



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S. 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
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DATE OF DECISION: October 14, 2011
PLAT/PROJECT NAME: Sweet Water Springs (formerly Country Village at Winter Lake)
APPLICANT/
LANDOWNER: Innovative Real Estate Concepts, Inc.
17318 Bothell Way N.E., Bothell, WA 98011
FILE NO.: 05-129116 SD
TYPE OF REQUEST: Preliminary Subdivision Approval - RCS
DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

BASIC INFORMATION

LOCATION: West of Sultan Basin Road, approximately 800 feet north of the intersection of Sultan Basin Road and Kellogg Lake Road, Sultan, Washington
ACREAGE: 27.7 acres
NUMBER OF LOTS: 12
AVERAGE LOT SIZE: 47,758 square feet
MINIMUM LOT SIZE: 44,000 square feet
GROSS DENSITY: 0.43 du/ac
GMACP DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)
ZONING: R-5
UTILITIES:
Water: Individual, Exempt Wells
Sewer: On-site individual septic
Electricity: Snohomish County PUD No. 1
SCHOOL DISTRICT: Sultan School District No. 311
FIRE DISTRICT: Snohomish County Fire District No. 5
PDS STAFF RECOMMENDATION: *Approve with conditions*

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. Regulatory Review and Vesting. A complete application was submitted to Planning and Development Services (PDS) on June 15, 2006 and was vested as of July 13, 2006 for purposes of regulatory review. (Exhibits A.1, A.2, K) The 120-day clock started on July 13, 2006. PDS and the applicant exchanged various plan sets and review comments six times through July 12, 2011. The application was granted two extensions of time. In November, 2010, the applicant began a major modification of the original proposal, scaling back the original application from a 44-lot Rural Cluster Subdivision (RCS) to a 12-lot subdivision. As a result, PDS started a new 120-day clock. As of the public hearing date, 93 days of the new 120-day period had elapsed. (Exhibits A.6, A.7, A.8, A.9, A.10; K) The Applicant waived the 120-day timelines applicable in this case.
2. Public Hearing. A public hearing was held on September 22, 2011. Appearing at the hearing on behalf of PDS was Ed Caine. Ry McDuffy appeared on behalf of the Applicant. Several members of the public attended the hearing and testimony was provided by Eric Blanche, Herb Jones, Gary Birch, and Jim Gardner. Their comments related to concerns about the proposed development's impact on existing wells in the area that provide potable water to their homes, the effect of logging the property, and concerns that the plat improvements will be made and the lots will sit vacant due to the economy, eventually becoming an eyesore, negatively affecting adjacent property values.
3. The Record. All of the Exhibits shown on the master list of exhibits (Exhibits A.1 through K) were entered into the record as evidence, along with the testimony of witnesses presented at the Open Record Hearing and the Tape Log. After the close of the public hearing, PDS noted that a document was inadvertently left out of the record and should have been included. The document is a June 2, 2011 memo from Mark Brown To Ed Caine addressing traffic review issues relating to the plat, and the "extent of improvements analysis" required by SCC 30.66B.430. (Exhibit L) This exhibit was added to the record and copies were sent to the parties of record along with this decision. The entire record was considered by the Examiner in reaching this decision.
4. Public Notice. The Examiner finds that PDS concurrently gave proper public notice of the Open Record Hearing, SEPA Threshold Determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits E.1, E.2, F.1, F.2 and F.3)

A. Background Information

5. Applicant's Proposal: The applicant is requesting a 12-lot RCS on a 27.7 acre parcel. The proposed development will impact 14.62 acres of the site. The remainder of the property will be permanently protected in Native Growth Protection Areas (NGPAs) and/or Easements. Access to the lots will be by private driveways off of a new private road taking access off of Sultan Basin Road.
6. Existing Conditions. The entire site is forested, with some dirt roads crossing the property, but otherwise undeveloped. Several critical areas (two small Category 3 wetlands and steep slopes

exceeding 40% grade) were identified on the site. Adjacent lands are either undeveloped and forested or developed with single-family residences. Winters Lake is located approximately 200 feet southwest of the property. Adjacent zoning is R-5.

