

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

DATE OF DECISION: April 16, 2010

PLAT/PROJECT NAME: **Warm Beach RCS**

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

FILE NO.: 06-126859 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: Located on the West side of Frank Waters Road, 1 mile north of its intersection with Lakewood Road, Stanwood

ACREAGE: 138.6

NUMBER OF LOTS: 41

AVERAGE LOT SIZE: 40,107 sf

MINIMUM LOT SIZE: 26,125 sf

GROSS DENSITY: 0.30 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential (1 DU per 5 acres, Basic)

ZONING: R-5

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

SCHOOL DISTRICT: Stanwood-Camano No. 401

FIRE DISTRICT: SCFD No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The preliminary plat application for a 41-lot RCS development was originally submitted to Planning and Development Services (PDS) on September 14, 2006 and was determined to be complete upon submittal for vesting purposes. The 120-day clock started on October 12, 2006. PDS and the Applicant exchanged various plan sets and review comments from 2006 through 2009. During this time, the Applicant requested an extension of the application expiration date which was granted. (Exhibit J) The 120-day clock was exceeded. The primary reason for the delay was due to request by the PDS reviewers for additional information and materials during the review cycle, which were then not returned by the Applicant for many several months.

The Examiner held an open record hearing on April 1, 2010. At the hearing, witnesses were sworn, testimony was presented, and exhibits were entered into the official 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. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. 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 F1, F2 and F3)

A. Background Information

3. Applicant's Request: The applicant is requesting approval of a 41-lot Rural Cluster Subdivision (RCS) on a 138.6-acre parcel. Access is proposed by a new public road connecting to Frank Water's Road. Each lot will be served by individual septic systems. Potable water will be supplied by the Snohomish County PUD No. 1.
4. Site Description: The site is undeveloped and covered in shrubs and scattered trees. There are nine (9) Category 3 wetlands on the site, one of which is a riparian wetland, and a Type 4 stream on site. All critical areas have been protected with prescriptive buffers and designated as NGPA or as NGPA/E (such as Tracts 999 and 993). Seventy-nine percent of the site contains slopes of less than fifteen percent.

5. Adjacent Zoning/Uses: Adjacent zoning is R-5 and adjacent uses are either single-family residences or undeveloped land.

6. Issues of Concern:

PDS and other reviewing agencies raised no issues of concern, except for the Department of Ecology (DOE).

A. DOE Comments. Paul Anderson, Wetland Specialist in the Shorelands and Environmental Assistance Program of DOE wrote a letter commenting on the SEPA Determination, and requesting to have his comments entered into the record, noting concern about the disclosures in the SEPA Checklist that there is an unspecified amount of wetland fill stated for utility and road construction, as well as plans to traverse a Category I forested wetland (Wetland A) near 108th Street and 99th Avenue N.E. Mr. Anderson noted that such impacts are permanent and are subject to the “avoidance” criteria (found in the Critical Areas Regulations). (Exhibit K.2) Mr. Anderson also requested that the County condition approval of the project upon the following stipulation: “The applicant shall obtain state and federal authorizations for stream and wetland impacts prior to beginning any ground disturbing activities or timber harvest.” (Exhibit K.2)

PDS responded to DOE’s request by noting that these comments were entered in response to the County’s SEPA Determination (which states that no additional mitigation measures will not be required under SEPA (Exhibit E.2)), and noting that the SEPA Determination was not appealed.

The Hearing Examiner, having reviewed Exhibits K.2 and E.2, and WAC 197-11-340(2), finds that the County is bound by its DNS in the absence of an appeal and has no legal authority to withdraw it unless certain conditions (that are not met here) exist. The Examiner finds that DOE did not appeal PDS’s Threshold Determination of DNS and, therefore, PDS cannot now require the requested mitigation pursuant to the County’s SEPA substantive authority.

