

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

DATE OF DECISION: September 16, 2010

PLAT/PROJECT NAME: ***STILLAGUAMISH VIEW ESTATES***

APPLICANT/
LANDOWNER: Team Merritt II, LLC

FILE NO.: 07-111205-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

DECISION (SUMMARY): **APPROVAL WITH CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 9813 Moran Road, Arlington, WA 98223

ACREAGE: 17.92 acres

NUMBER OF LOTS: 8

AVERAGE LOT SIZE: 44,917 square feet

MINIMUM LOT SIZE: 43,560 square feet

DENSITY: .45 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential (1 du/5 acres, Basic)

ZONING: R-5

UTILITIES:

Water: Individual Wells
Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No. 16

FIRE DISTRICT: #21

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The RCS application was originally submitted to the Department of Planning and Development Services (PDS) on September 24, 2007, which was determined to be complete as of the same date on October 22, 2007. (Exhibit K)

PDS gave proper public notice of the open record hearing as required by the County code. (Exhibits F1, F2 and F3)

A SEPA determination was made on April 8, 2010. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on June 23, 2010. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

NOTE: For a complete record, an electronic recording of the hearing in this case 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.

A. Background Information

2. Applicant's Request: The applicant is requesting approval of an 8-lot RCS on a 17.92 acre parcel. Access is proposed by a private road off Moran Road. Each lot will be served by individual septic systems. Potable water will be supplied by individual wells.

3. Site Description: The majority of the site is a combination of treed and vegetated areas. There is a single-family residence with outbuildings on the site that will remain. The western portion of the site has steep slopes.
4. Adjacent Zoning/Uses: Adjacent properties are single-family residences, undeveloped, or farmland. The zoning in the area is R-5.
5. Issues of Concern: No issues of concern were identified by technical reviewers or by agencies during the review process. Comments were received by a neighbor who was concerned about stormwater runoff from the development, as well as hillside instability and groundwater contamination. These comments were addressed by the project engineer, who explained that stormwater runoff from Lots 1-7 would flow to the northwest while stormwater from Lot 8 would flow to the southeast. Stormwater runoff from Lots 1-7 will be allowed to fully disperse across native vegetation and to infiltrate.

B. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within 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 prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and is included as a condition of approval.
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 SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

A. Road System Capacity [SCC 30.66B.310]

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 8 lots (revised from 15 lots), which is 9.57 ADT/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 66.99 new ADT and has a road system capacity impact fee of \$17,685.36 (\$2526.48/SFR) based on

\$264.00/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.

The ADT has been calculated as follows: (8 lots- 1 ex SFR) x 9.57 ADT/lot (home) = 66.99 ADT
The PM PHT has been calculated as follows: (8 lots- 1 ex SFR) x 1.01 PM PHT/lot (home) = 7.07 PM PHT

The AM PHT has been calculated as follows: (8 lots- 1 ex SFR) x 0.75 AM PHT/lot (home) = 5.25 AM PHT

The Hearing Examiner has included a condition to require the payment of the mitigation fees.

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The Highway Capacity Manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition, and LOS F the worst.

The County makes a concurrency determination for each development application that adds new trips to the road to ensure that the development will not impact a county arterial unit in arrears. The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130 (4): The subject development is located in TSA A, which as of the date of submittal has no arterial unit in arrears. The subject development generates 5.25 a.m. peak-hour trips and 7.07 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips, in which case the development would also have to be evaluated under SCC 30.66B.035.

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

Regardless of the existing LOS, any development which adds three or more a.m. peak-hour trips to a location in the road system determined to have an existing 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 A 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 IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

All developments are 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.

As per the Department of Public Works' (DPW) Rule 4222.020(1), full rural frontage improvements are required along the subject parcel's frontage on Tveit/Moran Road which typically consists of asphalt concrete pavement consisting of 11 feet in width from right-of-way centerline with a 7-foot paved shoulder. Both Moran Road and Tveit Road are not within the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

The Hearing Examiner has included a condition as part of the decision for construction of frontage improvements prior to recording the subdivision.

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 to the development is proposed via a new private road ending in a cul-de-sac. The proposed 40 foot wide radius cul-de-sac turnaround with a 50-foot radius easement meets the current 2004 EDDS for a private low volume access road. The Hearing Examiner has included a condition that specifies the construction design of the cul-de-sac.