7. Issues of Concern:

- A. Agency Comments. No issues of concern were raised after technical and agency reviews.
- B. Citizen Comments. Public comments were received from six (6) parties of record, mostly discussing the original 44-lot plat application. Two (2) individuals provided comments on the revised 12-lot plat application. The concerns are set forth in detail in the Staff Recommendation. (Exhibit K) The Examiner finds that each concern has been adequately addressed either by staff comments or through the regulatory review process.

B. Compliance with Codes and Policies.

- 8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within the Lord Hill Park Service Area, No. 305, and is subject to Chapter 30.66A SCC, which requires payment of \$344.52 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
- 9. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC, EDDS, and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.
 - (a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The applicant shall be required to pay a road system capacity impact fee to the County for impacts within TSA "C", in the amount of \$19,063.44 (\$1,588.62 per new lot) pursuant to SCC 30.66B.310. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of October 4, 2006. The expiration date of the concurrency determination is six years from that date. IRCs have been considered according to the requirements of SCC 30.66B.210. The project was not found to have an impact on any IRC location. As a result, the applicant shall not be required to make improvements to cure any IRCs. (Exhibit K)
 - (b) Frontage Improvements (SCC 30.66B.410) Full frontage improvements are required along the parcel's frontage on Sultan Basin Road consisting of an eleven-foot travel lane and a seven-foot paved shoulder. Sultan Basin Road is not in the cost basis for Chapter 30.66B SCC impact fees, therefore no credit for frontage improvements toward the applicant's impact fee is allowed. Construction of the required frontage improvements is included as a required conditional of approval.
 - (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Public Works Department (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any

needed improvements to any of these items. Three (3) requests to deviate from EDDS were submitted by the Applicant (See Exhibits G.1, G.2, and G.4), which were denied by the County Engineer. A fourth request to deviate from EDDS was submitted by the Applicant on September 5, 2007, seeking an intersection sight distance (ISD) of 356 feet, instead of the required 360 feet. (Exhibit G.3) This deviation request was granted for the reasons described in Exhibits G.3 and K in the record. The County Engineer and DPW staff have determined that, with the imposition of the Conditions set forth in Exhibit K, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

- (d) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430, as show in Exhibit L, and the facts set forth in the entire record.
- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) The applicant will not be required to dedicate additional right-of-way because existing public right-of-way is present at the appropriate widths. (Exhibit K)
- (f) Impacts to State Highways (SCC 30.66B.710) No impacts to state highways have been found as a result of the subject development application. Accordingly, Washington State Department of Transportation (WSDOT) has indicated that no impact fees are required as a result of the application. (Exhibit H.2)
- (g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement between the County and the other jurisdictions pursuant to the County's SEPA substantive authority.

Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the City of Sultan. As part of its traffic and SEPA reviews, PDS circulated notice of the proposed development to the City. The City of Sultan responded that the County's collected impact fees should be transferred to the City, based on impacts to Sultan Basin Road. Staff has determined that this is not allowed under the terms of the ILA. (Exhibit H.1) Accordingly, no impact fees are proposed or offered to the City of Sultan.

- (h) Transportation Demand Management (TDM) (SCC 30.66B.630)

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

10. 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, as well as the adequacy of pedestrian or bicycle facilities. The need for safe pedestrian facilities has been analyzed by the DPW and the Sultan School District No. 311. (Exhibits H.7 and K) Comments from the School District indicate that elementary, middle, and high school students residing in the proposed development will be picked up by bus at the intersection of Sultan Basin Road and the private access road to the development. A paved walkway along private roads A and B is only required where projected

ADT is 250 or greater. (Exhibit B.4, Sheet C4) Here, the development is projected to have 114.84 ADT, therefore the roadway can provide safe walking conditions for school children without a separated shoulder walkway to the school bus stop. The School District is not requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. The Examiner finds that proposed facilities are consistent with the County Code, EDDS, and the rural character of the surrounding area. The Examiner further finds that no school children will be required to walk to school from the site and that the facilities will provide for the general public health, safety and welfare.

11. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of School Impact Mitigation Fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, School Impact Mitigation Fees will be determined according to the Base Fee Schedule in effect for the Sultan School District No. 311, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit K) Credit is to be given for one existing lot on the subject property. Payment of School Impact Mitigation Fees has been included as a condition of approval of the development.

12. Drainage and Grading (Chapters 30.63A and 30.63B SCC) This project is vested to the codes in effect at the time of complete permit application, which was July 13, 2006. The new Land Disturbing Activities regulations were not in effect at that time. Therefore, the application is subject to the provisions of *former* Chapter 30.63A SCC (Drainage Code) and Chapter 30.63B (Grading Code).

