

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 13, 2010

PLAT/PROJECT NAME: **MOUNTAIN HOME**

APPLICANT/
LANDOWNER: Halverson Family Limited Partnership

FILE NO.: 06-103231-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

GENERAL LOCATION: 14011 Jordan Road, Arlington, WA 98223

ACREAGE: 57.5 acres

NUMBER OF LOTS: 18

AVERAGE LOT SIZE: 26,683 square feet

MINIMUM LOT SIZE: 18,500 square feet

DENSITY: .31 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential-5

ZONING: R-5

UTILITIES:

Water: Snohomish County PUD #1
Sewer: On-site septic

SCHOOL DISTRICT: Granite Falls School District No. 336

FIRE DISTRICT: #17

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The RCS application was originally submitted to the Department of Planning and Development Services (PDS) on June 6, 2006, and the application was determined to be complete as of the same date. (Exhibit A1)

PDS gave proper public notice of the open record hearing as required by the County code. (Exhibits F1, F2 and F3)

A SEPA determination was made on September 23, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on December 8, 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 approval of an 18-lot RCS on a 57.5 acre parcel. Access is proposed by a private road off Jordan Road. Each lot will be served by individual septic systems. Potable water will be supplied by the Snohomish County PUD.
3. Site Description: The site consists of three parcels. The westernmost parcel has frontage on Jordan Road and is pasture. The other two parcels are forested. An access easement traverses the site, roughly from west to east. The easement is for access to the properties to the northeast.
4. Adjacent Zoning/Uses: Adjacent properties are either developed as single-family residences or undeveloped. Some of the lands around the single-family residences are devoted to crops and to pasture. A Forest Overlay is located on some of the properties to the north of the subject property.
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. One public comment was received from Carole Kirk (Exhibit H1). She expressed concerns regarding the creation of more lots and suggested the land be devoted to agricultural use. The Examiner understands Ms. Kirk's concerns, but reminds her that the applicant has the right to develop its property as provided under the code. Furthermore, this property was never designated or zoned as agricultural use.

B. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and is included as a condition of approval.
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 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 as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 18 lots (revised from 15 lots), which is 9.57 ADT/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 172.26 new ADT and has a road system capacity impact fee of \$68,387.22, based on \$397.00/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.

The ADT has been calculated as follows: 18 lots x 9.57 ADT/lot (home) = 172.26
The PM PHT has been calculated as follows: 18 lots x 1.01 PM PHT/lot (home) = 18.18
The AM PHT has been calculated as follows: 18 lots x 0.75 AM PHT/lot (home) = 13.50

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 has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160 (2) (a): The subject development is located in TSA B, which as of the date of submittal had the following arterial units in arrears: Unit 238. Based on peak-hour trip distributions, the subject development will NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a); the development is determined concurrent. The development generates 13.50 AM peak hour trips and 18.18 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.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of April 13, 2009. The expiration date of the concurrency determination is six years from this date (April 13, 2015). 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 December 3, 2008.

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

Regardless of the existing level of service, any development which adds three or more a.m. peak-hour trips to a location in the road system determined to have an existing 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 proposal will not impact any IRC locations identified at this time within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to IRCs 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.

The subject property's frontage is located along Jordan Road. The plans were previously revised to eliminate a separate property parcel with frontage on Jordan Road. That reduces the development frontage on Jordan Road from about 489 feet to about 53 feet. Rural standard frontage improvements are required consisting of 19 feet of pavement widening from the centerline of the road right-of-way to include an 11-foot travel lane and an 8-foot attached shoulder walkway.

Jordan Road, 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 a condition as part of the decision for construction of frontage improvements prior to recording the subdivision.

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 from Jordan Road via a new public road ending in a cul-de-sac. There is a lack of public roads in the area, so a provision for future road connection is desirable. However; the property to the north has a Forestry zoning and steep topography, so connection is not feasible. A connection to the east would be hampered by the location of a Category 1 wetland. The neighboring property to the south (in the west area) could share the new public road since it is located along the south property line for approximately 280 feet east of Jordan Road. This

will eliminate the need for another development access point on Jordan Road in the future, which is designated as a major collector arterial road.

