

## **DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

DATE OF DECISION: April 13, 2009

PLAT/PROJECT NAME: **SAFE 2**

APPLICANT/  
LANDOWNER: Buryl & June Osborn

FILE NO.: 07-101231-000-00-SD

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

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

### **BASIC INFORMATION**

GENERAL LOCATION: 19325 Jordan Road and 19321 Jordan Road, Arlington, WA 98223.

ACREAGE: 35.97 acres

NUMBER OF LOTS: 16

AVERAGE LOT SIZE: 24,168 square feet

MINIMUM LOT SIZE: 20,002 square feet

DENSITY: .44 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: RURAL Residential (1du/5 acres-Basic)

ZONING: R-5

UTILITIES:  
Water: Snohomish County PUD No. 1  
Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No.16

FIRE DISTRICT: NO. 21

PDS STAFF RECOMMENDATION: Approve with conditions

## INTRODUCTION

The applicant filed the Revised Master Application on August 16, 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 F1, F2 and F3)

A SEPA determination was made on February 2, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on April 1, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS OF FACT

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

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

#### **A. Background Information**

2. Applicant's Request: The applicant is requesting a 16-lot rural cluster subdivision on a 35.97 acre parcel. The north and eastern boundary of the site borders Jim Creek, an ESA stream. The west boundary of the site fronts onto Jordan road. Access for all lots will be by a new private road off of Jordan Road located within Tract 999. Water will be supplied by Snohomish County PUD No. 1 and each lot will be served by individual septic systems.
3. Site Description: The site is currently developed with two (2) single-family residences, which are proposed to remain. The site contains six (6) Category 3 wetlands, a Type 1 stream (Jim Creek), a Type 5 stream, and steep slopes associated with Jim Creek. A 300-foot wide Bonneville Power Administration (U.S. Department of Energy) power line easement crosses the property from the southeast, and then turns north. The majority of the site is pasture, with trees along Jim creek and scattered on the site.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Adjacent uses are either single-family residential or are undeveloped. The proposed plat of S.A.F.E. 1 (05-125962-SD) is immediately to the south of the subject property for SAFE 2.

5. Issues of Concern:

#### A. Code Enforcement Issue.

A citizen complaint for possible multiple residences on the site was made on September 19, 2006. A letter that identified the complaint and notifying the property owner of the pending investigation was sent to the property owners, the current applicants, on October 30, 2006. A Notice and Order was issued on November 16, 2006. A public hearing was held on June 14, 2007, wherein a compliance date of September 14, 2007, was established. The applicant was

advised by the code enforcement officer that the violation could be abated through the platting process. Consequently, application for a rural cluster subdivision was made on August 16, 2007. The application went through several review cycles, and it was only when the file was being prepared for issuance of a SEPA DNS that the project planner for PDS discovered that there was a violation on the property. As a result, the project review process was suspended on October 30, 2008. (Exhibit G.4) The violation was abated on January 22, 2009 (Exhibit G.5) and the issuance of a SEPA DNS (Exhibit E.2) and scheduling of the public hearing followed.

***B. Water Resources and Traffic Issue.***

A citizen comment letter was received from Mr. Gary Baxter on September 5, 2007. (Exhibit I.1) His concerns were the water source, obtaining a water rights permit, impact of septic systems on Jim Creek, and the adequacy of Jordan Road.

STAFF RESPONSE: The concerns raised by Mr. Baxter have been evaluated by PDS. Water will be supplied by PUD #1. (Exhibit H.5) No wells are proposed and no water rights are required. The septic drainfield and reserve locations have been located outside of the required set-backs from the slopes. The Snohomish Health District has reviewed the suitability of the soils for the proposed drainfield and reserve locations, and has recommended approval for the preliminary plat. (Exhibit H.9) The access location has been evaluated during traffic review. Traffic review staff (PDS) recommended approval of the preliminary plat, and no IRC was identified during the review process. The proposed plat has been found to comply with the requirements for approval of the rural cluster subdivision.