The applicant submitted a sight distance analysis that showed the existing terrain limits sight distance to the west to approximately 164 feet at the proposed intersection. Sight distance to the east meets minimum standards. The applicant submitted an EDDS Deviation (Exhibit G.2) to address sight distance by constructing a raised curb island at the intersection. The raised curb island would restrict turns from the private road to right out only, thereby eliminating traffic conflicts from vehicles turning left from the private road onto Moran Road. Left turns into the development from Moran Road would not be restricted. The request was approved with the conditions that the intersection is illuminated, and the right turn only signing is provided consistent with The Manual for Uniform Traffic Control Devices (MUTCD). The justification by the Traffic Engineer is as follows from the staff report (Exhibit K at page 5):

The development property fronts Moran Road between the intersection of Tveit Road and 99th Avenue NE, and the proposed private road is centered between the two intersections with centerline spacing of about 220 feet on each side. The section of Moran Road along the

development property is about 400 feet long, and forms the north leg of a triangle with Tveit Road on the west, and 99th Avenue NE on the east side. If left turns were restricted at the private road onto Moran Road, motorists could turn right onto Moran Road, then turn left on Tveit Road to travel to the east. The traffic study for the development (Exhibit C1) indicates that “practically all of the project traffic is destined to/from the west along Tveit Road towards Arlington and its arterial connections including SR-9.”

The Hearing Examiner has provided conditions in the decision to implement these requirements.

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

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

Tveit and Moran Roads are designated as rural non-arterial roads 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. Thirty feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, the development is not required to dedicate any additional right of way.

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 Washington State Department of Transportation (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 SEPA and thus is subject to an Interlocal Agreement (ILA) with the WSDOT/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055, a written proposal was received from the applicant stating that no mitigation was required. Comments from WSDOT have been received via email dated October 1, 2007. (Exhibit H2). WSDOT concurred with the consultant traffic analysis concluding that the development will not impact any state projects. The County Engineer supports these findings. Therefore; no traffic mitigation to WSDOT will be required.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions.

An interlocal agreement (ILA) has been executed between the County and the City of Arlington for traffic mitigation for impacts on the City's road systems for those applications subject to SEPA. The proposed development is subject to SEPA and thus is subject to this agreement. The applicant is proposing measures to mitigate impacts on city streets in the amount of \$21,136.50 (\$3019.50 per new dwelling unit) and a written proposal of the traffic mitigation offer for that amount was submitted September 24, 2007 with the application. (Exhibit C.1) Comments dated September 24, 2007 were received in the file from the City indicating agreement with the amount. (Exhibit H1) Payment of that amount will be a condition of approval in this decision.

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

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of this section do not apply.

8. 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. Comments dated October 29, 2007 have been received from the Arlington School District indicating that the students will walk to the bus stop that will be located at the entrance of the development at the intersection of the new private road and Moran Road (Exhibit H8). Based on the ADT for the new private road, additional pedestrian facilities are not required. (EDDS Standard Detail 3-060). The applicant also will also provide a safe waiting area shelter on Moran Road meeting DPW specifications, including a 7-foot shoulder area. (See Exhibit K at 7). The Examiner will provide a condition in the decision to provide for the shelter. (Exhibit K at 7).

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the 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 two existing lots. The Hearing 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. Stormwater runoff from Lots 1-7 will flow to the northwest while stormwater runoff from Lot 8 will flow to the southeast. The private road is proposed to be installed along the drainage break between east and west runoff directions. Stormwater runoff from Lots 1-7 will be allowed to fully disperse across native vegetation and to infiltrate. Water quality will 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.

The development proposes in excess of 5,000 square feet of new impervious surface, which meets the definition of major development activity under the drainage code. Accordingly, a full drainage plan is required. The Examiner will require that a full drainage plan be completed before site work begins.

Grading. Grading quantities are anticipated to be approximately 675 cubic yards of cut and 500 cubic yards of fill, primarily for road, drainage facility, and home site construction. A grading permit is therefore required. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a TESCP required by Chapter 30.63A SCC.

11. Critical Areas Regulations. There are three Category 3 wetlands and a Type 4 stream on the site. The stream is in the southwest corner of the site and flows from Wetland B to the northeast and into Wetland C. Wetland A is located in the southeastern portion of the site. The applicant has minimized the impacts to critical areas and buffers, as required by Chapter SCC 30.62.365 in that the only impacts are to the required improvements to the public roads, Moran Road and Tveit Road, for Wetlands A and B and their buffers, and improvements as part of the new private road to buffers of Wetland A. Frontage improvements will impact approximately 345 square feet of Wetland A, approximately 463 square feet of Wetland B, and approximately 3998 square feet of buffers to Wetlands A and B. The private road will impact approximately 3804 square feet of Wetland A buffers.

