

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 15, 2010

PLAT/PROJECT NAME: ***Rustling Firs RCS***

APPLICANT/
LANDOWNER: Rocky Ogden
12520 240th Street NE
Arlington, WA 98223

FILE NO.: 09-101584 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 12520 240th Street NE (Arnot Road), Arlington, WA 98223

ACREAGE: 11.8 acres

NUMBER OF LOTS: 5

AVERAGE LOT SIZE: 46,753 square feet

MINIMUM LOT SIZE: 43,568 square feet

GROSS DENSITY: .42 du/ac

COMPREHENSIVE PLAN DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)

ZONING: Rural Conservation (RC)

UTILITIES:

Water: Individual wells (Less than 5,000 gpd)

Sewer: On-site individual septic

Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Arlington School District No. 16

FIRE DISTRICT: Snohomish County Fire District No. 21

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

A complete application for a 5-lot Rural Cluster Subdivision (RCS) development was submitted to Planning and Development Services (PDS) on March 25, 2009. The 120-day clock started on April 22, 2009. PDS and the Applicant exchanged various plan sets and review comments from the spring of 2009 through September, 2010. The final submittal was given to PDS on September 24, 2010. As of the hearing date, 196 days of the 120-day period had elapsed.

An open record hearing was held on December 8, 2010, and the witnesses were sworn, testimony was presented, and Exhibits A through K-1 were entered into the official record. Witnesses providing testimony included: Ed Caine, PDS, and the applicant's consultant, Merle Ash, Land Technologies, Inc.

On December 10, 2010, pursuant to SCC 30.72.040, the Hearing Examiner asked PDS to submit additional information which appeared to be inadvertently omitted from the record, relating to its determination that no traffic study was required for the subject development. (Exhibit K2) On December 13, 2010, PDS submitted a memo providing the additional information requested, which has been added to the record as Exhibit C3.

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 upon a preponderance of the evidence in the record, the following Findings of Fact are entered:

1. The information set forth in the introductory section of this decision is incorporated herein as if set forth in full. The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits F1, F2 and F3)

A. Background Information

2. **Applicant's Proposal:** The applicant is requesting preliminary plat approval of a 5-lot Rural Cluster Subdivision on an 11.8 acre parcel. Access for Lot 1, the existing residence, will be by the existing driveway on to 240th Street NE (Arnot Road). Access for Lots 2-5 will be by a new private road off of 240th Street NE. Each lot will be served by individual wells and individual septic systems.
3. **Site Description:** The site consists of two parcels, each of which is developed with a single-family residence. The southeast corner of the site is treed, but the remainder of the site is lawn. The land is relatively flat and there are no critical areas on site.
4. **Adjacent Zoning/Uses:** Adjacent zoning is R-5. Neighboring uses are either undeveloped land or single-family residential.
5. **Issues of Concern:**

- A. Agency Comments. Agency reviews and PDS reviews have identified no issues of concern.

- B. Citizen Comments. One public comment was received (Exhibit I1) from a neighboring property owner. The neighbor expressed concern about the proposed location of Lot 2, because the western property line of Lot 2 is located 50-feet from the plat boundary, and there is concern that the residence, well, and septic system on Lot 2 would negatively impact the neighboring property. However, the lot will be separated by a site-obscuring buffer and the proposed building site location on Lot 2 is approximately 70 feet (not 50 feet) from the neighbor's property. The neighbor's residence is approximately 90 feet west of the plat boundary, and the neighbor's septic drainfield is approximately 50 feet west of the plat boundary. PDS has determined that the location of Lot 2 is in compliance with the regulatory set-back requirements and that the location of Lot 2 has been approved by Snohomish Health District. Accordingly, the Hearing Examiner finds that the location of Lot 2 meets the requirements of the County Code and, in addition, the required site obscuring buffer and location of the improvements on Lot 2 have been planned to sufficiently mitigate any impacts to the neighboring properties.

B. Compliance with Codes and Policies.

6. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)

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 recommended condition of approval.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC)

PDS and the Department of Public Works (DPW) have reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate general standards for roads and access set forth in Chapter 30.24 SCC. The subject property is located within Transportation Service Area (TSA) "A." Mark Brown, an Engineer in the PDS Permitting Division, met with the applicant during a pre-submittal conference and determined that a traffic impact analysis was not required for the subject development. (Exhibit C3) PDS performed the transportation analysis needed to show compliance with Chapter 30.66B SCC.

