

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: September 10, 2010

PLAT/PROJECT NAME: *Lake Goodwin RCS-I*

APPLICANT/
LANDOWNER: **LGAJV, LLC**
P.O. Box 100
Edmonds, WA 98020

FILE NO.: 06-125855 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: Northwest of the intersection of 52nd Avenue N.W. and 188th Street N.W.,
Stanwood, Washington 98292.

ACREAGE: 165.85 acres

NUMBER OF LOTS: 49

AVERAGE LOT SIZE: 36,744 square feet

MINIMUM LOT SIZE: 26,680 square feet

GROSS DENSITY: 0.30 du/ac (gross)

COMPREHENSIVE PLAN DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)

ZONING: R-5

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

Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Stanwood-Camano Island School District No. 401

FIRE DISTRICT: Snohomish County Fire District No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The preliminary plat application for a 49-lot Rural Cluster Subdivision (RCS) development was originally submitted to Planning and Development Services (PDS) on August 3, 2006, and was determined to be complete upon submittal for vesting purposes. The 120-day clock started on August 31, 2006. PDS and the Applicant exchanged various plan sets and review comments from 2006 through 2008, when the Applicant was granted an extension of the application. (Exhibit J) The Applicant continued to resubmit materials through July, 2010. The 120-day clock was exceeded by 23 days, partly caused by the Applicants submittal and re-submittal of materials for review on seven separate occasions. As of the hearing date, 143 days have elapsed.

The Examiner held an open record hearing on September 8, 2010. At the hearing, witnesses were sworn, testimony was presented, and exhibits were entered into the official record. Witnesses providing testimony included: Ed Caine, PDS, and Brian Holtzclaw, attorney for the McNaughton Group. No members of the public were present. Other members of the Applicant's design team were present at the hearing. At the public hearing, the Examiner inquired about a missing exhibit from the record which is referred to in the staff report relating to the City of Arlington's final response to the proposed traffic impact fees. The record was held open until 5 pm on September 8, 2010, to allow PDS time to submit additional documentation. Ed Caine submitted such additional information, which is added to the exhibits in the record. (Exhibit K.1) In addition, the Applicant submitted a copy of a letter from the Snohomish County PUD No. 1 stating the availability of electrical power to the subdivision, which had been inadvertently left out of the record. The letter (Exhibit K.2) was added to the record.

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. At the start of the public hearing, Ed Caine, PDS staff noted that the Staff Report (Exhibit J) contains a proposed condition (Condition C.9) that is not needed because there are no proposed private roads in the subject development. Mr. Holtzclaw agreed and requested that the condition be stricken from the Staff Report. The Examiner agreed and Condition C.9 was

stricken as a recommended condition. That correction was made by the Examiner and is reflected in Exhibit J in the record. The record in this matter consists of the master list of Exhibits, as updated, and the testimony of witnesses, all of which was considered by the Examiner in reaching this decision.

2. The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits E and F)

A. Background Information

3. Applicant's Proposal: The applicant is requesting a 49-lot Rural Cluster Subdivision on a 165.85 acre parcel. Access will be by a new public road, which extends 192nd Street NW to the west, with three new cul-de-sac public roads off of the 192nd Street NW extension. Each lot will be served by public water from Snohomish County PUD No. 1 and sewer will be provided by individual septic systems. Restricted Open Space will be 115.35 acres, and includes 17 wetlands, wetland buffers, and upland areas. The site is not subject to a pending code enforcement action.
4. Site Description: The site is undeveloped and forested. There are 17 wetlands on site (2 Category 1, a Category 2, and 14 Category 3). There are 12.22 acres of land, 7.4% of the site and 10.6% of the Restricted Open Space (ROS) that will be provided with the subdivision, with slopes in excess of 40% (unbuildable lands). All steep slopes are proposed to be placed in Native Growth Protection Areas (NGPAs) and permanently protected from development.
5. Adjacent Zoning/Uses: Adjacent zoning is R-5. Neighboring uses are either undeveloped land or residential. Lake Goodwin RCS II (06-125856-SD), a 49-lot rural cluster subdivision, borders the site to the east and north. Lake Goodwin RCS II received preliminary approval on March 16, 2010. Lake Goodwin RCS III (06-126101-SD), a 104-lot rural cluster subdivision, borders the site to the west. Lake Goodwin RCS III has not received preliminary approval.
6. Issues of Concern:
 - A. Agency Comments. Agency reviews and PDS reviews have identified no unresolved issues of concern.
 - B. Citizen Comments. The Tulalip Tribes commented that their database shows that the unnamed streams present on the site are fish-bearing. PDS investigated and found no fish present. Ed Caine testified that the County's databases do not show the streams as having fish present. Mr. Caine further testified that PDS conferred with the Washington State Department of Fish and Wildlife (WDFW) to learn whether they had any data to

support a finding of fish presence in the streams on the site. Mr. Caine testified that WDFW did not have any such information. The Applicant testified that the Tribes have not presented any further evidence to support their claim. They believe that the bulk of the evidence in the record is that there is no such fish presence in streams on the site. No other issues were raised by members of the public.

B. Compliance with Codes and Policies.

7. Park and Recreation Impact Mitigation (Chapter 30.66A SCC).

The proposal is within Kayak Point Park Service Area, No. 301, and is subject to Chapter 30.66A SCC, which requires payment of \$811.29 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and is included as recommended condition of approval.

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

PDS has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "A." The Applicant has provided traffic analysis for both the subject application, as well as for the entire group of subdivisions (totaling approximately 611 units) within the surrounding area. (Exhibit C.1, C.2) These studies were used by PDS to determine the Applicant's compliance with Chapter 30.66B SCC and Title 13 SCC. Two deviations were granted from EDDS on October 23, 2007 and June 22, 2010. (Exhibits G.1, G.2)

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 impact fee for this proposal is based on the new average daily trips (ADT) generated by 49 new lots, which is 9.57 ADT/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report. The development will generate 468.93 new ADT and has a road system capacity impact fee of \$123,797.52 (\$2,526.48/lot) based on \$264/ADT. This impact fee must be paid proportionately prior to building permit issuance. PDS has included a recommended condition to require mitigation fee payment. The Hearing Examiner has included such a condition.