Mitigation is being provided for the impacts to Wetlands A and B, and the buffers of Wetlands A and B. Approximately 21,381 square feet of additional buffer is being added, with 9277 square feet of buffer added to Wetland A and 12,104 square feet of buffer added to Wetland B. The replacement ratio for additional wetland buffer is 26:1. Wetland enhancement is proposed for 3300 square feet of Wetland A, for an enhancement-to-disturbance ratio of 4:1.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that an application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare. The Hearing Examiner will include a condition to protect the Native Growth Protection Area (NGPA) easement and the NGPA.

12. Consistency with the GMA Comprehensive Plan.

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 UGAs and adopted area-wide rezones within the UGAs of the county respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). The base density is one dwelling unit per five acres, which may be increased consistent with General Policy Plan Policy LU 6.B.9.

The eight lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2 of the Unified Development Code.

13. Utilities.

A. Water.

Water will be supplied by individual private wells. (Exhibit H4) As stated in Exhibit H4, when individual wells are proposed, the following must be recorded as a part of the final plat restrictions:

For Proposed Wells:

"Well protection zones are shown in the Snohomish Health District records for lots 1-7 of this plat. The well protection zones are not based on 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 without 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 minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration."

For Existing Wells:

"(A) 100 foot radius well protection zone covenant(s) is hereby established on lot 8 around the existing well as located on this plat. The well protection zone is based on the actual constructed well. All owners of the property shown within this protection zone agree to comply with current state and local well protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners."

The Examiner will include both conditions as a part of the restrictions on the face of the plat.

B. On-Site Septic.

Each lot will be served by individual septic systems. The Snohomish Health District (SHD) has determined that the site meets SHD site and soil conditions for placement of on-site sewage disposal and has recommended approval for the preliminary plat on January 13, 2009 (Exhibit H4). The applicant must make final submittals to the SHD according to the instructions in Exhibit H3 prior to final plat approval.

C. Electricity.

On October 3, 2007, the PUD provided correspondence indicating that it can provide electrical service for the project. (Exhibit H5)

14. Zoning and Miscellaneous Development Regulations (Chapter 30.2 and 30.3 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements.

Since this property is within 1300 feet of agricultural resource land, disclosure of possible impacts of living close to farmland is required under the County's "Right to Farm" Ordinance at SCC 30.32B.220, and must be recorded on the face of the plat:

"Your real property is on, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to, noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities.

Snohomish County has adopted an Agricultural Lands Regulations (Chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of chapter 30.32B SCC from Snohomish County.

A provision of Chapter 30.32B SCC provides that "agricultural activities conducted on designated farmland in compliance with acceptable agriculture practices are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health or safety.

This disclosure applies to the real property upon any development or building permit approval; or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer.

This disclosure may not be applicable thereafter if areas designated as farmland are changed from the farmland designation.

Nothing in chapter 30.32B SCC shall affect or impair any right to sue for damages.”

The Examiner will include a condition in the decision to implement this requirement.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on April 8, 2010 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on August 24, 2007. (Exhibit A.1) The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, the PDS staff report, and testimony offered at the public hearing, the design standards for roads are met. Finding of Fact 7 addresses how the applicant is meeting County road requirements. 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 PDS Staff Report (Exhibit K) provides the following information on compliance with the fire code:

The County Fire Marshall of Snohomish County conducted an internal review of the proposed RCS and recommended approval on November 19, 2007. The conclusions of the review were that:

- (a) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements of this office.
- (b) If there is a gate installed at the entrance of the private roadway the gate shall be activated by the 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' clear opening for fire apparatus access. A recommended condition to implement these requirements has been included.

- (c) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

The Hearing Examiner will include a condition to implement the Fire Marshall's requirements in (b) of the review. As conditioned, the application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access.

17. Rural Cluster Subdivision Code Design Standards (SCC 30.41C.200)

The RCS code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

A. SCC 30.41A.200 (1) -- Critical Areas Compliance.

(1) When environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to chapters 30.62 and/or other applicable county ordinances or policies, the areas shall be designated as critical area protection areas;

PDS and the Examiner have concluded that the application meets the requirements of the critical areas code, Chapter 30.62A. SCC, as determined in Finding of Fact 11.