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 3 new lots, which is 9.57 ADT/lot. This rate comes from the 8th Edition of the ITE Trip Generation Report. The development will generate 28.71 new ADT and, therefore, will have a road system capacity impact fee of \$7,579.44 (or \$1,894.86 per lot) based on \$264.00 per ADT, the current fee rate for residential developments outside the urban growth area for TSA "A." These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of a road system impact fee is required prior to building permit issuance. The Hearing Examiner has included a condition requiring payment of traffic impact fees to the County.

B. Concurrency (SCC 30.66B.120 and SCC 30.66B.130(4))

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 subject development is located in TSA "A", which as of the date of submittal of the application had no arterial units in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of July 1, 2009. The expiration date of the concurrency determination is six years from this date or July 1, 2015. Consistent with DPW Rule 4225.070, the date of March 25, 2009 was used for the basis of the concurrency analysis. The subject development generates 3.00 a.m. peak-hour trips and 4.01 p.m. peak-hour trips, which is below the threshold for further analysis under SCC 30.66B.035. Accordingly, no such additional analysis was required.

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

Regardless of the existing level of service, any development which adds three or more PM 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 development 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. (Exhibit C3) Therefore, 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 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. Consistent with DPW Rule 4222.020(1), DPW determined that full rural frontage improvements along the subject parcel's frontage on 240th St NE must be

provided, consisting of asphalt concrete pavement, 11 feet in width measured from the roadway/right-of-way centerline, plus a 7-foot paved shoulder.

This road (240th St NE), is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore, no credit shall be granted for frontage improvements toward the ultimate build-out of the road. The construction of frontage improvements is required prior to recording. The Hearing Examiner has included a recommended condition to require the frontage improvements.

E. Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC)

Developments are required to include adequate provisions for roads, vehicular and pedestrian access, transportation network circulation, transit facilities, and traffic demand management in urban areas, in accordance with Chapter 30.24 SCC and the regulations cited in that Chapter.

In addition, according to SCC 30.66B.420, all developments are required to: (a) Provide for access and transportation circulation in accordance with the comprehensive plan and provisions of Chapter 30.66B SCC, applicable to the particular development, (b) Design and construct such access in accordance with the EDDS, and (c) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with Chapter 30.66B.430 SCC. Access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements.

Finally, all developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of public works determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with Chapter 30.66B.430 SCC.

Here, the proposed development will take access from 240th St NE at the northwest corner of the subject property. 240th St SW has been classified by the County Engineer as a non-arterial collector road. 240th St NE is a public rural road serving less than 3000 ADT. The posted speed for the road is 35 mph. Sight distance was evaluated at the proposed access point and was found to meet the minimum requirements set forth in the EDDS. The proposed internal road will be a private road that will be classified as a non-arterial private local access road which serves less than 90 ADT. The design speed for the road is 25 mph. PDS and DPW have determined that the road shown on the plans meets the minimum requirements of EDDS for road grades, vertical curves, and horizontal curves. The Hearing Examiner finds that the proposed access and internal private road meets the County's regulations and standards.

F. Extent of Improvements (SCC 30.66B.430)

In determining the extent of improvements required, the Director of Public Works considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

G. Dedication of Right-of-Way (SCC 30.66B.510 and 30.66B.520)

The road serving this development, 240th St NE, is designated as a non-arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 10 feet of additional right-of-way. This is adequately shown on the preliminary plat. As noted above, 240th St NE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report) and, therefore, credit toward the applicant's impact fee for the dedicated right-of-way is not applicable.

Based on the foregoing and the information in the record at Exhibit B1, the Hearing Examiner finds that the right-of-way is adequately shown on the preliminary plat. A condition has been included to require the dedication of additional right-of-way as described above.

H. Impacts to State Highways (SCC 30.66B.710)

Since the subject development creates less than 3 new directional peak hour trips and does not front a State highway, mitigation for the State is not required. The Washington State Department of Transportation (WSDOT) has concurred in this determination. (Exhibit H3)

I. Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement between the County and the other jurisdictions pursuant to the County's SEPA substantive authority. Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the City of Arlington.

