

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: February 18, 2009

PLAT/PROJECT NAME: **DUNROVEN RANCH**

APPLICANT/  
LANDOWNER: Bill Porter

FILE NO.: 06 133489 SD

TYPE OF REQUEST: 12-lot Subdivision with two future development tracts on approximately 4.33 acres, utilizing lot size averaging.

DECISION (SUMMARY): **APPROVE WITH PRECONDITION AND CONDITIONS**

**BASIC INFORMATION**

GENERAL LOCATION: 8332 8<sup>th</sup> Street SE, Everett (at the southeast corner of 83<sup>rd</sup> Avenue SE and 8<sup>th</sup> Street SE, in Section 24, Township 29 North, Range 5 East, W.M., Snohomish County, Washington).

ACREAGE: 4.33 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 6,929 square feet

MINIMUM LOT SIZE: 3,895 square feet

DENSITY: 2.77 du/ac (gross)  
6.28 du/ac (net)

ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (6 du/ac Lake Stevens only)

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

STAFF RECOMMENDATION: Approve with Conditions

### **INTRODUCTION**

The applicant filed the Master Application on February 2, 2007. (Exhibit A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit F1 (Affidavit of Mailing); Exhibit F2 (Affidavit of Notification by Publication); Exhibit F3 (Posting Verification).

A SEPA determination was made on December 9, 2008. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on February 4, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

1. Representing PDS was Monica McLaughlin, Senior Planner, Ann Goetz, Engineer, and Jack Hurley, Engineer.
2. The applicant, Bill Porter, was represented by Jeff Tapert.

**NOTE:** The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

### **FINDINGS OF FACT**

Based on all of 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. Summary of Proposal: The applicant is requesting approval of a 12-lot subdivision with two future development tracts, utilizing the lot size averaging provisions of SCC 30.23.210. An existing house on the 4.33 acre property will be retained on one of the proposed lots, with the remainder developed with new single-family homes. The project will involve construction of a new public cul de sac road within the development which will intersect with 8<sup>th</sup> Street SE. This new road will provide access to all of the lots. Also associated with the proposal is installation of a stormwater management system incorporating an underground detention vault, utilities, and right of way improvements consisting of curb, gutter, and sidewalk along the development's road frontages. Two on-site wetlands will be preserved and placed within Native Growth Protection Area (NGPA) tracts. Water service is to be provided by the Snohomish County PUD No. 1 and sewer service is to be provided by the Lake Stevens Sewer District.

3. Project Chronology/Background: The subject land use application was submitted to Planning and Development Services (PDS) on February 2, 2007, and was determined to be complete, as of the date of submittal, on March 2, 2007. In response to review comments by the county on March 29, 2007, November 21, 2007 and December 8, 2008, the applicant submitted revised review materials on October 23, 2007, October 8, 2008 and December 10, 2008, respectively. As of the date of the hearing, 131 days of the 120-day review period will have elapsed. As per SCC 30.70.110(5), the applicant was notified that the decision of the Hearing Examiner will be rendered outside of the usual 120-day review period.
4. Site Description: The “L” shaped site is 4.33 acres in size and is located at the southeast corner of 83<sup>rd</sup> Avenue SE and 8<sup>th</sup> Street SE , approximately ½ mile west SR-9. A single-family residence and outbuildings occupy the property. The bulk of the property is vegetated with pasture grass; with a few trees and shrubs scattered around the site. There are two wetlands on the property, one located adjacent to the south property line and one in the northeast corner of the site. The topography of the site slopes gently down towards the west.
5. Adjacent Zoning/Uses: The subject and surrounding properties are all zoned R-7,200 and are developed with single-family uses.

**B. Issues of Concern.**

No public comment letters have been received in this file, nor was any public testimony taken at the hearing regarding the proposed development. The Examiner has not noted any issues of concern.

**C. Compliance with Codes and Policies.**

6. Parks Mitigation. The proposal is within Centennial Park Service Area No. 306 and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 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. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC). PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

**A. Road System Capacity**

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 11 new homes, which is 9.57 ADT/home. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 105.27 new ADT and has a road system capacity impact fee of \$38,318.28 (\$3,483.48 per lot), based on \$364.00/ADT. This impact fee must be paid proportionately, prior to issuance of each building permit. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance, and is included as a condition at the end of this report.