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 September 18, 2006. The expiration date of the concurrency determination is six years from this date or September 18, 2012.

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 36.75 AM peak-hour trips and 49.49 PM 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 PM 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. In response to concerns about the cumulative impacts on the existing road system by the surrounding rural cluster subdivisions proposed by the same developer in the area, the Public Works Department determined that its Traffic Operations group should do an IRC evaluation of several locations that would be affected by the subject development.

The IRC data included the following information:

- a) the number of accidents within the 3-year time frame of 4/1/05 to 3/31/08,
- b) the accident rate
- c) accident severity
- d) traffic volume: capacity ratio
- e) sight distance ratio
- f) pedestrian/bicycle facilities
- g) traffic conflict
- h) driver expectancy

According to Public Works, a location is not identified as an IRC if the score is below 40. (Exhibit J at p. 4) If the score is over 40, the Internal Review Board reviews the evaluation to determine if the location should be classified as an IRC, depending upon what the issues were and what the fix was determined to be. In the present case, numerous locations were evaluated inadequate road conditions. (See, Exhibit J) The result of that evaluation found that an IRC

existed only at the section of road from the south development property line of RCS 2 on 52nd Avenue NW (192nd Street NW), around the curve for 188th Street NW to 40th Avenue NW.

This determination was based on the sum of the data, which totaled 40.29 for the current traffic volumes, and 49.18 for forecast conditions. The County Engineer concurred with the Board's decision on January 26, 2009. The Board recommended that the applicant be required to: "[w]iden and improve to 30 [feet] of pavement, [and] provide guardrail as needed. Address sight distance issues in curve at 188th Street NW and 52nd Ave. SE." The County Engineer's comments were "Alternate roadway section 24 [feet] with separated walkway may be used. Deviation may be required in critical areas." (Exhibit J) As a result of this information, PDS is recommending the following condition be included:

Improvements to remove the inadequate road condition (IRC) on 52nd Avenue NW beginning at 192nd Street NW to 188th Street NW and ending at 40th Avenue NW must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued, per the requirements of SCC 30.66B.220.

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. Here, the Applicant has demonstrated that their property does not front a public road. Therefore, frontage improvements are not required.

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

According to SCC 30.66B.420, all developments are required to: (a) Provide for access and transportation circulation in accordance with the comprehensive plan and provisions of Chapter 30.66B SCC, applicable to the particular development, (b) Design and construct such access in accordance with the EDDS, and (c) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with Chapter 30.66B.430 SCC.

In addition, access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements.

Finally, all developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is

not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of public works determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with Chapter 30.66B.430 SCC.

In the present case, extensive analysis of the road system was provided by PDS and the Public Works Department. Their findings are set forth in the record at Exhibit J and supported by the Traffic Analysis provided in Exhibits C.1 and C.2. Their findings are adopted by the Examiner as follows:

Description of the Internal Road System:

52nd Avenue NW is an existing county maintained road with 60 feet of right-of-way, which currently dead ends at the unopened right-of-way for 204th Street NW. 192nd Street NW (west of 52nd Avenue NW) is an existing dead end county maintained road with 60 feet of right-of-way. The applicant proposes to extend the west end of 192nd Street NW to the west for access into the development.

Road A extends from 192nd Street NW to the west property line of the development. Road A ends in the northwest corner of the site. A temporary dead end/road intersection/turnaround is proposed where Road A will leave this project. Road A is proposed to be extended into the preliminary plat of Lake Goodwin RCS 3 (06-126101-SD). If and when RCS 3 is completed, Road A will connect to Happy Hollow Road to the north. Happy Hollow Road is an existing minor collector arterial road.

Road B is a cul-de-sac road intersecting off of Road A in the northwest area of the development as an extension from the proposed location of the temporary turnaround. Road C and Road D are both cul-de-sac roads off of Road A located near the center and southeast areas of the property, respectively.

Road Classification, Internal Road Classification:

All of the roads in the development are proposed to be public roads. Under the authority of the County Engineer in accordance with the EDDS, and based on each road serving less than 250 ADT, internal roads B, C, and D in the proposed development will be classified as non-arterial rural public local access roads. The design speed for local access roads is 25 mph. All three of these roads would serve 90 ADT or less. EDDS 3-060 specifies that, when the road has no potential for connectivity (which these would not), a widened shoulder for a pedestrian walkway is not required. Required pavement width needs be 24 feet to include two 9-foot wide travel lanes and a paved 3-foot shoulder on each side.

Under the authority of the County Engineer in accordance with the EDDS, and based on the road serving between 250 ADT and 1,000 ADT, Road A will be classified as a non-arterial rural subcollector road. EDDS Table 3-2 specifies a design speed of 30 mph for a subcollector road. EDDS Plate 3-060 indicates the pavement width for that type of road is 30 feet for two 10-foot wide travel lanes and a 7-foot paved shoulder walkway on each side of the road.

Description of the External and Existing Road System:

The route into the development property via existing public roads is from Lakewood Road go north on 40th Avenue NW (Happy Valley Road), then west on 188th Street NW, and then north on 52nd Avenue NW.

Road Classification, External and Existing Roads:

52nd Avenue NW and 188th Street NW are classified as non arterial collector roads. They are rural public roads serving less than 3,000 ADT, which includes both the current traffic and the subject development trips. The posted speed on both roads is 35 mph. Both roads already have 60-feet of right-of-way, which is sufficient for the design standard required for that road classification. The frontage improvements that were required for the preliminary plat of Lake Goodwin RCS II (PFN 06-125856-SD) are for a non arterial collector road, which is designed for the road section when ultimately connected to Happy Valley Road to the north.