B. Citizen Comments. Additionally, PDS received 7 citizen letters stating comments, questions and concerns about the project. (Exhibits I.1 through I.6), Mr. Charles Osenbaugh also testified at the open record hearing on April 1, 2010 about his questions and concerns. The nature of the citizen concerns expressed included comments about (1) the speed of traffic and inquiring about speed bumps; (2) burning of woody debris from construction clearing; (3) the need for a bike path or lane to mitigate traffic impacts on Frank Waters Road, and widening the entire road; (4) the impact of 200 houses on wildlife and the rural setting; (5) alleging that the County’s Critical Areas Regulations are noncompliant under GMA; and (6) water quality impacts to Lake Loma and Lake Martha from 41 new septic systems.

In response to each of these concerns, PDS responded that (1) no traffic calming devices are being required by DPW; (2) The County has no regulatory authority to stop wood burning of construction debris on the site unless a burn ban is in place; (3) No bike path is called for in the County’s plans at this location, and the proposal does not cause the road to go into arrears,

therefore the County cannot legally request bike lanes or widening of the entire length of the road; and (4) the development proposes the construction of 41, not 200 new homes and over 60% of the site will be placed in restricted open space tracts; (5) the County's Critical Areas Eegulations are compliant with GMA; and (6) the Health District has approved the septic system design for the development, and Lake Martha is over 800 feet away from the site.

B. Compliance with Codes and Policies.

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

The proposal is within the 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, is included as recommended condition of approval from PDS and has been agreed to by the Applicant.

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 a traffic analysis (Exhibit C.1) for the proposed development which was used by PDS to determine the analysis below.

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

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 41 single-family residences (SFR), of 392.37 ADT or 9.57 ADT per residence. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). (Exhibit C.1) The development has a road system capacity impact fee of \$103,585.48 (\$2,526.48/SFR) based on \$264.00/ADT. Credit for certain expenditures may be allowed against said payments to the extent authorized by County Code. Any reduction of the amount due per lot shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM. PDS recommended that a condition be included to require payment of the mitigation fees prior to building permit issuance. The Hearing Examiner has included such a condition.

B. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a determination that the development is concurrent as of November 8, 2006. The expiration date of the concurrency determination is six years from that date, which is November 8, 2012. The development was deemed concurrent based on 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 30.75 a.m. peak-hour trips and 41.41 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips.

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

Based on the number of RCS developments proposed in the surrounding area and citizen concerns about traffic impacts to roads within the area, PDS performed an extended IRC evaluation at 7 separate locations in the area including:

- 40th Avenue NW at SR 531 (Lakewood Road)
- Lakewood Road at Frank Waters Road
- Marine Drive at Frank Waters Road
- 188th Street NW to 52nd Avenue NW
- 188th Street NW at 40th Avenue NW
- 40th Avenue NW (between 188th Street and Lakewood Road)
- 188th Street NW and 32nd Avenue NW

The summary results of that IRC evaluation are described in the Staff Recommendation at pp. 5-6 (Exhibit J), which analysis is incorporated herein by this reference. The DPW Traffic Operations Group concluded that the subject development will not impact any IRC locations identified within TSA A with three or more of its PM peak hour trips, nor will it create any. Therefore, no additional mitigation to address inadequate road conditions is required and no restrictions to building permit issuance or certificate of occupancy/final inspection will be required under Chapter 30.66B.210 SCC.

D. Frontage Improvements [SCC 30.66B.410]

According to Rule 4222.020(1), full rural frontage improvements are required along frontage of the subject property along Frank Waters Road. The road is designated as a Minor Collector Arterial on the County's Arterial Circulation Map. The required improvements shall consist of an 12-foot paved travel lane from the centerline of the right-of-way and an 8-foot paved shoulder. Construction of frontage improvements is required prior to recording. The Hearing Examiner has included a condition as part of the decision for construction of frontage improvements prior to recording the subdivision.

E. Access and Circulation [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. Access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements. 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.

Access:

Private Roads: There are no private roads associated with this project; all of the proposed roads in the development will be public.

As to the internal road system, a public road (Road A) intersects west off of Frank Waters Road and will connect at the west property line to Wayne Avenue, an open constructed County road with 50 feet of dedicated right-of-way from an old development adjacent to the west. Lots 11 through 19 will have direct access on Road A. Two new public cul-de-sac roads will intersect off of Road A to serve the remainder of the lots in the development. Road B is a public road that will intersect north off of Road A near the center of the property to serve lots 20 through 34. It is approximately 1,900 feet long, and ends in a 40-foot radius paved cul-de-sac. Road C is a public road proposed off of the west side of Road B to serve lots 35 through 41. It is approximately 400 feet long, and ends in a 40-foot radius paved cul-de-sac. Road D is a public road proposed off of the south side of Road A in the southeast area of the development property, and will serve lots 1 through 10. It is approximately 1,000 feet long and ends in a 40-foot radius paved cul-de-sac.

