

**CORRECTED (See page 8)  
DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: April 14, 2011  
DATE OF CORRECTION: April 27, 2011  
PLAT/PROJECT NAME: **JOHNSON'S RANCH**  
APPLICANT/  
LANDOWNER: Larry and Shelly Johnson  
FILE NO.: 06-130615 SD  
TYPE OF REQUEST: Rural Cluster Subdivision (RCS) Approval  
**DECISION (SUMMARY): APPROVED WITH CONDITIONS**

**BASIC INFORMATION**

LOCATION: 6605 256<sup>th</sup> Street NE, Arlington WA 98223  
ACREAGE: 20  
NUMBER OF LOTS: 9  
AVERAGE LOT SIZE: 49,961 square feet  
MINIMUM LOT SIZE: 47,895 square feet  
GROSS DENSITY: 0.44 du/ac  
GMACP DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)  
ZONING: R-5  
UTILITIES:  
    Water: Individual wells (Exempt)  
    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. 18

PDS STAFF RECOMMENDATION: Approve with conditions

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

### **FINDINGS OF FACT**

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on February 22, 2007, and was vested as of that date for purposes of regulatory review. The 120-day clock started on March 21, 2007. PDS and the applicant exchanged various plan sets and review comments through February 16, 2011. As of the hearing date, 201 days of the 120-day period had elapsed. Part of the delay in processing this application was caused by the applicant's desire to take access to the property via a private road which crosses a portion of the Centennial Trail, a public right-of-way owned and maintained by the County's Parks and Recreation Department, for which a Special Use Permit must be obtained.
2. **Public Hearing.** A public hearing was held on April 12, 2011. Appearing for the applicant was Gene Miller and Larry Johnson. Appearing for PDS was Ed Caine. Notice was provided as required by SCC 30.70.050. Ms. Judith Howard, a citizen, appeared and testified. Other witnesses testifying at the hearing included Ed Caine and Gene Miller. At the start of the hearing, Ed Caine added an additional document received from Ms. Howard to the record as part of Exhibit I.2, and also added Exhibit K.1, a letter from the Department of Ecology, to the record.
3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the tape log. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** 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 F.1, F.2 and F.3)

#### **A. Background Information**

5. **Applicant's Proposal:** The applicant is requesting a 9-lot rural cluster subdivision (RCS) on a 20-acre parcel. Access to the lots will be by private driveways off of a private road. A majority

of the site is forested and undeveloped. There is one existing residence and its large lawn area on the subject property that will remain. There is one Category 3 wetland and a Type 4 stream on site. Neighboring zoning is R-5. Adjacent properties are either developed as single-family residences or are undeveloped. To the north of the site, but separated by a large tract of land, is the County's closed landfill. The property is situated to the southeast of Lake Bryant.

6. Issues of Concern:

- A. Agency Comments. No issues of concern were raised during agency reviews.
- B. Citizen Comments. Public comments were received from three citizens (Julie Posch, James Grieve, and Judith Howard). (See, Exhibits I.1 to I.2). The concerns relate to the impact of trails in the development on neighboring properties and the neighbor's livestock, groundwater impacts from the off-site closed landfill, which is an EPA cleanup site, increased traffic in the area, stormwater runoff on adjacent parcels, the possibility of water ponding on Ms. Howard's property resulting from the required road improvements, and protection of the wetland pond and wildlife that use it. Each of these concerns was carefully addressed by both the applicant and PDS (Exhibit J) as shown in the record and through their testimony at the public hearing.

**B. Compliance with Codes and Policies.**

- 7. 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. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
- 8. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.
  - (a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The applicant shall be required to pay a road system capacity impact fee to the County in the amount of \$20,211.84 (\$2,526.48 per new lot) pursuant to SCC 30.66B.310. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of July 18, 2008. The expiration date of the concurrency determination is six years from that date. IRCs have been considered according to the requirements of SCC 30.66B.210. The project was not found to have an impact on any IRCs. As a result, the applicant shall not be required to make improvements to cure IRCs.

- (b) Frontage Improvements (SCC 30.66B.410) The subject property has no frontage on a public road. Access will be through a private road only. As such, frontage improvements are not required.
- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Department of Public Works (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. A request to deviate from EDDS was approved by the County Engineer. (Exhibits G.1 and G.2) DPW's analysis is shown on pages 5 and 6 of the PDS Staff Recommendation (Exhibit J), which is incorporated herein by this reference as if set forth in full. The County Engineer and DPW staff have determined that with the imposition of the conditions set forth in Exhibit K, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.
- (d) In determining the extent of required improvements, the Director of DPW 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.
- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) The applicant will not be required to dedicate additional right-of-way because it has no frontage along a public road.
- (f) Impacts to State Highways (SCC 30.66B.710) The applicant is responsible for paying impact fees to the State of Washington in the amount of \$2,693.69 for its proportionate share of the development's impacts on state highways pursuant to the interlocal agreement (ILA) executed between the County and the Washington State Department of Transportation (WSDOT). WSDOT was provided notice of application for this project and has agreed to the proposed mitigation offered by the applicant. (Exhibit H.2) The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.
- (g) 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 ILA 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).