A. Grading. Grading quantities are anticipated to be approximately 25,000 cubic yards of cut and 25,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality will 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. Based on the fact that grading in excess of 100 cubic yards will occur, a grading permit (now known as a "Land Disturbing Activity Permit"), and a Stormwater Pollution Prevention Plan (SWPPP) is required. (Exhibits C.2, B.4)

B. Stormwater Drainage. In terms of downstream analysis, a majority of the site drains to the east and enters into an existing Category 3 wetland, located on the west side of Sultan Basin Road. The stormwater then exits the wetland, traveling east through a 12-inch culvert under Sultan Basin Road and continues east to a natural drainage course, eventually reaching Kellogg Lake. (Exhibit C.2)

In terms of the stormwater conveyance system proposed for the development, most of the drainage from impervious surfaces and other pollution generating surfaces will be collected and conveyed to a stormwater detention pond for water quality treatment, infiltration and detention, located in Tract 995. The pond will be designed to meet the former Drainage Code. There is also a proposed offsite easement adjacent to Tract 995, which will contain a portion of the detention pond and the discharge facilities. The owner of this adjacent parcel is the Applicant. The outflow from the pond will be tight-lined to the existing pipe under Sultan Basin Road to flow east to its natural drainage path. Water quality standards will be met by providing dead storage underneath the detention pond according to County design standards.

Over 5,000 square feet of new impervious surface will be created. A full drainage plan (construction plan) is required.

PDS Engineering staff has reviewed the concept offered and recommended approval of the project, subject to the recommended conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. With the inclusion of the proposed conditions of approval, the Hearing Examiner finds that the Applicant has sufficiently demonstrated that code requirements and standards for storm water drainage, grading, water quality treatment, and construction stormwater pollution prevention can be met with development of this proposed site. Conditions have been included to require the approvals for the drainage plan, grading permit, and SWPPP.

13. Critical Areas Regulations (former Chapter 30.62 SCC)

This project is vested to the codes in effect at the time of complete permit application, which was July 13, 2006. Accordingly the provisions of *former* SCC 30.62 SCC apply to this project. There are several critical areas on the subject property. (Exhibits C.3) The property is located west of Sultan Basin Road and north of Lake Winters, and is comprised of rolling topography with even age timber stands. There are steep slopes on the site that render a large portion of the property unbuildable.

There are two (2) Category 3 wetlands located fully or partially on the site. The wetlands require protection through a 50-foot buffer. The southernmost portion of the property contains existing gravel roads. Portions of the existing gravel roads are within the Category 1 wetland buffer adjacent to Lake Winters. The two Category 3 wetlands are located on the west side of Sultan Basin Road. Off-site to the east and east of the Sultan Basin Road is a Category 1 wetland complex. The Type 4 stream consists of a series of braided channels extending off-site to the north. This stream flows in an easterly direction under Sultan Basin Road into the off-site Category 1 Wetland. The off-site Type 4 stream located on the adjacent parcel also flows in an easterly direction under Sultan Basin Road into the off-site Category 1 wetland complex.

Development is proposed in the northeastern portion of the property. A Type 4 stream requires the establishment of a 50 foot buffer. The standard stream buffers can be met for the proposed development along the northernmost Type 4 stream.

Frontage improvements are required along Sultan Basin Road which will result in unavoidable impacts. Impacts from road improvements will result in 624 square feet of stream buffer impacts and 2,875 square feet of wetland buffer impacts. The applicant is proposing to utilize the existing gravel roads within the Category 1 wetland buffer as a pedestrian trail and recreation tract. The proposal is to treat establishment of the trail as if it was a critical area impact, even though the road is existing and no additional impacts will occur. The existing road network within the Category 1 wetland buffer equals approximately 22,875 square feet.

This project will impact a total of 26,374 square feet (0.6-acres) of forested buffer. As mitigation for these impacts the Applicant will designate 363,502 square feet (8.3-acres) of additional forested area as buffer. This equates to a 14:1 buffer to impact ratio. The proposed buffer dedication will result in overall improvement in the level of onsite functions and values due to both the quality and quantity of the area to be dedicated as NGPA.

A 15-foot building setback line shall be established between the edge of the NGPA/E and any proposed building construction.