Internal Road Classification: Internal Road A in the proposed development will be classified as a non-arterial rural public subcollector road. The proposed right-of-way width of 60 feet (between Frank Waters Road and the furthest west lots, 14/15 served by Road A in the development) is adequate for the required improvements. The section of Road A between lots 14/15 and the existing pavement for Wayne Avenue to the west has a proposed right-of-way width of 30 feet, and a pavement width of 20 feet, which was approved via a deviation request in a letter dated September 29, 2008 from Snohomish County PDS (Exhibit G.1).

Internal Road B in the proposed development will be classified as a rural public local access road. The pavement width specified is 28 feet for two 9-foot travel lanes, a 3-foot paved shoulder on one side and a 7-foot paved shoulder on the other side. The proposed right-of-way width of 60 feet is adequate for the required improvements. A permanent cul-de-sac with a paved radius of 40 feet is proposed at the end of Road B, which meets the minimum requirements of EDDS 3-10.

Internal Road C in the proposed development will be classified as a rural public local access road. The pavement width specified is 28 feet for two 9-foot travel lanes, a 3-foot paved shoulder on one side and a 7-foot paved shoulder on the other side. The proposed right-of-way width of 60 feet is adequate for the required improvements. A permanent cul-de-sac with a

paved radius of 40 feet is proposed at the end of Road C, which meets the minimum requirements of EDDS 3-10.

Internal Road D in the proposed development will be classified as a rural public local access road. The pavement width specified is 28 feet for two 9-foot travel lanes, a 3-foot paved shoulder on one side and a 7-foot paved shoulder on the other side. The proposed right-of-way width of 60 feet is adequate for the required improvements. A permanent cul-de-sac with a paved radius of 40 feet is proposed at the end of Road D, which meets the minimum requirements of EDDS 3-10.

The property fronts and takes access from Frank Waters Road, which is designated as a Minor Collector Arterial on the County's Arterial Circulation Map. Frank Waters Road intersects with Marine Drive north of the development property, and intersects with Lakewood Road south of the development property. Both of those roads are designated as a Major Collector Arterials on the County's Arterial Circulation Map; and both connect with state highways that connect to Interstate 5 to the east. The development will also construct a new public road from Frank Waters Road west through the property to connect to the east end of Wayne Avenue, an existing county non-arterial road. Wayne Avenue extends easterly off of the end of 84th Drive NW, and 84th Drive intersects north off of Lakewood Road. A short distance to the west, Lakewood Road intersects with Marine Drive; or to the east, Lakewood Road eventually connects to Interstate 5.

As to the External Roads, Frank Waters Road is designated as a minor collector arterial road on the County's Arterial Circulation Map. It is a rural public arterial road serving approximately 2,190 ADT with the current traffic plus the subject development trips. Frank Waters Road has 60-feet of deeded right-of-way (30 feet on each side of the right-of-way centerline) between Marine Drive and Lakewood Road, and SCC 30.66.B. 510 specifies a right-of-way width of 70 feet for a minor collector arterial road (35 feet on each side of the right-of-way centerline). The applicant will dedicate an additional 5 feet where the development property fronts the road. The frontage improvements that have been required for this development are those for a rural standard minor collector arterial road serving over 2,000 ADT per EDDS Plate 3-030B, which is 12 feet of paved roadway from centerline of right of way with an 8 foot paved shoulder (Condition D.i). Frank Waters Road generally meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. In addition, sections of the road will be widened as a result of frontage improvements for this and other proposed developments fronting the road between the north property line of this development and Lakewood Road to the south. When other properties along Frank Waters Road develop in the future, the road will be widened to meet the current design standard for pavement width along each frontage. DPW has determined that the existing 20-foot pavement width of Frank Waters Road where development is not proposed is sufficient for the current conditions.