The ADT has been calculated as follows: 12 lots – 1 existing home = 11 homes x 9.57 = 105.27  
The PM PHT has been calculated as follows: 11 homes x 1.01 = 11.11  
The AM PHT has been calculated as follows: 11 homes x 0.75 = 8.25

**B. Concurrency [SCC 30.66B.120]**

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The concurrency for the review of this project was based on 11 new lots. It has been determined by DPW and PDS, as required by DPW Rule 4220.045, that the impacts of the entire development (current proposal and the Future Development Tracts) will be evaluated at the time of application for development of the "Future Development Tracts". This will be stated on the face of the recorded development document.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of March 23, 2007. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is February 2, 2007.

**C. Inadequate Road Condition (IRC) [SCC 30.66B.210]**

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B.

**D. Frontage Improvements [SCC 30.66B.410]**

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

The subject property frontage is located along 83<sup>rd</sup> Avenue SE. Urban standard frontage improvements are required consisting of 18 feet of pavement from centerline of right-of-way, vertical curb, 5-foot planter strips, and 5-foot sidewalks. Construction of frontage improvements is required prior to recording the subdivision unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. The Examiner has included this requirement as a condition of preliminary plat approval.

The subject property frontage is also located along 8<sup>th</sup> Street SE. Urban standard frontage improvements are required consisting of 23 feet of pavement from centerline of right-of-way, vertical curb, 5-foot planter strips, and 5-foot sidewalks. Construction of frontage improvements

is required prior to recording the subdivision unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. The Examiner has included the dedication of right of way as a condition of preliminary plat approval.

**E. Access and Circulation [SCC 30.66B.420]**

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

Access is proposed via a new public road off of 8<sup>th</sup> Street SE. The new plat road has been aligned directly across from 84<sup>th</sup> Avenue SE. The new public road forms a short “T” with both legs of the “T” ending in cul-de-sacs. The design was evaluated as to the need for the future road connection to the east, and it was determined that the current design is acceptable. The subject development would not have 250 or more ADT on a dead end road system, even with the future development of Tracts 995 and 996 (adding perhaps another 6 lots at the maximum, plus the 12 lots currently proposed would be a total of 172.26 ADT) so the development would meet the provisions of EDDS 3-01 (B) 1, which specifies that a road serving more than 250 ADT shall be connected in at least two locations with another road or roads that meet the applicable standard(s) for the resulting traffic volume. In addition, the property to the east has frontage on both 8<sup>th</sup> Street SE, which is an arterial road, and on 87<sup>th</sup> Avenue SE, which is a non-arterial road; so there are other access options for the property adjacent to the east if and when it develops in the future.

The new plat road has been designed so that it intersects with 8<sup>th</sup> Street at a 90-degree angle, so it meets EDDS 3-09. Previous plans did not meet EDDS table 3-11 for spacing between an arterial road and a residential/subcollector road, which is 165 feet between 8<sup>th</sup> Street SE and the east/west road in the development (called 8<sup>th</sup> Place SE on the plans). The proposed spacing is about 150 feet. A deviation request was submitted asking approval of the proposed spacing, which was conditionally approved by DPW. As long as there are no driveways located along 84<sup>th</sup> Avenue SE, there would not be a concern about traffic conflicts caused by the shorter centerline offset. The condition of approval would be to restrict driveways on 84<sup>th</sup> Avenue SE so that access to those lots is not hampered by queuing at the stop sign at the 8<sup>th</sup> Street/84<sup>th</sup> Avenue intersection, and there would not be conflicts from vehicles pulling in and out of the driveways versus traffic turning from 8<sup>th</sup> Street and 8<sup>th</sup> Avenue.

Sight distance has been checked, and it meets the minimum requirements of EDDS; as do the vertical and horizontal curves, and road grades. The right-of-way width shown is 52 feet, which meets requirements.

The driveway for the existing home to remain on lot 9 will be eliminated, and access to the home will be from the new public plat road instead of directly off of 8<sup>th</sup> Street SE.