B. SCC 30.41C.200 (2) -- Sight Obscuring Buffers.

(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210 (1);

The sight-obscuring buffer is intended to provide a transition from residences and adjoining properties and from perimeter roads. (Exhibit B.1) In this RCS, the sight-obscuring buffer is proposed to be a minimum of 25 feet in width, with an average of 35

feet in width. It is located within a separate Tract 999. This complies with former SCC Table 30.41C.210. Existing landscaping provides the intended function of the vegetated sight-obscuring buffer. The landscaping plan (Exhibit B.1) requires any disturbed area to be replanted with conifers (75%) at ten (10) feet on center and by shrubs at six (6) feet on center, planted in a triangular pattern. The vegetated sight-obscuring buffer has been appropriately located, the buffer is of the required size, and the landscaping note provides adequate requirements for augmenting the existing vegetation, should that become necessary. The project meets this requirement.

The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200 (3)—Internal Roads.

(3) All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;

The proposed access road is proposed to be a public road and to be built to EDDS standards. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the RCS code.

D. SCC 30.41C.200 (4)—Utilities.

(4) Electric, telephone, and other utility lines shall be designed, located, and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;

Applicant will be placing all utilities underground. The Examiner will include a condition requiring all utilities to be installed underground. (Exhibit H5; K)

E. SCC 30.41C.200 (5)—Unbuildable land.

(5) All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. Unbuildable lands have been placed in Tract 999 and designated as a

NGPA. Unbuildable lands constitute 64.3% of the Restricted Open Space, which is less than the 65% allowed.

F. SCC 30.41C.200 (6)—Buffers for Resource Land.

(6) When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;

Not applicable.

G. SCC 30.41C.200 (7)—Disclosure Statement Required.

(7) When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC 30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure statement shall apply to the real property that is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.

Not applicable.

H. SCC 30.41C.200 (8)—Mineral Resource Land Disclosure Statement.

The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:

...

*(b) Notice for mineral uses within required or optional open space:
Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.*

Not applicable.

I. SCC 30.41C.200 (9)—Physical Separation of Clusters.

(9) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;

Not applicable.

J. SCC 30.41C.200 (10)—Open Space Management Plan.

(10) A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all restricted open space and other open space areas which require continuing maintenance or management;

The applicant prepared an Open Space Management Plan which has been accepted by PDS. (See Exhibit A4) The plan addresses ownership and maintenance of Tract 999. Tract 999 is designated as restricted open space and contains NGPAs and Easements (NGPA/E), the sight-obscuring buffers, and upland areas that may be used for passive recreation. The Open Space Management Plan provides that the Home Owner's Association will have ownership, control, and maintenance responsibility for the tracts. (Exhibit A4.)

K. SCC 30.41C.200 (11)—Physical Separation of Clusters.

(11) Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));

This requirement is not applicable, since this is an 8-lot development.

L. SCC 30.41C.200 (12)—Lots abut open space or buffer.

(12) At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;

All lots abut the open space tract or the sight-obscuring buffer. (Exhibit B1)

M. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character.

(13) The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural

character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

The subject property is constrained by critical areas. As discussed in the Critical Areas section of this decision (above), impacts to critical areas has been kept to a minimum with the proposed lot layout. The open space tract contains steep slopes, but the area proposed for development is relatively flat. The project complies with this requirement.

N. SCC 30.41C.200 (14)—Sanitary Sewers.

(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;

The applicant proposes on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. (See Exhibit H4)

O. SCC 30.41C.200 (15)—Location of clusters.

(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters - 30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

The lots have been placed in the northern portion of the site and are located as central to the site as possible, given the critical areas limitations of the site. The Examiner determines that the applicant has met this design requirement to the extent possible on this application.

P. SCC 30.41C.200 (16)—Fire District.

(16) Rural cluster subdivisions or short subdivisions shall be located in a rural fire district;

The development is located within the service boundary for Fire District #21.

Q. SCC 30.41.C.200 (17)—Rural Concurrency Standards.

(17) Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.

The project meets rural concurrency standards. (See Finding of Fact 7, *supra*)

18. Rural Cluster Subdivision Lot Yield Calculations.

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

Basic lot yield: 2,595,410 square feet/200,000 square feet	= 7.8 lots
Total lot yield-rounded	= 8 lots
Total lots proposed	= <u>8 lots</u>

19. Rural Cluster Subdivision Standards—General.

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on January 13, 2010 (Exhibit B1), and in an Open Space Management Plan (Exhibit A.4) 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 as further discussed in Finding of Fact 17. 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 56% of the 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.

20. 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. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation,

playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas, the single-family homes will be in character with the existing area. 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 Chapter 30.63C SCC. 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. Adequate water will be provided and sewage disposal will be provided by individual wastewater septic systems.