In the original plans, a large section of the property across the north was shown on the plans as Tract 999, to be "reserved for future development". That tract was eliminated in a subsequent review, so no future development is proposed. The change for this review is that the Mineral Resource Overlay has been removed from the site, and a portion of that area is now being used for lots.

A public local access road design standard is required for the main road serving this plat (Roads A and C), (EDDS 3-060/3-040, which is based on a maximum of 250 ADT) from Jordan Road to the end of the cul-de-sac (north leg), which requires a pavement width of 28 feet for two 9-foot lanes, a 7-foot and a 3-foot paved shoulder. The design speed is 25 mph. The horizontal curves were identified on the plans, and meet the minimum requirements (165-foot radii) of EDDS Table 3-4. A profile of the roads was provided for this review that showed the proposed grades and vertical curves have met minimum requirements of EDDS.

The section detail for the public rural local access road (Roads A and C) previously showed a 28-foot pavement width and a drainage ditch on each side. The section was revised for this review to show a drainage ditch on one side and thickened edge asphalt on the other side to direct runoff into a storm drainage system. The applicant has demonstrated that the improvements required for the road will fit within a 40-foot wide right-of-way. The drainage proposal will be reviewed as part of the construction plan review. The section detail is shown in a 40-foot wide easement instead of right-of-way, but since the public road is correctly identified as public in the plan views, the correction can be made in the construction plan review. The standard roadway section shows the pavement depth currently required by EDDS 3-040.

There is a short cul-de-sac road (Road B or Tract 995) serving lots 1 through 5 in the southwest area of the development proposed as a private road. That road must meet EDDS minimum standards for a private low volume access road (EDDS 3-080), which has a 20 mph design speed, and requires a 20-foot wide gravel road.

The section detail for private Road B shows a 20-foot wide paved road (EDDS allows the surfacing to be gravel for this road classification) in a 30-foot wide easement width, which meets the minimum requirements.

If the property to the south proposes a development in the future that would use the west leg of the new public road (just east of Jordan Road), that developer would be required to widen the pavement in the section of road fronting the property to meet the design standards for a rural subcollector public road serving over 250 ADT.

Sight distance at the proposed access point was checked and it meets the EDDS requirements.

Section (c) of SCC 30.66B.420 requires the applicant to improve existing roads (which in this case is Jordan Road, connected at the north and south ends with a state highway) 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 standard,
- (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 above factors were evaluated in relation to the proposed development and it was determined that no off-site improvements to the existing road system (Jordan Road) is needed due to the addition of 18 homes in an area that has moderate 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.

Jordan Road is designated as a major collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. 20 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 20 feet of additional right-of-way is required, which has been shown on the plans. The Hearing Examiner has included a condition to require the dedication of right-of-way.

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 an Interlocal Agreement (ILA) with the WSDOT/County effective December 21, 1997, and as amended.

A voluntary offer to the State for \$0.00 was included in the initial application; based on the Gibson Traffic study dated May 22, 2006 (Exhibit C.1), which indicated that the project would not owe the State any traffic mitigation fee based on the trip distribution provided in the study showing that the proposed development will not impact any WSDOT improvement projects in TSA B with three or more peak hour directional trips. Comments dated June 12, 2006 were received from WSDOT (Exhibit G.2) indicating agreement with the consultant's analysis.

The updated traffic study dated February 27, 2009 for 18 lots had the same conclusion as the previous study; that the project would not owe the State any traffic mitigation fee based on the trip distribution. Comments dated March 9, 2009 have been received from WSDOT (Exhibit C.1) confirming agreement with the revised traffic study. Therefore; no traffic mitigation to WSDOT will be required.

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.

