

## DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: May 6, 2008

PLAT/PROJECT NAME: ***EMERALD SPRINGS ESTATES DIVISION 2***

APPLICANT/  
LANDOWNER: Lifestyle Homes & Construction  
1242 State Avenue Suite I  
Marysville, WA 98270

FILE NO.: 99-113776-0020 SD

TYPE OF REQUEST: Major Revision to change number of lots in a Rural Cluster Subdivision (RCS) from 8 to 11, relocate private road access 200 feet to the north and include revisions to the Open Space/NGPA Tract 999

DECISION (SUMMARY): **APPROVED**, subject to conditions

### BASIC INFORMATION

GENERAL LOCATION: The property is located between State Highway SR 9 and Finn Settlement Road, approximately one-quarter mile north of their intersection, in Section 9, Township 32 North, Range 5 East, W.M., about five miles north of Arlington, Snohomish County, Washington.

Acreage: 31.8 acres

Avg. Lot Area: 58,206 square feet

Gross Density: 0.35 d.u./ac

Lots: 11

Smallest Lot Area: 49,431 square feet

Open Space: 6.8 acres

Zoning: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential – 5 (1 d.u./5 acres)

School District: Arlington No. 16  
Fire District: No. 18  
Water Source: Individual on-site wells  
Sewer Service: Individual on-site systems

**INTRODUCTION**

Emerald Springs Estates received preliminary approval as an eleven-lot subdivision on January 18, 2002.

A revision to create two Phases (3 lots in Phase 1, 8-lots in Phase 2) was administratively approved on June 14, 2006. Phase 1 (three lots) has been recorded. Emerald Springs Estates Division 2 adds three lots to the previously approved 8-lots in Phase 2. This brings the total in Phase 2 to 11, added to the 3 approved in Phase 1 equals 14 lots total. The Emerald Springs Estates Division 2 application was originally submitted to Planning and Development Services (PDS) on October 16, 2006. (Exhibit 1)

PDS gave proper public notice of the open record hearing as required by the county code. (Exhibits 20, 21 and 22)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 21, 2008 (Exhibit 19). The DNS was not appealed or specifically commented on.

The Examiner held an open record hearing on April 24, 2008, the 106th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on April 24, 2008 at 11:05 a.m.

1. The Examiner pro tem, James Densley, announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Lifestyle Homes & Construction, was represented by Mr. Allan Whipple. Snohomish County was represented by Robert Pemberton and Anne Goetz both of PDS.
3. Those present who expressed a desire to testify were administered the oath.

4. Appearing and giving testimony were Robert Pemberton, Anne Goetz and Mr. Allan Whipple.
5. The examiner kept the record open for one week for the filing of additional written information from the parties regarding well head protection.

The hearing concluded at 11:38 a.m.

6. During the period the record was kept open, both the applicant and PDS submitted written comments. The comments are made part of the record and were considered by the Examiner.

**NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.**

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. Nature of Application: Emerald Springs Estates Division 2 is an 11-lot subdivision of 31.8 acres. The proposed single-family residential lots range in size from 49,431 square feet to 74,757 square feet with 93,976 square feet of open space. This is a revision to add three lots to a previously approved subdivision on this site. A previously approved minor revision to Emerald Springs Estates created the tract being currently divided. Mitigation fees are to be paid in accordance with Chapters 30.66A, B, and C, SCC, for project impacts to community parks, nearby road system traffic and to the Arlington School District No. 16. Access is provided from Finn Settlement Road, a public road. Streams and wetlands exist on site, and are to be protected in accordance with the Critical Area Regulations.
3. Site Description: This 31.8 acre site lies between Finn Settlement Road and SR 9. The site is irregular in shape. The land slopes down from Finn Settlement Road, the easterly property line, toward the western portion of the property at an approximately 18 percent slope. The southern portion of the site slopes toward SR 9 at 2 to 5 percent slope. Approximately 6 acres is considered forested, the remaining 25 acres consists of pasture with scattered trees and blackberries along the perimeter. A stream, with adjacent wetland areas, runs from Finn Settlement Road to SR 9 in the southern portion of the site.
4. Adjacent Zoning/Uses: The site and adjacent properties lie in a rural area of Snohomish County, north of Arlington. This site and immediately surrounding properties are zoned Rural 5 Acre (R-5). Forestry zoning lies off-site a short distance to the east and west. Generally, large lot rural development surrounds the site. A Puget Sound Power and Light electrical transmission line crosses the center of the site in a north-south direction.