***C. Cultural Resources Issue.***

The Stillaguamish Tribe provided review comments and expressed concerns for impacts to cultural sites. (Exhibit H.4) In response to the Notice of the Open Record Hearing (Exhibit F.1), the Stillaguamish Tribe sent another comment letter regarding potential impacts to cultural sites. (Exhibit H.12)

STAFF RESPONSE: PDS has included a recommended condition to deal with these issues.

***D. Transmission Line Easement Issue.***

Bonneville Power Administration (U.S. Department of Energy) provided review comments and stated that "...BPA has no issues with the proposed development." (Exhibit H.3) BPA did note that no structures could be built within their right-of-way, either on lots or within Tract 997. BPA requested that a condition be placed on the face of the plat specifying the restriction, including the specific wording. PDS has included a recommended condition to meet this request.

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

6. **Parks Mitigation.** The proposal is within the River Meadows Park Service Area No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid 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.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B of Snohomish County Code, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures.

A. Road System Capacity [SCC 30.66B.310]

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The development will generate 133.98 new average daily trips (ADT) and has a road system impact fee of \$35,370.72 (\$2,947.56/SFR) based on \$264/ADT, the current fee rate for residential developments outside the urban growth area, for TSA A. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

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

ITE Land Use Category: Single-family detached housing

ITE Land Use Code: 210

Number of applicable measurement units for this development: 14

Trip Generation Calculations (Trip Generation Based on Average Rates):

New average daily trips =  $14 \times 9.57 = 133.98$  ADT

New PM peak-hour trips =  $14 \times 1.01 = 14.14$  PM PHT

New AM peak-hour trips =  $14 \times 0.75 = 10.50$  AM PHT

The Hearing Examiner has included a condition to require the payment of the mitigation fees.

B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of October 8, 2007. The expiration date of the concurrency determination is six years from this date.

Development generating 50 or fewer peak-hour trips 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 10.50 a.m. peak-hour trips and 14.14 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, 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.

The Examiner inquired whether the bridge over Jim Creek on Jordan Road, which is presently a one-lane bridge with a stop sign on either side, is classified as an IRC. The bridge is west of the subject property. The response from the Department of Public Works is contained in Exhibit K-3. The bridge is programmed and funded in the county's 2009-14 Transportation Improvement Program to be replaced with new approaches to the bridge. It is currently in design phase and is scheduled for construction in 2011.

D. Frontage Improvements [SCC 30.66B.410]

All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

As per DPW Rule 4222.020(1) full rural frontage improvements are required along the subject parcel's frontage on Jordan Road and consist of asphalt concrete pavement consisting of 12 feet width from right-of-way centerline with a 8 foot paved shoulder. A condition of approval has been included in order to implement this requirement.

The applicant submitted an EDDS deviation request (Exhibit G.1), received by the Department of Public Works on November 20, 2007, requesting to provide no frontage improvements on Jordan Road west of Station 32+00 (as shown on Sheet 3 of 6 of the Targeted Drainage Plans received by PDS on January 22, 2008) (Exhibit B.6). The County Engineer reviewed and approved the deviation request on December 3, 2007. The County Engineer approved the deviation request because there are extensive wetlands and a steep bank along the project's road frontage west of this location.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

The access road proposed for the project will be classified as a private subcollector. Per EDDS Plate 3-060, a private rural subcollector requires a design speed of 30 mph, with a minimum horizontal curve radius of 275 feet (per EDDS Table 3-4). The applicant submitted EDDS deviation requests, received by DPW on November 20, 2007, to allow a 25 mph design speed for the proposed access road (Exhibit G.2) and a minimum horizontal curve radius of 165 feet,

consistent with EDDS Table 3-4. (Exhibit G.3) The County Engineer reviewed and approved the deviation requests on November 27, 2007, subject to the requirement that traffic calming measures (such as speed tables) be provided every 400 feet. The County Engineer approved the deviation requests because the location of wetlands onsite would require extensive mitigation if the road were to be built with a 30 mph design speed. The access road will be a dead end road with a low traffic volume (134 ADT). A condition to require the traffic calming devices has been included.

