

# DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 22, 2010

PLAT/PROJECT NAME: ***THE ARBOR AT ECHO FALLS***

APPLICANT/  
LANDOWNER: Echo Falls MTA, LLC

FILE NO.: 08 103337 SD

**TYPE OF REQUEST:** Rural Cluster Subdivision (RCS)

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

## **BASIC INFORMATION**

GENERAL LOCATION: 11804 202<sup>nd</sup> Street SE, Snohomish, WA 98296

ACREAGE: 31.18 acres

NUMBER OF LOTS: 14

AVERAGE LOT SIZE: 36,745 square feet

MINIMUM LOT SIZE: 24,552 square feet

DENSITY: .45 du/ac (gross)

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

ZONING: R-5

UTILITIES:

Water: Cross Valley Water District  
Sewer: On-site septic

SCHOOL DISTRICT: Monore School District No. 103

FIRE DISTRICT: #7

PDS STAFF RECOMMENDATION: Approve with conditions

## INTRODUCTION

The preliminary plat application was originally submitted to the Department of Planning and Development Services (PDS) on April 2, 2008, and the application was determined to be complete as of the April 30, 2008. (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 April 15, 2008. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on March 9, 2010. As of that date, 227 days had elapsed on the 120-day timeline. At the hearing, witnesses were sworn, testimony was presented, and exhibits were entered.

**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 a 14-lot RCS on a 31.18 acre parcel. Access is proposed by a private road off of 202<sup>nd</sup> Street SE. Each lot will be served by individual septic systems. Potable water will be supplied by the Cross Valley Water District.
3. Site Description: The site is undeveloped and forested. There is an existing road that transects the site and has already caused wetland disturbance to wetlands which dominate the western edge of the site.
4. Adjacent Zoning/Uses: Adjacent property to the east and south is developed as The Golf Course at Echo Falls. Properties surrounding the site are either undeveloped or developed as single family residences.
5. Issues of Concern:

Technical and agency reviews have identified no issues of concern.

One public comment has been received from Glen Hirai (Exhibit H.1), who is the Special Projects Manager for the golf course. He requested either that the residences be set-back from the golf course, or that netting be installed to prevent golf balls from either hitting the residences or falling into their yards.

PDS RESPONSE: The project is an RCS, with the required vegetated sight-obscuring buffer between the golf course and the proposed lots. Lot 8 shows the proposed building site that is closest to the golf course, with a total distance of 75 feet from the property line and the proposed residence. PDS believes that it is incumbent on the golf course to provide the necessary facilities to prevent golf balls, and golfers, from trespassing onto adjacent properties, rather than placing the responsibility on the developer of the adjacent parcels.

At the hearing, Mr. Hirai testified relaying the same concerns. He was specifically concerned that homeowners would cut the trees in the perimeter buffer. He again requested that nets be required. The Examiner, with the agreement of the applicant, stated that she would condition the final plat to specifically state on the face of the final plat that

The Vegetated Sight-Obscuring Buffer shall be maintained for the sight-obscuring function. The site-obscuring buffer helps to protect homeowners from stray golf balls from the golf course. Trees in the sight-obscuring buffer may only be cut down if they are determined to be hazardous as defined in Snohomish County Code by a certified arborist. A hazardous tree is defined as a tree which poses an imminent danger of falling on structures, or which constitutes an airport hazard. (SCC 30.91H.040)

As to Mr. Hirai's request for the Examiner to require the applicant to install netting around the lots bordering the golf course, the Examiner believes that the golf course should take the responsibility to install netting, as it is creating the hazard. The Examiner does not have the authority to require the applicant to take on such a costly endeavor when it is not creating the hazard to other property owners.

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

6. Parks Mitigation. The proposal is within Nakeeta Beach Park Service Area, No. 307, and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 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 Hearing Examiner has included a requirement for payment of mitigation fees as a condition of approval of the RCS.
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, 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 133.98 average daily trips (ADT) and has a road system impact fee of \$33,762.96 (\$2,411.64/lot) based on \$252/ADT, the current fee rate for residential developments outside the Urban Growth Area (UGA), for TSA E. 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. PDS has included a recommended condition to require the mitigation payments.

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

ITE Land Use Category: Single family residential

ITE Land Use Code: 210

Applicable Measurement Unit (ITE Independent Variable): number of lots.