Wayne Avenue is a dead end road that currently serves approximately 45 homes (428 ADT) for access to and from Lakewood Road via 84th Drive NW to the south. Based on the number of

ADT that will utilize Wayne Avenue, it would be classified as a non-arterial, rural public subcollector road. It has 50 feet of dedicated right-of-way, and a minimum pavement width of 20 feet. It generally meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. EDDS specifies two 10-foot travel lanes, a 7-foot paved shoulder on one side and a 3-foot paved shoulder on the other side. There is very limited development potential of the properties served by Wayne Avenue. All of those properties are less than 5 acres, except for two properties that are approximately 10 acres, and since that area is zoned R-5, the road will not be widened due to frontage improvements constructed by future developments fronting on Wayne Avenue. The County has no plans to improve Wayne Avenue in the future. Therefore, DPW has determined that the existing 20-foot pavement width of Wayne Avenue will be adequate after it is connected by Road A to Frank Waters Road. This will provide for connectivity and additional emergency vehicle access to the existing and proposed lots in the immediate vicinity.

Deviation Request: One EDDS deviation request was approved for this proposed development (Exhibit G.1). The deviation asked for approval of a right-of-way width of 30 feet and a 20-foot pavement width for the section of Wayne Avenue between lots 14/15 and the existing pavement end for Wayne Avenue to the west, approximately 900 feet in length. All of the proposed lots in the development are located east of this section, on Road A, which will be constructed with a 30-foot pavement width. The applicant's justification for the request was that the required EDDS design (30-foot pavement width in a wider right-of-way) could not be achieved due to the alignment of the east end of Wayne Avenue in relation to the location of the south property line of the development. The applicant cited the need for the extension of Wayne Avenue to be property aligned with the centerline of the new public road, Road A. The future centerline of Road A is the south property line of the development, which is also the centerline of an existing 60 foot wide ingress/egress access easement. The applicant also indicated that the adjacent property to the south would complete the full width improvements of Road A when it was developed in the future. The request was approved in a letter dated September 29, 2008 (Exhibit G.1), for those reasons and because majority of trips from the development (95%) will travel east on the 30-foot section of Road A to Frank Waters Road rather than west via this 20-foot section of Road A and Wayne Avenue.

Road Circulation: The road system into this development from the Frank Waters Road / Road A intersection will connect with the east end of Wayne Avenue, currently a dead end road serving approximately 428 ADT. With this connection, the development will meet the minimum requirements of EDDS 3-01 (B.4) for road circulation, layout and design, which requires that a road serving more than 250 ADT be connected in at least two locations with another road or roads that meet the applicable standards for the resulting traffic volume. The Examiner finds that the applicant has made provisions for road circulation and connection by dedicating right-of-way and constructing Road A to the west property line.

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.

Frank Waters Road is designated as a minor collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Thirty (30) feet of right of way presently exists on the development's side of centerline. Five (5) feet of additional right of way is required along the development's frontage on Stanwood Bryant Road. 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 5-foot section of right-of-way.

H. Impacts to State Highways [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 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, in lieu of other mitigation, the Applicant proposes to pay impact fees to WSDOT in the amount of \$14,125.32 (or \$344.52 per lot). (Exhibits J, C.1, H.6) The Hearing Examiner finds that the payment of such fees to WSDOT provides adequate mitigation of impacts to the State's highway system and has included a condition to require the payment of such funds.

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 interlocal agreements between the County and the other jurisdictions.

Snohomish County has executed an Interlocal Agreement with the City of Arlington regarding traffic impacts and this development is within the influence area that requires traffic impacts and mitigation be considered for the City. Based on the interlocal agreement (ILA), for Sub Area #CO-ARL-6, 40 percent of the development's trips will pass through the City of Arlington.