Jordan Road has a posted speed limit of 35 mph. The applicant has submitted a speed study, received by PDS on January 22, 2008, showing the 85% operating speed at the proposed access location on Jordan Road is 35 mph. The required Stopping Sight Distance (SSD) for an operating speed of 35 mph is 250 feet. The applicant has provided a sight distance plan and profile of Jordan Road north and south of the access location, on Sheet 3 of 6 of the Targeted Drainage Plans received by PDS on January 22, 2008. (Exhibit B.6) This plan and profile show the required SSD (250 feet) to the right from the proposed access road location on Jordan Road is available. The required Intersection Sight Distance (ISD) to the right from the proposed access location onto Jordan Road is 340 feet. EDDS Plate 3-9 requires an ISD of 390 feet for an access road with over 80 ADT intersecting a road with a posted speed of 35 mph. ISD to the right from the proposed access location is obstructed by roadside vegetation. The applicant has provided a sight distance easement (Exhibit D.3), signed by the owners of the parcel with frontage on the west side of Jordan Road where the ISD line of sight falls outside the public right-of-way. The required 390 foot ISD must be continuously available at the access point, from 15 feet behind the edge of traveled way up to the edge of traveled way. This will require a larger sight distance easement than received by PDS on January 22, 2008. A condition of approval that the applicant provide a sight distance easement large enough to include the entire sight distance triangle. A condition for maintenance through clearing of vegetation along the west side of Jordan Road within the intersection sight distance easement has been included. All sight distance requirements to the left from the proposed access location onto Jordan Road are met.

The Private Access Road Section B, Sheet 4 of 6 of the Targeted Drainage Plans received by PDS on January 22, 2008 (Exhibit B.6), shows a 30-foot crowned road section with thickened edges on both sides. This design is consistent with EDDS plate 3-060 and Section 4-04.B.2. The proposed road end conforms to EDDS Plate 3-150. DPW approves the proposed road layout. The County approves the use of the private roads shown on the preliminary plat for the subject development per SCC 30.41A.210(3)(c).

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, Jordan 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. Currently, DPW records show 0 feet of right-of-way exists on the development's side of the right-of-way, with the road within a prescriptive right-of-way. Therefore, the development is required to dedicate 40 feet of right-of-way from the center line of Jordan Road. This is adequately shown on the Jordan Road Half-Roadway Improvement Section A on Sheet 3 of 6 of the Targeted Drainage Plans received by PDS on January 22, 2008. (Exhibit B.6) The applicant shows 30 feet of existing right-of way and 10 feet of right-of-

way dedication on Sheet 1 of 6 of the Targeted Drainage Plans and on the Preliminary Plat received by PDS on January 22, 2008. (Exhibit B.5 and B.6) This decision includes a condition that the Final Plat shows a total of 40 foot of right-of-way dedication to the county from the centerline of Jordan Road.

Jordan Road is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended. Pursuant to SCC 30.66B.055 a written traffic mitigation offer of \$4,134.24, dated August 8, 2007, has been submitted by the applicant. In comments dated August 23, 2007, WSDOT has accepted the traffic mitigation offer of the applicant. (Exhibit H.2)

The Hearing Examiner has included a condition of approval to implement the mitigation fees.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

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PDS has included a recommended condition of approval in order to implement the mitigation fees.

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

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

8. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision. Comments from the applicable school district dated September 1, 2007 indicate all school children from the development will be picked up by school buses at the intersection of the proposed access road with Jordan Road. No offsite improvements are required. However, because of the rural nature of this area and the fact that there is little lighting available, the Examiner imposes a requirement that the applicant provide an all climate protection (ACP) waiting area to the specification of DPW at the bus stop that is off Jordan Road.

