

**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 21, 2007

PLAT/PROJECT NAME: ***BRYANT ESTATES II***

APPLICANT/  
LANDOWNER: Ken and Barbara Siegfried

FILE NO.: 05-126581-000-00-SD

TYPE OF REQUEST: 13 lot rural cluster subdivision of 30.16 acres

DECISION (SUMMARY): Granted subject to conditions

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at the south side of Stanwood-Bryant Rd. west of the intersection with 3<sup>rd</sup> Ave NE, Arlington .

ACREAGE: 30.16

NUMBER OF LOTS: 13

AVERAGE LOT SIZE: 45,004 square feet

SMALLEST LOT AREA: 43,760 square feet

GROSS DENSITY: 0.43 du/ac

NET DENSITY: 0.43 du/ac

ZONING: R - 5

**COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan: Rural Residential (1 du/5 acres, Basic)  
Subarea Plan: Northwest County

Subarea Plan Designation: Rural (1 du/2.3-5 acres)

SCHOOL DISTRICT: Arlington # 16

FIRE DISTRICT: No. 14

WATER SOURCE: Individual wells

SEWER SERVICE: Individual septic

## INTRODUCTION

The applicant is requesting a 13-lot rural cluster subdivision on a 30.17 acre parcel. Access is by a new private road off of 2<sup>nd</sup> Ave. NE. Each lot will be serviced by individual wells and individual septic systems.

The applicant filed the Master Application on \_\_\_\_\_

The preliminary plat application was originally submitted to Planning and Development Services (PDS) on January 30, 2006, and was determined on February 27, 2006 to be complete as of the date of submittal. The 120-day clock started on February 27, 2006. A review letter was written on March 13, 2006, which stopped the 120-day clock. A resubmittal of the application was received on August 15, 2006, and the 120-day clock started on August 29, 2006. The 120-day clock stopped on September 8, 2006, when a review letter was sent to the applicant. A resubmittal of the application was received on October 3, 2006, and the 120-day clock started on October 17, 2006. The 120-day clock stopped on November 27, 2006, when a review letter was sent to the applicant. A resubmittal of the application was received on March 7, 2007, and the 120-day clock started on March 24, 2007. The materials submitted were deemed to meet the requirements for preliminary plat, and a SEPA determination was issued on March 24, 2007. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 21-23)

A SEPA determination on non-significance was made on October 4, 2006. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on May 9, 2007, the 106th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The Examiner viewed the site on May 8, 2007.

## **PUBLIC HEARING**

The public hearing commenced on May 9, 2007 at 11:01 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Ken and Barbara Siegfried, were represented by Kris Suiter, Metron And Associates, Inc., 307 N. Olympic Ave., Suite 205, Arlington, WA. Snohomish County was represented by Stacey Abbot, appearing on behalf of Ed Caine of the Department of Planning and Development Services.
3. Those in attendance expressing a desire were administered the oath.
4. The county staff report and exhibits 1-37 were admitted to the record.
5. Stacey Abbot appeared and testified under oath. She presented the county staff report. She made a correction to the staff report as to condition D, iii. The extended paved area should be the WEST side of 2<sup>nd</sup> Avenue rather than EACH side. She also introduced Exhibit 38, the preliminary plat. This was admitted into the record.
6. Kris Suiter, on behalf of the applicants, appeared and testified under oath. He said the applicants agree with the conditions of the staff recommendation. He testified that the entrance to Bryant Estates 2 will be through Bryant Estates 1. There will be no curbs, but there will be an 8 foot wide walking surface along the road.
7. Chad Sage, 26032 -2<sup>nd</sup> Ave. NE, Arlington, appeared and testified under oath. He explained that he resides in neighboring Bryant Estates I. He had questions about the hours of the gate opening. Kris Suiter indicated the gate will remain open during the same hours. There was a discussion with Mr. Suiter regarding the home owners' associations and road maintenance.

The hearing concluded at 11:15 a.m.