52nd Avenue NW between the north end of 52nd Avenue NW southward to just south of 192nd Street NW meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. 52nd Avenue NW will be widened to a minimum of 36 feet as a result of frontage improvements by the applicant for construction of Lake Goodwin RCS II.

The curve at the southern section of 52nd Avenue connecting to 188th Street NW does not meet EDDS requirements for road grades, horizontal and vertical curves. As contained in the Inadequate Road Condition section, above, the IRC evaluation for this intersection concluded that the intersection of 52nd Avenue connecting to 188th Street NW needs to be improved by widening the road to an improved surface of 30' and to provide a guardrail as needed. Sight distance issues in curve at 188th Street NW and 52nd Ave. SE also need to be addressed. PDS has included recommended conditions to implement the road improvements.

The section of 188th Street NW from east of the curve to 40th Avenue NW meets the minimum requirements of EDDS for road grades, horizontal and vertical curves, and will not be widened as a result of frontage improvements for the development.

40th Avenue NW is classified as a minor collector arterial road on the County's Arterial Circulation Map. The road is a rural public road serving less than 2,000 ADT with the current traffic plus the subject development trips. The posted speed is 35 mph. The DPW Traffic Operations group performed an IRC evaluation of the road segment between SR 531 and 188th Street. The sum of the data totaled 21.35 for the current traffic volumes, and 22.41 for forecast conditions, so DPW made a determination that this road segment should not be classified as an IRC.

The classification of the roads within and adjacent to the proposed development have been made based on professional engineering judgment under the authority of the County Engineer, the requirements in EDDS and the following information:

- a) The number of ADT generated by the proposed development is 469 ADT.
- b) The number of ADT currently on the existing 52nd Avenue NW is 176 ADT.
- c) The number of ADT currently on the existing 188th Street NW is 372 ADT
- d) The number of ADT currently on the existing 40th Avenue NW is 1,320 ADT
- e) The approximate number of ADT anticipated to be contributed by all proposed development within the surrounding area is 1,804 ADT on 188th Street NW and 3,370 ADT on 40th Avenue NW.

The classification of 52nd Avenue, 188th Street, and 40th Avenue may differ from the EDDS prescriptively indicates. DPW based the road classifications on information found in the project traffic studies (Exhibits C.1 and C.2), the traffic analysis by PDS, and the professional experience and judgment used in compiling and analyzing the data.

The existing rights-of-way on the offsite sections of 52nd Avenue NW and 188th Street NW are 60 feet wide, except for a section of 188th Street just west of 40th Avenue for about 1,200 feet, which is 50 feet wide. Therefore, in the future if the County determines that the roads need to be widened, there will be sufficient right-of-way available to upgrade the roads as conditions of approval for the future developments.

40th Avenue NW between 188th Street and SR 531 has a varying amount of right-of-way. The majority of the deeded and dedicated right-of-way is 40, 50 and 60 feet width. There is a short section of the road with a 20-foot right-of-way width and a short section of road with a 30-foot right-of-way width. In some sections of the road, additional right-of-way will be needed in order to widen the pavement of the road in the future. Additional right-of-way to improve 40th Avenue NW will be a requirement on future development.

Sight Distance:

Sight distance was checked at several intersections between the development property and SR 531 (Lakewood Road), which is the route for 100% of the trips from the proposed development until a future road connection is made through other proposed developments to the west and to the northeast.

- a) 40th Avenue NW and SR 531: Sight distance was checked at the intersection. The intersection sight distance (ISD) to the left, taken 10 feet back on 40th Avenue NW looking east, was 319 feet. 390 feet is required based on the posted speed of 35 mph and a grade of plus 3 percent. The ISD was limited by trees and brush, coupled with the horizontal curve on the east leg of SR 531. This situation will be addressed by removal of the trees and brush within the line of sight, and by a recommended condition of approval for this project that the applicant shall improve the intersection of 40th Avenue NW and SR 531 to the satisfaction of DPW prior to recording the subject development.
- b) 188th Street NW and 40th Avenue NW: (1) The ISD from the north leg of 40th Avenue at 188th Street looking right (west on 188th Street) was 260 feet. An ISD of 390 feet is required. Looking left on 188th Street the ISD exceeded 400 feet, which met the required ISD of 390 feet. (2) Where the west leg of 188th Street intersects with 40th Avenue on the curve between 40th Avenue and the east leg of 188th Street, the ISD to the left was 700 feet, and to the right was 360 feet. The required ISD for both directions is 390 feet. (3) If a vehicle going northbound on the southern leg of 40th Avenue was stopped and attempting to turn left onto the west leg of 188th Street, a vehicle traveling in the same direction on 40th Avenue would have 260 feet of Stopping Sight Distance (SSD) from the location where the stopped vehicle was visible. A SSD of 340 feet is required based on the 85th percentile speed of 43 mph and a grade of -1%. The sight distance deficiencies will be addressed by inclusion of the recommended condition of approval to require the applicant to improve the intersection of 188th Street NW and 40th Avenue NW to the satisfaction of DPW prior to recording the development.

