.
11. 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.
12. Stormwater runoff will be accommodated by use of two infiltration ponds and bio-filtration swales. PDS Engineering reviewed and approved the concept proposed by the applicant.
13. Critical area regulations contained in Chapter 30.62 SCC have been met. PDS has reviewed and approved the plans proposed by the applicant. These will protect the Category 2 and Category 3 wetlands which exist on the subject property.
14. The Snohomish County Fire Marshall conducted an internal review of the proposed plat and recommended approval.
15. 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 the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
4. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

## DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 21-lot rural cluster subdivision on 47.87 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions and precondition:

### PRECONDITION

- A. A revised preliminary plat plan shall be submitted and approved by PDS. The preliminary plat plan shall show the area that is currently designated as Tract 993 is dedicated, but unopened, public right-of-way, and a 35 foot radius for right-of-way at the entrance to the development.

### CONDITIONS

- A. The preliminary plat submitted to satisfy the precondition shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The plat 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 conceptual Critical Area Study and Wetland & Buffer Restoration Plan for Cascade View Estates by Wetland Resources, Inc. dated September 20, 2007 shall be submitted for review and approval during the construction review phase of this project.
- 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 Sultan School District No. 311 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 3 existing parcels. Lots 1 through 3 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:  
  
\$1,588.62 per lot for mitigation of impacts on County roads paid to the County,  
\$344.52 per lot for mitigation of impacts on state highways paid to the County

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 by PDS.”

- iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”

- iv. “The dwelling units within this development are subject to park impact fees (Lord Hill # 305) in the amount of \$344.52 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.”

- v. “The Open Space Management Plan (Exhibit A.4.) shall be implemented.”

D. Prior to recording of the final plat:

- i. Rural frontage improvements, which include a bus pull-out, shall be constructed along the parcel’s frontage on May Creek Road to the satisfaction of the County.
- ii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

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

- iii. The final wetland mitigation plan shall be completely implemented.
- iv. A critical area site plan (CASP) is required to be recorded for the off-site restoration area for the utility connection along the SE property boundary.
- v. An easement to the Home Owners Association on Lots 7, 8, 9, 10, and 11 which allows the Home Owners Association entry and maintenance rights for the vegetated sight obscuring buffer shall be recorded.

- E. In conformity with applicable standards and timing requirements:
  - i. The preliminary landscape plan (Exhibit B.1., sheets L1.0 and L 1.1) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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

Decision issued this 17<sup>th</sup> day of October, 2008.

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James Densley, Hearing Examiner Pro Tem

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

**Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 27, 2008**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 31, 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: Ed Caine

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.

**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than OCTOBER 17, 2009.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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### **ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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