

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: October 29, 2009

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

APPLICANT/
LANDOWNER: Terry Johnson

FILE NO.: 08-101749-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

DECISION (SUMMARY): APPROVAL WITH CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: 23030 135th Avenue NE, Arlington, WA 98223

ACREAGE: 20 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 43,627 square feet

MINIMUM LOT SIZE: 43,560 square feet

DENSITY: .45 du/ac (gross)

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

ZONING: R-5

UTILITIES:

Water: Individual wells

Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No.16

FIRE DISTRICT: No. 21

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on February 22, 2008, which was determined complete on the same day. (Exhibit A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the County code. (Exhibits F4, F5 and F6)

A SEPA determination was made on March 2, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on October 14, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

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

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.

A. Background Information

2. Applicant's Request: The applicant is requesting a 9-lot rural cluster subdivision on a 19.84 acre parcel. Access is proposed from a new public road off of 135th Avenue NE. Each lot will be served by individual septic systems. Potable water will be supplied by individual wells.
3. Site Description The site is undeveloped and is a combination of pasture in the eastern and northeastern portion of the site with the remainder of the site scattered trees. There are no critical areas on site.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Adjacent uses are a mixture of single-family residential, agriculture, and undeveloped.
5. Issues of Concern: No issues of concern were identified by PDS during the review process, nor were any identified during the open record hearing. No citizen comments were received on the proposal.

B. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within Park District No. 302 (River Meadows) 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. The Examiner has included a condition to require the park mitigation fees.

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

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code (SCC), Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area (TSA) as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 86.13 new average daily trips (ADT) and has a road system impact fee of \$22,738.32 (\$2,526.48/lot) based on \$264.00/ADT, the current fee rate for residential developments outside the Urban Growth Area (UGA), for TSA A. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category:	Single Family Residence
ITE Land Use Code:	210
Applicable Measurement Unit (ITE Independent Variable):	SFR
Number of applicable measurement units for this development:	9

Trip Generation Calculations:

Trip Generation Based on Average Rates

New average daily trips = $9 \text{ new SFR} \times 9.57 \text{ ADT/SFR} = 86.13 \text{ ADT}$

New PM peak-hour trips = $9 \text{ new SFR} \times 1.01 \text{ PM PHT/SFR} = 9.09 \text{ PM PHT}$

New AM peak-hour trips = $9 \text{ new SFR} \times 0.75 \text{ AM PHT/SFR} = 6.75 \text{ AM PHT}$

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

B. Concurrency [SCC 30.66B.120]

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 development was not

determined to be concurrent at the initial review because the trip distribution shown in the traffic study submitted for this development was not consistent with previously accepted distributions in the area. In addition, key intersections 45 and 47 were shown incorrectly. A revised traffic study was required to correct the key intersection locations, and the applicant was required to either provide justification for the trip distribution used, or revise the distribution so that it was consistent with previously accepted distributions in the area. The applicant submitted a revised traffic study correcting the key intersection locations and revising the trip distribution so that it is consistent with the others accepted in the area.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of October 29, 2008. The expiration date of the concurrency determination is six years from this date. Consistent with the Department of Public Works' (DPW) Rule 4225.070, the point in time for which the concurrency analysis is based (the concurrency vesting date) is October 6, 2008.

The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130 (4): The subject development is located in TSA A, which as of the date of submittal of the application had no arterial units in arrears. The subject development generates 6.75 AM peak-hour trips and 9.09 PM peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

Regardless of the existing level of service, any development which adds three or more p.m. 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 proposal will not impact any IRC locations identified within TSA A with three or more of its p.m. peak hour trips, nor will it create any. 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.

DPW Rule 4222.020(1) requires full rural frontage improvements along the property's frontage on 135th Avenue NE and shall consist of asphalt concrete pavement consisting of 11 feet width from right-of-way centerline with a 7 foot paved shoulder.

135th Avenue NE, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

The Hearing Examiner has included within the decision a condition to require construction of frontage improvements prior to recording.

E. Access and Circulation [SCC 30.66B.420]

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access is proposed via an internal public road connection to 135th Avenue NE. The road will serve approximately 86 ADT and would be classified as a rural public local access road under the current EDDS, which has a design speed of 25 mph. A 50 foot right-of-way section has been provided and is adequate to accommodate the required road section per EDDS Standard Detail 3-060. A 40 foot paved radius cul-de-sac turnaround is required. A 50 foot radius right-of-way section has been provided at the western end of the road and is adequate to accommodate the required cul-de-sac. The PDS Traffic Section generally approves of the proposed layout.