- c) 188th Street/52nd Avenue NW from west of the intersection of 188th Street NW and 40th Avenue NW to 150 feet north of the curve between 188th Street NW and 52nd Avenue NW: Stopping sight distance (SSD) was measured through the curve. The horizontal sight distances from some of the driveways located on the curve have as little as 130 feet of sight distance. There are also vertical sight distance issues at the crest of the hill on 188th Street traveling eastbound. The measured SSD is 240 feet. A SSD of 278 feet is required based on the 85th percentile speed of 38 mph. The SSD will be addressed by inclusion of a recommended condition of approval to improve the intersection of 188th Street NW and 52nd Avenue NW to the satisfaction of DPW prior to recording the development.
- d) The sight distance at the intersections of 52nd Avenue NW and 192nd Street meet the minimum requirements of EDDS 3-08.
- e) The plans (Exhibit C.5) show intersection and stopping sight distance at the intersection of Road A and Road B near the west property line. EDDS 3-06-A specifies that design speed is a speed selected to determine the various geometric design features of a roadway. Design speed shall be used to determine stopping sight distance (SSD) and intersection sight distance (ISD) requirements for new road facilities. A design speed of 30 mph is used in EDDS Table 3-6 and 3-8 without a modifier, so the required SSD and ISD is 200 feet for both measurements. Both ISD and SSD will meet the standards with the proposed configuration of the roads. The plans include the profiles for both roads, and show that there are no vertical curves in that location that would prevent adequate sight distance.

Road Circulation:

The east leg of 204th Street NW (from 52nd Avenue) is proposed to continue east as a public road through the proposed plats of Lake Goodwin RCS 4 (06-126104 SD) and north through Lake Goodwin RCS 5 (07-101623-SD), connecting onto 212th Street NW, which then connects to Happy Hollow Road and 50th Avenue NW. The west leg of 192nd Street NW from 52nd Avenue NW is proposed to continue west as a public road through the subject development and north through Lake Goodwin RCS III (06-126101-SD), and will connect onto 212th Street NW at about 62nd Avenue.

For the current proposal, the road system into this development from the 40th Avenue NW/188th Street NW intersection will be a dead end until the other adjacent developments have been constructed.

The Hearing Examiner further finds that DPW approved two EDDS deviations based on several factors described below which affects the road design for the subject development:

Deviation Request #1 (Exhibit G.1):

EDDS Section 3-01-B.2 specifies that the maximum distance between intersections or between an intersection and a dead end road should not exceed 1,320 feet in rural areas. The distance on Road A between the two intersections with Road C and Road B exceeds 1320 feet, and the temporary road end is proposed at the intersection of Road A with Road C. A deviation request was submitted by the applicant to ask approval of the distance as designed. The request was approved in a letter dated October 23, 2007, by the County Traffic Engineer, based on the overall layout and design of the road system northwest of the subject development proposed by the applicant for Lake Goodwin RCS III (06-126101-SD), application for which is pending and is by the same applicant as for this application. The continued road system in Lake Goodwin RCS III has multiple road intersections from the main road (Road A) and will connect to Happy Hollow Road at the north end. Additionally, the design of the road system in the subject development is limited by the topography of the subject property as the road system had to avoid the wetlands, streams, and buffers to the maximum extent feasible.

Deviation Request #2 (Exhibit G.2):

EDDS 3-01 B.4 specifies that a road serving more than 250 ADT shall be connected in at least two locations with another road or roads that meet the applicable standards for the resulting traffic volume. A deviation request was submitted by the applicant asking approval to end the road system (Road A) with a temporary turnaround at the west property line of this development, which is adjacent to the proposed Lake Goodwin RCS III subdivision. Lake Goodwin RCS I, this proposal, will add 49 homes (468.93 ADT) to the existing dead end road system in addition to the 49 homes that were approved for Lake Goodwin RCS II. A total of approximately 1,486 proposed and existing ADT are anticipated on the existing dead end road system which begins at the intersection of 188th Street NW and 40th Avenue NW. The future road connection proposed on the west side of the development will connect to the road system proposed for Lake Goodwin RCS III to the west. The road system in Lake Goodwin RCS III will connect 192nd Street NW to Happy Hollow Road. The deviation request was approved with the following condition: Prior to recording Lake Goodwin RCS I, if

the public road connection through Lake Goodwin RCS III is not constructed, the public road connection proposed through Lake Goodwin RCS II, Lake Goodwin RCS IV, and Lake Goodwin RCS V shall be constructed to connect with an existing open constructed public road (50th Avenue / Happy Hollow Road) prior to recording Lake Goodwin RCS I. PDS has included the condition as a recommended condition of approval.

The Fire Code requires the distance between intersections and turnarounds do not exceed 1,200 feet without an intermediate turnaround. The approved EDDS deviation (Exhibit G.1) was reviewed by the Office of the Fire Marshal. The design of Road A, including the deviations, was approved by that office. (Exhibit H.4)

There are no private roads associated with this project. The applicant proposes to build the internal plat roads to County standards and to dedicate them as public roads with recording of the plat.

Profiles of the interior plat roads were included in Exhibit B.5 and the vertical curves and road grades were reviewed for compliance to EDDS. The road grades, vertical and horizontal curves were found to meet the minimum requirements of EDDS for public rural local access roads (Roads B, C, and D) and for public rural sub-collector roads (Road A).

Based on the foregoing, the Hearing Examiner finds that the applicant has made adequate provisions for public access, road circulation and connection, adequate site distances and emergency response vehicle access and turnaround by dedicating proposed right-of-way and constructing a new road to serve the development lots, along with the other proposed road improvements described above.

F. Extent of Improvements [SCC 30.66B.430]

In determining the extent of improvements required, the Director of Public Works considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors as set forth in the Staff Recommendation (Exhibit J), which is adopted herein by this reference, and finds that the recommended extent of improvements are consistent with the Department's analysis of the factors required in SCC 30.66B.430 and the facts set forth in the entire record.

G. 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 section of 188th Street NW fronting the development (along the south property line) is currently unopened right-of-way for a future road. There is 60 feet of right-of-way existing east of the development property, and there is a strip of 30 feet of right-of-way south of the right-of-way centerline fronting approximately 70% of the development property. The existing strip of 30 feet of right-of-way intersects with 60th Avenue NW right-of-way at the southwest corner of the development property. 60th Avenue NW is a constructed and maintained public road that connects directly to Lakewood to the south. DPW has determined that the development needs to dedicate 30 feet of property along the south property line in order to provide for future road connectivity in the area. A recommended condition has been included to require the right-of-way dedication.

