

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: August 31, 2010

PLAT/PROJECT NAME: Carpenter Heights RCS

APPLICANT/

LANDOWNER: **Kim Gardner**
DaJac, LLC
P.O. Box 5428
Lynnwood, WA 98046

FILE NO.: 06-133750 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 800 feet north of the intersection of Carpenter Road and 195th Avenue SE, Snohomish, WA 98290

ACREAGE: 40 acres

NUMBER OF LOTS: 12

AVERAGE LOT SIZE: 43,563 square feet

MINIMUM LOT SIZE: 43,560 square feet

GROSS DENSITY: 0.30 du/ac (gross)

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

ZONING: R-5

UTILITIES:

Water: Individual wells

Sewer: On-site individual septic

SCHOOL DISTRICT: Snohomish School District No. 201

FIRE DISTRICTS: Snohomish County Fire District No. 16

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The preliminary plat application for a 12-lot Rural Cluster Subdivision (RCS) development was originally submitted to Planning and Development Services (PDS) on July 23, 2007 and was determined to be complete upon submittal for vesting purposes. The 120-day clock started on August 20, 2007. PDS and the Applicant exchanged various plan sets and review comments from 2007 through 2010. (Exhibit J) The 120-day clock was exceeded. As of the hearing date, 181 days had elapsed.

The Examiner held an open record hearing on August 10, 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, Britt Hiatt and Steve Mason, Harmsen and Associates, and Tony Penna, and Harold Christensen, interested citizens. On August 24, 2010, the Hearing Examiner requested additional information from all parties of record pursuant to Rule 708(d), relating to compliance with SCC 30.41C.200(11). (Exhibit J1) The record was held open until August 30, 2010 for any party to provide information on that issue. Ed Caine submitted a memorandum providing additional information on the same, which is added to the exhibits in the record. (Exhibit J2) No additional information was received from any other party of 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, requested corrections be made to Exhibit I (Staff Report) at page 11 to correct a clerical error in the statement of the Basic Lot Yield (8.83 lots) and Additional Bonus Density (18.4%). Those corrections were made by the Examiner and are reflected in Exhibit I 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. 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 12-lot RCS. All lots will take access from a new public road off of 195th Avenue SE. Each lot will be served by water from an individual well, and each lot will have an individual septic system. The site is not subject to a pending code enforcement action.
4. Site Description: The site is undeveloped and forested. There are four (4) Category 3 wetlands, two (2) Type 4 streams, and a Type 5 stream on the site. There are steep slopes associated with the stream on the western portion of the site.
5. Adjacent Zoning/Uses: Adjacent zoning is R-5 and adjacent uses are either single-family residences or undeveloped land.
6. Issues of Concern:
 - A. Agency Comments. Agency reviews and PDS reviews have identified no unresolved issues of concern.
 - B. Citizen Comments. Seven (7) public comments were received from six (6) individuals (Exhibits H.1-6). In addition, two citizens testified at the public hearing and provided comment. The primary concerns raised in the correspondence received were related to the effects of stormwater runoff from the development, potential mosquito problems associated with the detention pond, traffic, noise, water quality problems associated with septic systems, impacts to wildlife, impacts on existing farms, and failure to place the lots and sight-obscuring buffers in accordance with the RCS code requirements. Those issues are discussed in the appropriate section of this decision below. For those issues that are not addressed in a section below, the Examiner addresses them individually here.
 - (1) Mosquitoes. With respect to the concern about an increase in mosquito populations, PDS noted that the site, and surrounding area, is already characterized by wetlands, streams, and seeps. It is expected that mosquitoes inhabit such areas. The area of the detention pond is relatively small when compared with natural water sources, and PDS does not anticipate the mosquito populations to be increased by an appreciable amount by this development above background levels. Snohomish County does not have regulations that require a developer to address potential insect problems associated with detention ponds.
 - (2) Noise. With respect to the concern raised about noise generated by the development, noise is regulated through Chapter 10.01 SCC (Noise Control). PDS has determined that there may be an increase in the noise level as a result of this development, especially when considering the existing conditions within the sparsely developed, rural location, but the increase in noise is within the

criteria established by the noise ordinance. There is no evidence to indicate that the quantitative allowed noise levels established in SCC 10.01.030 will be exceeded, although some short-term elevated noise levels may be created during construction. Construction related noises are specifically exempted during daylight hours by SCC 10.01.050(2). Additionally, noise is an impact that must be disclosed as part of the SEPA process through the completion of a SEPA Checklist, which was done in this case. PDS reviewed the SEPA Checklist and issued a Determination of Nonsignificance (DNS), which means that apart from the requirements set forth in the County Code, no additional mitigation measures were found to be necessary. No appeal of the DNS was filed. As such, no additional noise mitigation can be required through the authority granted to PDS under its substantive SEPA authority.