The new public road was reviewed for compliance to the EDDS requirements for grade, vertical and horizontal curves, and sight distance; and it was determined that the proposed design meets the minimum requirements.

Section (c) of SCC 30.66B.420 requires the applicant to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.440; which lists the following factors to use when this department considers the extent of improvements required to serve the development:

- (3) (a) Extent of the development proposed;
- (b) Priority of improvements to involved county roads in the county's six-year transportation improvement plan;
- (c) Condition of existing transportation facilities in comparison to adopted standards.
- (d) Existing and projected land uses and development densities;
- (e) Current and projected levels of service on the affected road system;
- (f) Availability of public transit;

- (g) Any traffic study submitted;
- (h) Availability of a specific improvement program;
- (i) The number of dwelling units currently using the road system that must be improved and projected to use the road system after full occupancy of the development;
- (j) The needs of low-income persons for decent, affordable, low-cost housing;
- (k) Transportation system or demand management measures proposed by the developer;
- (l) The need for pedestrian and bicycle facilities;
- (m) Continuity with existing and proposed improvements;
- (n) Development standards of adjacent cities;
- (o) The need for safety improvements for school children; and
- (p) The types, sizes and performance of vehicles generated by the development, including but not limited to large trucks.

The PDS staff evaluated the above factors in relation to the proposed development and determined that no off-site improvements to the existing road system were necessary due to the addition of nine homes in an area that has light traffic in a rural area, with no level of service issues. There are no inadequate conditions on the existing road system in the area that would initiate the requirement for the applicant to do off-site improvements in order to provide for safety and the operational efficiency of the road.

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

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

135th Avenue NE is designated as a non-arterial collector on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 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 has been adequately shown on the preliminary plat. The Hearing Examiner has included a condition to require the dedication of right-of-way.

135th Avenue NE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

G. State Highway Impacts [SCC 30.66B.710]

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which

the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the WSDOT/County effective December 21, 1997, and as amended. Pursuant to SCC 30.66B.055, a written offer from the applicant proposing measures to mitigate impacts on state highways is required and was received on October 6, 2008. The applicant's obligation to the State is as follows: Proportionate Share Mitigation (ILA Section 5.2); the payment of \$3,096.00 based on standard rate of \$36/ADT.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received via an e-mail dated March 20, 2008 (Exhibit H2). WSDOT agrees to the mitigation measures proposed by the applicant. 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. The Examiner has included a condition to require payment of \$3,096.00 to WSDOT.

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions. The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the ILA with the City of Arlington.

The Northshore Traffic Consultants traffic study (Exhibit C1) indicated that the traffic mitigation owed to Arlington for impacts to city streets is \$27,175.50, based on nine new PM peak hour trips x 90% (sub area location) x \$3,355/trip. Comments dated March 13, 2008 were received from the City of Arlington (Exhibit H1) requesting that amount (\$27,175.50) for traffic mitigation for the development. An offer for that amount, signed by the applicant, was submitted for this review.

The Hearing Examiner has included a condition of approval to implement the mitigation fees.

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

This proposal lies outside of the UGA. Therefore, the provisions of this section do not apply.

8. Pedestrian Facilities. [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. Comments dated February 28, 2008, have been received from the Arlington School District (Exhibit H4) stating that the students will take the bus

to their respective schools from the intersection of the proposed entrance to the subject development on 135th Street NE. Pedestrian facilities in accordance with EDDS will be provided within the plat and along the frontage improvements on 135th Street NE. Therefore, safe walking conditions for school children will be provided in the development. However, because of the rural nature of this area and the fact that there is little lighting available, the Examiner imposes a requirement that the applicant provide an all climate protection (ACP) waiting area to the specification of DPW at the bus stop that is at the development entrance.

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

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. Comments dated February 28, 2008, have been received from the Arlington School District (Exhibit H4) stating that the students will take the bus to their respective schools from the intersection of the proposed entrance to the subject development on 135th Street NE. Pedestrian facilities in accordance with EDDS will be provided within the plat and along the frontage improvements on 135th Street NE. Therefore, safe walking conditions for school children will be provided in the development.

10. Drainage and grading.

Drainage.

EXISTING CONDITIONS: The site is approximately 20 acres in size. The site is relatively flat with no apparent flow paths or channels either on or near the site. On-site soils are primarily sandy/gravelly "outwash" types that encourage and enable infiltration of stormwater. The site is currently a combination of managed forest and pasture.