188th St NW is designated as a non-arterial road on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. No right-of-way presently exists on the development's side of the right-of-way. Therefore, 30 feet of additional right-of-way is required. This has been shown on the preliminary plat plan. A recommended condition has been included to require the right-of-way dedication.

Right-of-way Vacation request: Approximately 650 feet of the unopened right-of-way for 192nd Street NW will be improved by construction of Road A, extending west from 52nd Avenue. Road A then curves to the south and continues o loop to the north. As Road A curves, it leaves the unopened right-of-way. The applicant proposes to vacate the portion of the unopened right-of-way for 192nd Street NW where it is not needed for Road A. The existing unopened right-of-way for 192nd Street NW precludes the most buildable contours of the property. The configuration of proposed Road A will provide an acceptable public road while allowing a better configuration for the plat. An application to vacate the property has been submitted, and a preliminary review of the request was completed by DPW. DPW has indicated that it will support a petition to vacate the unopened right-of-way based on the applicant's proposal to construct a new public road network within the development. The west end of the unopened right-of-way for 192nd Street NW stubs at the property line for the subdivision of Blacktail Forest (01-110742-SD), which has been constructed and recorded. The 192nd Street NW right-of-way was not used by Blacktail Forest because of steep slopes and sensitive areas in that area of the development, so the unopened right-of-way will not be used by any other property except as is currently proposed by the applicant.

Based on the foregoing and the information in the record, the Hearing Examiner finds that the right-of-way is adequately shown on the preliminary plat. A condition has been included to require the dedication of additional 30-foot section of right-of-way.

H. Impacts to State Highways [SCC 30.66B.710]

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. When a development's road system includes a state highway, mitigation requirements are established using the County's SEPA authority consistent with the terms of the ILA between the County and the Washington State Department of Transportation (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.

Here, the Traffic Study shows that the proposed development will impact State Highways. Pursuant to the County's SEPA substantive authority, SCC 30.61.230(9) and the ILA, the County has determined that the impact fee for the subject development should be \$12,851.30 or \$262.27 per lot. The amount of the impact fee is based on the fact that the proposed development will impact State Highways with 154 Average Daily Trips (ADT). The mitigation fee for this project is arrived at using the following formula: $\$83.45/\text{ADT} \times 154 \text{ ADT} = \$12,851.30$ (\$262.27/lot). The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

A DNS was issued for the development application based on mitigation offered by the developer, including the payment of impact fees. The applicant chose to make a voluntary payment to mitigate their impact to the state highway system in lieu of other mitigation. The applicant chose to pay towards the Interstate 5-172nd St NE Interchange (ID# DOT-01) and has a per ADT fee of \$83.45. The applicant submitted a written offer to WSDOT in the amount of \$12,851.30 to mitigate traffic impacts to State highways. WSDOT accepted this offer in an e-mail sent to PDS on March 8, 2007 (Exhibit H.2). Accordingly, mitigation is required as a condition of approval.

I. Impacts to City Streets and Roads [SCC 30.66B.720]

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of ILA between the County and the other jurisdictions.

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the City of Arlington. Here, the Traffic Study shows that the proposed development will impact the influence area that requires traffic mitigation for the City. Based on Exhibit 3 of the interlocal agreement (ILA), for Sub Area #CO-ARL-6, forty percent of the development trips will pass through the City of Arlington.

Pursuant to the County's SEPA substantive authority, SCC 30.61.230(9) and the ILA, the County has determined that the impact fee for the subject development should be \$20,548.25. The amount of the impact fee was based on the following formula: 49 new SFRs x 1.01 PM PHT/SFR x \$1,038.00 / PM PHT x 40%.

A DNS was issued for the development application based on mitigation offered by the developer, including the payment of impact fees. The applicant chose to make a voluntary payment of \$20,548.25 to mitigate their impact to the City's streets in lieu of other mitigation.

Comments from the City of Arlington dated September 21, 2007 were received by PDS on September 27, 2007 (Exhibit H.1). The City agreed to the mitigation measures proposed by the applicant. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval. Therefore payment of \$20,548.25 (\$419.35 per lot) to the City of Arlington for traffic mitigation will be a recommended condition of approval for this development.

Additionally, Snohomish County has an ILA with the City of Stanwood and this development is within the influence area that requires traffic mitigation be considered for the City. The applicant's traffic impact analysis (Exhibit C.1) indicate that the development will not add 3 directional peak hour trips to any projects that are part of the City's cost fee basis. Therefore, the development is not subject to any City mitigation requirements and thus the proportionate share amount is zero. The City of Stanwood accepted the applicant's mitigation offer on August 7, 2006, by signing in the appropriate box. Therefore no traffic mitigation fee will be required to be paid to Stanwood.

There are no other City jurisdictions that have an ILA with the County that will be significantly impacted by the subject development.

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

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

9. 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. PDS received comments from the Stanwood-Camano School District No. 401. (Exhibit H.5) The District indicated that students' bus stop location for Stanwood Elementary, Port Susan Middle, and Stanwood High Schools will be at the existing stop outside the development at 192nd Street NW and 52nd Avenue NW, because the road system for the development is a dead end, and the school buses do not go down dead end roads due to turn around and safety issues.

All new roads will be constructed in accordance with EDDS and therefore will provide adequate pedestrian facilities for all students. An offsite walkway will be required between the east development property line and 52nd Avenue NE on the south side of 192nd Street NW. PDS has included a recommended condition to implement this requirement.

The Examiner has included a condition requiring the construction of necessary pedestrian facilities. The extent of those improvements is discussed in Paragraphs 8 (E), (F) and (G), and the Examiner finds that those improvements are consistent with the County Code, EDDS and will provide safe walking conditions for school children and will provide for the general public health, safety and welfare.