- (3) Impacts to local farming operations. With respect to the project's impact on neighboring farm operations, one citizen commented that the proposal may increase traffic in the area which would make it more difficult for them to move their sheep between fields using 195th Avenue SE. The County Code provides numerous traffic and road design regulations that the applicant must meet. Those criteria are discussed in Section III (1) below and in the Traffic Report (Exhibit C1).

B. Compliance with Codes and Policies.

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

The proposal is within Robe Canyon Park Service Area, No. 303, and is subject to Chapter 30.66A SCC. Here, PDS has determined that no payment is required for impacts to this Park Service Area.

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) "B." 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 12 single-family residences (SFR) of 114.84 ADT. 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 \$45,591.48 (\$3,799.29/SFR) based on \$397/ADT, the current fee

rate for residential developments outside the urban growth area, for TSA B. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. 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 (DPW) has made a determination that the development is concurrent as of September 12, 2007. The expiration date of the concurrency determination is six years from that date, which is September 12, 2013. The development was deemed concurrent based on SCC 30.66B.130(4). The subject development is located in TSA "B" which, as of the date of submittal of the application, had the following arterial unit in arrears; Unit # 238 – 20 St SE from SR 204 to SR 9. Based on peak-hour trip distributions for similar projects in the area, the subject development will NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a) the development is determined to be concurrent. The development generates 9.00 a.m. peak-hour trips and 12.12 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

One citizen raised a comment about inadequate road conditions. Based on the Traffic Study in the record, the Examiner finds that the subject development proposal will not impact any IRC locations identified within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation is not required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

According to Rule 4222.020(1), full rural frontage improvements are required along frontage of the subject property along 195th Avenue SE and shall consist of: an asphalt concrete pavement consisting of 11 feet in width from roadway centerline with a seven foot paved shoulder. The road, 195th Ave SE, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore credits towards the Applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable. 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 the DPW 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 the DPW in accordance with Chapter 30.66B.430 SCC.

In the present case, access to the development is proposed by a new private road off of 195th Ave SE which terminates in a 40 foot radius paved cul-de-sac. According to Chapter 30.41A.210(3)(C) SCC, private roads may be permitted as part of a RCS where specifically approved by the County Engineer. The DPW approves the use of the private road shown on the preliminary plat for the subject RCS.

The new private road as shown will provide future access to Lots 1-12. The new private road shall be constructed in accordance with EDDS 3-060 with a pavement width of twenty-seven (27) feet of asphalt concrete pavement and a 3-foot gravel shoulder for a total of 30 feet. According to the EDDS Table 3-2, the future private road shall be a Sub-Collector with a design speed of 30 mph. The Applicant has shown the centerline radiuses in accordance with EDDS Table 3-4. Based on the above, the proposed layout is acceptable to the DPW.

Based on the foregoing, the Examiner finds that the Applicant has made provisions for road circulation and connection by dedicating right-of-way and constructing a new road to serve the development lots.

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

In determining the extent of improvements required, the Director of the DPW 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 I), 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.

Here, 195th Ave SE is designated as a non-arterial 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 dedication is required. This is adequately shown on the preliminary plat. A condition has been included to require the dedication of right-of-way. 195th Ave SE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

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 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 not impact any state highways. Accordingly, no mitigation is required. (Exhibit C1) WSDOT has concurred in this determination. (Exhibit G1)

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.