Number of applicable measurement units for this development: 14

Trips	Calculations	
ADT	(14 New SFR - 0 Exist.) x (9.57 ADT/SFR) =	133.98
AM PHT	(14 New SFR - 0 Exist.) x (0.75 AM PHT/SFR) =	10.50
PM PHT	(14 New SFR - 0 Exist.) x (1.01 PM PHT/SFR) =	14.14

B. Concurrency [SCC 30.66B.120]

Concurrency, as defined by the Washington Growth Management Act, is the requirement that adequate transportation capacity be available to support development. A proposed development may not proceed if it would lower the Level of Service (LOS) of a transportation facility below the adopted standard, or impact an arterial unit that is already below standard (in arrears). Transportation improvements that would bring the LOS back to the adopted standard must be reasonably funded and scheduled for completion within six years.

Concurrency helps balance the timing and sequencing of development in relation to transportation improvements, such as new streets and traffic signals. The two main parts of a concurrency program are an ordinance, which defines how concurrency is administered, and the Comprehensive Plan, which establishes transportation LOS standards.

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 subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of May 29, 2008. The expiration date of the concurrency determination is six years from this date.

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 E which, as of the date of submittal, had the following arterial units in arrears: Arterial unit 240, York Road/35<sup>th</sup> Ave SE from SR 524 to Grannis Road is in arrears. Based on peak-hour trip distributions, the subject development did 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 10.50 a.m. peak-hour trips and 14.14 p.m. 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 LOS, any development which adds three or more p.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 E 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.

202<sup>nd</sup> Street SE: As per DPW Rule 4222.020(1) full rural frontage improvements are required along the subject parcel's frontage on 202<sup>nd</sup> Street SE and consist of: Asphalt concrete pavement consisting of 11 feet in width from roadway centerline with a 7 foot paved shoulder.

The road, 202<sup>nd</sup> Street SE, 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.

Echo Lake Road: As per DPW Rule 4222.020(1) full rural frontage improvements are required along the subject parcel's frontage on 202<sup>nd</sup> Street SE and consist of: Asphalt concrete pavement consisting of 12 feet in width from roadway centerline with an 8 foot paved shoulder.

Echo Lake 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.

Construction of frontage improvements must be complete prior to approval of the final plat. The Hearing Examiner has included such a requirement as a condition of approval of the decision.

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.

The private road serving the development, Lots 1 through 12, shall be constructed to at least the Private Subcollector Road standards, Plate-3-60 of the EDDS consisting of 30 feet of pavement, a 3-foot shoulder, 20 feet of driving service and a 7-foot shoulder. The 7-foot paved

shoulder will provide safe walking conditions for the school children. Access to Lots 13 and 14 will be provided by a 20-foot panhandle. The use of the elbow design is approved pursuant to Table 3-4 of the EDDS (note on alternative design). The 165 foot curve in the private road on the northeast side of Lot 12 is approvable because of its close proximity to the elbow design which will minimize the speed of the vehicles using said curve.

The County approves the use of the private roads shown on the preliminary plat for the subject development per SCC 30.41A.210(3)(c), roads in an RCS can be private roads.

Access Sight Distance: A sight distance analysis was submitted with the November 6, 2008 resubmittal. The analysis provides evidence that the development's access meets or exceeds the county's minimum safety requirements for access.

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.

202<sup>nd</sup> Street SE: The road serving this development, 202<sup>nd</sup> Street SE, 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, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, no additional right-of-way is required. The road serving this development, 202<sup>nd</sup> Street SE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

Echo Lake Road: The road serving this development, Echo Lake Road, is designated as a Collector Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 5 feet of additional right-of-way. The additional right-of-way is not shown on the preliminary plat. Echo Lake Road 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. The Hearing Examiner will include a condition to require the dedication of right-of-way.

SR 522: There is a small amount of frontage (35.89 feet) along the SR 522 right-of-way. No comments were received from the WSDOT concerning any additional right-of-way dedication.

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 (ILA) between the County and the 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 ILA with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055, the applicant has offered to provide the mitigation measures for impacts on state highways as follows: Proportionate Share Mitigation (ILA Section 5.2) will be payment of \$4,823.28 based on the standard rate of \$36/ADT.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT were received by e-mail on April 11, 2008 (Exhibit G.1). 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 Hearing Examiner will impose the mitigation fees on the development as a condition of approval.

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 ILAs between the County and the other jurisdictions. There are not any city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development.