5. Matters of Concern:
  - A. In response to this application, two letters of concern were received from the general public. (Exhibits 24 & 25) One letter expressed concern about water availability. This was a concern raised during the review of the previous proposal. The applicant has submitted information to address this issue, including well logs from properties in the vicinity and a "Final Ground Water Supply Evaluation" (Exhibit 12). This report includes the statement, "Based on the expected pumping rates and schedule, we would not expect an impact to existing wells in the general vicinity of this site." Another concern raised by the commentators was vegetative screening along Finn Settlement Road.
  - B. During the hearing the Examiner pro tem questioned placement of septic drainfields up hill and above the drinking water well heads, the placement of driveways within the well head protection zone, the steep grade of the road serving the proposed lots, and the one-way bridge on SR 9 to the south of the proposal as an inadequate road condition.
6. Parks Mitigation: The proposal is within the River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with County policies.
7. School Impact: Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Arlington School District No. 16, 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 the one existing lot.
8. Drainage and Grading: Runoff from the proposed impervious surfaces will be collected by a combination of systems. The runoff from the private road will discharge into road side ditches which are connected to a wet detention pond. Runoff from the lots will also be collected by ditches that discharge into the detention pond. The detention pond will detain all the runoff from the impervious areas and all runoff from the defined drainage basin. A control structure will be located downstream of the detention pond and the pond will have an emergency overflow weir.

PDS (Engineering) reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 15,000 cubic yards of cut and 13,500 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

9. Critical Areas: The site contains seven wetlands and three streams. Three of the wetlands are Category 3 wetlands under Critical Area Regulations and four are Category 4. One Type 5 stream, one Type 4 stream and part of another on site is classified as a Type 3 stream. The regulated streams, wetlands and their buffers are designated as Native Growth Protections Areas (NGPAs). The four Category 4 wetlands are proposed

to be filled in accordance with SCC 30.62.360 pursuant to best management practices. The total wetland fill is 8,296 square feet. This will be compensated for by additional NGPA buffers (100,814 square feet of additional buffer will be provided) on other wetlands and increased stormwater capacity in the drainage detention facility. A complete description of the streams, wetlands, buffers and mitigation for impacts is found in the Critical Area Study Wetland Mitigation Plan and Habitat Management Plan, dated October 3, 2006 (Exhibit 11). PDS reviewed the Critical Area Study and Mitigation Plan and determined that the project as proposed is consistent with Chapter 32.62 SCC Critical Areas Regulations. Such determination is adopted by the Examiner as a finding.

10. GMA Compliance: The proposal is subject to the version of the General Policy Plan (GPP) portion of the GMACP which became effective on December 12, 1996. The subject site is designated Rural Residential (1 d.u./5 acres Basic) on the GPP Future Land Use Map (FLUM). In accordance with the GPP (p. LU-64) the Rural Residential designation is implemented by the Rural-5 Acre zone. The implementing zone in this designation will continue to be the R-5 zone.
11. Zoning: This project meets zoning code requirements for lot size, including rural cluster subdivision provisions, bulk regulations and other zoning code requirements. The 11 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.
12. Subdivision Code: The proposed plat meets Chapter 30.41A SCC requirements. 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. Regarding the Examiner's questions regarding the one-way bridge between the local fire department station and the proposed project, both the applicant and PDS testified that this should not adversely affect the nature of service provided to the project.
13. Rural Cluster Subdivision Standards: The subject revised RCS application was reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on March 9, 2007 (Exhibits 6 and 7), and in an Open Space Management Plan (Exhibit 8) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 55.9% (14.8 acres) of the total property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and

potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the County's environmentally sensitive areas.

The application was reviewed by PDS for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as NGPAs; a sight-obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1). Regarding the comments from the public regarding the sight obscuring buffer, the parcel is located in part on a steep hillside. The applicant testified that it is not possible to entirely screen the parcel from view from either the top or the bottom. Trees cannot be placed too closely to Finn Settlement Road as trees growing too close to the right-of-way could impact the safety of the motoring public. Regarding the Examiner's questions regarding the steep slope of the interior roads, PDS and the applicant testified that the public and the interior roads shall be constructed to EDDS standards. The grade of the private interior roads is in compliance with County standards. All utility lines are to be located underground. There is no unbuildable land as defined by Chapter 30.41C SCC located on site which would be required to be included in NGPAs; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an Open Space Management Plan has been provided detailing the required maintenance and management tasks for the proposed open space; physical separation of clusters is provided; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road. The proposal is not served by public sanitary sewer, rather on-site sewage treatment (septic systems) is proposed. In response to the concerns raised by a commentator and the Examiner regarding this system and the placement of some of the drainfields up hill and above some of the drinking water well heads, the applicant and PDS testified during the public hearing that the proposal had been fully reviewed and approved by the Snohomish County Health District. (Exhibit 30) Furthermore, during the period that the record was kept open for written comments, the applicant and PDS submitted comments. Both the applicant and PDS directed the Examiner's attention to WAC 246-272 A. They also submitted information that the location of the driveways and septic systems complied with the WAC and the requirements of the Health District. The Examiner finds that such documentation shows that the proposed well head and septic system drainfield locations comply with the regulations. Clusters of lots are located relatively near the interior of the site on the side of the hillside and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