One basin encompasses the entire site. The terrain flows in a southwesterly direction across the entire site. There are no indications of surface flows or channels on or adjacent to the site.

PROPOSED CONDITIONS: PDS approved a drainage waiver (Exhibit G1) to allow stormwater dispersion under the 2005 DOE Stormwater Manual. Stormwater runoff from the proposed road will flow into a 6-foot wide grass-lined filter strip and then disperse across the lots. Stormwater runoff from the residences will be for downspouts to splash blocks and then dispersed through a minimum of a 50-foot vegetated flowpath. The Examiner has included a condition of approval for the required vegetated flowpath.

PDS (Engineering) has reviewed the concept offered 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.

Grading. Grading quantities are anticipated to be approximately 675 cubic yards of cut and 515 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with

a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations. (Chapter 30.62 SCC) There are no critical areas on site or within 100 feet of the site. Therefore, there are no critical area impacts associated with the project and no mitigation is required.
12. Consistency with the GMA Comprehensive Plan.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic) on the Future Land Use Map of the General Policy Plan of the Snohomish County GMA Comprehensive Plan. 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 1 dwelling unit per 5 acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9.

The 9 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

- A. Water.

Water will be supplied by nine individual wells, one on each lot. The Snohomish Health District (SHD) approved the wells on February 25, 2008, subject to the following final plat restriction, which the Examiner will place as a condition in this decision:

Well protection zones are shown in the Snohomish Health Districts records for lots 1-9 of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, a 100-foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners. 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 plat alteration.

(Exhibit H3 at 2).

- B. On-Site Septic.

Each lot will be served by individual septic systems. The SHD recommended approval for the preliminary plat on February 25, 2008. (Exhibit H3 at 2)

C. Electricity.

Snohomish County Public Utility District has provided correspondence indicating that it can provide electrical service for the project. (Exhibit H6)

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.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on June 1, 2009 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on February 22, 2008. (Exhibit A1) 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 addresses how the applicant is meeting County road requirements. See SCC 30.41A.210.
- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. See 30.41A.110.
- C. Fire Code. The PDS staff report (Exhibit I) provides the following information on compliance with the fire code:

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the preliminary plat on April 22, 2008. The conclusions of the review were that:

- (i) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office.
- (ii) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

The application complies with the requirements contained in SCC 30.53A, including fire flow and emergency vehicle access.

17. Rural Cluster Subdivision Standards—General.

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on October 6, 2008 (Exhibit B1), and in an open space management plan (Exhibit A4) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 49.7% (9.86 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 critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

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

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

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

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

As indicated above, there are no critical areas on site.

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

(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public

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

The transition from residences and adjoining properties and from specified roads has been provided (Exhibit B1). Existing landscaping does not provide the intended function of the vegetated sight obscuring buffer in all areas. A landscaping note is located on Exhibit B1 that requires, for any area that does not meet the sight obscuring buffer requirements, supplemental plantings of conifers at ten (10) feet on center and by shrubs at three (3) feet on center, planted in a triangular pattern. PDS has determined that the vegetated sight obscuring buffer has been appropriately located, the buffer is of the required size, and the landscaping note provides adequate requirements for augmenting the existing vegetation, should that become necessary. PDS has determined that the project meets this requirement. The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200(3)—Internal Roads.

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

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

D. SCC 30.41C.200(4)—Utilities.

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

Applicant will be placing all utilities underground. (Exhibit H6; I.)

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

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

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. There are no on-site areas that meet the definition of unbuildable lands.

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

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

Not applicable.

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

(7) When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in 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.

Not applicable.

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

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

. . .

(b) Notice for mineral uses within required or optional open space:

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

Not applicable.

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

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

The applicant will be placing the open space tract in this plat contiguous to one proposed in another plat to the north.

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

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

The applicant prepared an Open Space Management Plan which has been accepted by PDS. (See Exhibit A4) Specific management options will be left to the discretion of the Homeowners' Association, so long as it fits within Snohomish County Code. The tracts are generally intended for buffering from adjacent properties, to serve recreational needs of residents, and to be used for stormwater management purposes. (Exhibit A4) The tracts shall be maintained for these purposes.

Permanent vegetation removal within any restricted open space shall not be permitted, except that the following activities are allowed where vegetation is the minimum necessary to conduct the activity:

1. Construction of pedestrian trails;
2. Removal of dead, diseased or hazardous vegetation, consistent with best wildlife management practices;
3. Selective thinning and enhancement of vegetation; and
4. Fire breaks provided in accordance with fire district requirements or recommendations.