For impacts to the City of Arlington's streets, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal to mitigate the development's impacts is required. The applicant submitted a traffic mitigation offer of \$21,686.72 (\$2,710.85 per new lot), which was accepted by the City. (Exhibit H.1) The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

(h) 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.

9. 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. The need for safe pedestrian facilities has been analyzed by the DPW and the Arlington School District. (Exhibits H.7 and J) Comments from the Arlington School District indicate that children from the development will be picked up at a bus stop at the intersection of SR 9 and 256th Street NE, a private road serving the development. As such, a safe walkway must be provided along the entire length of the proposed private access road (256<sup>th</sup> Street NE) between the development property and SR 9. The School District is not requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. 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.

10. 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 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 H.7) Credit is to be given for one existing lot on the subject property. Payment of school impact fees has been included as a condition of approval of the development.

11. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC) This project is vested to the codes in effect at the time of complete permit application, which was February 22, 2007.

Clearing and Grading. The project is not subject to the current Land Disturbing Activities codes of the County. Grading in excess of 100 cubic yards will occur, thereby necessitating a grading permit and a stormwater pollution prevention plan (SWPP Plan). Conditions have been included to require the approvals for the drainage plan, grading permit, and SWPP Plan.

Stormwater. The drainage proposal is to collect runoff from the new roadway and then detain the runoff in an underground detention structure. Stormwater will discharge to an on-site wetland. Prior to entering the wetland these flows will receive water quality treatment in a bio-filtration swale. Stormwater from the new impervious surfaces on the lots will be infiltrated into individual infiltration systems located on each the lot. More than 5,000 square feet of new impervious surface will be created, thereby necessitating a full drainage plan (construction plans).

The evidence in the record (Exhibit B.1, B.5, and C.2) provided the necessary information required for preliminary drainage and grading review and recommendation. PDS concluded that the documents show that the proposed development can meet the requirements of the drainage and grading code. With the inclusion of the proposed conditions of approval, the Hearing Examiner finds that the applicant has sufficiently demonstrated that code requirements and standards for storm water drainage, water quality treatment, and construction storm water pollution prevention can be met with development of this proposed site.

12. Critical Areas Regulations (former Chapter 30.62 SCC)

Wetlands. There are two wetlands located either wholly or partially on the site, including one Category 3 wetland that is eight acres in size, requiring protection with a 50-foot standard buffer, and one Category 4 wetland that is .4 acres in size (of which 3,081 square feet is on the subject property) requiring protection with a 25-foot standard buffer. Given the County's requirement to upgrade the private access road, some unavoidable impacts to the Category 3 wetland will occur through filling and grading, amounting to 0.6 percent of the 8-acre wetland.

FWHCAs - Streams. There is an unnamed, seasonal, Type 4 stream that flows through the Category 3 wetland and outlets under the private access road through a 12" culvert. Based on the physical characteristics and inaccessibility of stream to anadromous fish, it is not presumed habitat for any salmonid species listed under the Endangered Species Act. Therefore, the stream is not subject to a 150-foot buffer per the *Salmonid Habitat Management Plan* (SCC 30.62.110) adopted by PDS in an administrative rule. The stream will be protected by a 50-foot buffer and NGPA.

The evidence in the record demonstrates that the applicant was unable to mitigate its proposed impacts within the Category 3 wetland and stream due to property boundary issues. However, PDS has reviewed and approved an innovative mitigation design that would instead enhance the nearby Category 4 wetland by 3,166 feet, plus wetland creation of 2,099 square feet, in addition to other critical area protection features, to mitigate for the portion of the Category 3 wetland and Type 4 stream impacts associated with road improvements. (See, Exhibit C.3) Such an approach is allowed under the applicable Critical Areas Regulations (CAR). PDS has reviewed the Critical Areas Study (Exhibits C.3) and determined that the application is in conformance with Chapter 30.62 SCC (CAR) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

13. 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). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Utilities.

A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on September 21, 2007. (Exhibit H.5)

B. Electricity. The Snohomish County PUD No. 1 notified the County on March 7, 2007, that they can provide electrical service to the development. (Exhibit H.4)

C. Water. Potable water will be supplied by exempt individual wells which may not exceed 5,000 gpd. (Exhibit K.1) Well protection zones of 100 feet in diameter shall be required for any lot served by a well. A 100-foot well protection zone shall be established on Lot 6 for the existing well, as shown on the plat map.

15. 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 D.1, D.2, D.3, D.4 and J)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 16, 2011. (Exhibit E.2) Notice was properly given of the SEPA determination. (Exhibits F.1, F.2, and F.3) The DNS was not appealed. The requirements of SEPA have been met.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. 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) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit J) Accordingly, the Hearing Examiner finds that 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.