The application complies with the provisions of SCC 30.41C.230 and SCC 30.41C.240 based on the following analysis:

Revised Basic lot yield: 1,384,929 square feet/100,000 square feet	= 13.8 lots
Bonus residential density	= N/A
Additional bonus density	= N/A
Total lot yield	=13.8 lots
Total lot yield-rounded	=14 lots
Total lots proposed	= <u>11 lots</u>

14. Plats – Subdivisions – Dedications (Chapter 58.17 RCW): The proposed plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas. The single-family homes on small lots will be in character with the existing neighborhood. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Washington State Department of Ecology drainage standards. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying County requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Water supply will be by individual on-site wells and sewer service will be by individual on-site sewage disposal systems subject to approval by the Snohomish Health District.
15. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)
- A. Road System Capacity [SCC 30.66B.310]
- The development will generate 105.27 new ADT and has a road system capacity impact fee of \$27,791.28 based on \$264.00/ADT.
- B. Concurrency [SCC 30.66B.120]
- Since this development will not impact any arterial units in arrears, nor will it create any, and generates less than 50 peak hour trips, it is deemed concurrent and will not require mitigation with respect to arterial units [SCC 30.66B.130(4)]. Prior to the expiration date of the development's concurrency certificate, the final subdivision must be recorded to remain concurrent.
- C. Inadequate Road Condition (IRC) [SCC 30.66B.210]
- The subject proposal will not impact any IRC locations within the subject TSA with three or more of its peak hour trips. Therefore, no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC. In response to the Examiner's questions regarding the one-way bridge on SR 9 to the south of the project, PDS testified that this section of road is not classified as an inadequate road condition as defined under County code.
- D. Frontage Improvements [SCC 30.66B.410]
- The subject property's frontage is located along Finn Settlement Road. Rural standard frontage improvements are required, consisting of 18 feet of pavement from the centerline of the road on the development side. This property also fronts SR 9, which is under the jurisdiction of the Washington State Department of Transportation (WSDOT).
- E. Access and Circulation [SCC 30.66B.420]
- Access for Phase 2 is proposed via a new private road off of Finn Settlement Road, and access to Phase 1 is proposed at the south property line off of Finn Settlement Road. Three additional lots will be placed on the north private road,

Tract 997; to be 105.27 ADT. That causes the design classification of the private road to be upgraded from a rural low volume road to a subcollector road. The required design for the road is a 20-foot pavement width for the two travel lanes and a 7-foot wide paved shoulder walkway between the cul-de-sac and Finn Settlement Road. The design speed changes from 25 mph to 30 mph, so the required minimum road grade is 12%, the minimum vertical curve length is 90 feet (except when algebraic grade difference applies), and the minimum radius for the horizontal curve is 275 feet. The construction plans showed that the road grade and the vertical curves have met the minimum standard. A deviation request was submitted for the two horizontal curves; both curves were proposed with a 100-foot radius. The request was approved on the condition that a sight distance easement is placed over Lot 10 to prevent sight distance obstructions within the easement for a 25 mph design speed on the 12% down slope of the road (approximately 182 feet.) The plat plan submitted for this review shows the sight distance easements as required and correctly shows the horizontal curves as approved.

Sight distance was checked at the new location of the private road for Phase 2, and it was determined that the location meets the minimum requirements in the EDDS.

The access point on Finn Settlement Road for Phase 2, (the north private road) has no sight distance issues.

A sight distance analysis was submitted and approved for the south access point (now part of Phase 1) on Finn Settlement Road during the previous review (received by PDS on June 8, 2001). The plan identified an area to the north of the south access road in Phase 1 to be removed in order to achieve sight distance required by the EDDS. The sight distance issue must be resolved prior to recording Phase 1 of this development.

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

Finn Settlement 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. Twenty feet of right-of-way presently exists on the development's side of the right-of-way centerline. Therefore, 10 feet of additional right-of-way is required, which is adequately shown on the plans.