An interlocal agreement has been executed between the County and the City of Granite Falls for traffic mitigation for impacts on the City's road systems. The Gibson Traffic Study dated May 22, 2006 identified the amount owed for traffic mitigation to Granite Falls as \$18,750.00, and a copy of a traffic mitigation offer for that amount was included with the application. (Exhibit C.1) That amount was based on the formula: 15 peak hour trips (homes) x 50% (sub area percentage) x \$2,500.00 = \$18,750.00. Comments dated June 8, 2006 were received from the City indicating agreement with the amount, and a copy of the executed offer was attached.

Since the plans have been revised to add three more lots, a new traffic mitigation offer was needed to Granite Falls. The applicant submitted a traffic mitigation offer to Granite Falls for this review for the amount of \$22,500.00 based on 18 peak hour trips (homes) x 50% (sub area percentage) x \$2,500.00. A copy of the agreement was returned by the City signed as accepted (Exhibit G.1). Payment of that amount will be a condition of approval in this decision.

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

This proposal lies outside of the Urban Growth Area (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 that may reside in the subject development. Comments dated August 2, 2007 have been received from the Granite Falls School District indicating that the bus stop will be located at the entrance of the development and Jordan Road (Exhibit G.7). A 7-foot paved shoulder walkway will be a constructed along the main interior development road (Roads A and C) to Jordan Road, and along Jordan Road where the development fronts the road; which meets the requirements of the law. At the hearing, the applicant also agreed to provide a safe waiting area shelter on Jordon Road meeting DPW specifications. (See Exhibit G.7). The Examiner will provide a condition in the decision to provide for the shelter.

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Granite Falls School District No. 332, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 3 existing lots. The Hearing Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage. Stormwater runoff from each lot will be directed to stormwater infiltration facilities on each lot. Stormwater runoff from the road will be routed to water quality treatment facilities and infiltration systems located within Tracts 994 and 995 (Exhibit B.4).

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 50,000 cubic yards of cut and 50,000 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. The applicant is proposing an 18-lot RCS with access along a new public road that crosses wetland and streams in three locations. Portions of the on-site wetlands and buffers are proposed to be filled for the access roadway and will be mitigated for through the addition of large upland areas that fall outside of the standard buffer protection areas. All of the mitigated critical areas and buffers are proposed to be permanently protected as Native Growth Protection Areas/Easements (NGPA/Es) or in separate tracts as NGPAs. Three existing culverts will be upgraded to bottomless arched culverts where the road crosses these streams. Two of the streams are presumed bull trout streams.

The applicant is avoiding and minimizing the impacts to the on-site critical areas by widening the existing gravel access road and thus utilizing existing stream crossings and minimizing impacts to areas that have been previously disturbed or are immediately adjacent to the previously disturbed gravel roadway corridor per SCC 30.62.365. Mitigation for the wetland and buffer impacts is proposed in the form of additional wetland buffer via innovative development as allowed per SCC 30.62.370. The applicant is proposing a total of 620,480 square feet of additional buffer as compensation for 5,349 square feet of direct wetland fill, most of which is an emergent wetland (Wetland C – 4,574 square feet) regulated as a BMP wetland pursuant to SCC 30.62.360(6) and 63,671 s.f. of buffer loss for the roadway for a combined mitigation replacement ratio of 9:1.

Three existing culverts will be upgraded to bottomless arched culverts as required by SCC 30.63A.200 (3) (c) when the gravel road is improved to public road standards.

Innovative development is required because the applicant is not proposing to create additional wetland to replace the wetland area being filled and thus the application does not meet the

standard requirements per SCC 30.62.345(1) (c). The applicant has demonstrated compliance with SCC 30.62.370(2) because the bulk of the filled wetland area (86%) is an emergent BMP wetland that is allowed to be filled with a 1:1 mitigation ratio for the habitat function replacement and the remaining 15% of combined scrub-shrub and forested wetland totals only 775 square feet. The overall replacement ratio of buffer addition for buffer and wetland impacts is 9:1. PDS has included a recommended condition to require implementation of the mitigation plan.

