

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of	)	
	)	<b>FILE NO. 05 119577</b>
<b>CASCADIA HIGHLANDS, LLC</b>	)	
	)	<i>Cascadia Highlands</i>
32-lot Rural Cluster Subdivision (RCS) on 116.33 acres	)	

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DATE OF DECISION: April 12, 2006

DECISION (SUMMARY): The proposed 32-lot rural cluster subdivision is **CONDITIONALLY APPROVED**.

**BASIC INFORMATION**

GENERAL LOCATION: The property is located near the intersection of 147<sup>th</sup> Avenue NE and Goebel Road, Lake Stevens, Washington.

ACREAGE: 116.33 acres

NUMBER OF LOTS: 32

AVERAGE LOT SIZE: 54,926 square feet

MINIMUM LOT SIZE: 43,600 square feet

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)

Subarea Plan: Granite Falls

Subarea Plan Designation: Rural-5 (1 du/5 ac)

UTILITIES:

Water: Snohomish County PUD No. 1  
Sewer: Individual Septic

SCHOOL DISTRICT: Marysville No. 25

FIRE DISTRICT: No. 22

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions  
Public Works (DPW): Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on May 11, 2005. (Exhibit 1)

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 February 15, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on March 28, 2006, the 107<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 March 28, 2006 at 9:03 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Cascadia Highlands LLC, was represented by Martin Robinett of Robinett Development Company LLC. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services. Letters of opposition or concern were received from four vicinity households (Hal Buttery, Doug and Robin Meek, Heather Robinson and Tim Zuver.) Mr. Zuver also testified at the public hearing as well.

The hearing closed at 9:59 a.m., March 28, 2006.

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

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file as if set forth in full herein.
2. The applicant proposes a rural cluster subdivision of 32 lots on 116.33 acres zoned Rural Residential-5, which allows one dwelling unit per five acres. On 116 acres, the basic density allowed would be 23 lots. Bonus provisions of the rural cluster subdivision concept add nine lots for the total of 32 lots. An issue before the Hearing Examiner is whether the additional nine lots are so much more adverse than the basic 23 lots as to require extraordinary conditions upon approval or denial of the application.
3. The concerned, vicinity landowners object to the greater density and assert it to be "...akin to a housing development." They express concern about their wells and septic systems, about the bridge on 147<sup>th</sup> Avenue NE needing repair, about annual floods in the vicinity of that bridge, about the dangers of the blind intersection at 147<sup>th</sup> Avenue NE and Goebel Hill Road, about the dangers of turning and entering movements of vehicles at the intersection of 147<sup>th</sup> Avenue NE and NE 84<sup>th</sup> Street, and the impact on wildlife.
4. The neighbors assert that 84<sup>th</sup> Street NE carries 2,400 trucks per day already, apparently generated by Concrete Nor-West, two gravel pits to the north and more on the way and bustling development on Burn Road. Neighbor Jim Zumer has driven the area for 20 years and feels that the current 90-degree curve near this plat's access will be sharper than 90 degrees if built as proposed in the application, which will worsen the current situation and not improve driver sight distance at that intersection.
5. The Examiner questioned the applicant about why the internal plat road is proposed as a public road in view of the fact that it does not appear any further northerly extension of or connection to the plat road will be made in the foreseeable future. The applicant responded that it is less costly for the platter to build a public road than to build a private road here. The Examiner notes that even if the plat road were opened to the north, traffic would be impeded by the curb cuts accessing individual lots. For example, there are four driveway curb-cuts within a road length of approximately 250 feet at the northern terminus of the proposed plat road. Review of the proposal by the Public Works Department did not reveal that to be a problem for a public road.
6. 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 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.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$48.82 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.

9. Four wetlands and two streams are located on the subject site. Wetland A, a Category 1 wetland, is a large forested wetland that covers approximately 44 acres of the western and central portions of the site. The wetland continues off-site to the north and south. The wetland will be wholly contained within Tract 998 as a Native Growth Protection Area Easement (NGPA/E). A portion of the NGPA/E which contains the wetland's buffer will be located within Lots 13-18. Wetland B, a Category 3 wetland, is forested and located in the northeast corner of the property and also continues off-site to the north. This wetland will be contained within an NGPA/E, but on Lots 22 and 23. Wetlands B and C are small BMP (under 5,000 square feet) wetlands located on Lot 12. These wetlands are proposed to be filled.

Stream A is a portion of Little Pilchuck Creek. It flows south through the central portion of Wetland A. Stream B is a portion of Star Creek flowing easterly through the western portion of Wetland A, converging with Stream A in the south central section of the subject site. Both streams are Type 3 and presumed habitat for bull trout. The streams will be protected by the Native Growth Protection Area Easement (NGPA/E) in Tract 998.

10. 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.
11. The Snohomish County Health District has no objection to this proposal provided that public water is furnished. Public water and electrical power will be available for this development.
12. The subject property is designated Rural Residential -5 (1 du/5 ac) on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning allowing rural cluster subdivisions.
14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A 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.
15. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
16. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following conditions:

## **CONDITIONS**

- A. The revised preliminary plat/rural cluster subdivision received by the Department of Planning and Development Services (PDS) on February 3, 2006 (Exhibit 20) 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. Construction plans shall have been approved for the redesign of the intersection of 147th Avenue NE and 96th Street NE.
  - iii. A frontage improvement plan shall have been approved.
  - iv. 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.
  - v. A final mitigation plan based on the revised conceptual Critical Area Study, Habitat Management Plan and Wetland Mitigation Plan for Cascadia Highlands, prepared by Wetland Resources, Inc. dated September 12, 2005 (Exhibit 18) 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 Marysville School District No. 25 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit.”
  - ii. “The dwelling units within this development are subject to park impact fees in the amount of \$48.82 per newly approved dwelling unit pursuant to Chapter 30.66A. 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.”
  - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
    - \$3,521.76 per lot for mitigation of impacts on county roads paid to the County,
    - \$6.73 per lot for impacts to WSDOT project DOT-22 paid to the County,
    - \$74.43 per lot for impacts to WSDOT project DOT-37 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 or the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.
  - iv. Thirty feet of right-of-way shall be dedicated from the centerline of 147th Avenue NE along the side fronted by the proposed development.
  - v. A 30-foot access easement shall be shown across Lots 24 and 25 to Tax Lots 30061500300600 and 30061500302100.
  - vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;
    - "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”
- D. Prior to recording of the final plat:
- i. Pedestrian facilities shall be constructed along the interior plat roads.
  - ii. A temporary turnaround shall be constructed at the end of the proposed internal public road at the north end of the development.

- iii. The intersection of 147th Avenue NE and 96th Street NE shall be reconstructed in accordance with the approved plans.
- iv. Frontage improvements shall be constructed in accordance with the approved frontage improvement plan.
- v. 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 plat 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.

- vi. The final wetland mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements:

The preliminary landscape plan (Exhibit 5) 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 recommended 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.

5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 32-lot rural cluster subdivision on 116.33 acres is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 12<sup>th</sup> day of April, 2006.

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Ed Good, Deputy Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 24, 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 Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

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

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with



the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 26, 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 or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

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Staff Distribution:

Department of Planning and Development Services: Paul MacCready  
Department of Public Works: Andrew Smith

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.
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