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the 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 2 existing lots. The Hearing Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage. The proposed method of providing quantity control for the runoff from the development is to construct infiltration facilities in a tract for the new private roadway, and individual infiltration facilities for the increased runoff created by the development on each individual lot. The subject property is broken up into four separate drainage basins: the 24" culvert basin, the South Infiltration Basin, the North Infiltration Basin, and the Jim Creek Basin. Exhibit C4 at 5.

The 24" Culvert Basin is the main watershed on the property, and encompasses 32.64 acres in size with approximately half the are being offsite and upstream from the project site. A majority of the watershed is covered by wetlands and pasture onsite and a mixture of brush tress and pasture grass offsite. Water flows to various reaches of the wetland system and to the 24" culvert crossing under Jordan Road. Very little change will occur to this basin in the developed state, except that the pasture will be converted to lawn and that the basin will be reduced by .7 acres due to the widening of Jordan Road and the private road cut across the basin.

The South Infiltration Basin is one of two onsite basins that does not generate any runoff. All rainfall landing in the basin infiltrates into the ground. The basin is 2.62 acres in size. Exhibit C4 at 5. After development, the infiltration pattern will be maintained. Exhibit C4 at 11. The



basin will be reduced by .24 acres because of the private road cut. *Id.* Roof rainfall and driveway runoff will be directed to infiltration trenches. Because the soils are fine ragnar soils that are particularly well suited to infiltration, this is deemed an acceptable method of drainage for this area, and also required under the Administrative Salmonid Rule.

The North Infiltration Basin has the same characteristics as the South Infiltration Basin but is 5.68 acres in size, and will be reduced to 5.33 acres in size in its developed state, because of the private road cut.

Jim Creek Basin is the south and west bank of Jim Creek along the east and north side of the property. The basin is 12.71 acres in size. It is primarily a forested stream bank, with a small wetland and pasture at the northwest corner of the basin. Stormwater runoff is sheet flow down the hillside into the creek. The BPA power lines run over the creek and there is an existing access road over the easement. This drainage basin will be completely protected in a Natural Growth Protection Area (NGPA) and no development activity is planned.

Drainage impacts are addressed by the required adherence to the county drainage code, SCC 30.63A, and other applicable police power regulations. Those requirements ensure that concerns about drainage impacts are addressed in conformity with county and state standards. SCC 30.63A requires submittal and implementation of a drainage plan for this proposal. PDS has reviewed the targeted drainage plan and report articulating the drainage concept detailed above, from which it concludes that the proposal can conform to drainage code requirements. Full drainage plan review will be conducted; the specifics of final drainage system design are matters under the administrative authority of PDS.

Grading. The grading associated with the proposed project is located either in the public right of way or in the interior portion of the development and associated with roadway construction or infiltration facility construction. Grading quantities are anticipated to be approximately 3,633 cubic yards of cut and 2,487 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations. (Chapter 30.62 SCC) The staff report provides the following explanation of site conditions and critical areas regulations compliance:

A Type 1 stream containing species listed as threatened under the Endangered Species, Jim Creek, flows northwesterly along the northern property boundary with associated steep slopes and a Shoreline designation of Conservancy. There are six Category 3 riparian wetlands in the upper portions of the site near the proposed development areas including two smaller streams associated with Wetland C near the approximate center of the site. Most of the upper portion of the site was logged within the past six plus years and underwent a state mandated six-year forest practices moratorium which ended on July 31, 2008. Forested conditions still persist along the length of the Jim Creek with fewer trees existing within the PBA power line easement which bisects the site and is subject to periodical vegetative maintenance. Most of the Category 3 wetlands found on the site are currently utilized as pasture. An existing access driveway crosses Wetland C, a Category 3 wetland as well as a Type 5 stream, known as Stream A through a degraded portion of the wetland. See Exhibit K-2.