Through its traffic and SEPA reviews, DPW identified significant adverse environmental impacts from the development on the City of Arlington's street system which can be mitigated through the payment of an impact fee, as authorized through the ILA and SCC 30.66B.055(4).

The applicant has voluntarily offered to mitigate its impacts as shown through a written proposal dated March 23, 2009, through payment of an impact fee in the amount of \$4,132.52 (\$1,033.13/lot). The City of Arlington has agreed to accept the mitigation as shown in its letter dated April 23, 2009. (Exhibit H1). The Hearing Examiner has included a condition requiring the payment of impact fees to the City of Arlington.

J. Transportation Demand Management (TDM) (SCC 30.66B.630)

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

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 subdivision, as well as the adequacy of pedestrian or bicycle facilities. None of the roads in the area between the development and SR 531 are on the County's adopted bicycle plan. The need for safe pedestrian facilities has been analyzed.

Comments from the Arlington School District dated May 6, 2010, have been received. (Exhibit H6) Those comments indicate that all students will be picked up by bus at 12520 240th St NE, the subject development. Since frontage improvements will be a recommended condition of approval no off-site pedestrian facilities will be required.

The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. As such, a bicycle path is not required along the developments frontage on 240th St NE. (Exhibit J)

The Examiner finds that existing and proposed facilities are consistent with the County Code, EDDS, that no school children will be required to walk to school from the site, and that the facilities will provide for the general public health, safety and welfare.

9. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. 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. (Exhibit H6) Credit is to be given for the two (2) existing lots. Payment of school impact fees has been included as a condition of approval of the development.

10. Drainage and grading (Chapters 30.63A and 30.63B SCC)

Drainage. The County's drainage regulations have recently changed. However, the subject development is vested to the regulations in effect on March 25, 2009. Given the site's soils which are highly susceptible to infiltration, the applicant proposes to use low impact development (LID) techniques to manage and mitigate impacts from stormwater on the site. Accordingly, stormwater runoff from the private road and frontage improvements will be routed to a compost amended filter strip of sufficient width to provide both water quality treatment and infiltration capacity. It is proposed that driveways will be handled in a similar manner. Flow control for the non-pollution generating rooftops will be routed to drywells. According to the full drainage report (Exhibit C1), the applicant will maintain a majority of the site as lawn and no grading activity will be required to create lawns outside of the house footprints. The site obscuring buffers will be planted with trees and shrubs.

In order to implement LID techniques, the Applicant submitted a drainage waiver request to SCC 30.63A, in order to be allowed to use the newer 2005 Department of Ecology (DOE) Stormwater Management Manual for Western Washington ("Stormwater Manual"). (Exhibit G2) The 2005 DOE Stormwater Manual offers alternative technologies and approaches to stormwater control, including LID, which are not found in the 1992 DOE Stormwater Manual to which they are vested. The 2005 DOE Stormwater Manual is considered to be the best available science. Stormwater flowing from pollution-generating impervious surfaces will be provided water quality treatment and be infiltrated via filter strips and drywells. The filter strips are compost amended. In addition, the soil logs show 24 inches of sandy loam soils overlying loamy medium sands which will provide excellent infiltration and additional treatment. The proposal meets the requirements of the 2005 DOE Stormwater Manual.

Planning and Development Services (Engineering) has reviewed the concept offered, approved the waiver, and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. (Exhibit G2)

Grading. Total proposed grading is approximately 1,200 cubic yards of cut and 1,200 cubic yards of fill. Therefore, a grading permit will be required. The grading volumes require a grading permit and a stormwater pollution prevention plan (SWPPP) according to Chapter 30.63A SCC. Water quality shall be controlled during construction by use of approved stormwater best management practices (BMPs) in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. The Examiner has

included conditions of approval requiring completion of a full drainage plan, the submission and approval of the TESCP, a SWPPP, and a grading permit.

11. Critical Areas Regulations (Chapter 30.62 SCC)

There are no critical areas on the subject property. As such, the regulations set forth in Chapter 30.62 SCC do not apply. (Exhibit C2)

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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county, respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9. The 5 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

A. Sewer. Sewer will be supplied individual septic systems. Snohomish Health District recommended approval of the preliminary plat on April 21, 2009. (Exhibit H2)

B. Electricity. On October 8, 2008, the Snohomish County PUD No. 1 notified the County that they can provide electrical service to the development on April 13, 2009. (Exhibit H4)

C. Water. Potable water will be supplied individual wells. Snohomish Health District recommended approval of the preliminary plat on April 21, 2009. (Exhibit H2) The plat consists of 5 lots. At 350 gallons per day (gpd) of typical usage, this computes to be 1,750 gallons per day for the plat. The computed value is less than the 5,000 gallon per day exemption found in RCW 90.44.050, such that no separate water right is required.