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

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. School impact mitigation fees are determined according to the Base Fee Schedule in effect for the Stanwood-Camano Island School District No. 401, 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 two existing lots. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC. The Hearing Examiner has included a condition that requires payment of any school impact fees at the time of building permit issuance.

11. Drainage and grading.

Drainage. The development proposes new impervious surfaces in excess of 5,000 square feet, and is a "major development" within the meaning of Chapter 30.63A SCC. Therefore, the applicant must provide a full drainage plan and report in accordance with the County Code.

The Surface Water Management division of DPW has not found flooding downstream of the proposed development, and has no reported downstream drainage complaints. The proposed

detention ponds will meet the detention requirements of Snohomish County, which includes a 30% factor of safety. The outflows from the ponds will be discharged into level spreaders that sheet flow to an existing wetland. PDS has approved over-sized culverts with gravel fill to approximately 1/3 of the culvert diameter for water conveyance beneath Road A.

The undeveloped flows for Foldens Creek Basin (the 2-year, 10-year and 100-year storms) correspond to values of 1.35, 3.24 and 7.04 cfs, respectively. The undeveloped flows for Foldens Creek Tributary Basin (the 2, 10 and 100 year storms) correspond to values of 0.25, 0.70 and 1.59 cfs, respectively. The post-detention flows from the site for Foldens Creek Basin (of the 50% of 2, 10 and 100 year storms) correspond to values 0.67, 3.23 and 7.02 cfs respectively. The post-detention flows for Foldens Creek Tributary Basin (of the 50% of 2-year, 10-year and 100-year storms) correspond to values 0.13, 0.63 and 1.58 cfs, respectively.

Water quality measures will include dead storage in the proposed detention ponds and within bypass areas dispersion through existing vegetation. The wet ponds will provide treatment for the total volume of runoff from the 6-month, 24-hour storm event. Discharge through level spreaders will be to the established flow paths mimicking pre-developed condition. Based upon the conceptual review of drainage and grading, and the preliminary documents provided, PDS has concluded this project can meet the requirements of Chapters 30.63A and 30.63B SCC, subject to the recommended conditions for drainage considerations. The Hearing Examiner agrees and finds that the proposed development meets the County's development standards relating to the control of stormwater runoff. Additional review of drainage will occur during construction plan review.

Grading. The project is proposing approximately 100,000 cubic yards of cut and 100,000 cubic yards of fill. Proposed grading is in excess of 100 cubic yards which triggers the need for a grading permit and a Stormwater Pollution Prevention (SWPP) Plan per SCC 30.63B and Rule 3044. PDS has included recommended conditions to require approval of the construction plans, the drainage report, and the SWPP Plan. PDS has also included a recommended condition to require a grading permit.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the Chapter 30.63A and 30.63B SCC. Water quality shall be controlled during construction by use of silt fences and straw bales or other BMPs in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. The Examiner has included conditions of approval requiring completion of a full drainage plan, a SWPP plan, grading permit, and a right-of-way permit for any work within the county right-of-way. The detention ponds shall be landscaped.

12. Critical Areas Regulations.

There are 17 wetlands on the subject property: one Category 1, forested bog wetland, one mature forested Category 1 wetland, one mature forested Category 2 wetland, and 14 Category 3, forested wetlands on site. Foldens Creek, a Type 3 stream and a smaller Type 4 stream are located on or within 100 feet of the subject property. There are some areas of steep slopes greater than 33% located within the proposed project boundaries however they are not associated with either of the two streams and all steep slopes are proposed to be placed within NGPAs and permanently protected.

One stream and wetland crossing is proposed near the main access point to 192nd St. NW. Three additional buffer impact areas are proposed by the internal public roads. The relatively minor wetland fill that is proposed for the crossing is to be mitigated through innovative development in the form of substantial buffer additions throughout the site. All of the mitigated and expanded buffer areas are to be permanently protected as NGPA/E within separate open space tracts.

The applicant submitted a critical area study and mitigation plan (Exhibit C.4) that proposed additional buffer in lieu of wetland creation for the 6,544 square feet of wetland fill and included more buffer addition for impacts to wetland buffers for the internal roadways calculated at 278,810 square feet. The conceptual mitigation plan states that the mitigation ratio amounts to an 8:1 replacement ratio. While staff's math calculated the figures provided in the conceptual mitigation plan at just slightly less than 7.3:1 vs. 8:1. The actual amount of additional buffer to be provided is much larger, but not calculated, because the applicant has designated the entirety of Tracts 903 and 901 as NGPA. The real mitigation ratio of added buffer as compensation for 6,544 s.f. of wetland fill and 31,817 s.f. of buffer impact is more on the order of 24:1.

Based on this information, the applicant has demonstrated compliance with SCC 30.62.370(2) because the large amounts of additional upland buffer habitat adjacent to existing wetlands compensate for 6,544 s.f. of filled wetland. PDS has included recommended conditions to establish and protect the areas designated as NGPA.

All critical areas and buffers are proposed to be permanently protected as NGPA/Es or in separate tracts as NGPA. PDS has included conditions to require critical area protections. 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 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. Accordingly, the Hearing Examiner finds that the proposed mitigation plan requiring the protection of critical areas meets the requirements of the County Code and should be imposed as a condition of development approval.

13. 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 - 5 (RR-5: 1 du/5 ac). This GMA Comprehensive Plan designation identifies all lands which are currently designated as Rural on existing subarea comprehensive plans and which have subsequently been zoned "Rural 5." This designation also includes some areas which were previously designated and zoned as "Agriculture" lands. It also includes lands for which the pre-GMA subarea comprehensive plan indicates as higher density, but which were zoned R-5 by the county subsequent to the plan adoption date. The implementing zone in this designation will continue to be "R-5." The 49 lots proposed, when constructed pursuant to a rural cluster subdivision design, are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Utilities.