PDS has reviewed the critical areas study and mitigation plan (Exhibits C.5 and C.6) and determined that the application is in conformance with Chapter 30.62A SCC (Critical Areas Regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

12. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to UGAs and adopted area-wide rezones within the UGAs of the county respectively.

The subject property is designated Rural Residential-5 (RR-5: 1 du/5 acre). This designation includes a large portion of the rural area that was formerly zoned R-5 prior to the GMA's enactment. It is still zoned R-5. The base density is one dwelling unit per five acres.

The 18 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 Snohomish County Public Utility District No. 1 (PUD). (Exhibit G.5) As stated in Exhibit G.5, the applicant may be required to install a backflow prevention assembly to prevent backflow of contaminants into drinking water through cross-connection. Related Department of Health regulations pertaining to cross-connection are found at WAC 246-290-490. The applicant also must provide PUD with appropriate easements.

B. On-Site Septic.

Each lot will be served by individual septic systems. The Snohomish Health District (SHD) recommended approval for the preliminary plat on April 27, 2009 (Exhibit G.3).

C. Electricity.

On June 19, 2006, the PUD provided correspondence indicating that it can provide electrical service for the project. (Exhibit G.4)

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 September 23, 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 June 6, 2006. (Exhibit A.1) 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 RCS and recommended approval on July 20, 2006. The conclusions of the review were that:

- (a) Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.310. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the (final) plat, and locations for new hydrants shall be approved by this office.
- (b) The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.300, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems.
- (c) 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 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;

PDS and the Examiner have concluded that the application meets the requirements of the critical areas code, Chapter 30.62A. SCC, as determined in Finding of Fact 11.

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 B.1) Existing landscaping provides the intended function of the vegetated sight-obscuring buffer. The landscaping plan (Exhibit B.3) requires any disturbed area to be replanted with conifers at ten (10) feet on center and by shrubs at six (6) feet on center, planted in a triangular pattern. The vegetated sight-obscuring buffer has been appropriately located, the buffer is of the required size, and that the landscaping note provides adequate requirements for augmenting the existing vegetation, should that become necessary. 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 to be 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. The Examiner will include a condition requiring all utilities to be installed underground. (Exhibit G.6; 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. Unbuildable lands have been placed in Tract 996, 997, 998, and 999 and designated as a NGPA.

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;

Not applicable.

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 A5. The plan addresses ownership and maintenance of Tracts 992, 993, 994, 995, 996, 997, 998 and 999. Proposed ownership is as follows: restricted open space (Tracts 999 and 998) and private access easement (Tract 992): Mountain Home Limited Partnership, 13721 Tastad Road, Arlington, WA 98223, (360) 691-5375; restricted open space (Tracts 996 and 997), storm drainage tracts (994 and 995), and private road (Tract 993): held in common ownership by the Homeowners Association (HOA) as conveyed at the time of plat recording.

The management objectives are as follows:

1. Maximize vegetative health;
2. Minimize negative effects of soil disturbance;
3. Preserve and enhance appropriate wildlife habitat;
4. Minimize the potential impacts of development on water quality;
and
5. Enhance and maintain an attractive natural environment.

(Exhibit A5 at 2). While the management practices prescribed in the Open Space Management Plan are primarily designed to promote preservation, the Plan makes clear that health and safety of the residents in the development is the foremost consideration. Therefore, according to the Plan, the safety of homes and their occupants from the hazards of fire and falling trees must be carefully considered in all management practices. (Exhibit G5 at 2) With that exception in mind, no permanent vegetation removal will be permitted. The HOA will ultimately be responsible for compliance (management and maintenance) with the Open Space Management Plan, as implemented through a condition of final plat approval.

K. 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 an 18-lot development.

- L. 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;

Eighteen (18) lots are proposed. The computation of 75% of 18 yields 13.5 lots. At least 13 lots need to abut with the required buffers and open space of the development. Fourteen lots abut to the required buffers and open space tracts. Four lots (lots 15, 16, 17, and 18) do not abut the required buffers or open space tracts.