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 have been received from the Monroe School District dated March 11, 2008 (Exhibit G.4), stating that the students will attend the following schools:

School Type	Elementary	Middle School	High School
School Name	Maltby	Hidden River	Monroe High
Walk to School	No	No	No
Walk to School Bus	Yes	Yes	Yes
Will busses pick up children within/adjacent to this project	Yes	Yes	Yes
Bus Stop Locations	Development access @ 202 <sup>nd</sup> Street SE		

Per DPW specifications, it is also necessary to provide a safe waiting area shelter so children will not have to wait in the rain. 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 Monroe School District No. 103, 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 six 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. Detention and water quality treatment facilities will be located at the north end of the site, adjacent to 202<sup>nd</sup> Street in separate tracts (as required under the drainage ordinance). Most site development drainage is to be collected in catch basins and conveyed in culverts within the private road tract. Stormwater will be carried to a typical two cell detention and water quality treatment open earthen wetpond system at the north end of the site. The ponds will detain post-development storm water flows and release at no greater than pre-developed peak rates of runoff as required of major developments. Drainage from the detention pond will discharge to the 202<sup>nd</sup> Street road ditch as in the existing condition. Pollution runoff from Lots 13 and 14 driveways will be treated via driveway filter strips, draining to individual level spreaders adjacent to the wetland, and providing wetland hydration.

No known drainage problems are known to exist downstream of this project within ¼ mile.

Grading. Grading quantities are anticipated to be approximately 2,850 cubic yards of cut and 2,850 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. The Hearing Examiner has included recommended conditions to require submission and approval of construction plans, to require landscape plantings around the detention pond, and to obtain a grading permit prior to ground disturbing activities.

11. Critical Areas Regulations.

A. Streams and Wetlands

The applicant is proposing a 14 lot RCS with access taken from 202<sup>nd</sup> St. SE off of Echo Lake Road. The on-site wetlands and their corresponding buffers are proposed to be permanently protected as critical area protection areas (CAPAs) in separate tracts. A site visit was conducted on May 15, 2008, which found two Category 3 wetlands and a Type Ns stream on the site. Wetlands A and B were found to be properly flagged in the field. The Type Ns stream is a tributary to Evans Creek within the Little Bear Creek watershed and flows through the larger forested Category 3 wetland located in the western portion of the site. The site is predominantly forested with clearings in the northeastern portion and along an existing paved access road.



The buffer of Wetland B, a Category 3 wetland that is less than 5,000 square feet, will be impacted by the access road. The entirety of Tract 993 is designated as CAPA as compensation for the impact to the buffer.

At the hearing, the Examiner reviewed the Critical Area Study and BMP Mitigation Plan with the applicant's expert. There were a number of errors in the original report submitted (Exhibit C.4), so the Examiner asked that the consultant go back and correct the report to make it consistent with the data reported by the witness from the on-site investigation. The applicant has submitted a new report that is consistent and rates the wetlands consistent with the on-site investigation. (Exhibit J.2) The Hearing Examiner will include conditions to mark and protect the critical areas in the decision portion of this document.

B. Critical Aquifer Recharge Areas.

The development is in a location mapped as Critical Aquifer Recharge Area. The Hydrogeologic Report (Exhibit C.3) found the proposed on-site septic disposal systems will not impact the Critical Aquifer Recharge Area. According to the report, the Cross Valley Aquifer and advance outwash deposits do not underlie the site; and calculated increases in concentrations of nitrate due to the on-site septic system are below Ecology's threshold increase of 2 mg/L and well below the State Water Quality Standard of 10 mg/L. The Water District has not requested any conditions on the development.

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 (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1du/5 ac) may be increased consistent with Policy LU 6.B.9.

The 14 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 the Cross Valley Water District. (Exhibit G3.)

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 14, 2008 (Exhibit G2).

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 (SEPA) Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on April 15, 2008 (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 A1)  
The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, 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 Staff Report (Exhibit I) provides the following information on compliance with the fire code:

PDS sent a request for review document to Fire District # 7 on April 7, 2008. PDS did not receive a response from Fire District # 7.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the RCS on June 10, 2008. The conclusions of the review were that:

- (a) 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.
- (b) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150.

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 May 26, 2009 (Exhibit B.1), and in an Open Space Management Plan (Exhibit A.4) 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 54% (17.11 acres) of the property in restricted open space (Exhibit A4); 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;*

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, so supplemental plantings will only be required in areas of site disturbance. The landscaping plan (Exhibit B.4) 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 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 restricted open space and designated as a Native Growth Protection Area (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 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998 and 999. The Open Space Management Plan (Exhibit A.4) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for the tracts. Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts. The open space management plan states that

After plat construction permanent vegetation removal with the sight obscuring buffers or the CAPA buffers shall not be permitted, except that the following activity shall be allowed where vegetation removal is the minimum necessary to conduct this activity:

- (i) Removal of dead, diseased or hazardous vegetation, consistent with best wildlife management practices

The Examiner notes that the applicant agreed at the open record hearing to limit tree removal to only hazardous trees which are defined under the Snohomish County Code as “a tree which poses an imminent danger of falling on structures, or which constitutes an airport hazard.” (SCC 30.91H.040) The Examiner requires that the Open Space Management Plan be amended prior to final plat approval to conform to this requirement.