The applicant submitted a traffic mitigation offer to the City of Arlington in the amount of \$55,572.22 for impacts to the City street system based on the Gibson Traffic Report dated March 9, 2009 (Exhibit C.1), which amount has been accepted by the City. (See, Exhibits H.1 and H.3)

In addition, Snohomish County has executed an ILA with the City of Stanwood regarding traffic impacts, and this development is within the influence area that requires traffic mitigation be considered for the City. Based on the analysis set forth in the Gibson Traffic Report, the development will not add three directional peak hour trips to any projects that are part of the City's cost fee basis; therefore the developer is not required to pay a traffic mitigation fee to the City. The City has indicated its agreement with this analysis; therefore, the Hearing Examiner will not impose additional traffic mitigation requirements for the City of Stanwood. (Exhibit H.4)

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 that may reside in the subject development. The Stanwood-Camano School District has stated that all school-age children residing in the proposed development will be bused to school and picked up at the entrance located on Frank Waters Road. (Exhibits H13 and H14) The applicant is required to provide a safe pedestrian pathway within the development to the bus stop, and a safe pedestrian waiting area at the bus stop. The applicant has designed the development to provide an 8-foot wide paved shoulder along Frank Waters Road, and will construct a 7-foot paved shoulder along new public roads within the development. The Examiner finds that these

new paved shoulder areas will provide the necessary safe pedestrian pathways and waiting areas for school children walking to and from the bus stop.

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 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 three existing lots. 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 proposed drainage system is designed to capture and treat all storm water runoff from the plat within four restricted open space detention ponds, located within Tracts 995, 996, 997, and 998. Storm water will be released from the detention ponds relative to the predevelopment rate of fifty percent of the 2-year, 24-hour storm, equal to the 10-year, 24 hour storm and equal to the 100-year, 24 hour storm. The detention ponds will be provided with the required landscaping. Conveyance to the detention ponds will be via grass-lined or rock-lined roadside ditches, depending upon the slope of the conveyance ditches. (Exhibits B.1 and C.3)

Water quality treatment will be provided by dead storage within the detention ponds. The restricted open space drainage ponds shall be owned in common by all property owners within the plat, and shall be managed and maintained by a homeowner's association for the plat. (Exhibit B.1)

Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 80,000 cubic yards of cut and 80,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality will be controlled on the site during construction by use of silt fences, straw bales and other best management practices, in accordance with a Temporary Erosion and Sediment Control Plan required by Chapter 30.63A SCC.

12. Critical Areas Regulations

There are critical areas present on the subject property. The Applicant prepared a critical areas study entitled "Critical Area Study, Mitigation Plan and Habitat Management Plan Warm Beach

RCS," dated March, 2009. (Exhibit C.4) There are nine Class 3 wetlands on the subject property, along with a Category 4 stream. The stream flows westerly across the northern portion of the property with a narrow band of an associated Category 3 wetland (Wetland 1), adjacent to the stream. Four additional Category 3 wetlands (Wetlands 2, 6, 7 and 8) are located near the approximate center of the project, with another four smaller Category 3 wetlands (Wetlands 3, 4, 5, and 9) located in the extreme southern portion of the site.

In terms of impact, the Applicant proposes to permanently impact Wetlands 6 and 7 by filling them to accommodate the development. In addition, a small amount of Wetland 3 and its buffer area was previously impacted by another development offsite. The access road will impact the buffer area for Wetlands 4 and 9.

The BMP wetland fills are allowed pursuant to Chapter 30.62.360(6) SCC. The wetland fill and associated buffer impacts detailed on the Critical Areas Study and HMP are proposed to be mitigated through innovative development per Chapter 30.62.370 SCC by the addition of buffer areas at a ratio of 13:1.

Additionally, a portion of the project site (Lots 1-10 and Tract 999 NGPA), fall within a portion of an off-site communal roost management zone for bald eagles, designated by the Washington State Department of Fish and Wildlife to protect a nearby, active nesting pair of bald eagles. Under *former* Chapter 30.62A.320 SCC to which this project is vested, the applicant is required to prepare a Habitat Management Plan (HMP) to provide protection for any species with a primary association to the site that is listed under the Endangered Species Act. Although at the time of listing the HMP provision was triggered for the bald eagles nesting nearby, the species is recovered and was removed from the Federal Endangered Species Act during the pendency of the application. Accordingly, the HMP regulation (and the Bald Eagle Administrative Rule), no longer apply to this application.

PDS has reviewed the critical areas study and mitigation plan. (Exhibit C.4) Review of that document 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.