The applicant proposes to widen and improve the driveway to private road standards crossing the riparian Category 3 wetland and Type 5 stream in the same location as the current gravel driveway. This area is already severely degraded. A total of 1,296 s.f. of degraded pasture

wetland is proposed to be filled for the access road as allowed per SCC 30.62.350. The access needs to cross the wetland and stream in order to access the majority of the site's developable area and is considered to be unavoidable. The applicant has minimized the impacts as required per SCC 30.62.365 by choosing the most degraded portion of the site along the existing driveway. Mitigation for the wetland and buffer impacts is proposed in the form of wetland creation and wetland enhancement. The wetland creation area is proposed to be 3,888 s.f. along the western portion of Wetland C just to the north of Wetland B and parallel to the Type 5 stream for a 3:1 mitigation ratio to be planted in trees and shrubs. Temporary and permanent buffer impacts are proposed to be mitigated largely through buffer averaging as allowed per SCC 30.62.350(c)(i) with minor temporary impacts to be restored through re-seeding of the disturbance area.

Staff reviewed and approved a conceptual mitigation plan as well as habitat management plans for both federally listed salmonids and bald eagles. The applicant has demonstrated compliance with the Snohomish County Salmonid Habitat Management Plan Administrative Rule by utilizing Option A. There will be no development within 150 ft. of the ordinary high water mark (OHWM) of Jim Creek and the applicant has demonstrated that the stormwater within 300 ft. of the OHWM of Jim Creek can be released in a manner that mimics the pre-development site conditions. There is a designated bald eagle roost site located in the southeastern corner of the site. The proposed development is well away from the roosting area and the applicant has demonstrated that the development can meet the prescriptive Option A requirement of the Snohomish County Bald Eagle Habitat Management Plan Administrative Rule, which includes limited development activity within 800 feet of the roosting site. (Exhibit C7)

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare. PDS has reviewed the Critical Areas Study and Mitigation Plan and determined that the project complies with the critical areas regulations. The Examiner will include conditions to require submission of, approval of, and implementation of the final mitigation plan.

SCC 30.62.210 Landslide hazard area: The approach used to address the requirements of SCC 30.62.210 in this case is to assume (without a geotechnical report) that the areas with slopes that might be classified as Landslide hazard areas are Landslide hazard areas. They are placed in NGPA and appropriate building set back lines are established. For this project the areas that are assumed to be Landslide hazard areas are already within the limits of NGPAs that are required for other critical areas. Because this method affords maximum protection there is no need to require a Geotechnical report to evaluate the existence of landslide hazard areas.

12. Consistency with the GMA Comprehensive Plan.

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

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density

subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9.

The 16 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

A. Water.

Water will be supplied by Snohomish County PUD #1. A Certificate of Availability was received from Snohomish Health District on February 6, 2008. (Exhibit H5)

B. On-Site Septic.

The applicant proposes on-site septic systems on each of the 16 lots in the proposed subdivision. The Snohomish Health District has provided a letter recommending approval of the plat dated February 6, 2008. (Exhibit H9)

C. Electricity.

On August 29, 2007, Snohomish County Public Utility District No. 1 provided correspondence indicating that they can provide electricity to the proposal. (Exhibit H7)

14. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements.

15. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 2, 2009. (Exhibit E2) The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on November 28, 2006. (Exhibit 1) The following general subdivision standards have been met:

A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. Finding of Fact 7 addresses how the applicant is meeting County road requirements. See SCC 30.41A.210.

B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. See 30.41A.110.

C. Fire Code. The Staff Report (Exhibit J) provides the following information on compliance with the fire code:

The Office of the Fire Marshal reviewed the project and recommended approval of the preliminary plat on October 3, 2007, with conditions relating to the location of fire hydrants, fire flow requirements, the potential for a gate on the private road. PDS has included recommended conditions of approval to implement the requirements of the Fire Marshal.

As conditioned, the Fire Marshal concluded, "Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further comments."

The Examiner concludes that the subdivision meets the requirements of the fire code.

17. Rural Cluster Subdivision Standards—General.

The Safe 2 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 October 30, 2007 (Exhibit 16A-G), and in an open space management plan (Exhibit 6) 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 65% (21.3 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 and reducing the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems. Finally, the project complies with critical areas regulations (CAR), thereby minimizing the loss of the county's environmentally sensitive areas.