- A. Sewer. Sewer will be supplied individual septic systems. Snohomish Health District recommended approval of the preliminary plat on September 6, 2007. (Exhibit H.3)
- B. Electricity. Electricity to the development will be supplied by Snohomish County PUD No. 1. (Exhibit K.2)
- C. Water. Water will be supplied by Snohomish County PUD No. 1. (Exhibit H.7)

15. Zoning (Chapter 30.2 SCC)

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

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on July 30, 2010. (Exhibit E.2) The DNS was not appealed. Notice was properly given of the SEPA determination. The requirements of SEPA have been met.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on August 3, 2006. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, the PDS staff report and in the public hearing, the design standards for roads are met. Finding of Fact 8 above, addresses how the Applicant meets 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. (SCC 30.41A.110)

- C. Fire Code Compliance. (Ch. 30.53A SCC) PDS sent a request for review to Fire District No. 19 on August 6, 2007. Fire District No. 19 did not respond to the request. Additionally, the Office of the Fire Marshall within PDS reviewed the project for compliance with the fire code and emergency vehicle access. The Office of the Fire Marshall approved the EDDS deviation (Exhibit G.1) for the distance between the internal roads of the plat (Exhibit H.4). Based upon the fire code (Chapter 30.53A SCC), the preliminary plat plan (Exhibit B.1), and the civil plans sheets (Exhibit B.5), the following conditions are recommended:
 - (a) Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.310. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.

 - (b) The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a two-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.300, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a two-hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.

- (c) If there is a gate 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. 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 provide a minimum 20' clear opening for fire apparatus access.

With inclusion of the recommended conditions, with the exception of (c), the Examiner finds that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150.

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

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The standards applicable to the subject development are reviewed below:

A. Rural Cluster Subdivision Lot Yield Calculations

The application complies with the provisions Chapter 30.41C.010 SCC by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 69.5% (115.4 acres) of the property in restricted open space.

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

Basic lot yield:	7,224,517 square feet/200,000 square feet = 36.12 lots
Bonus residential density	= 15%
Additional bonus density	= 20%
Total lot yield	= 48.8 lots
Total lot yield-rounded	= 49 lots
Total lots proposed	= <u>49 lots</u>

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

This Code provision states that 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 SCC and/or other applicable County ordinances or policies, the areas shall be designated as critical area protection areas.

The development proposal has designated all critical areas as NGPAs and the NGPAs are located within Tracts 903 and 901. (Exhibit B.1) Impacts to wetland 7 and the associated buffers are caused by construction of Road A, which crosses the wetland at the narrowest point while still aligning with the extension of 192nd Street NW. Impacts to buffers of wetland 9 are associated with extension of Road A to the western plat boundary. Driveways to lots 1 and 2 cross wetland 9 and impact both the wetland and the associated buffers. No other impacts will occur to either critical areas or to critical area buffers. PDS has determined that the project complies with the relevant critical areas codes, rules, and policies. The Examiner finds that the project complies with the relevant provisions of Chapter 30.62 SCC and SCC 30.41A.200(1).

C. Former SCC 30.41C.200 (2) – Vegetated Sight Obscuring Buffers

This Section states:

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

The transition from residences and adjoining properties has been provided. (Exhibit B.1) Existing landscaping may not provide the intended function of the vegetated sight obscuring buffer in all areas, so supplemental plantings may be required. The Landscape Plan (Exhibit B.4) contains the planting specifications for the sight obscuring buffer. 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 installation of the plants. PDS has recommended conditions of approval to implement the supplemental planting requirement and for maintenance of the sight obscuring buffer. The Examiner finds that the provisions of SCC 30.41C.200(2) have been met. A condition of approval has been added to require implementation of the supplemental plantings within the site obscuring landscape buffer where appropriate.

D. Former SCC 30.41C.200 (3)—Internal Roads

This Section states:

(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;

Roads A, B, C, and D are proposed to be public roads. All roads will be built to EDDS standards, with the exceptions approved by the two EDDS deviations: a deviation to allow more than 1,320 feet between intersections (Exhibit G.1), and a deviation for relief from the requirement to have 2 access locations (Exhibit G.2). PDS has determined that the project meets this requirement. The Examiner concurs and finds that these requirements are set forth in detail above.

E. Former SCC 30.41C.200 (4)—Utilities

This Section states:

(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;

All utilities are to be located underground, and PDS has determined that the project complies with this requirement. PDS has recommended a condition of approval to require utilities to be located underground. The Hearing Examiner concurs. Such condition will be included by the Examiner.

F. Former SCC 30.41C.200 (5)—Unbuildable land

This Section states:

(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 “[s]teep 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. Here, there are approximately 12.2 acres of unbuildable lands that meet the definition of Chapter 91U.060 SCC. These areas are located within Tracts 903 and 901, and are designated as

NGPA. PDS has determined that the project complies with this requirement. The Examiner finds that the project complies with this requirement of SCC 30.41C.200(5).

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

This Section states:

(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;

The Examiner finds that this provision is not applicable to the present development proposal.

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

This Section states:

(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.

The Examiner finds that neither agricultural nor forestry uses are proposed for any of the tracts within the RCS. Therefore, no disclosure statement is required.

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

This Section states:

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.

Here, no mineral resource uses are proposed for any of the open space tracts within the RCS. Therefore, no disclosure statement is required. The Examiner finds that the project complies with this requirement.

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

This Section states:

(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;

Lake Goodwin RCS II (06-125856-SD), a 49-lot rural cluster subdivision, borders the site to the east and north. Lake Goodwin RCS II received preliminary approval on March 16, 2010. Lake Goodwin RCS III (06-126101-SD), a 104-lot rural cluster subdivision, borders the site to the west. Lake Goodwin RCS III has not received preliminary approval. The Restricted Open Space (ROS) for this project is contiguous with the ROS for Lake Goodwin RCS II and is contiguous with the proposed ROS for Lake Goodwin RCS III. PDS has determined that the open space tracts of this project do abut the open space tracts on adjoining properties, so this requirement is satisfied.