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

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

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

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

2. The site is undeveloped and forested. There is a Type 4 stream in the southwest corner of the site and a Type 3 stream with riparian Category 3 wetlands in the northeast corner of the site.
3. Adjacent land is either developed as single family residences or is undeveloped. The adjacent zoning is R-5.
4. The area of concern raised by the testimony of the neighbor dealt with the hours the gate would be open and the constitution of the homeowners' association of the proposed development. The testimony of the applicant's representative were the hours of the gate would remain unchanged and that a new homeowners' association would be created for the lots within the proposed development.
5. 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]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 13 new homes, which is 9.57 ADT/home. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 124.41 new ADT and has a road system capacity impact fee of \$27,867.84, based on \$224.00/ADT. This impact fee must be paid proportionately prior to the issuance of each building permit.

The ADT has been calculated as follows: 13 lots x 9.57 ADT/lot (home) = 124.41

The PM PHT has been calculated as follows: 13 lots x 1.01 PM PHT/lot (home) = 13.13

The AM PHT has been calculated as follows: 13 lots x 0.75 AM PHT/lot (home) = 9.75

b. Concurrency [SCC 30.66B.120]

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

The development has been deemed concurrent on the following basis: Medium-Sized Development in TSA with no arterial unit in arrears, SCC 30.66B.130(4). The subject development is located in TSA A, which as of the date of submittal of the application had no arterial units in arrears. The subject development generates 9.75 a.m. peak-hour trips and 13.13 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]

The subject proposal will not impact any IRC locations identified at this time within TSA A 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 inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

d. Frontage Improvements [SCC 30.66B.410]

The subject property frontage is located along Stanwood-Bryant Road. Rural standard frontage improvements are required consisting of 22 feet of pavement (a bicycle lane is designated for the road) from the centerline of right-of-way. Construction of frontage improvements is required prior to recording the subdivision unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

Access is proposed from a private road that was constructed for the adjacent development, Bryant Estates (PFN 03 108173), via Stanwood-Bryant Road. The private road serves 10 lots in that development, and a stub road in an access easement was provided to the subject property. After reviewing the need for connection, DPW has determined that connection to the property line (on any side) is not needed. The property to the east has been developed into 5 acre parcels and is served by a private road. The property to the south appears to have access off of Dahl Road.

The required EDDS road design is 3-060/-090 for a rural private subcollector road. Since the school district comments dated February 9, 2006 indicate that children will walk to the Stanwood-Bryant Road to the bus stop, a 7-foot paved shoulder walkway will be required along one side from the cul-de-sac to the county road.

The gated entrance on the private road (2<sup>nd</sup> Avenue NE) just south of Stanwood Bryant Road is an issue of concern to DPW. The gate was not shown on the plans for 2<sup>nd</sup> Avenue during review of Bryant Estates Div. 1, but is in place now.

An as-built plan of the gate location was submitted for this review, and was reviewed by the County Traffic Engineer. He determined that DPW would not require that the queuing length be extended in this situation, but that a turnaround is needed. It will be a recommended condition of approval that an adequate turnaround, as approved by DPW, is shown on the construction plans, and constructed prior to recording the development. The turnaround would be a widened paved area in the Stanwood Bryant Road right-of-way on both sides of 2<sup>nd</sup> Avenue NE. The paved area must be extended 30 feet long from the edge of the 2<sup>nd</sup> Avenue pavement on WEST side (see EDDS 3-105 temporary Hammerhead drawing for details), and be at least 10 feet wide. The pavement for the turnaround would meet the edge of pavement for Stanwood Bryant Road.

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

Stanwood-Bryant Road is designated as a major collector on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. No right-of-way presently exists on the development's side of the

right-of-way. Therefore, 40 feet of right-of-way is required, which has been shown on the plans.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997. The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at

$$124.41 \text{ ADT} \times \$36.00/\text{ADT} = \$4,478.76$$

A copy of a voluntary offer to the State, signed by the applicant was included with the application for the amount of \$4,321.44 (this amount differs from the amount above, and it is not clear why). Comments dated February 3, 2006 have been received from WSDOT that indicate agreement with that amount, so that is what will be recommended.

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

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency.

