

# **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: February 27, 2006

PLAT/PROJECT NAME: *THE MEADOWS AT CHAIN LAKE*

APPLICANT/  
LANDOWNER: Steve Harris

FILE NO.: 05 117830

TYPE OF REQUEST: A 9-lot Rural Cluster Subdivision (RCS) of approximately 19.9 acres

DECISION (SUMMARY): Request APPROVED subject to conditions

## **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 11614 Chain Lake Road, Snohomish

ACREAGE: 19.9 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 16,553 square feet

MINIMUM LOT SIZE: 13,324 square feet

DENSITY: .45 du/ac (gross)  
2.63 du/ac (net)

OPEN SPACE: 14.81 acres

ZONING: R-5

### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Rural Residential (1 du/5 acres-Basic within Rural Urban Transition Area (RUTA)  
Subarea Plan: Skykomish Valley  
Subarea Plan Designation: Residential Estate (1-2 du/ac)

UTILITIES:

Water: City of Monroe  
Sewage: Individual wastewater septic

SCHOOL DISTRICT: Monroe

FIRE DISTRICT: No. 3

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services (PDS): Approve subject to conditions  
Public Works (DPW): Approve subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on April 8, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 26, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on December 22, 2005. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on January 31, 2006, the 147<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on January 31, 2006 at 11:01 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Steve Harris appeared and indicated that he had no objection to the PDS staff report or the conditions of approval.
3. Mr. Robert Bogash appeared and stated that he owns property to the south and is concerned about drainage to the south. He stated that he is a professional engineer and that the stream flows in an opposite direction as shown in the drainage report and referred to wetland B.

He stated that with regard to wetland A, water flows from east to west and Cripple Creek flows from east to west. He submitted Exhibits 42 and 43 and stated that the professionals proclaim the opposite on drainage. He indicated that the applicant's property is higher than his and that there will be no tight lining to the detention pond, it will just flow in swales. He feels that the information submitted is wrong, and that the county has refused to come and look at this.

He doesn't care about there being new neighbors, but he doesn't want the water coming onto his property.

4. By way of rebuttal, Mr. Richard Heide stated that drainage will be done as shown in the pictures in Exhibit 44.
5. Mr. Harris stated that the houses will be tight lined, and water will be put into an open ditch and into a detention pond.
6. The main area of concern was the drainage to the southeast corner. The Examiner left the record open for two weeks to resolve the issues and have Mr. Bogash meet with the county representatives.

The hearing concluded at 12:30 p.m.

**NOTE:** The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS:**

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. One person, Mr. Bogash, appeared to speak on the matter and indicate his concerns that drainage will not come onto his property to the south from this project.
4. The request is for approval of a 9-lot RCS of approximately 19.9 acres. The property is zoned R-5 and is developed with a single-family residence and out-buildings. The open space will include 14.81 acres and access will be provided by a new private road connecting to Chain Lake Road.
5. The adjacent zoning is R-5 and adjacent properties are primarily undeveloped and forested, single-family residential with pastures.
6. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,361.22 for each new single-family home.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. (See Pages 3-5, Exhibit 38)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

9. There are five Category 3 wetlands on site, and these have been provided with appropriate buffers and should not be impacted by the development based upon PDS review of the Critical Areas Study pursuant to Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
10. Stormwater runoff from all structures and driving surfaces will be captured and routed to detention facilities. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
11. The Snohomish County Health District has no objection to this proposal as long as certain conditions are met.
12. Public water and private septic service will be available for this development as well as electrical power.
13. The subject property is designated Rural Residential (RR: 1 du/5 ac Basic) with a Rural Urban Transition Area Overlay. This designation identifies 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 (RC). 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 date. 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. Several of the RR designated areas have been identified by the county as needing more detailed study in the Rural/Resource Plan.
14. The property is designated Rural Residential on the GPP Future Land Use Map and is located outside of any Urban Growth Area. The requested Rural Cluster Subdivision is consistent with the GPPs Rural Residential designation of the property and the nine lots proposed are consistent with the density provisions. (SCC Title 30 GMA-based zoning regulations)
15. The proposal complies with the provisions of Section 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 74% (14.81 acres) 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 Snohomish County's Critical Areas Regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

In this regard, the staff has correctly analyzed the effect of the Rural Cluster Subdivision on page 2-4 of the PDS staff report. (Exhibit 38)

16. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat 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.

17. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
18. The aerial photograph (Exhibit 15) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
19. The Examiner allowed time for the parties to discuss the issues raised by Mr. Bogash as to the proper drainage. Subsequently, Mr. Ed Caine, PDS, submitted a letter to the Examiner dated February 13, 2006, a copy of which he advised was sent to Mr. Bogash. This letter is made a part of the file as Exhibit 46 and provides a condition, agreed to by the applicant, to meet the concerns as to drainage. (See Condition D.vi.)
20. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

**CONCLUSIONS:**

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report, except for the addition of a new condition, D.vi.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request would allow for the development of single-family homes as a RCS, thereby providing for homes in an attractive area, while at the same time preserving the wetlands and other amenities.
5. The request should be approved subject to compliance by the applicant with the following amended conditions of a new condition, D.vi., which states as follows:

## CONDITIONS

- A. The preliminary plat received by PDS on October 24, 2005 (Exhibit 20A) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - iii. A final mitigation plan based on the *Critical Areas Study* prepared by Pentac Environmental dated March 3, 2005 (Exhibit 6) shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District No. 103 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 2 shall receive credit."
  - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
  
\$1,879.97 per lot for mitigation of impacts on county roads paid to the county,  
\$306.24 per lot for mitigation of impacts on state roads paid 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 of the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.
  - iii. The interior public road shall be shown as a public road with minimum centerline radiuses of 165 feet.
  - iv. Stormwater runoff from all structures and from all driving surfaces shall be captured and routed to the stormwater detention facilities.
  - v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;  
  
"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

- vi. The developer shall pay the County \$1,361.22 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel's frontage on Chain Lake Road to the specifications of the DPW.
- ii. The vegetation blocking intersection sight distance shall be removed to the satisfaction of the DPW.
- iii. A pedestrian waiting area shall be provided at the entrance of the subdivision to the satisfaction of the DPW.
- 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 platator 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. Covenants, deeds, and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneous with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
  - a. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
  - b. Establish a Homeowner's Association, guaranteeing maintenance Tract 999 and Tract 996.
- vi. A drainage swale, one foot deep with 2:1 side slopes, shall be installed between the Bogash-Meadows at Chain Lake property line and the Lot 8 and 9 southern lot lines, with runoff directed to the west. The discharge shall be designed to not create a point of discharge and shall be located on contour on the western portions of Lots 8 and 9 and the eastern portion of the buffer of Wetland C.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 20D) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

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

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

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

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

**DECISION:**

The request for a 9-lot Rural Cluster Subdivision within an RUTA, of 19.9 acres is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 27th day of February, 2006.

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Robert J. Backstein, Hearing Examiner

**EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 9, 2006**. 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **March 13, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the county and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is 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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

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### Staff Distribution:

Department of Planning and Development Services: Ed Caine  
Department of Public Works: Mark Brown

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.