

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

DATE OF DECISION: September 23, 2008  
PROJECT NAME: **MORENCY MEADOWS**  
APPLICANT/OWNER: Troy Schmeil; Callidus Land, Inc.  
FILE NO: 07-111499-000-00-SD  
TYPE OF REQUEST: **RURAL CLUSTER SUBDIVISION**  
DECISION: **APPROVE** with conditions

**BASIC INFORMATION**

GENERAL LOCATION: Approximately 15901 220<sup>th</sup> Street SE, Monroe, within Sec.27, T27N, R6E, W.M.  
ACREAGE: 19.8  
NUMBER OF LOTS: 9  
AVERAGE LOT SIZE: 41,981 square feet  
SMALLEST LOT: 28,963 square feet  
GROSS DENSITY: 0..45 du/ac  
ZONING: R-5  
COMPREHENSIVE PLAN  
General Policy Plan: Rural Residential (1du/5acres – Basic)  
SCHOOL DISTRICT: Monroe #103  
FIRE DISTRICT: #3  
UTILITIES  
Water: Cross Valley Water District  
Sewer: Individual on-site septic

PDS  
RECOMMENDATION: Approve with conditions

### **INTRODUCTION**

The applicant filed the Master Application on September 27, 2007. The application was determined to be complete for regulatory purposes as of the date of submittal. Resubmittals were made on February 26, 2008 and June 25, 2008.

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

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 14, 2008. No appeal was filed.

The Examiner held an open record hearing on August 28, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

### **PUBLIC HEARING**

The public hearing commenced on August 28, 2008 at 1:04 p.m.

1. The applicant was represented by John Bissell, HBA Design Group.
2. PDS was represented by Paul MacCready, Planner.
3. There was no public testimony.

The hearing concluded at 1:21 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 PDS Staff Report has correctly analyzed the nature of the application and the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. There were three public comments which raised the issues that were resolved in connection with the plat of Kaiana, immediately to the east. The issues were access, water supply and impacts on the adjacent buffalo ranch. They were resolved as follows: access to Morency Meadows shall be solely through the plat of Kaiana. The developer of both plats (Callidus Land, Inc.) will be dedicating those portions of 161<sup>st</sup> Avenue SE and 224<sup>th</sup> Street SE providing access

to the plats, as a condition of approval of Kaiana. Public water will be provided by the Cross Valley Water District. The adjacent buffalo farm property directly north of Morency Meadows will be provided with a 60-foot wide easement for future access, and a 35-foot sight-obscuring buffer will be left between the new developed area and the buffalo farm.

4. The site is rectangular in shape and consists of one original parcel. The property is undeveloped and covered by second growth forest. Two large Category 3 wetlands are located in the western third of the property. The eastern two-thirds are comprised of an upland crown that gently slopes westward to the wetlands and eastward off the site. The grades on the property are generally between zero and nine percent.
5. The site is located outside the Urban Growth Area (UGA) and is zoned Rural-5 Acre (R-5). All of the surrounding property is also zoned R-5. The surrounding lands are in undeveloped forest and pasture and single-family residences on large acreage lots. The preliminary plat of Kaiana (06-102869-SD) abuts the eastern boundary of Morency Meadows. Kaiana received preliminary approval on December 12, 2007.
6. The applicant seeks approval of a 9-lot Rural Cluster Subdivision on a 19.8 acre parcel. The wetlands will be avoided. The residential lots will be clustered on the eastern side of the site. The largest building lot will be 57,432 square feet; the smallest will 28,963 square feet. The average building lot size is 41,981 square feet. There will be three tracts: one (998) for a private access road, another (997) for stormwater detention and a third (999) for Native Growth Protection Area Easements (NGPA/E), site obscuring buffers and passive recreation.
7. Residential lots will be served by public water (Cross Valley Water District) and individual on-site septic systems. Clustering of the lots will permit approximately 51.6% (10.2 acres) of the site to be preserved in restricted open space.
8. Sole access to the subdivision will be provided from the southeast through the preliminary plat of Kaiana. The access will be a private road on which all of the residential lots will have frontage. The road will terminate near the center of the cluster in a 50-foot-radius culdesac. A 60-foot-wide easement off the plat road will be reserved for future access to property to the north.
9. The plat access road will connect to a private road that transits the south portion of the Kaiana Plat and then connects to a "T" intersection at the north end of 161<sup>st</sup> Avenue SE. High Bridge Road will be reached via 161<sup>st</sup> Avenue SE, 224<sup>th</sup> Street SE, 165<sup>th</sup> Avenue SE and Mount Forest Boulevard. As a condition of approval for Kaiana, 161<sup>st</sup> Avenue SE and 224<sup>th</sup> Street SE are being improved to public road standards.
10. Frontage improvements will not be required since the development does not front on a public road. No right-of-way will need to be dedicated.
11. School children will take busses to elementary, middle and high schools from a new bus stop at the intersection of 161<sup>st</sup> Avenue SE near the entrance to Kaiana. Completion of the Kaiana plat and construction of the new private road into the subject development will provide safe walking conditions to the bus stop for students.