The project proponent is proposing to locate the plat detention pond on the adjacent property lying east of the subject property and west of Sultan Basin Road. This parcel contains a Type 4 stream with 50-foot buffers. No impacts are proposed to the critical areas located on this

property. All critical areas on this parcel shall be designated as NGPA and a Critical Area Site Plan (CASP) shall be recorded on this parcel.

Recommended conditions are included to establish the NGPA areas and to provide the required NGPA protections. In addition, a condition is included to require the off-site area containing the drainage easement to be recorded in a CASP. With the recommended conditions, the Hearing Examiner finds that the project complies with the requirements for the protection of Wetland and Fish & Wildlife Habitat Conservation Areas provisions contained in Chapter 30.62A SCC. (Exhibits C.3) The Hearing Examiner further finds that the application is consistent with the purpose and objectives of the Chapter, to safeguard the public health, safety and welfare.

14. 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 Urban Growth Areas (UGA) and adopted area-wide rezones within the UGA of the County, respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). 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 (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

15. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on June 15, 2011. (Exhibit H.3)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on July 2, 2006 that they can provide electrical service to the development. (Exhibit H.4)
- C. Water. Potable water will be supplied by individual exempt wells. (Exhibit K)

16. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, Bulk Regulations and other zoning code requirements. (Exhibits D.1, D.2, D.3 and K)

17. State Environmental Policy Act Determination (Chapter 30.61 SCC--SEPA)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on August 9, 2011. (Exhibit E.1, E.2, F.1, F.2, F.3) Notice was properly given of the SEPA determination. Id. The DNS was not appealed. The requirements of SEPA have been met.

18. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. As conditioned, the Plat will meet all SCC 30.41A.210 design standards for roads, except where an EDDS deviation has been approved. In addition, the subdivision meets all of the County's other transportation and road regulations and design standards. The Examiner finds that all 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. (SCC 30.41A.110) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation, and the recommendations of Fire District No. 5 have been generally met. (Exhibits K and H.5) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community.

19. Rural Cluster Subdivision Code Design Standards (Former Chapter 30.41C SCC).

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements. Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit K, the subdivision complies with the provisions of:

SCC 30.41C.010 (clustering lots),
SCC 30.41A.200(1) (critical areas protection)
SCC 30.41C.200(2) (vegetated sight-obscuring buffers),
SCC 30.41C.200(3) (access roads),
SCC 30.41C.200(4) (utilities),
SCC 30.41C.200(5) (unbuildable land),
SCC 30.41C.200(6) (buffers for resource land),
SCC 30.41C.200(7) (designated resource land disclosure statements),
SCC 30.41C.200(8) (mineral resource land disclosure statements),
SCC 30.41C.200(9) (location of open space tracts near tracts on adjacent properties).
SCC 30.41C.200(10) (open space management plan),
SCC 30.41C.200(11) (physical separation of clusters),
SCC 30.41C.200(12) (lots abutting open space or buffer),
SCC 30.41C.200(13) (design fits with natural features and maintains rural character),
SCC 30.41C.200 (14) (no sanitary sewers absent health order),
SCC 30.41C.200(15) (Location of lot clusters),
SCC 30.41C.200(16) (location within fire district required),
SCC 30.41.C.200(17) (rural concurrency standards), and
SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations).

20. 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 (Exhibit B.1), and an Open Space Management Plan (Exhibit A.5, A.3). The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 18 and 19. 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 over 50% 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 (CAR), thereby minimizing the loss of the County's environmentally sensitive areas.

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

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

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision. The single-family homes within the subdivision will be in character with the rural area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to *former* Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by individual exempt wells and sewage disposal will be provided by individual wastewater septic systems.

22. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, 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 proposed 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. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

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 described 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 of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

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

CONDITIONS

- A. The Preliminary Plat received by PDS on July 12, 2011 (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.
 - 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 Critical Area Site Plan (CASP) shall be recorded for the offsite wetland and stream that is adjacent to the offsite drainage facilities for the development.
 - iv. A full drainage plan, including construction plans and a Stormwater Pollution Prevention Plan, shall be submitted for review and approval.
- 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 (Lords Hill # 305) in the amount of \$344.52 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. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence or twice the amount shown for a duplex:

\$1,588.62 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized

by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein.”

iii. “The lots within this subdivision will be subject to School Impact Mitigation Fees for the Sultan School District No. 311 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit.”

iv. All critical areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language indicated on the face of the plat;

“All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”

v. “Your real property is on, adjacent to, or within 500 feet of designated forest land on which a variety of forest management activities could occur that may not be compatible with residential development for certain periods of limited duration. These forest management activities include, but are not limited to, timber harvest, road and trail construction, the operation of machinery, trucks, aircraft, brush control, slash burning, the application by spraying of forest chemicals, and other forest management activities are lawful if conducted in compliance with Title 222 WAC.