An interlocal agreement has been executed between the County and the City of Arlington and the City of Stanwood for traffic mitigation for impacts on the Cities road system. A copy of a voluntary offer to pay the Arlington mitigation requirements signed by the applicant was submitted with the application for the amount of \$8,096.40. This amount is based on the formula: 13 peak hour trips x 60% (sub area percentage) x \$1,038.00 = \$8,096.40. Comments dated February 16, 2006 have been received from the City that indicates agreement with the offered amount, and a copy of the signed agreement was attached.

A copy of a voluntary offer to pay the Stanwood mitigation requirements signed by the applicant was submitted with the application for the amount of \$4,321.44. This amount is based on the formula: 124.41 average daily trips x 15% (sub area percentage) x \$231.57 = \$4,321.44. Comments dated February 9, 2006 have been received from the City that indicates agreement with the offered amount, and a copy of the signed agreement was attached.

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

This proposal lies outside of the Urban Growth Area. Therefore, the provisions of this section do not apply.

j. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments dated February 9, 2006 have been received from the Arlington School District indicating that bus service will be provided for all grade levels of public school children that may reside in the proposed development. The bus stop will be located adjacent to the development on the Stanwood-Bryant Road at 2<sup>nd</sup> Avenue NE. In the comments for the Bryant Estates Div. 1 (the bus stop is in exactly the same location for both developments) the school district requested a bus pullout along the development frontage and requested that a safe walkway be provided from the interior of the development to the bus pullout area. The pavement widening required (22 feet from right-of-way centerline) for the rural standard frontage improvements would probably qualify as sufficient pullout for the bus. A 7-foot paved shoulder walkway will be required along one side from the cul-de-sac to the county road.

6. Stormwater runoff from lots 3, 4, 5, 6, 7, and 10 shall incorporate full dispersion under the LID provisions. Stormwater runoff for lots 1, 2, 8, 9, 11, 12, and 13, and for the road, shall be captured and routed to a stormwater detention facility located in Tract 998. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 1,750 cubic yards of cut and 1,750 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.
7. The proposal is within Park District No. 302 (River Meadows) and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. 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 Arlington School District No. 16, 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 1 existing lot.
9. There is a Type 4 stream in the southwest corner of the site and a Type 3 stream with riparian Category 3 wetlands in the northeast corner of the site. Based upon the PDS review of the

Critical Areas Study and Mitigation Plan it is found that the project complies with the critical areas regulations.

10. Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on January 30, 2006 after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on December 12, 1996, as revised through the completeness date of the application.

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 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9.

The property is designated Rural (2.3-5 du/acre) on the pre-GMA Northwest County Subarea Plan. In resolving the GPP text discussion regarding the structural relationship of the subarea plans to the GPP, previous hearing examiner decisions have held that the definitive statement in the GMACP adoption ordinance that "the existing subarea comprehensive plans are not part of the county's GMA comprehensive plan..." must be accorded primacy. Therefore, the comprehensive plan to be utilized in the consistency determination procedure required by RCW 36.70B.030(2) and SCC 32.50.100 is the GMACP, and not the pre-GMA subarea plan.

SCC 32.50.100 requires evaluation under the GPP when adopted development regulations do not exist. The GPP and pre-GMA subarea plan policies which might reasonably be applied to the review of a proposal, such as those which relate to density, design, utilities, critical areas protection and transportation, have been superseded by adopted GMA development regulations. Applicability of specific comprehensive plan policies to a development application is also limited by the *Citizens v. Mt. Vernon* (133 Wn. 2d 861) decision.

The 13 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

11. The Snohomish County Health District has no objection to this proposal provided that water and sewer are available (Exhibits 27 and 29).
12. PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 22, 2007 (Exhibit 20). The DNS was not appealed.