According to WAC 173-160-345(1), wells must demonstrate a minimum of 400 gpd in order to be approved. PDS has established a value of 350 gpd for average consumption (87.5% of the minimum demonstrated capacity for approval of the wells). PDS included

two recommended conditions for the establishment of well protection zones, which the Examiner has included as conditions of approval.

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. (Exhibits D2, J)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on October 15, 2010. (Exhibit E2) The DNS was not appealed. Notice was properly given of the SEPA determination. (Exhibits F1, F2, F3) The DNS was not appealed. The requirements of SEPA have been met.

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 August 3, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. 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 in the public hearing, the design standards for roads are met. Finding of Fact 7, above, addresses how the Applicant meets County road requirements. See, SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that all 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. (SCC 30.41A.110)
- C. Fire Code Compliance. (Chapter 30.53A SCC) PDS sent a request for review to Fire District No. 21, but the District did not respond to the request. Additionally, the Office of the Fire Marshall within PDS reviewed the project for compliance with the Fire Code and emergency vehicle access on May 27, 2009. The Fire Marshal determined that each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements. Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512 and we have no further requirements. Based upon the Fire Code (Chapter 30.53A SCC), the preliminary plat plan (Exhibit B1), and the civil plans sheets, the Fire Marshall will recommend during construction plan approval that the following condition be met:

Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. The applicant shall provide signage or pavement striping on both sides of the access road if it is less than 28' in width one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used, the curbs shall be painted yellow with black lettering.

With inclusion of the recommended conditions, the Examiner finds that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150.

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

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The standards applicable to the subject development are reviewed below:

A. Rural Cluster Subdivision Lot Yield Calculation

The application complies with the provisions Chapter 30.41C.010 SCC, by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 50 percent (5.84 acres) of the property in restricted open space, including the retention of a stand of mature Evergreen trees. The application complies with the provisions of Chapters 30.41C.230 and 30.41C.240 SCC based on the following analysis:

Basic lot yield: 512,492 square feet/100,000 square feet = 5.12 lots
Total lot yield-rounded = 5 lots
Total lots proposed = 5 lots

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

This Code provision states that 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 SCC and/or other applicable County ordinances or policies, the areas shall be designated as critical area protection areas. There are no critical areas present on the subject property. Accordingly, the Hearing Examiner finds that this provision does not apply.

C. Former SCC 30.41C.200 (2) – Vegetated Sight Obscuring Buffers

This Section states:

... (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);

A landscape plan is a required component of the submittal documents for a rural cluster subdivision (Chapter 30.41C.040(8) SCC). The applicant has provided Exhibit B1 (Sheet P1), which is the approved landscape plan for the project. The sight obscuring buffer is proposed to be a minimum of 50 feet in width and located within Tract 999. Existing landscaping does not provide the intended function of the vegetated sight obscuring buffer in all areas, so supplemental plantings will be required. The Landscape Plan (Exhibit B1) has planting specifications for the sight obscuring buffers. The transition from residences and adjoining properties and from specified roads has been provided. (Exhibit B1) Should any site development work impact the areas that are designated as sight obscuring buffer, supplemental plantings will be required. PDS has recommended a condition of approval to implement the supplemental planting requirement. The Examiner finds that the provisions of SCC 30.41C.200(2) have been met. A condition of approval has been added to require implementation of the supplemental plantings within the site obscuring landscape buffer where appropriate.

D. Former SCC 30.41C.200 (3)—Access Roads

This Section states:

(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 access road is proposed to be a private road within an easement (Tract 998) and will be built to EDDS standards. PDS has determined that the project meets this requirement. The Examiner concurs and finds that these requirements are set forth in detail above.

E. Former SCC 30.41C.200 (4)—Utilities

This Section states:

(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;

All utilities are to be located underground, and PDS has determined that the project complies with this requirement. PDS has recommended a condition of approval to require utilities to be located underground. The Hearing Examiner concurs. Such condition will be included by the Examiner.