- 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 a 14-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;*

All lots abut open space tracts; therefore the project complies with this requirement.

- 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 and is relatively flat. Impacts to critical areas are mainly those that have already occurred due to the existing private road and have been kept to a minimum with the proposed lot layout. The design of the plat is such that passing traffic will have very limited views from the roadway to the proposed residences. 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. (Exhibit G2.)

- 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 property is a very irregular shape. Lots are not located near the interior of the site because the interior and one side of the site are 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 other 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 #7.

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*)

19. 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: 1,358,201 square feet/100,000 square feet	= 13.58 lots
Total lot yield-rounded	= 14 lots
Total lots proposed	= <u>14 lots</u>

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 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 Arbor at Echo Falls 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 RCS 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, 30.41C.100 and 2.02.155(2), the application for **PRELIMINARY SUBDIVISION** approval and **PRELIMINARY RURAL CLUSTER SUBDIVISION** approval is hereby **GRANTED** subject to the following conditions:

**CONDITIONS:**

- A. The preliminary plat received by PDS on May 26, 2009 (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 Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.
  - iii. A final mitigation plan based on the Wetland Buffer Mitigation Plan – The Arbor at Echo Falls as prepared by Wetland Resources, Inc. dated May 22, 2009, date stamped received by PDS on May 26, 2009 -- shall be submitted for review and approval during the construction review phase of this project.
  - iv. A full drainage plan shall be submitted for review and approval for the construction of the plat.
  - v. Construction plans shall be submitted for review and approval prior to any ground disturbing activities.
  - vi. A grading permit, 08-110193-GR, shall be issued concurrent with construction and full drainage plan approval. The permit shall be closed concurrent with approval of the as-builts for 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 (Nakeeta Beach # 307) in the amount of \$1,244.49 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. "Additional right-of-way adjacent to the existing right-of-way of Echo Lake Road shall have been dedicated to the County along the development's entire frontage such that a minimum of 35 feet of right-of-way exists from centerlines of the Echo Lake Road right-of-way."
  - iii. "Chapter 30.66B SCC requires traffic impact mitigation payments in the amounts shown below for a single-family residence:

\$2,411.64 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$344.52 per lot to Snohomish County for the Washington State Department of Transportation (WSDOT) as fee mitigation of project impacts on state highways.

These payments are due prior to or at the time of individual building permit issuance for each residence. Notice of these mitigation payments/obligations shall be contained in any deeds involving this subdivision or any of the lots therein. Once a residential building permit(s) has been issued all mitigation payments shall be deemed paid for the respective lot.”

- iv. “The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District No. 103 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for six existing parcels. Lots 1 through 6 shall receive credit.”
- v. All Critical Areas shall be designated Critical Area Protection Area (CAPA) (unless other agreements have been made);  
  
“In consideration of Snohomish County Code requirements, except as otherwise provided herein, the CAPA (Critical Area Protection Area) 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 within said CAPA, except the allowed activities set forth in Snohomish County Code (30.62A.010(2), 30.62A.510, 30.62A.530) when approved by the County.”
- vi. “The Open Space Management Plan (Exhibit A4) shall be fully implemented and maintained.”
- vii. “The Vegetated Sight-Obscuring Buffer shall be maintained for the sight-obscuring function. The sight-obscuring buffer helps to protect homeowners from stray golf balls from the golf course. Trees in the sight-obscuring buffer may only be cut down if they are determined to be hazardous as defined in Snohomish County Code by a certified arborist. A hazardous tree is defined as a tree which poses an imminent danger of falling on structures, or which constitutes an airport hazard.” (SCC 30.91H.040.)
- viii. “All utilities shall be located underground.”
- ix. “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.”

- x. "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. "
- xi. "The lots in this subdivision do not qualify as duplex lots per Snohomish County Code."

D. Prior to recording of the final plat:

- i. Construction of rural standard frontage improvements on 202nd Street SE and Echo Lake Road shall have been completed in accordance with the EDDS and to the satisfaction of DPW.
- ii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the county, with both CAPA 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 a CAPA 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.

CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. 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 CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.

- iii. The final wetland mitigation plan shall be completely implemented.
- iv. Utilities shall be located underground.
- v. The applicant shall construct a weatherproof safe waiting area at the school bus stop in accordance with EDDS.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B.4) shall be implemented. All required sight-obscuring buffer landscaping and detention facility landscaping shall be installed in accordance with the approved landscape plan.
- ii. The Open Space Management Plan (Exhibit A4) 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 site 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.

- ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in 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 22<sup>nd</sup> day of March, 2010.



Barbara J. Dykes, Hearing Examiner

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

**Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 1, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 5, 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.