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

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

83<sup>rd</sup> Avenue SE is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. 20 feet

of right-of-way presently exists. Therefore, 15 feet of additional right-of-way is required, which has been shown on the plans. The Examiner has included the dedication of right-of-way as a condition of preliminary plat approval.

8<sup>th</sup> Street SE is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. 20 feet of right-of-way presently exists. Therefore, 15 feet of additional right-of-way is required, which has been shown on the plans. The Examiner has included the dedication of right-of-way as a condition of preliminary plat approval.

Dedication of additional right-of-way that is tangent to the ultimate right-of-way on 8<sup>th</sup> Street SE and 83<sup>rd</sup> Avenue SE with a curve sufficient for a 35-foot radius curb return is required. The plans have identified the curb return radii on the arterial roads as 35-foot radius curb returns, which meets requirements. The Examiner has included the dedication of right-of-way as a condition of preliminary plat approval.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT.

A copy of a voluntary offer signed the applicant was submitted with the application for the amount of \$0.00, based on the Gibson Traffic analysis dated February 1, 2007, which states that the development will not impact any WSDOT collection projects with 3 directional trips. Comments dated February 1, 2007 (see Exhibit H1) were received from WSDOT indicating agreement with the traffic study, and no traffic mitigation was requested. Therefore, no traffic mitigation payment to WSDOT is required.

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

There are no local jurisdictions that have an interlocal agreement with the County for traffic mitigation; therefore the provisions of this section of code do not apply to this project.

#### **I. Transportation Demand Management (TDM) [SCC 30.66B.630]**

All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes

construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 11.11 new PM peak hour trips x \$1,500.00 which equals \$833.25. An acceptable written offer for payment of this TDM obligation has been received. The Examiner has included this payment as a condition of preliminary plat approval.

8. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children who may reside in the subject development. Comments dated December 7, 2007, have been received from the Lake Stevens School District (Exhibit H2) stating that the elementary and high school students would take the bus to their respective schools from the intersection of the proposed entrance to the subject development on 8<sup>th</sup> Street SE. The middle school students would walk to Lake Stevens Middle School located at 1031 91<sup>st</sup> Avenue SE. Pedestrian facilities in accordance with EDDS will be provided within the plat and along the frontage improvements on 8<sup>th</sup> Street SE. There is paved shoulder walkway or sidewalks along the remainder of 8<sup>th</sup> Street SE, and south along 91<sup>st</sup> Avenue SE to the school. The Examiner finds that adequate pedestrian facilities will be provided to allow for safe walking conditions for school children.

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

The proposal is subject to Chapter 30.66C which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to SCC 30.66C.100, school impact mitigation fees will be determined, according to the Base Fee Schedule in effect for the Lake Stevens School District, at the time of building permit application and collected at the time of building permit issuance for the proposed units. Credit will be given for 1 existing lot. The Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage. The Applicant has submitted a targeted drainage plan (Exhibit B3) and supplementary drainage report (Exhibit C2) with the land use application in conformance with the regulatory provisions of Chapter 30.63A SCC, the drainage code. Rainwater runoff from the site will be collected and transported via catch basins and pipes to an underground detention vault to be constructed within Tract 999, at the southwest corner of the site. Water quality treatment will be provided via a storm filter vault. Stormwater will be released at a controlled rate into the existing drainage system on the east side of 83<sup>rd</sup> Avenue SE. The provisions of SCC 30.63A.226 apply in this drainage basin, requiring the minimum computation standard for sizing detention facilities to be the flow duration standard. Water in this system travels north, intersects with the drainage system on the south side of 8<sup>th</sup> Street SE and then flows west towards Ebey Slough. PDS has found the targeted drainage plan and supplementary drainage

report in conformance with Chapter 30.63A SCC. Prior to site development, a full drainage plan must be approved pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 14,900 cubic yards of cut and 14,900 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, 63B SCC, and Chapter 33 UBC.

11. Critical Areas Regulations (Chapter 30.62 SCC)

PDS has reviewed the Wetland Report prepared by B & A, Inc. (Exhibit C3) submitted with the application and has determined that the project complies with county critical areas regulations (CAR). Portions of two Category 3 wetlands are found on the site in the northeast corner and along the southern property line. It is possible or probable that these two wetland areas are connected off-site to the south and east but this could not be confirmed without access to other properties. The on-site wetland areas have been historically disturbed and contain pasture grasses and reed canary grass.