F. Former SCC 30.41C.200 (5)—Unbuildable land

This Section states:

(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 “[s]teep 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. Here, there are no areas on site that meet the definition of Chapter 91U.060 SCC. As such, the Examiner finds that the project complies with the requirement of SCC 30.41C.200(5).

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

This Section states:

(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;

The Examiner finds that this provision is not applicable to the present development proposal.

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

This Section states:

(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 SCC30.41C.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.

The Examiner finds that neither agricultural nor forestry uses are proposed for any of the tracts within the RCS. Therefore, no disclosure statement is required.

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

This Section states:

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.

Here, no mineral resource uses are proposed for any of the open space tracts within the RCS. Therefore, no disclosure statement is required. The Examiner finds that the project complies with this requirement.

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

This Section states:

(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;

There are no adjacent rural cluster developments. PDS determined that there are no open space tracts on adjoining properties. As such, the Examiner finds that the development proposal meets the requirements of SCC 30.41C.200(9).

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

This Section states:

(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;

An Open Space Management Plan has been provided in the record (Exhibit A4), which has been reviewed by PDS and they found that it meets the requirements of the Code. The Examiner concurs and has included a condition to require compliance with the Open Space Management Plan.

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

This Section states:

(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));

For the current development, only 5 lots are proposed, all within a single cluster. The Examiner finds that the project complies with this requirement.

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

This Section states:

(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;

Here, all of the lots abut Tract 999, exceeding the County's requirement. The Examiner finds that the project complies with this requirement.

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

This Section states:

(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 relatively flat and has no prominent topographic features. The development of the rural cluster subdivision will not change the natural rural character of the site or the surrounding area. Accordingly, the Examiner finds that the natural features of the site and the site design maintain its natural features and maintain rural character to the greatest extent feasible.

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

This Section states:

(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;

All lots in the plat will be served by individual septic systems, which have been approved by the Snohomish Health District. (Exhibits H2)

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

This Section states:

(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;

As noted above, the subject property is mainly flat and open pasture/grassland in its current state. There are no prominent features or ridgelines on site. The lots are proposed to be centrally located within the property. Accordingly, the Examiner finds that the proposal complies with this requirement.

Q. SCC 30.41C.200 (16)—Fire District

This Section states:

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

The development is located within the service boundaries for Fire Districts No. 21. The Examiner finds that the project complies with this requirement.

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

This Section states:

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

PDS determined the project is concurrent as of July 1, 2009. The concurrency determination is valid for 6 years from that date. The Examiner finds that the project complies with this requirement.

18. 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 (Exhibit B1), and an Open Space Management Plan (Exhibit A4). 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 18. 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 over 50 percent 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.

19. 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 on 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, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

20. 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 proposed 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 rural cluster preliminary subdivision 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 preliminary plat approval of a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS

- A. The preliminary plat received by PDS on September 7, 2010 (Exhibit B1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:**
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. A Snohomish County grading permit shall be obtained.
 - iii. Construction plans shall be submitted for review and approval.

- iv. A Temporary Erosion and Sedimentation Control Plan (TESCP) shall be submitted for review and approval.

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 (River Meadows # 302) 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,894.86 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

\$1,033.13 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment of the above amount shall be provided to the County.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein."

- 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 2 existing parcels. Lots 1 and 2 shall receive credit."

- iv. "The Open Space Management Plan (Exhibit A4) shall be fully implemented."

- v. "The Landscape Plan shall be fully implemented and maintained, including the sight obscuring buffers."

- vi. Right-of-way shall be dedicated so that a total of 30 feet of right-of-way exists on the development's side of the right-of-way centerline of 240th St NE.

- vii. "Well protection zones are shown in the Snohomish Health District records for Lots 2-5 of this plat. The well protection zones are not based upon actual constructed wells. The

well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries 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 a 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.”

- viii. “A 100 foot radius well protection zone covenant is hereby established on Lot 1 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site 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 owner(s).”
- ix. All utilities shall be placed underground.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel’s frontage on 240th St NE to the satisfaction of the County.

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 15th day of December, 2010.

Millie M. Judge, 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, 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 **DECEMBER 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, Robert J. Drewel Building (Admin-East), 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 29, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); for each appeal filed; provided that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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.