G. State Highway Impacts [SCC 30.66B.710]

An interlocal agreement is in effect between the County and the WSDOT. Written comment from WSDOT dated February 11, 2000 regarding this project has been received by Public Works requesting a fee of \$36.00 per trip or the applicant can provide a traffic study to WSDOT for review to determine the mitigation requirements.

A revised offer to WSDOT is needed to reflect the addition of three lots to the development. The fee amount for Phase 2 is 105.27 ADT x \$36.00 = \$3,789.72. A revised offer for that amount was forwarded to WSDOT. Comments dated March 21, 2007 were received accepting the offer. Payment of that amount will be a recommended condition of approval for this development. As previously



found the one-way bridge condition on SR 9 to the south of the project is not a prohibition to the development of this project.

H. Other Streets and Roads [SCC 30.66B.720]

An interlocal agreement is in effect between the County and the City of Arlington. Comments dated June 4, 2001 have been received from the City of Arlington asking for a traffic mitigation offer for traffic impacts to city roads, per the interlocal agreement. The fee amount is \$9,225.74 based on 11.11 peak hour trips x 80% (sub area location) x \$1,038.00 per PM peak hour trip. A revised offer was forwarded to the City for that amount. A signed copy of the offer approved by an Arlington official was received on March 26, 2007.

There are no other jurisdictions that have an interlocal agreement with the County that will be significantly impacted by the subject development.

I. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. The county is required to make findings regarding safe walking conditions for school children who may reside in the subject development. Updated comments had not been received from the school district, so a telephone call was put into the Arlington School District to Sid Logan, Director of the Transportation Department for the school district for a verbal update. He indicated that the bus would stop at each intersection of Finn Settlement Road with the two plat roads, but that if there was a paved walkway between the two access points on Finn Settlement Road so that students could safely walk from one to the other, the bus would stop at just one of the intersections. Since the development road furthest to the north serves 11 lots compared to the south road serving three lots, and the north access has better visibility for traffic; it would make sense that that would be the better location. Mr. Logan indicated that a bus pull out area is not needed; the bus would stop on Finn Settlement Road and stop traffic, but that safe walkways and a safe waiting area for the children are needed.

16. 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 has jurisdiction to hear this case and render a decision thereon.
2. This development will provide housing in compliance with Snohomish County Regulations. The public interest will be served as there will be compliance with health and safety, regulations, including parks, schools, fire department, internal circulation, public roads, utilities, GMA, critical areas and drainage and grading.

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 an eleven-lot **RURAL CLUSTER SUBDIVISION** on 31.8 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### **CONDITIONS:**

[NOTE: These recommended Conditions include all previous Conditions of Approval of the previously approved subdivision on this site.]

- A. The rural cluster subdivision/preliminary plat received by PDS on March 9, 2007 (Exhibits 6 and 7) 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 detailed mitigation plan for the planting of the Rural Cluster Subdivision buffer within Native Growth Protection Areas – based on the October 3, 2006 Critical Area Study Wetland Mitigation Plan and Habitat Management Plan by Wetland Resources, Inc. (Exhibit 11) – shall be submitted to Snohomish County for review and approval. The final mitigation plan will include a detailed estimate for the maintenance portion of the mitigation bonding.
  - iv. A Rural Cluster Subdivision clearing, buffering and landscape plan shall have been submitted to and approved by the Department of Planning and Development Services. Said plan shall first evaluate existing vegetation for its sight-obscuring qualities, based on all seasons of the year. In those areas where existing vegetation will not provide a sight-obscuring buffer year-round, the plan shall recommend a planting plan for fast growing supplemental vegetation

designed to fill in the gaps in the native vegetation. Species shall be chosen at least in part for their ability to thrive in partial or complete shade (if applicable), their ability to thrive without irrigation and their rate of growth. Overstory species shall be denoted as not less than four feet tall at time of planting. All plantings shall be completed and inspected by the Department of Planning and Development Services prior to final approval.

- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Conditions A and B, above.
- D All utilities shall be underground.
- E. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
  - ii. All Critical Areas shall be designated Native Growth Protection Areas (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."
  - iii. "All restricted open space shall be protected as open space in perpetuity. Use of the restricted open space is limited to those uses approved for the Rural Cluster Subdivision within the approved Open Space Management Plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of these approved uses and buffering within the restricted open space tracts."
  - iv. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
  - v. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for a single-family residence:

\$2,526.48 per lot for mitigation of impacts on County roads paid to the County.  
\$344.52 per lot for mitigation of impacts on State roads paid to the County.  
\$838.70 per lot for mitigation of impacts on Arlington streets paid to the City.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this short subdivision or the lots therein. Once a building permit for a lot has been issued, all mitigation payments for that lot shall be deemed paid by PDS.