12. Staff analysis reached the following additional conclusions on traffic and road design:
  - a) Impacts on future road system capacity can be mitigated by paying an impact fee of \$21,704.76.
  - b) The development is concurrent as of December 3, 2007.
  - c) Mitigation will not be required with respect to inadequate road conditions.
  - d) Transportation Demand Management provisions do not apply.
  - e) State highway impacts can be addressed through payment of \$3,100.68.
  - f) No city jurisdiction that have an interlocal agreement with the County will be significantly impacted.
13. Two separate drainage basins exist on the site. Both are ultimately tributary to the Snoqualmie River. There is minimal upstream flow into the site. For the western drainage basin, which contains the wetlands and buffers, total new impervious surface is less than 5,000 square feet and total new 100-year, 24-hour stormwater runoff is below 0.1 cubic feet per second (cfs). Therefore, no water quality treatment and runoff control is required for the western basin. Most of this basin is designated as restricted open space and sight obscuring buffer and will be contained within a NGPA/E.
14. However, for the eastern basin the total new impervious surface is approximately 45,000 square feet and net new 100-year, 24-hour stormwater runoff is 2.04 cfs. For this level of development, treatment and runoff control will be required. The runoff in the eastern basin will be collected, treated and detained in an open two-cell pond. Water stored in the pond will be released through a control structure, limiting flow to pre-developed rates. The outflow will be conveyed to the Kaiana subdivision and released above a wetland through a level spreader outflow system. A preliminary landscaping plan shows required landscaping for the detention facility. PDS has found that the proposed drainage facilities will meet applicable regulatory requirements. No significant impacts on downstream drainage are anticipated.
15. As noted, wetlands on the site will be avoided. No impacts to the wetlands or buffers are proposed. An NGPA/E will provide permanent protection. An Open Space Management plan has been provided detailing the required maintenance and management tasks for the proposed open space areas to be performed by a homeowners association.
16. The applicant supplied information regarding septic drain fields and reserve areas, including soil logs. The Snohomish Health District recommended approval of the preliminary plat on December 24, 2007. Snohomish County Public Utility District provided correspondence, dated November 2007, indicating that they can provide electrical service for the project. The Cross Valley Water District provided a letter, dated September 24, 2007, stating that water will be available after water mains are installed to the site.
17. The County Fire Marshal reviewed the proposal and recommended approval on November 29, 2007. He determined the appropriate fire hydrant and fire flow requirements, which will be included as conditions of approval. Fire apparatus access will meet County minimums. A condition on the face of the plat will require that if a gate is installed at the plat entrance, it will be equipped to open automatically on the approach of emergency vehicles.
18. Conditions are included for appropriate impact fees for the impacts of the development on parks and schools.