18. Rural Cluster Subdivision Code Design Standards (SCC 30.41C.200)

The rural cluster subdivision code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

A. SCC 30.41A.200(1)-- Critical Areas Compliance.

*(1) When environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to chapters 30.62 and/or other applicable county ordinances or policies, the areas shall be designated as critical area protection areas;*

Applicant's development concept protects critical areas on site, as explained in Finding of Fact 11 under the heading "Critical Areas Regulations". The applicant has avoided almost all impacts to critical areas in developing this site plan and will infiltrate stormwater, further protecting critical areas and water quality. Exhibits C4 and C5.

B. SCC 30.41C.200(2)-- Sight Obscuring Buffers.

*(2) The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210(1);*

This development provides for a 35-foot sight-obscuring buffer along the road, and adjacent to lots 1, 2, 15, and 16, in accordance with the provisions of Table 30.41C.210(1). See Exhibit K2, B1. On the east side, the perimeter is buffered by the Critical Area Protection Area for Jim Creek. A landscaping plan (Exhibit B.4) has been reviewed and approved. PDS has determined that the vegetated sight-obscuring buffer has been appropriately located, the buffer is of the required size, and that the landscaping plan provides adequate requirements for augmenting the existing vegetation, should that become necessary. The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200(3)—Internal Roads.

*(3) All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;*

All roads are proposed to be public roads and to be built to EDDS standards, as modified by the EDDS deviations (Exhibits G.1, G.2, and G.3). PDS has determined that the project meets this requirement. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the rural cluster subdivision code.

D. SCC 30.41C.200(4)—Utilities.

*(4) Electric, telephone, and other utility lines shall be designed, located, and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;*

Applicant will be placing all utilities underground. (Exhibit H7.)

E. SCC 30.41C.200(5)—Unbuildable land.

*(5) All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;*

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. The entirety of Tracts 997 is designated as NGPA. Slopes greater than 40% and all lands covered by water, which are defined as unbuildable lands in SCC 91U.060, are located within Tract 997. The Hearing Examiner has determined that the project complies with this requirement

F. SCC 30.41C.200(6)—Buffers for Resource Land.

*(6) When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;*

Not applicable.

G. SCC 30.41C.200(7)—Disclosure Statement Required.

*(7) When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure statement shall apply to the real property that is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.*

Not applicable.

H. SCC 30.41C.200(8)—Mineral Resource Land Disclosure Statement.

*The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:*

...

*(b) Notice for mineral uses within required or optional open space:*

*Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.*

Not applicable.

I. SCC 30.41C.200(9)—Physical Separation of Clusters.

*(9) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;*

Not applicable.

J. SCC 30.41C.200(10)—Open Space Management Plan.

*(10) A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all restricted open space and other open space areas which require continuing maintenance or management;*

The applicant prepared an Open Space Management Plan which has been accepted by PDS. See Exhibit A4. These areas will be used as passive recreation areas, NGPA, and critical areas. The management plan provides guidance for maintenance and use of the open space in a manner that will maximize the homeowners' enjoyment of the site. Management objectives include:

- Maximize health and growth of the existing native landscaping;
- Preserve and protect sensitive wetlands;
- Recognize and enhance wildlife and ecological values;
- Maximize vegetation health;
- Minimize negative effects of soil disturbance;
- Preserve and enhance appropriate wildlife habitat;
- Minimize the potential impacts of development on water quality;
- Enhance and maintain an attractive native environment; and
- Those management objectives allowed by the Bonneville Power Administration.

The Open Space Management Plan specifies that tree removal will be restricted to removal of hazardous, dead or dying trees/shrubs. (Exhibit A4). The Homeowner's Association will ultimately be responsible for compliance with the Open Space Management Plan, as implemented through a condition of final plat approval.