Recommended conditions B.ii and C.vi have been included in order to implement the critical area requirements. No final mitigation plan is required because mitigation for the historic impacts have been approved with the additional buffer provided at a ratio of 13:1.

PDS has reviewed the critical areas study and mitigation plan (Exhibits C5 and C6) and determined that the application is in conformance with Chapter 30.62A SCC (Critical Areas Regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare. 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 designation identifies all lands which are currently designated as Rural on existing subarea comprehensive plans and have subsequently been zoned to Rural 5. This designation also includes some areas which were previously designated and zoned agriculture. 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 the R-5 zone. The 41 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2 SCC.

14. Utilities

A. Sewage Disposal. Sewer will be supplied individual septic systems. Snohomish Health District recommended approval of the preliminary plat on September 10, 2007. (Exhibit G.9)

B. Electricity. Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on September 20, 2006. (Exhibit G.10)

C. Water. Water will be supplied to the development by Snohomish County PUD No. 1. A certificate of water availability was received on August 1, 2008. (Exhibit G.16) The certificate of water availability contained conditions that will require extension of the waterline. The waterline extension was included in the SEPA DNS issued for this project. (Exhibit E.2)

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)

The applicant submitted a SEPA Checklist on March 24, 2009. (Exhibit E1) PDS issued a Determination of Nonsignificance (DNS) for the subject application on February 23, 2010. (Exhibit E.2) The DNS was not appealed.

A part of the environmental review included an analysis of light and glare. Although a change in the local conditions, the quantity of light was determined not to rise to the level of a significant adverse environmental impact. Adjoining properties will be shielded from light and glare from the proposed development by the sight obscuring buffers and by the distance of the proposed lots from adjoining properties and roads.

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 September 14, 2006. (Exhibit A.2) and a Revised Master Permit Application was received by PDS on September 22, 2008. (Exhibit A.1) The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 SCC 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 7 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)

Although PDS sent a request for review document to Snohomish County Fire District No. 19, no response was received from the Fire District. The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval, concluding that fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150.

Based upon the preliminary plat plan (Exhibit B.1) and the civil plans sheets (Exhibit B.4), PDS recommended the following conditions be imposed:

(a) 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) 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.

The Hearing Examiner finds that the development is subject to the Fire Code requirements for fire flow and fire hydrants and will impose the requested conditions.

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

The RCS code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. Each of them will be reviewed below:

A. 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: $6,035,928 \text{ square feet} / 200,000 \text{ square feet} = 30.18 \text{ lots}$

Bonus residential density = 15%

Additional bonus density = 25%

Total lot yield = 40.74 lots

Total lot yield-rounded = 41 lots
Total lots proposed = 41 lots

B. 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;

PDS and the Examiner have concluded that the application meets the requirements of the critical areas code, Chapter 30.62A. SCC, as determined in Finding of Fact 11, above.

C. SCC 30.41C.200 (2) – Vegetated 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);

A landscape plan is a required component of the submittal documents for a RCS (SCC 30.41C.040(8)). Exhibit B.3, is the approved landscape plan for the project. The sight obscuring buffer is proposed to be a minimum of 35 feet in width and located within Tracts 999, 994, and 992. The Landscape Plan (Exhibit B.3) has planting specifications for the sight obscuring buffers. A recommended condition has been included to require implementation of the landscape plan.

Open Space Management Plan

Eight (8) tracts are being created within the plat (Exhibit B.1): Tracts 998, 997, 996, and 995 are tracts containing the detention system, and are designated as restricted open space. Tracts 999, 994, 993, and 992 are restricted open space and contain the areas designated as NGPA/E. The Open Space Management Plan (Exhibit A.5) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for the tracts.

Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts.

PDS determined that the Open Space Management Plan complies with the requirements of SCC 30.41C. PDS has included a recommended condition to require implementation of the Open Space Management Plan. The Hearing Examiner finds that the provisions of Chapter 30.41C SCC have been met with the inclusion of a condition requiring implementation of the Landscaping Plan.

D. 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 private roads and to be built to EDDS standards. PDS has determined that the project meets this requirement. The Examiner has detailed the PDS and DPW findings in Finding of Fact 8 of this decision, and finds that these meet the design requirements of the RCS code.