PDS staff determined that the wetlands were accurately flagged in the field and were accurately categorized and depicted on the submitted site plans. The applicant has avoided the impacts to critical areas and buffers as required per SCC 30.62.365. Two on-site wetlands will be preserved and placed within Native Growth Protection Area (NGPA) tracts. The Examiner has included conditions of approval related to critical areas requirements in this decision.

12. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, and as revised through the completeness date of the application.

The subject property is designated as Urban Low Density Residential (6du/ac Lake Stevens UGA only) on the Future Land Use map. The Urban Low Density Residential- (6) designation "allows mostly detached housing developments on larger lot sizes in the Lake Stevens UGA. It is applied to most of the non-constrained ULDR land in the Lake Stevens UGA. Implementing zones include R-7,200 and PRD 7,200." A rezone is not proposed with this application.

13. Zoning.

Single-family dwellings are a permitted use in the R-7,200 zone. The number of lots proposed (12) is allowed per code. The proposal meets the minimum net density requirements of SCC 30.23.020 and access requirements of SCC 30.24.052. Prior to the issuance of building permits for the proposed dwellings, PDS staff will verify that the building setbacks, building height, and lot coverage requirements outlined in SCC 30.23 will be met.

The proposal complies with the lot size averaging provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreation uses, if any, divided by the total number of lots equals or exceeds the minimum lot area of the zone in which the property is located. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. Lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet.

Lot size averaging calculations for this proposal are as follows:

Area in lots [83,155] +NGPA [17,030] + open space [12,300] = 112,485 ÷ number of proposed lots [12] = 9,375 (exceeds the minimum lot size of 7,200 for proposed underlying zone).

Note: These calculations do not include the area for the Future Development Tracts 995 and 996.

Besides the tracts set aside for future development, there are two lots in the plat that are large enough to be potentially subdivided at a later date under a different application. A condition is included in the approval of the subdivision to ensure that any further subdivision of the existing lots or tracts in the plat does not result in more lots being approved than would have been allowed under the original application.

14. Utilities

- A. Water. Applicant provided a letter of water availability from the Snohomish PUD, but it is now expired. Applicant must provide an updated letter as a pre-condition of approval. (Exhibit H5)
- B. Sewer. Sewer service is available from the Lake Stevens Sewer District. (Exhibit H3)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available, but that existing facilities may need upgrading. (Exhibit H4)
- D. Snohomish Health District (SHD) Approval: the SHD has no objections to the preliminary subdivision approval but indicates that any existing onsite septic systems and wells must be abandoned as required by WAC 246-272-18501 prior to final plat approval. The Examiner will incorporate these requirements as conditions of approval. (Exhibit H6)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on December 9, 2008. (Exhibit E2) The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on February 2, 2007. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. Specifically, the following are met:

- A. Roads. The Examiner finds that based on the information provided in the file, Staff Report and in the public hearing, the design standards for roads are met. See SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. See 30.41A.110.
- C. Fire Code. The Staff Report (Exhibit I at p.8) provides the following comments from the Fire Marshall's office:

Fire apparatus access as depicted has been found to meet the minimum requirements of SCC 30.53A.150. During the construction plan review stage detailed plans will be reviewed by the Fire Marshall's Office to determine the appropriate placement of fire hydrants and any required signage or pavement striping denoting fire lanes to ensure access by emergency vehicles is not impeded. PDS inspection staff will insure that prior to the start of combustible construction, fire hydrants are installed and operational and that approved addresses are placed on all new buildings as required. A request for comment on this project was sent to Fire District 8, but they did not respond. No special conditions of approval are necessary.

- D. As indicated earlier in this decision, applicant has met the requirements of the health district, school district, parks, the county drainage code, code requirements for building area, lot size averaging, and minimum net density.
- E. Applicant has mapped sloping land as required by SCC 30.41A.250. Elevation rise across entire site is no more than .2%; therefore, the density restrictions of SCC 30.41A.250 do not apply. (Exhibit B1)

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

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

The applicant must provide a new updated letter of water availability from the Snohomish PUD to demonstrate that adequate potable water supply is available. Otherwise, the Applicant has demonstrated that the project is in conformance with all the required criteria.