The ILA provides for mitigation fees to the City of Granite Falls based on zones and traffic shed areas. This development does not fit into any of the traffic shed areas. Therefore, the development should not be required to contribute any mitigation payments to the City of Granite Falls. The City of Granite Falls has concurred with this determination. (Exhibit G.7). 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. Comments from the Snohomish School District dated August 14, 2007 were received by PDS on November 5, 2007 (Exhibit G.6). One citizen expressed a concern for the safety of school children walking to and from the bus stop each day and stated their concern that the required frontage improvements may not be enough. (Exhibit H2)

The Snohomish School District provided comments stating that the bus stop location for Machias Elementary, Centennial Middle, and Snohomish High School students will be at the intersection of Carpenter Road and 195th Ave SE, with an area for the students to wait that is off the travel portion of the road. Therefore, off-site pedestrian facilities from the subject development to the intersection of Carpenter Road and 195th Ave SE are required. The Examiner has included a condition requiring the construction of necessary pedestrian facilities. The extent of those improvements is discussed in Paragraphs 8 (F) and 8 (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 Snohomish School District No. 201, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot. 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.

Several citizens expressed their concern both in writing and during the public hearing, about the potential effects of stormwater runoff from the site on their downstream properties. The project has been reviewed and determined by PDS to meet the requirements of Chapter 30.63A SCC

(Drainage Code). The Targeted Drainage Report (Exhibit C.2) has been evaluated by PDS and accepted as providing a conceptual framework that the proposed design can meet all requirements. Construction plans, which are required to be approved prior to ground disturbing activities, will include a Full Drainage Plan and a Stormwater Pollution Prevention Plan. PDS has determined that stormwater discharge will not alter the existing hydrology of the site.

From 195th Avenue SE, the site slopes downward to a stream corridor, rises sharply to a plateau, and then slopes downward to a wetland complex. Drainage to the stream and drainage to the wetland creates two drainage basins of similar size. Consequently, two separate stormwater systems are proposed in order to maintain the existing hydrology and existing runoff patterns of the site.

Stormwater runoff within each drainage basin will be collected and routed to a detention pond that is designed to provide water quality treatment and to control stormwater release. Stormwater release from the detention ponds will be less volume, as measured in cubic feet per second, than currently is discharged from the site (Exhibit C.2). Conveyance from the detentions will end in a level spreader located adjacent to the stream for the western system and located adjacent to the wetland for the eastern system. As noted above, construction plans (including a full drainage plan) are required to be submitted for review and approval prior to any ground disturbing activities.

In addition, PDS and DPW Surface Water Management have no records of stormwater complaints within ¼ mile of the site, although citizen comments have expressed drainage concerns. The drainage report (Exhibit C.2, on page 15) indicates that the existing drainage pathway for the western basin is through an existing grass lined ditch that does not appear to have been maintained. Lack of maintenance of the drainage ditch, which is located offsite, may contribute to the problems expressed in Exhibits H.1 and H.6.

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.

Grading. Grading quantities are anticipated to be approximately 25,000 cubic yards of cut and 11,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. A grading permit is required. A Stormwater Pollution Prevention Plan (SWP Plan) is a required component of the grading permit application. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. 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.

Water quality. Citizens raised concerns about water quality as a result of the proposed development. Water quality must be controlled on the site during construction and particularly during grading activities, by use of silt fences, straw bales and other best management practices, in accordance with a TESCPC required by Chapter 30.63A SCC. The sites for the septic systems have been approved by the Snohomish Health District (SHD). SHD is an independent regulatory agency and has not indicated that their approval had been appealed. The drainage system has been reviewed for compliance with Chapter 30.63A SCC, and found to meet the requirements. Other than expressing concerns, no citizen provided documentation of water quality issues and there is no evidence in the record that would indicate that this development fails to meet the requirements of the County Code. Therefore, the Examiner finds that the proposed project is in compliance with the water quality components of the regulations.

12. Critical Areas Regulations.

Citizens raised concerns about the impacts to wildlife residing in the area from the proposed development. Chapter 30.62 SCC (Critical Areas code) provides specific protections to species that are federally listed as threatened or endangered. No listed species are known to occur either on the site or within 300 feet of the site. No other provisions of county code provide protections to other wildlife. Rather, critical area protections are provided to the habitats that support fish and wildlife species. The site has four (4) Category 3 wetlands, two (2) Type 4 streams, and a Type 5 stream. One of the wetlands is associated with a Type 4 stream. The access road for the RCS will follow an existing logging road, and will cross a Type 4 stream and the associated Category 3 riparian wetland. No other critical area and buffer impacts are proposed.

