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**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 ) **FILE NO. 06 102869 SD**  
**CHB Development, LLC** )  
 )  
17-lot Rural Cluster Subdivision (RCS) on 40 acres )

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DATE OF DECISION: December 12, 2007

PROJECT NAME: *Kaiana*

DECISION (SUMMARY): The preliminary plat for a 17-lot rural cluster subdivision is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located north of the terminus of 161<sup>st</sup> Avenue SE, eight miles southwest of Monroe.

ACREAGE: 39.17 acres

NUMBER OF LOTS: 17

AVERAGE LOT SIZE: 44,006 square feet

MINIMUM LOT SIZE: 43,562 square feet

DENSITY: 0.43 du/ac (gross)

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres, Basic)

UTILITIES:

Water: Cross Valley Water District  
Sewer: Individual on-site septic

SCHOOL DISTRICT: Monroe

FIRE DISTRICT: No. 3

## **INTRODUCTION**

The applicant filed the Revised Master Application on August 8, 2006 but was revised three times during 2007: April 27, June 15 and August 1. (Exhibits 1, 15, 17, 22)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20, 21)

A SEPA determination of non-significance was made on August 22, 2007. (Exhibit 11) An appeal was timely filed (Exhibit 43) but was withdrawn pursuant to a stipulated settlement agreement (Exhibit 55) facilitated by Examiner Barbara Dykes at the pre-hearing conference on October 1, 2007. (See also Exhibit 56)

The Examiner held an open record hearing on November 13, 2007, the 125th day of the 120-day decision making period. (Exhibit 45) Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing. The master list of exhibits and witnesses considered by the Examiner is hereby made a part of this file as if set forth in full herein.

## **PUBLIC HEARING**

The public hearing commenced on November 13, 2007 at 9:02 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, Ronin Northwest, was represented by W. Noel Higa, Tasha Branch and Troy Schmeil. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services. Citizen Laura Hartman spoke in support of the settlement agreement and asked that potable water wells be removed from the face of the plat. (Troy Schmeil responded that the wells had already been removed from the engineering drawings.) Citizen Kathleen Gamble expressed her support for the settlement agreement but articulated her broad opposition to the rural cluster subdivision process.
3. In all, 13 public comment letters had been received. At a prehearing conference, principal issues raised in those letters and in an appeal from a SEPA determination of non-significance were settled between the principal parties. That settlement was described in the staff report to the Examiner and was announced at the public hearing so that the general public could support or oppose the settlement. No opposition to the settlement agreement was expressed.

The hearing concluded at 9:44 a.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available through 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 applicant, Ronin Northwest, filed an application for a 17-lot rural cluster subdivision (RCS) on 39 vacant acres zoned R-5. All lots are at least one acre in size. All lots are as far as possible from the large Category 3 wetland and its associated Type 4 stream located in the middle of the property.
2. The above-mentioned wetland extends off-site to the north and south. That riparian wetland and stream are protected by a 50-foot buffer pursuant to SCC 30.62.310(1). Additional mitigation buffer is also provided as Native Growth Protection Area (NGPA) pursuant to SCC 30.41C.200(1). The site slopes upward from the wetland to the west and east at grades of 1.1% to 5.4%.
3. The above-mentioned slopes position the subject site at the crest of two drainage basins. Consequently, the northern portion of the subject site's storm drainage flows north but the southern portion drains to the south. (There is drainage to the east from a smaller northeast area of the subject site.) The western portion of the proposed development (six proposed lots) will be served by a detention pond in Tract 997 into which all runoff from the impervious asphalt private road will be collected, detained and treated prior to discharge via a level spreader to the east into the on-site wetland. In that western portion, runoff other than from the road (i.e., rooftops and driveways) will be infiltrated into the soil of each lot. In contrast, storm drainage in the eastern portion of the site (eleven proposed lots) will infiltrate through pervious asphalt private roads. Downspouts and footing drains from the houses will be tightlined to dispersion trenches, as will some of the private driveways. The Department of Public Works recommends approval of the two-part drainage concept subject to conditions to be imposed during full drainage plan review pursuant to SCC 30.63A.
4. A drainage-related issue is whether consideration has been given to an abutting pending rural cluster subdivision of nine lots on 20 acres of applicant Margaret Morency, Tax Parcel #27062700100300. (See Exhibit 32, Ahearn.) No mention of that application is found in the Kaiana Targeted Drainage Report (Exhibit 22) nor is any consideration of that application shown in Kaiana's Preliminary Grading and Drainage Plans (Exhibit 23A). Kaiana's dependence on infiltration to control its own drainage causes concern as to whether Kaiana could accept any drainage from the Margaret Morency property and, if not, how the Morency application could be approved. The Examiner adds a condition to require analysis of that issue during full drainage plan review. That analysis should include analysis of issues raised by Fern Elledge in several documents within Exhibit 30. (Drainage was not an issue covered by the settlement agreement herein.)
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. The site specific review at the public hearing level is more fine-toothed, however, and vicinity residents point out that the intersection of Highbridge Road and Mt. Forest Boulevard has poor driver sight distance and will soon carry traffic from 36 homes of the proposed Highbridge Estates, the nine lots of the Morency application and other subdivisions not addressed in this record. (See Exhibit 37, Gamble.) However, the Examiner finds that a preponderance of the evidence of