(Exhibit A4 at 2). The Homeowner's Association will ultimately be responsible for compliance with the Open Space Management Plan, as implemented through a condition of final plat approval.

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

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

This requirement is not applicable, since this is a nine-lot development.

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

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

Nine (9) lots are proposed. The computation of 75% of 9 yields 6.75 lots. A minimum of 7 of the proposed 9 lots need to abut a buffer or open space. All lots abut a required buffer or restricted open space tract. Therefore, the project complies with SCC 30.41C.200(12).

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

(13) The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

The lots are proposed to be within the central portion of the site. (Exhibit B1) The lots are laid out in a fashion so that the open space corridors adjoin with the property to the north. The property to the north is constrained by the fact that the Bonneville Power Easement runs through the property, thereby limiting where the open space can be located. By aligning the open space corridors, and setting the lots farther toward the north end of the property, the applicant has followed the code's preference for larger connected open space corridors on contiguous lots, with larger buffering for adjacent properties that are not divided in a rural cluster configuration.

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

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

The applicant proposes on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and recommended approval of the preliminary plat. (See Exhibit H3)

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

(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters -

30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

Although the site is flat, as noted earlier, it is designed with an adjacent development to have contiguous open space corridors. The Hearing Examiner concurs that the project complies with this requirement.

L. SCC 30.41C.200 (16)—Fire District.

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

The development is located within the service boundary for Fire District No. 21.

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

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

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

20. Rural Cluster Subdivision Lot Yield Calculations.

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

Basic lot yield: 864,432 square feet/100,000 square feet	= 8.64 lots
Total lot yield-rounded	= 9 lots
Total lots proposed	= <u>9 lots</u>

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 walking conditions for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas. The single-family homes will be in character with the existing area. Provisions for adequate

drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, B and C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate water will be provided through an individual wells and sewage disposal will be provided by individual wastewater septic systems.

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

the proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students

RCW 58.17.110.

3. Given the information provided in the record, and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the RCS application should be approved.
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 SUBDIVISION** approval and **RURAL CLUSTER SUBDIVISION** approval is hereby **GRANTED SUBJECT TO** the following **CONDITIONS**:

- A. The preliminary plat received by PDS on October 6, 2008 (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 and to this decision.

 - ii. The applicant shall submit the Full Drainage Plan for review and approval prior to any construction activities.

- 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,
\$3,019.50 per lot for mitigation of impacts on Arlington streets paid to the City,
\$344.00 per lot for mitigation of impacts on State roads paid to the County.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS."

 - iii. "The final plat shall show a 10-foot right-of-way dedication along the property's frontage with 135th Avenue NE to total 30 feet from the right-of-way centerline, or as determined by DPW."

- iv. “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 1 shall receive credit.”
- v. “Well protection zones are shown in the Snohomish Health District records for Lots 1-9. 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 50 foot minimum length of downhill slope for stormwater dispersion through the natural vegetated area shall be preserved to fully disperse stormwater runoff prior to outfall from the property.”
- vii. “The Open Space Management Plan (Exhibit A4) shall be implemented, including all maintenance responsibilities. Changes to the Open Space Management Plan may be accomplished through a plat alteration, per SCC 30.41A.700, 30.41A.710, 30.41A.720, 30.41A.730, 30.41A.740, and 30.41A.750.”
- viii. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
- ix. “The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation. “
- x. “The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.”

D. Prior to recording of the final plat:

- i. The public road and the turnaround shall have been constructed to the satisfaction of DPW.
- ii. Urban standard frontage improvements shall have been constructed along the property's frontage with 135th Avenue NE to the satisfaction of DPW unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- iii. An All Climate Protection (ACP) waiting area to the specification of DPW shall be provided at the bus stop that is at the development entrance.
- iv. Utilities shall be located underground.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit A3), contained within the Open Space Management Plan, shall be implemented. All required landscaping within the sight obscuring buffer and within the detention facility shall be installed in accordance with the approved landscape plan.
- ii. PDS shall review the sight obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the site obscuring buffer.
- iii. All development activity shall conform to the requirements of Chapter 30.63A SCC.

F. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the PDS, and shall at a minimum:

- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
- ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space as required by the Open Space Management Plan. (Exhibit A4)

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

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

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

Decision issued this 29th day of October, 2009.



Barbara Dykes, 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 **NOVEMBER 9, 2009**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue,

Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **NOVEMBER 12, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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