18. 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 Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements. Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit J, the subdivision complies with the provisions of:

- SCC 30.41C.010 (clustering lots),
- SCC 30.41A.200(1) (critical areas protection)
- SCC 30.41C.200(2) (vegetated sight-obscuring buffers),
- SCC 30.41C.200(3) (access roads),
- SCC 30.41C.200(4) (utilities),
- SCC 30.41C.200(5) (unbuildable land),
- SCC 30.41C.200(8) (mineral resource land disclosure statements),
- SCC 30.41C.200(10) (open space management plan),
- SCC 30.41C.200(11) (physical separation of clusters),
- SCC 30.41C.200(12) (lots abutting open space or buffer),
- SCC 30.41C.200(13) (design fits with natural features and maintains rural character),
- SCC 30.41C.200 (14) (no sanitary sewers absent health order),
- SCC 30.41C.200(15) (Location of lot clusters),
- SCC 30.41C.200(16) (location within fire district required),

SCC 30.41.C.200(17) (rural concurrency standards), and  
SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations).

19. The Hearing Examiner further finds that based on the facts and circumstances of the proposed development application, the following provisions of the *former* RCS regulations do not apply:

SCC 30.41C.200(6) (buffers for resource land),  
SCC 30.41C.200(7) (designated resource land disclosure statements),  
SCC 30.41C.200(9) (location of open space tracts near open space tracts on adjacent properties).

20. 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 A.4). The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 17 and 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% 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 CAR, thereby minimizing the loss of the county's environmentally sensitive areas.

21. 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 pedestrian facilities 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 within the subdivision will be in character with the rural 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~~ on-site wells<sup>1</sup> and sewage disposal will be provided by individual wastewater septic systems.

22. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

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<sup>1</sup> Scrivener's error – corrected April 27, 2011

## 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. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

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 described 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 of Law 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 December 10, 2010 (Exhibit B.1), as modified to add the area marked as “pasture” to Tract 999, shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
  
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  
  - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  
  - iii. A Final Mitigation Plan shall be submitted for review and approval during the construction review phase of this project based on the September 9, 2010 Revised Critical Areas Study and Mitigation Plan by Watermark Critical Areas LLC (Exhibit C.3).
  
  - iv. Construction plans shall be submitted for review and approval.
  
  - v. A grading permit shall be obtained and a Stormwater Pollution Prevention Plan (SWPP Plan) shall be approved.
  
  - vi. The applicant shall have obtained approval and permits from WSDOT for all work to be completed within the SR-9 right-of-way.
  
  - vii. The developer shall have obtained approval and permits from Snohomish County Parks and Recreation Department to add the development trips and to improve the road within Parks property (Centennial Trail), as specified in Exhibit A.4.
  
- 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. “SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:  
  
\$2,526.48 per lot for mitigation of impacts on county roads paid to the county,  
\$336.71 per lot for mitigation of impacts on state roads paid to the county,

\$2,710.85 per lot for mitigation of impacts on Arlington streets paid to the city. 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.”

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 1 existing parcel. Lot 6 shall receive credit.”

iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

“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.”

v. “Well protection zones are shown in the Snohomish Health District records for Lots 1-5 and 7-9 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.

vi. “A 100 foot radius well protection zone covenant is hereby established on Lot 6 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).”

vii. “Your real property is on, adjacent to, or within 500 feet of designated forest land on which a variety of forest management activities could occur that may not be compatible with residential development for certain periods of limited duration. These forest

management activities include, but are not limited to, timber harvest, road and trail construction, the operation of machinery, trucks, aircraft, brush control, slash burning, the application by spraying of forest chemicals, and other forest management activities are lawful if conducted in compliance with Title 222 WAC.

In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including falling timber and increased fire hazard. Due to these risks, Snohomish County encourages land owners to locate structures at least 200 feet from adjacent forest land boundaries.

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

A provision of chapter 30.32AB SCC provides that “forest management activities conducted on designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington’s pesticide regulations (WAC 16-228-1220(5)), and established prior to surrounding non-forestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on public health, safety, or environment.”

- viii. “Your real property is on or within 2,000 feet of designated mineral resource lands, on which mineral extraction, or a variety of activities related to mineral extraction, may occur that are not compatible with residential development for certain periods of limited duration. An application might be made on the designated mineral resource land for mining-related activities, including, mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.”
- ix. “All utilities shall be placed underground.”
- x. “The Sight Obscuring Buffer (Exhibit B.3) shall be fully implemented and maintained.”
- xi. “The Open Space Management Plan (Exhibit A.2) shall be fully implemented.”

D. Prior to recording of the final plat:

- i. 256<sup>th</sup> Street NE shall have been constructed to a 27-foot pavement width for two travel lanes and a paved pedestrian walkway to the satisfaction of the County from SR-9 to the cul-de-sac; for safe walking conditions for children walking to the designated bus stop.
- ii. The conditions of an access connection permit shall be fulfilled to the satisfaction of the WSDOT.

- iii. The conditions of a Special Use Permit for road construction and access across Parks property shall be fulfilled to the satisfaction of the Snohomish County Parks and Recreation Department.
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- v. The Final Mitigation Plan shall have been satisfactorily implemented.

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 seven (7) 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 14th day of April, 2011.

Corrected decision issued this 27<sup>th</sup> day of April, 2011.



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Millie Judge, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before APRIL 25, 2011**. 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 **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before APRIL 28, 2011**, 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.

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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.