19. The Comprehensive Plan designation is Rural Residential (RR:1 du/5 acre Basic). R-5 is an implementing zone for this designation. The basic density is 1 dwelling unit per 5 acres in a traditional subdivision. But Policy LU 6.B.9 states that within the Rural Residential designation, subdivisions may exceed the basic density if the Rural Cluster Subdivision technique is used, all of its criteria and requirements for the maintenance and enhancement of rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres. The 9 lots proposed are consistent with the density provisions of the Comprehensive Plan and implementing regulations.
20. The Staff Report thoroughly discusses the conformity of the proposal with the Code requirements for Rural Cluster Subdivisions (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. Lots are clustered on the most buildable and least environmentally sensitive portions of the site. Appropriate buffers are provided. All utilities will be underground. There is an Open Space Management Plan. The design is in accordance with the natural features and maintains rural character.
21. The Examiner concurs with the Staff's findings and agrees that the project, as conditioned, will be consistent with the County's adopted Codes and policies.
22. The plat makes "appropriate provisions" for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
23. The public use and interest will be served by the platting of the subdivision.
24. 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.
2. The requirements of SEPA have been met.
3. The proposal is consistent with the GMA-Comprehensive Plan and with the applicable development regulations. RCW 58.17.100, RCW 58.17.195. In particular, the proposal, as conditioned, 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 Morency Meadows is **GRANTED** subject to the following conditions:

**CONDITIONS:**

- A. The revised preliminary plat/rural cluster subdivision received by PDS on June 25, 2008 (Exhibit 2A, Sheets P1.0 and P2.0) 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 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.
  
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. Provide the following language on the face of the final plat:

“The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
  
  - ii. Provide the following language on the face of the final plat:

“The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit.”
  
  - iii. Provide the following language on the face of the final plat:

“Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$2,411.64 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 payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued all mitigation payments shall be deemed paid.”
  
  - 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. The 50-foot wetland buffer shall be clearly identified as NGPA/E on the final plat.
- vi. Provide the following language on the face of the final plat:  
“All utilities shall be located underground.”
- vii. Provide the following language on the face of the final plat:  
“Where existing vegetation fails to meet the intended function of the Vegetated Sight Obscuring Buffer, then supplemental planting of native vegetation shall be made, with the ultimate density of trees at 20 feet on center and shrubs at 5 feet on center. A minimum of 75% of the trees shall be conifers.”
- viii. Provide the following language on the face of the final plat:  
“If a gate is installed at the entrance of the private roadway, the gate shall be activated by an emergency vehicle opticom strobe that opens the gate automatically with the approach of an emergency vehicle in either direction or by a means acceptable to the local fire district. In the event of power failure the gate shall open automatically and remain in the open position until the power is restored. The gate shall provide a minimum 20 feet clear opening for fire apparatus access.”

D. Prior to recording of the final plat:

- i. The preliminary plat of Kaiana, PFN 06-102869 SD, shall have been recorded.
- ii. Adequate access shall be provided to the boundary of the development 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 plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

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

- iv. The developer shall provide the required fire hydrants and written confirmation that the minimum required fire flow of 1,000 gpm at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems.

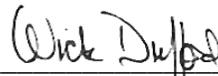
E. In conformity with applicable standards and timing requirements:

- i. All required detention facility landscaping shall be installed in accordance with the approved preliminary landscape plan (Exhibit 2A, Sheet L1.1).
  - ii. The preliminary landscape plan (Exhibit 2A, Sheet L1.0) for the sight obscuring buffer shall be implemented.
  - iii. The open space management plan (Exhibit 1E) shall be implemented by the homeowner's association.
- F. All development activity shall conform to the requirements of Chapters 30.63A and 30.63B SCC, and shall comply with the following conditions:
- i. Easement shall be granted from the plat of Kaiana (PFN: 06-102869 SD) to the plat of Morency Meadows for the drainage conveyance and outfall system within the plat of Kaiana for the life of the plat of Morency Meadows prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the County.
  - ii. Operation and maintenance covenant responsibilities and costs for the shared conveyance and outfall facilities shall be clearly delineated between the plat of Kaiana (PFN: 06-102869 SD) and the plat of Morency Meadows prior to recording of the final plat.
  - iii. The drainage conveyance and outfall construction on Kaiana (PFN: 06-102869 SD) shall be constructed, functioning, and approved by Snohomish County prior to recording of the final plat.
  - iv. At construction plan review, the control structure shall be moved out of the detention pond berm and the detention pond shall be completely fenced and landscaped.

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 23<sup>rd</sup> day of September, 2008.



\_\_\_\_\_  
Wick Dufford, Hearing Examiner Pro Tempore

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
---

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 3, 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 7, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Paul MacCready

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.