13. The subject rural cluster subdivision (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 August 15, 2006 (Exhibit 6), and in an open space management plan (Exhibit 5) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. 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 48.5% (14.62 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

The application has been reviewed for compliance with the requirements of SCC 30.41C.200 as follows: critical areas have been identified and designated as Native Growth Protection Areas; a sight obscuring buffer of native vegetation has been provided, in accordance with the provisions of Table 30.41C.210(1), DPW has indicated that the private road shall be constructed to EDDS standards; all utility lines are to be located underground; there is 18,830 square feet of unbuildable land as defined by Chapter 30.41C SCC located on site which is included in native growth protection areas; no on-going agriculture or forestry uses are proposed within the open space tracts; there are no adjacent designated open spaces which affect the location of the open space in the RCS; an open space management plan has been provided detailing the required maintenance and management tasks for the proposed open space; physical separation of clusters is provided; at least 75% of the residential lots abut a required buffer or open space tract; the proposed RCS has been designed in accordance with the natural features of the site, maintains rural character, and maximizes the visibility of the open space tracts from the adjoining road; the proposal is not served by public sanitary sewer; clusters of lots are located near the interior of the site and are not located on prominent topographic features, to the extent feasible; and the site is located within a rural fire district.

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

Basic lot yield: 1,313,992 square feet/100,000 square feet = 13.14 lots

Total lots proposed = 13 lots

14. The plat has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. Such 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 plat conforms with applicable zoning codes and the comprehensive plan. There is open space provided within the plat in the form of wetland, and buffer areas, the single-family homes on small lots will be in character with the existing neighborhood. 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 State DOE drainage standards. 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. Water and sewer are to be provided by individual wells and individual septic systems, respectively.

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

### **CONCLUSIONS OF LAW**

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

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their relationship to the request. It is therefore adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Examiner has jurisdiction to hear this matter and render an decision thereon.
3. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
4. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
5. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

### **DECISION**

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

The request for a 13-lot rural cluster subdivision on 30.16 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary plat received by PDS on August 15, 2006 (Exhibit 6) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. 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. The applicant has proposed buffer averaging as outlined in the revised Critical Area Report and Habitat Management Plan prepared by Sewall Wetland Consulting, Inc. dated August 3, 2006 (Exhibit 11). This plan is acceptable and no other mitigation is being proposed or required..
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit."
  - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:  
  
\$2,143.68 per lot for mitigation of impacts on county roads paid to the county,  
\$332.42 per lot for mitigation of impacts on state highways paid to the county,  
\$622.80 per lot for mitigation of impacts on Arlington streets paid to the city,  
\$332.42 per lot for mitigation of impacts on Stanwood streets paid to the city.

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

- iii. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works (PW) grants a formal deviation.
- iv. The final plat shall show a 40-foot right-of-way dedication along the property frontage with Stanwood Bryant Road to total 40 feet from the right-of-way centerline.
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) with the following language on the face of the plat;  
  
"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."
- vi. Lots 3, 4, and 10 are approved for full dispersion for stormwater runoff.
- vii. Lots 5, 6, and 7 shall retain/protect at least 100 feet of native vegetation in order to use full dispersion for stormwater runoff.
- viii. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

- i. Rural standard frontage improvements shall be constructed along the property frontage on Stanwood Bryant Road, unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. A 7-foot paved shoulder walkway shall be constructed along one side of the interior plat road from the cul-de-sac to Stanwood Bryant Road. [RCW 58.17.110 and SCC 30.66B.430 (O)]
- iii. An adequate turnaround, as approved by DPW, shall be shown on the construction plans, and constructed prior to recording the development. The turnaround would be a widened paved area in the Stanwood Bryant Road right-of-way on both sides of 2<sup>nd</sup> Avenue NE. The paved area must be extended 30 feet long from the edge of the 2<sup>nd</sup> Avenue pavement on WEST side (see EDDS 3-105 temporary Hammerhead drawing for details), and be at least 10 feet wide. The pavement for the turnaround would meet the edge of pavement for Stanwood Bryant Road.

- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- E. In conformity with applicable standards and timing requirements:
  - i. The preliminary landscape plan (Exhibit 8) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/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 21<sup>st</sup> day of May, 2007.

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James Densley, Hearing Examiner Pro Tem

<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 **MAY 31, 2007**. 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 **JUNE 4, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

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Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

<p>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.</p>
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