- M. 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 subject property is constrained by critical areas. As discussed in the Critical Areas section of this decision (above), impacts to critical areas has been kept to a minimum with the proposed lot layout. The new public roads and proposed lot driveways have been designed so that passing traffic will have very limited views of the subdivision from the roadway. No driveways are proposed from existing roadways.

- N. 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 has recommended approval of the preliminary plat. See Exhibit G3.

- O. 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;

There are no prominent topographic features on which lots are proposed. The northeast corner of the site is over 150 feet higher than the proposed lot locations. Lots are not located near the interior of the site because the interior of the site is comprised of critical areas. PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property that are accessible from existing road systems,

and that the proposed lots are provided with a visual sight-obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. The Examiner determines that the applicant has met this design requirement to the extent possible on this application.

P. 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 #17.

Q. 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*.

18. 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: 2,595,410 square feet/200,000 square feet	= 12.98 lots
Bonus residential density	= 15%
Additional bonus density	= 20%
Total lot yield-rounded	= 17.52% lots
Total lots proposed	= <u>18 lots</u>

19. 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 December 3, 2008 (Exhibit B.1), and in an Open Space Management Plan (Exhibit A.5) 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 as further discussed in Finding of Fact 17. 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 71% (41 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.

20. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas, the single-family homes on will be in character with the existing area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 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 and sewage disposal will be provided by individual wastewater septic systems.

21. Any Finding of Fact in this Order, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the Mountain Home RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

RCW 58.17.110. The Examiner concludes the applicant has met its burden in showing the established criteria have been met.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved as outlined in Chapter 30.41C SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.

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

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS:

- A. The preliminary plat received by PDS on December 3, 2008 (Exhibit B.1) 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 this Decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the Critical Area Assessment and Delineation report, Habitat Management Plan, and Mitigation Plan for Mountain Home RCS (all three reports) prepared by Chad Armour, LLC dated November 11, 2008 (submitted to PDS on 12/03/08) shall be submitted for review and approval during the construction review phase of this project.
 - iv. Construction plans shall be submitted for review and approval by PDS.
 - v. A full drainage plan shall be submitted for review and approval for the construction of the plat.
- 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 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:

\$3,799.29 per lot for mitigation of impacts on county roads paid to the county, PDS Tran Code 5208.

\$1,250.00 per lot for mitigation of impacts on City of Granite Falls streets paid to the City.

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 20-foot right-of-way dedication along the property's frontage with Jordan Road to total 40 feet from the right-of-way centerline.
- iv. "The lots within this subdivision will be subject to school impact mitigation fees for the granite Falls School District No. 332 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 three (3) existing parcels. Lots 1 through 3 shall receive credit."
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA);
"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 UDC 30.91N.010 are allowed when approved by the County."
- vi. "The Open Space Management Plan shall be fully implemented and maintained."
- vii. "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."
- viii. "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. "
- ix. "The lots in this subdivision do not qualify as duplex lots per Snohomish County Code."
- x. "All utilities shall be located underground."

D. Prior to recording of the final plat:

- i. The roads within the plat shall have been constructed in compliance with the EDDS.
- ii. Rural standard frontage improvements shall have been constructed along the property frontage with Jordan Road in compliance with the EDDS 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. 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 PDS for review and approval prior to installation.

- iv. Utilities shall be located underground.
- v. The applicant shall have constructed a safe area for children to wait for the school bus in compliance with the EDDS and DPW specifications.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B.3) shall be implemented. All required sight-obscuring buffer landscaping shall be installed in accordance with the approved landscape plan.
- ii. The Open Space Management Plan shall be fully implemented.
- iii. PDS shall review the sight- obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the sight-obscuring buffer.

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 Department of Planning and Development Services, and shall, at a minimum:

- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts; and
- ii. Establish a Homeowner's Association, guaranteeing management and maintenance of restricted open space in as required by the Open Space Management Plan (Exhibit A.4).

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 13th day of January, 2010.



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 **JANUARY 25, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JANUARY 27, 2010** 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.