- vi. Duplexes are not allowed on any lot without additional Department of Public Works review.
- vii. For New Wells: “Well protection zones shown in the Snohomish Health District records for \_\_\_ lots of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries with out written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s) and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which at a minimum, prevent the installation of sewer and stormwater drainfields within the well protection zone. The revision of the well protection zone is a private matter between the affected lot owners and does not require a plat alteration.”
- viii: For Existing Wells: “An 100 foot radius well protection zone covenant is/are hereby established on lots \_\_\_ around existing wells located on the plat. The well protection zones are based on actual constructed wells. All owners of property shown with in these protection zones agree to comply with current and future state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If any well is moved, an 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenants from the affected property owners.”
- ix. The private road shall be provided with signage stating “NO PARKING – FIRE LANE” per 30.53A.150 Subsection 902.2.3 and Section 901.4.2 of the Uniform Fire Code 1997 Edition.
- x. If there is a gate installed at the entrance of the private road it shall be approved by the fire marshal or his designee per Section 30.53A.150 Subsection 902.2.4.
- xi. All residences shall be individually numbered with addresses approved by the local fire marshal. Such numbers shall be plainly visible from the street.

D. Prior to recording of the final plat:

- i. Frontage improvements consisting of an 8-foot paved shoulder shall have been installed along the Phase 1 and Phase 2 property frontage on Finn Settlement Road.
- ii. An additional 10 feet of right-of-way is required along the Phase 1 and Phase 2 property frontages on Finn Settlement Road (as is shown on the June 8, 2001 plans).
- iii. Removal of the embankment north of the private road for Phase 1 to obtain sight distance in accordance with EDDS is required.
- iv. The interior private road system shall have been constructed in accordance with the requirements of EDDS 3-090 and the approved deviation request.
- v. Native Growth Protection Area boundaries shall have been permanently marked on the site prior to final inspection by the County, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the County. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- vi. The final wetland mitigation plan shall be completely implemented.
- vii. Covenants, deeds and Homeowners Association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with final plat recording, shall have been approved as to substance and completeness by PDS, and shall at a minimum:
  - (a) Establish all restricted open space as shown on the approved preliminary plat in separate commonly owned tracts. The restricted open space areas shall be protected in perpetuity and be restricted to critical area protection, sight-obscuring buffers and passive recreation in accordance with the Open Space Management Plan.
  - (b) Establish a Homeowner's Association, guaranteeing maintenance of restricted open space, including required sight-obscuring buffers, detention facilities, and all other commonly owned and operated property in a manner which assures continued use for the purpose intended. Membership in the Homeowners Association and payment of dues or other assessments for maintenance purposes shall be a binding requirement of lot ownership.

- viii. Designated sight-obscuring buffers shall have been inspected and approved by the Department of Planning and Development Services. Should any designated buffer areas be found to contain insufficient vegetation to provide a year-round sight-obscuring screen between proposed homes and adjoining properties, native vegetation shall be supplemented as necessary to achieve buffer requirements.
- E. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- F. EXAMINERS CONDITIONS (imposed by the Conditions of Approval of the original subdivision):
  - i. The applicant shall provide for complete buffering and view protection to ensure that the homes will be completely hidden from Finn Settlement Road with some buffering along SR 9, although not as dense. This buffering shall be done with landscaping of a size that obscure the homes, but protect the general view of the area.
  - ii. The final drainage plans shall carefully provide that there are no adverse affects on the wetlands, streams and Pilchuck Creek.
  - iii. The Department of Public Works shall review the testimony provided at the hearing to determine whether any additional traffic improvements are needed as a result of this improvement prior to final plat approval.
  - iv. While the applicant has submitted subsequent to the hearing a preliminary report as to the effect of the development on the area based upon well logs and locations, a final report must be submitted indicating that there will be no effect upon existing wells prior to final plat approval. [NOTE: This report has been submitted and is Exhibit 12. PDS considers this condition as having been already met.]

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

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

Decision issued this 6<sup>th</sup> day of May, 2008.

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James Densley, Hearing Examiner Pro Tem

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 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 **MAY 16, 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 **MAY 20, 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.

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### Staff Distribution:

Department of Planning and Development Services: Robert Pemberton

Department of Planning and Development Services (traffic): Ann Goetz

<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>
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