record does not support further conditions upon approval based upon traffic impacts. The evidence does warrant inquiry about traffic impacts when any further applications are reviewed in the vicinity.

6. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.
7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Monroe School District reports (Exhibit 42) that the bus stop serving students of all grade levels will be located at the intersection of 165<sup>th</sup> Avenue SE and 224<sup>th</sup> Street SE. Thus, off-site pedestrian facilities in the form of a seven-foot paved shoulder are required to that intersection as a condition upon approval in order to assure safe walking for students.
8. The Snohomish County Health District has no objection to this proposal because public water will be furnished by the Cross Valley District (Exhibit 53) pursuant to the settlement agreement entered herein. Further, the Health District accepts the proposed on-site individual sewage disposal facilities subject to final plat review. (Exhibit 41)
9. The subject property is designated Rural Residential-5 on the GPP Future Land Use map, and is not located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Rural Residential-5 designation applies to lands which were previously designated Rural by various subarea plans and have been subsequently zoned R-5. The implementing zone in this designation will continue to be the R-5 zone.
10. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17. As conditioned herein to include conditions upon approval agreed to in the settlement agreement (Exhibit 55 and Conditions A.2., D.i, E.i, and H.) The proposed plat 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.
11. 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 and in an open space management plan (Exhibit 8) that is to be implemented by a homeowners' association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200.
12. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
13. 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 hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
3. 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.
4. 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 17-lot rural cluster subdivision on 39.17 acres is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### **CONDITIONS:**

- A-1. The revised preliminary plat/rural cluster subdivision received by PDS on June 14, 2007 (Exhibit 17) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- A-2. The applicant shall pay for installation of the Cross Valley Water Association water main that will serve the plat.
- 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-1, 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.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. 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. “The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District 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.”
  - iii. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$2,411.64 per lot for mitigation of impacts on county roads paid to the County,  
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 lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”
  - iv. Provide the following note on the face of the final plat:  
“Access to Lot 1 shall be restricted to the westerly 100 feet of Lot 1”.
  - v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) 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. Provide the following note on the face of the final plat:  
“Where existing vegetation fails to meet the intended function of the Vegetated Sight Obscuring Buffer, then supplemental planting of native vegetation shall be made, with the ultimate density of trees at 10 feet on center and shrubs at 3 feet on center. A minimum of 75% of the trees shall be conifers.”
- D. Prior to recording of the final plat:
- i. The private gravel roads from the intersection of 165th Ave SE and 224th St SE west to the intersection of 161st Ave SE and 224th St SE (known as 224th St SE), and from the intersection of 161st Ave SE and 224th St SE north to the southern boundary of the subject development (known as 161st Ave SE), shall be constructed to public road standards per the EDDS and to the satisfaction of the County.

- ii. If there is any shared drainage between Kaiana and any other subdivision, a supplemental drainage plan and related maintenance plan shall have been submitted into this record and noted on the face of the Kaiana plat demonstrating how the shared drainage shall function to serve both plats
- iii. Pedestrian facilities shall be constructed from the subject parcel to the intersection of 165th Ave SE and 224th St SE to the satisfaction of the County.
- 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 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 the Development Review & Construction Division for review and approval prior to installation.

E. Prior to occupancy of any residence constructed in the new subdivision:

- i. The sections of gravel roads built to public road standards (known as 224th St SE and 161st Ave SE) shall be established as public roads; or if those roads remain private, a maintenance agreement between the applicant and the owners of the above roads shall be required.

F. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 23h) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- ii. The open space management plan (Exhibit 14) shall be implemented by a homeowner's association.

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

H. The applicant shall work with the owners of property 270627-001-016-00 (Gamble property) to resolve the boundary safety issue by having the applicant provide an appropriate physical barrier, signage, and restrictions on clearing along the western boundary of the plat that is adjacent to the Gamble property.

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 12<sup>th</sup> day of December, 2007.

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Ed Good, Deputy Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 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 **DECEMBER 24, 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 **DECEMBER 26, 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: Paul MacCready

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.
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