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

This Section states:

(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;

An Open Space Management Plan has been provided in the record (Exhibit A.4), which has been reviewed by PDS and they found that it meets the requirements of the Code. The Examiner concurs and has included a condition to require compliance with the Open Space Management Plan.

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

This Section states:

(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));

For the proposed 49 lot RCS, there are 3 clusters of lots, separated by portions of Tracts 903 (south of Road A) and 901 (north of Road A). They consist of:

- 1) A 23 lot cluster consisting of lots 1-14 and 35-43. The separation between this cluster and the adjacent cluster to the south and east (2), below, is a minimum of 50-foot width and designated as a visual screening buffer with NGPA designation;
- 2) A 19 lot cluster consisting of lots 15-34. The separation between this cluster and the cluster to the east (3), below, is a minimum of a 250-foot width buffer with NGPA designation; and
- 3) A 6 lot cluster consisting of lots 44-49.

No cluster exceeds the maximum of 30 lots. PDS has determined that the project complies with this requirement.

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

This Section states:

(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;

Here, all lots except Lot 38 abut either required buffers or restricted open space tracts. Accordingly, 98% of the lots are within the requirement of subsection (12), above, exceeding the standard. The Examiner finds that the project complies with this requirement.

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

This Section states:

(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 varies in elevation between 330 feet and 400 feet. The lower elevations are associated with the wetlands. The upland areas to be developed have elevations of 360 to 400 feet. The site has no prominent topographic features. Grading is associated with the access roads and the detention systems, and the lots are configured with the natural features of the site. Accordingly, the Examiner finds that the natural features of the site and the design to maintain the site's natural features and maintain rural character to the greatest extent feasible.

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

This Section states:

(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;

All lots in the plat will be served by individual septic systems, which have been approved by the Snohomish Health District. (Exhibits H.3)

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

This Section states:

(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;

The site is constrained by significant critical areas including wetlands, streams, and steep slopes. All lots have been located near the center of the site where feasible. The Examiner finds that the proposal complies with this requirement.

Q. SCC 30.41C.200 (16)—Fire District

This Section states:

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

The development is located within the service boundaries for Fire Districts No. 19. The Examiner finds that the project complies with this requirement.

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

This Section states:

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

DPW and PDS determined the project is concurrent as of September 18, 2006. The concurrency determination is valid for 6 years from that date. The Examiner finds that the project complies with this requirement.

19. Rural Cluster Subdivision Standards—General

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat (Exhibit B), and in an Open Space Management Plan (Exhibit A.5) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Finding of Fact 18. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining over 69.5% (115.4 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

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

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

The proposed subdivision conforms generally with the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland, and buffer areas, the single-family homes 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, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students

RCW 58.17.110. The Examiner concludes the applicant has met its burden in showing the established criteria have been met.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved as outlined in Chapter 30.41C SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

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

CONDITIONS

- A. The preliminary plat received by PDS on July 16, 2010 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.

- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

 - ii. The plattor shall mark with temporary markers in the field the boundary of all Critical 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. Construction plans shall be submitted for review and approval by the county.

 - iv. A grading permit shall be obtained from the county.

 - v. A Stormwater Pollution Prevention Plan (SWP Plan) shall be submitted for review and approval.

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

“The dwelling units within this development are subject to park impact fees in the amount of \$811.29 (Kayak Point # 301) 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:

\$2,526.48 per lot for mitigation of impacts on County roads paid to the County,
\$262.27 per lot for mitigation of impacts on state highways paid to the County,
\$419.35 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 lots therein.”

- iii. The final plat shall show a 30-foot wide strip of right-of-way dedication north of the south property line for the future alignment of 188th Street NW.
- iv. “The lots within this subdivision will be subject to school impact mitigation fees for the Stanwood-Camano School District No. 401 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.”
- v. All Critical Areas shall be designated Native Growth Protection Areas (NGPA);
"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 UDC 30.91N.010 are allowed when approved by the County.”
- vi. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.310. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.
- vii. The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.300, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2- hour duration can be provided.

- viii. "If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems."
- ix. "The landscape plan (Exhibit B.4) shall be fully implemented and maintained."
- x. "The Open Space Management Plan (Exhibit A.5) shall be fully implemented."
- xi. "The vegetated sight obscuring buffer, as designated on Exhibit B.1, shall be fully maintained."
- xii. "All utilities shall be located underground."

D. Prior to recording of the final plat:

- i. All new public roads shall be constructed in accordance with the EDDS, or as determined by the Department of Public Works.
- ii. The applicant shall improve the intersection of 188th Street NW and 52nd Avenue NW as determined by the Department of Public Works.
- iii. The applicant shall improve the intersection of 40th Avenue NW and SR 531 as determined by the Department of Public Works.
- iv. If the public road connection through Lake Goodwin RCS III has not been constructed, the public road connection proposed through Lake Goodwin RCS II, Lake Goodwin RCS IV, and Lake Goodwin RCS V shall be constructed to connect with an existing open constructed public road (50th Avenue / Happy Hollow Road).
- v. An offsite walkway between the east property line of the development and 52nd Avenue NE along the south side of 192nd Street NW shall have been included on the approved constructions plans for the plat and completed to the satisfaction of the Department of Public Works.
- vi. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

vii. Right-of-way vacation shall have been completed.

E. In conformity with applicable standards and timing requirements:

i. Improvements to the satisfaction of the Department of Public Works to remove the inadequate road condition (IRC) on 52nd Avenue NW beginning at the intersection with 52nd Avenue NW to 188th Street NW and ending at 40th Avenue NW; must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued; per the requirements of SCC 30.66B.220.

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 10th day of September, 2010.



Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information

about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 20, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not

file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 24, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A

copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.