- 18. Any finding of fact in this order which should be deemed a conclusion is hereby adopted as such.

## CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to chapter 30.72 SCC and chapter 2.02 SCC.
2. The legal standard the Examiner must review a preliminary subdivision under the state subdivision code, Chapter 58.17 RCW, is:

whether the proposed subdivision 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...

RCW 58.17.110.

3. The applicant has met its burden in all respects of showing that the preliminary plat should be approved, except that it has not yet provided an updated letter demonstrating water availability. The Examiner will make demonstration of adequate potable water supply a precondition of preliminary plat approval.
4. Any conclusion in this order, 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 12-lot subdivision on 4.33 acres is hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

### PRECONDITION:

Applicant must supply a new updated letter of water availability from the Snohomish County PUD No. 1. See Finding of Fact 14A and Exhibit H5. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules.

### CONDITIONS:

- A. **The preliminary plat, received by Planning and Development Services (PDS) on December 10, 2008 (Exhibit B1), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.**
- B. **Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:**

- i. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

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

- i. "Further division of lots or tracts in this plat proposed under a future application(s) may not result in more lots than would have been allowed under the original application, unless the new application includes all the property/lots included in the originally approved plat and the new application complies with the regulations in effect at the time of the new application."
- ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens 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 9, containing the existing house, shall receive credit."
- iii. "The dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per single-family unit as mitigation for impacts to the Centennial parks service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by February 2, 2012 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
  - \$3,483.48 per lot for mitigation of impacts on county roads paid to the County,
  - \$75.75 per unit for transportation demand management paid to the county for TSA B,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 subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS."

- vi. "The impacts for concurrency of this entire subdivision (existing lots and future development tracts) will be evaluated at the time of application for development of the "Future Development Tracts" in accordance with DPW Rule 4220.045."
- vii. "No lot within this development shall have direct driveway access from 84<sup>th</sup> Avenue SE, including the lots to be created in the "Future Development" Tracts 995 and 996. All driveway access shall be via 8<sup>th</sup> Place SE, the interior cul-de-sac road."
- viii. The final plat shall show a 15-foot right-of-way dedication along the property frontage with 83<sup>rd</sup> Avenue SE to total 35 feet from the right-of-way centerline, or as determined by DPW.
- ix. The final plat shall show a 15-foot right-of-way dedication along the property frontage with 8<sup>th</sup> Street SE to total 35 feet from the right-of-way centerline, or as determined by DPW.
- x. The final plat shall show dedication of right-of-way that is tangent to the ultimate right-of-way on 8<sup>th</sup> Street SE and 83<sup>rd</sup> Avenue SE with a curve sufficient for a 35-foot radius curb return, or as determined by DPW.

**D. Prior to recording of the final plat:**

- i. The public road and the turnaround shall have been constructed to the satisfaction of the County.
- ii. Urban frontage improvements shall be constructed along the parcel's frontage on 8<sup>th</sup> Street SE, and on 83<sup>rd</sup> Avenue SE to the satisfaction of the County.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iv. The applicant will abandon any existing onsite septic systems by having the septic tank(s) removed by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272-18501). Existing wells must be decommissioned pursuant to WAC 173-160-381. Documentation demonstrating completion of this work must be submitted to Snohomish Health District prior to final plat approval.
- v. All required landscaping improvements shall be installed, including any required detention facility area landscaping. The applicant shall provide a maintenance bond for

- required landscape improvements, in an amount and form satisfactory to PDS.
- vi. All development activity shall conform to the requirements of Chapter 30.63A SCC.
  - vii. The development shall meet reasonable health and safety requirements that may be imposed by the Fire District and/or Fire Marshall's Office, including but not limited to: adequate fire flow standards, inclusion of fire hydrants, adequate road signage prior to construction and adequate building addresses.
  - viii. PDS shall ensure that the applicant has renewed as necessary all available utility certificates so the necessary infrastructure adequately serves the final plat.

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 18<sup>th</sup> day of February 2009.

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Barbara Dykes, Hearing Examiner

## 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 **MARCH 2, 2009**. 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 **MARCH 4, 2009** 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: Monica McLaughlin

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 FEBRUARY 18, 2010.**

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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