In addition, forest management activities may cause physical and aesthetic risks to residences and other structures within 200 feet of forest lands including falling timber and increased fire hazard. Due to these risks, Snohomish County encourages land owners to locate structures at least 200 feet from adjacent forest land boundaries.

Snohomish County has adopted a Forest Lands Regulations (Chapter 30.32A SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32A SCC from Snohomish County.

A provision of Chapter 30.32AB SCC provides that “forest management activities conducted on designated forest land in compliance with best management practices as defined by the current Washington Forest Practices Rules and Regulations (Title 222 WAC), and Washington’s pesticide regulations (WAC 16-228-1220(5)), and established prior to surrounding non-forestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on public health, safety, or environment.”

vi. “Well protection zones are shown in the Snohomish Health District records for Lots 1-12 of this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision

exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”

- vii. “All utilities shall be placed underground.”
- viii. “The sight obscuring buffer shall be planted and fully maintained by the home owners association.”
- ix. “The Open Space Management Plan shall be fully maintained by the homeowners association.”
- x. The offsite drainage facilities shall be placed in an easement.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel’s frontage on Sultan Basin Road to the satisfaction of the County.
- ii. Vegetation on the east side of Sultan Basin Road shall be cleared to the satisfaction of the County.
- iii. Native Growth Protection Areas (NGPA) boundaries 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 platlor 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.

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 seven (7) 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 14th day of October, 2011.


Millie Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before OCTOBER 24, 2011**. 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before OCTOBER 28, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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

The grounds for filing an appeal 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.

PARTIES OF RECORD REGISTOR
05-129116-SD SWEET WATER
SPRINGS (FKA COUNTRY VILLAGE
AT WINTER LAKE)
HG: 9/22/2011

INNOVATIVE REAL ESTATE
CONCEPTS
BRIAN O'NEIL
17318 BOTHELL WAY NE
BOTHELL WA 98011

LAND RESOLUTIONS
RY MCDUFFY
3605 COLBY AVE
EVERETT WA 98201

SNO CO PLANNING & DEV/LAND USE
WHEELER / CAINE
3000 ROCKEFELLER AVE # 604
EVERETT WA 98201

DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE # 607
EVERETT WA 98201

SULTAN BASIN FOR SENSIBLE
GROWTH
NANCY ABELL
PO BOX 392
SULTAN WA 98294

SULTAN SCHOOL DISTRICT
JERRY ALLES
514 4TH ST
SULTAN WA 98294

CINDY FALK
PO BOX 1723
SULTAN WA 98294

JAMES GARDNER
11625 INGRAHAM RD
SNOHOMISH WA 98290

SNO CO FIRE DISTRICT #5
MERLIN HALVERSON
PO BOX 149
SULTAN WA 98294

JUDY & STAN HEYDRICK
PO BOX 352
SULTAN WA 98294

ROBERT MCNAMEE
PO BOX 582
SULTAN WA 98284-0582

LORRAINE OBAR
3324 SULTAN BASIN RD
SULTAN WA 98294

WA STATE DEPT OF
TRANSPORTATION
STEVE BENENATI / RAMIN PAZOOKI
PO BOX 330310
SEATTLE WA 97133-9710

SNOHOMISH HEALTH DISTRICT
BRENT RAASINA
3020 RUCKER AVE STE 104
EVERETT WA 98201

SNO CO PUD NO 1
DEAN SAKSENA

PO BOX 1107
EVERETT WA 98206-1107

CITY OF SULTAN
JOHN STACK
PO BOX 1199
SULTAN WA 98294

C.P. & ROSEMARY WENZL
33128 SULTAN BASIN RD
SULTAN WA 98294

STILLAGUAMISH TRIBES
SHAWN YANITY, TRIBAL CHAIRMAN
PO BOX 277
ARLINGTON WA 98223-0277

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