K. SCC 30.41C.200 (11)—Physical Separation of Clusters.

*(11) Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));*

This requirement is not applicable, since this is a sixteen-lot development.

L. SCC 30.41C.200 (12)—Lots abut open space or buffer.

*(12) At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;*

Sixteen (16) lots are proposed. The computation of 75% of 16 yields 12 lots or, stated another way, a maximum of 4 lots within the development do not need to abut with the required buffers and open space of the development. Lots 1 and 2 have pre-existing residences and the sight obscuring buffer is required between Lots 1 and 2 and the new lots (lots 3-16 and the roads). The required sight-obscuring buffer has been placed between Lot 3 and Lots 1 and 2. However, there are some sections of sight-obscuring buffer along Jordan Road that abut Lots 1

and 2. Lot 1 abuts to Tract 997 and Lot 2 abuts Tract 996 and Lot 11 abuts Tract 998. All lots abut either a required buffer or a required Restricted Open Space Tract and PDS has determined that the project complies with SCC 30.41C.200(12). (Exhibit B1)

M. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character.

*(13) The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;*

The subject property is severely constrained by critical areas and Fish and Wildlife Habitat Conservation Areas. As discussed in the Critical Areas section of this report (above), impacts to critical areas has been kept to a minimum with the proposed lot layout. The new private road and proposed lot driveways have been designed so that passing traffic will have very limited views from the roadway and along the new roads and to the proposed residences. (Exhibit B.1) The applicant has done an excellent job of trying to balance these sometimes competing goals to meet its obligations under this ordinance.

N. SCC 30.41C.200 (14)—Sanitary Sewers.

*(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;*

The applicant proposes onsite septic systems for this development. See Exhibit H9.

O. SCC 30.41C.200 (15)—Location of clusters.

*(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters - 30.32C SCC. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;*

There are no prominent topographic features on which lots are proposed. Lots are not located near the interior of the site because the interior of the site is comprised of critical areas and a Bonneville Power Administration easement (Exhibit B.1). PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property and that the proposed lots are provided with a visual sight obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. PDS has determined and the Hearing Examiner concurs that the project complies with this requirement.



P. SCC 30.41C.200 (16)—Fire District.

*(16) Rural cluster subdivisions or short subdivisions shall be located in a rural fire district;*

The development is located within the service boundary for Fire District # 14.

Q. SCC 30.41.C.200 (17)—Rural Concurrency Standards.

*(17) Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.*

The project meets rural concurrency standards. See Finding of Fact 7, *infra*.

20. Rural Cluster Subdivision Lot Yield Calculations.

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

Basic lot yield: 1,566,682 square feet/100,000 square feet	= 15.67 lots
Total lot yield-rounded	= 16 lots
Total lots proposed	= <u>16 lots</u>

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 walking conditions for students.

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

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

## CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the Safe 2 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.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate conditions for the public health, safety, and general welfare.
6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

## DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary subdivision approval and rural cluster subdivision approval is hereby **GRANTED** subject to the following conditions:

### CONDITIONS:

- A. The preliminary plat received by PDS on October 8, 2008 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above and to this decision.
  - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the

proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

- iii. A final mitigation plan based on the Revised Mitigation Plan (Exhibit C5) for the SAFE-II Subdivision as prepared by GECCO, dated August 11, 2008 as submitted to PDS on August 15, 2008 shall be submitted for review and approval during the construction review phase of this project. Adherence to the provisions within the Bald Eagle Habitat Management Plan for the SAFE II RCS by GECCO dated August 12, 2008 and the Habitat Management Plan for SAFE 2 RCS by GECCO dated August 14, 2007 are required, including retention of trees within an 800 foot area, and limitation of development activity as specified in the plan. Exhibit C7.
- iv. The applicant shall submit full drainage plans for review and approval.
- v. The Area of NGPA on Lot 3 shall be expanded by extending the NGPA boundary on Lot 3 from the proposed location adjacent to Lot 4 as a straight line to the southwestern property line of Lot 3.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$48.83 (River Meadows # 302) 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:

\$2,947.56 per lot for mitigation of impacts on County roads paid to the County,  
\$344.52 per lot for mitigation of impacts on state highways paid to the County,  
\$2,710.84 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

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. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- iii. "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 2 existing parcels. Lots 1 and 2 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 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. “Bonneville Power Administration (BPA) imposes certain conditions on the use of the properties encumbered by high voltage transmission line right-of-ways. There can be no structures built on BPA right-of-ways. Proposed uses of the right-of-way must be reviewed, approved and permitted by BPA prior to installation. BPA Real Estate Field Services can be contacted at 1-800-836-6619.”
  - vi. “Prior to any ground disturbing activities on Lots 1, 2, and 3, including site exploratory work, the landowner shall obtain an excavation permit from the Washington State Department of Archaeology & Historical Preservation (DAHP) for additional archaeological work. DAHP can be contacted at 360-586-3065.”
  - vii. “Clearing of vegetation along the west side of Jordan Road within the sight distance easement shall be periodically performed as necessary in order to provide the required intersection sight distance. It is the responsibility of the Home Owners Association to perform the maintenance.”
  - viii. “If the required fire flow requirements cannot be met, new dwellings shall be provided with NFPA 13-D fire suppression systems.”
  - ix. “If a gate is installed at the entrance of the private roadway, the gate shall be activated by the emergency vehicle opticom strobe that opens the gate automatically with the approach of an emergency vehicle in either direction, or by a means that is acceptable to the local fire district. In the event of power failure, the gate shall open automatically and remain in the open position until the power is restored. The gate shall have a minimum of 20-feet of clear opening for fire apparatus access.”
  - x. “Fire access shall not be obstructed in any manner, including parking of vehicles. Signage or pavement striping shall be provided on both sides of the private access road if it is less than 28 feet wide stating “NO PARKING – FIRE LANE” to insure access availability.”
  - xi. “The Open Space Management Plan (Exhibit A.4) shall be implemented. Changes to the Open Space Management Plan may be accomplished through a plat alteration, per SCC 30.41A.700, 30.41A.710, 30.41A.720, 30.41A.730, 30.41A.740, and 30.41A.750.”
  - xii. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
  - xiii. “The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight obscuring vegetation. “
  - xiv. “The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.”

- xv. "The landscape buffers shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation."

D. Prior to recording of the final plat:

- i. The applicant shall provide a sight distance easement along Jordan Road large enough to include the entire sight distance triangle.
- ii. The Final Plat shall show a total of 40 feet of right-of-way dedication to the county from the centerline of Jordan Road.
- iii. Rural frontage improvements shall be constructed along the parcel's frontage on Jordan Road in conformance with chapter 30.66B and the Engineering Design and Development Standards.
- iv. An All Climate Protection (ACP) waiting area to the specification of DPW shall be provided at the bus stop that is off Jordan Road.
- v. Traffic calming measures, such as speed tables, shall be provided every 400 feet along the private road.
- vi. Fire hydrants shall be provided in accordance with SCC 30.53A.310.
- vii. Prior to final plat approval, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2-hour duration can be provided.
- viii. Utilities shall be located underground.
- ix. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.  
  
NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to PDS for review and approval prior to installation.
- x. The final wetland mitigation plan shall be completely implemented.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B.4) shall be implemented. All required landscaping within the Sight Obscuring Buffer and within Tract 998 shall be installed in accordance with the approved landscape plan.

- ii. PDS shall review the site obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the site obscuring buffer.
- F. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
  - ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as much as such maintenance is required by the Open Space Management Plan (Exhibit A4).
- G. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 13<sup>th</sup> day of April, 2009.

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Barbara Dykes, Hearing Examiner

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

**Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 23, 2009**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a**

**copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

**Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 27, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.



**This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than APRIL 13, 2010.**

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
  - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

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**ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS**

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of \_\_\_\_\_, \_\_\_\_\_.

Certified by:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

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