21. 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 RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the Stillaguamish View Estates RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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.

The Examiner concludes the applicant has met its burden in showing the established criteria have been met.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the RCS application should be approved as outlined in Chapter 30.41C SCC.

4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS:

- A. The preliminary plat received by PDS on January 13, 2010 (Exhibit B.1) 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, and this Decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Critical Areas Conceptual Mitigation Plan for the Merritt Rural Cluster Subdivision in Snohomish County Washington (GECCO 3/9/09) as amended by the Supplement to the Mitigation Plan for the Merritt Rural Cluster Subdivision in Snohomish County, Washington (GECC) 4/19/09).
 - iv. Construction plans shall be submitted for review and approval by PDS.
 - v. A full drainage plan and all other construction plans shall be submitted for review and approval for the construction of the plat.
 - vi. A Stormwater Pollution Prevention Plan (SWPP) shall be submitted for review and approval.

- vii. A grading permit shall be obtained.
- viii. A right-of-way permit shall be obtained for any ground-disturbing activities within the county right-of-way.

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

i. "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. 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. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

\$2526.48 per lot for mitigation of impacts on county roads paid to the county, PDS Transportation Code 5208.

\$3,019.50 per lot for mitigation of impacts on City of Arlington streets; proof of payment to the City is required.

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."

iii. "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 two (2) existing parcels. Lots 1 and 2 shall receive credit."

iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) with the following language indicated 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 Snohomish County Code 30.91N.010 are allowed when approved by the County."

v. "The Open Space Management Plan shall be fully implemented and maintained."

- vi. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and 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 the uses, facilities and landscaping within the open space as approved and constructed."
- vii. "The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation, with at least 75% of the trees being coniferous. "
- vii. "The lots in this subdivision do not qualify as duplex lots per Snohomish County Code."
- ix. "All utilities shall be located underground."
- x. "Your real property is on, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to, noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities." Snohomish County has adopted an Agricultural Lands Regulations (Chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32B SCC from Snohomish County. A provision of Chapter 30.32B SCC provides that "agricultural activities conducted on designated farmland in compliance with acceptable agriculture practices are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health or safety. This disclosure applies to the real property upon any development or building permit approval; or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated as farmland are changed from the farmland designation. Nothing in Chapter 30.32B SCC shall affect or impair any right to sue for damages."
- xi. "Well protection zones are shown in the Snohomish Health District records for Lots 1-7 of this plat. The well protection zones are not based on 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 without 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 minimum, prevent installation of drainfields within the well protection zone.

The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”

- xii. “(A) 100 foot radius well protection zone covenant(s) is hereby established on Lot 8 around the existing well as located on this plat. The well protection zone is based on the actual constructed well. All owners of the property shown within this protection zone agree to comply with current state and local well protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners.”

- xiii. “Any gate installed at the entrance of the private road shall be activated either by the 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’ clear opening for fire apparatus access.”

D. Prior to recording of the final plat:

- i. The roads within the plat shall have been constructed in compliance with the EDDS.

- ii. Rural standard frontage improvements shall have been constructed along the property’s frontage with Tveit Road and Moran Road in compliance with the EDDS and to the satisfaction of PDS and DPW.

- iii. Native Growth Protection Area and Easement (NGPA/E) 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 plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA/E 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/E signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA/E. 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/E signs shall be submitted to PDS for review and approval prior to installation.

- iv. The final mitigation plan shall have been fully implemented.

- v. Utilities shall have been located underground.

vi. The applicant shall have constructed a safe area for children to wait for the school bus in compliance with the EDDS and DPW specifications.

E. In conformity with applicable standards and timing requirements:

i. The preliminary landscape plan (Exhibit B.1) shall be implemented. All required sight-obscuring buffer landscaping shall be installed in accordance with the approved landscape plan. The landscaping plan (Exhibit B.1) requires any disturbed area to be replanted with conifers (75%) at ten (10) feet on center and by shrubs at six (6) feet on center, planted in a triangular pattern.

ii. The Open Space Management Plan shall be fully implemented. The Open Space Management Plan requires maintenance of the sight-obscuring buffer.

iii. PDS shall review the sight-obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the sight-obscuring buffer.

F. 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:

i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts; and

ii. Establish a Homeowner's Association, guaranteeing management and maintenance of restricted open space in as required by the Open Space Management Plan (Exhibit A.4).

G. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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

Decision issued this 16th day of September, 2010.



Barbara Dykes, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 27, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 30, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.