E. 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;

The Applicant will be placing all utilities underground and PDS requests that a requirement imposing such placement of utilities underground be included as a condition of development approval. The Examiner will include a condition requiring all utilities to be installed underground.

F. CC 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. There are unbuildable lands that meet the definition of SCC 91U.060. The lands are designated as

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

G. 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.

H. 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.

No agricultural and no forestry uses are proposed within the open space tracts of the development. PDS has determined that the project complies with this requirement.

I. 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.

Neither agricultural nor forestry uses are proposed for any of the tracts within the rural cluster subdivision. Therefore, no disclosure statement is required. PDS has determined that the project complies with this requirement.

J. 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;

There are no existing open space tracts on adjoining properties. PDS has determined that this project has no open space tracts on adjoining properties, so this project in compliance with this requirement.

K. 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;

An Open Space Management Plan has been provided. (Exhibit A.5) PDS has determined that the project complies with this requirement. PDS has included a recommended condition to require compliance with the Open Space Management Plan.

(Exhibit A.5). The Hearing Examiner has included a condition to require implementation of the Open Space Management Plan.

L. 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));

There are 41 lots are proposed, with 3 separate clusters of lots: Lots 1-10, Lots 11-21, and Lots 22-41. The three clusters are separated by appropriate buffers. PDS has determined that the requirement for separate clusters has been met.

M. 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;

All lots in the development abut open space. As such, the Examiner finds that this requirement has been met.

N. 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;

Lots within the proposed development have been located toward the interior of the site. The subject property does have critical areas that slightly constrain the location of lots, but the lot lay-out has avoided most critical area impacts. As discussed in the Critical Areas section of this report (above), impacts to critical areas has been mitigated. PDS has determined that the project complies with this requirement.

O. 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 on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. (Exhibit G.9)

P. 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 within the proposed development have been located toward the interior of the site. The subject property does have critical areas that slightly constrain the location of lots, but the lot lay-out has avoided most critical area impacts. The proposed lots are provided with a visual sight obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. The Examiner finds that the project complies with this requirement.

Q. 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 No. 19.

R. 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 8, above.

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.1), 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 approximately 66.7% of the subject 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, 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 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 a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS:

- A. The preliminary plat received by PDS on March 24, 2009 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by Chapter 30.41A.330 SCC.

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

 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, using methods and materials acceptable to the county.

 - iii. Construction plans shall be submitted for review and approval.

 - iv. A Snohomish County grading permit shall be obtained prior to ground disturbing activities.

 - v. A Snohomish County right-of-way permit shall be obtained for any construction with the county right-of-way.

- 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 (Kayak Point # 301) in the amount of \$811.29 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 \$344.52 per lot for mitigation of impacts on state highways paid to the County
\$1,355.42 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. Once building permits have been issued all mitigation payments shall be deemed paid by PDS. ”

- iii. “No lot in this development shall have direct vehicle access to Frank Waters Road. Access to all the lots shall be to and from the new roads created by the subdivision.”
- iv. “The final plat shall show a 5-foot right-of-way dedication to total 35 feet from the centerline of the right-of-way along the property frontage on Frank Waters Road.”
- v. “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 3 existing parcels. Lots 1 through 3 shall receive credit.”
- vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made):
 - “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.”
- vii. 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.
- viii. 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.
- ix. The Open Space Management Plan (Exhibit A.5) shall be fully implemented.
- x. All utilities shall be located underground.

D. Prior to recording of the final plat:

- i. Full rural frontage improvements along the development's frontage on Frank Waters Road shall be constructed to the satisfaction of the DPW.
- ii. All new public roads shall be constructed in accordance with the EDDS, or as determined by DPW.
- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B.3) shall be implemented. All required detention facility landscaping and sight obscuring buffer landscaping shall be installed in accordance with the approved landscape plan. Supplemental plantings shall be installed within the areas designated as sight obscuring buffers if the existing vegetation fails to meet the intended function.

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 Chapter 30.41A.300 SCC.

Decision issued this 16th day of April, 2010.

Millie Judge, Hearing Examiner Pro Tem

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 **April 26, 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 **April 30, 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.