The project will permanently impact 970 square feet of wetland and 5,994 square feet of stream and wetland buffer, and temporarily impact 340 square feet of buffer (Exhibits B.1 and C.3). The Applicant is avoiding and minimizing the impacts to the on-site critical areas by widening the existing gravel access road and thus utilizing the existing stream crossing and minimizing impacts to areas that have been previously disturbed or are immediately adjacent to the previously disturbed gravel roadway corridor per SCC 30.62.365.

Mitigation for the impacts will be provided by designation of 45,353 square feet of additional upland areas as critical area buffers and designating the areas as a Native Growth Protection Area (NGPA). The proposal is acceptable to PDS and has been evaluated as innovative development as allowed per SCC 30.62.370. Innovative development is required because the Applicant is not proposing to create additional wetland to replace the wetland area being filled and thus the application does not meet the standard requirements per SCC 30.62.345(1)(c).

All critical areas and buffers are proposed to be permanently protected as NGPA/Es or in separate tracts as a 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 UGAs and adopted area-wide rezones within the UGAs 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 12 lots proposed 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 December 14, 2007 (Exhibit G.3).

B. Electricity. Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on August 2, 2007 (Exhibit G.4)

C. Water. Water will be supplied by individual wells. The SHD recommended approval of the preliminary plat on December 14, 2007 (Exhibit G.2).

- Exempt Wells. The plat consists of 12 lots. At 350 gallons per day (gpd) of typical usage, this computes to be 4,200 gallons per day for the plat. The computed value is less than the 5,000 gallon per day exemption within RCW 90.44.050. It should be noted that WAC 173-160-345(1) requires that wells must demonstrate a minimum of 400 gpd in order to be approved and PDS has established a value of 350 gpd for average consumption (87.5% of the minimum demonstrated capacity for approval of the wells).
- Well protection zones. Well protection zones are required by the SHD. Well protection zones are shown in the SHD records for all lots within this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed.

If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and a recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration. The Examiner has included a condition requiring well protection zones.

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 June 15, 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 July 23, 2007. 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 document to Snohomish County Fire District No. 16 on July 23, 2007. Fire District No. 16 did not respond to the request for comments. The Office of the Fire Marshal provided

comments on September 12, 2007. The Fire Marshal's office recommended approval of the development, with the following findings and conditions.

- a) Each lot is a minimum of one acre or more in size and is therefore exempt from fire hydrant and fire flow requirements 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 or by a means acceptable to the local fire district. In the event of power failure the gate shall open automatically and remain in the open position until the power is restored. The gate shall provide a minimum 20' clear opening for fire apparatus access. It shall be noted as a restriction on the recording of the final plat.
- c) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28' in width and on one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability.

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 of Chapter 30.41C.010 SCC by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 63.4% (25.7 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: 2,622,619 square feet/200,000 square feet = 8.83 lots
Bonus residential density = 15%
Additional bonus density = 18.4%
Total lot yield = 11.78 lots
Total lot yield-rounded = 12 lots
Total lots proposed = 12 lots

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 Chapter 30.62 SCC and/or other applicable County ordinances or policies, the areas shall be designated as critical area protection areas.

In the current application, all critical areas are designated as either NGPA/E or as NGPA and located within Tracts 995 and 992 (Exhibit B.1). Impacts to the Type 4 stream and the associated Category 3 wetland are associated with construction of the access road. Mitigation is provided for those impacts. No other impacts will occur to either critical areas or to critical area buffers. The Examiner finds that the project complies with the relevant provisions of Chapters 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 and from specified roads through a vegetated buffer has been provided (Exhibit B.1). Existing landscaping provides the intended function of the vegetated sight-obscuring buffer in all areas, so supplemental plantings will be required only for areas of the sight-obscuring buffer that are disturbed during development of the plat. A landscape plan is a required component of the submittal documents for a RCS (Chapter 30.41C.040(8) SCC). Exhibit B.4 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 and 991. NGPA areas within Tracts 999, 995, 992, and 991 have been determined to satisfy the requirement for sight-obscuring buffers. 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. The Examiner finds that the provisions of SCC 30.41C.200(2) has been met. A condition of approval has

been added to require implementation of the supplemental plantings within the sight-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;

The access road will be a private road contained within Tract 996. The road will be built to EDDS standards. 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;

Here, all utilities are to be located underground, and PDS has determined that the project complies with this requirement. The Hearing Examiner concurs. A condition requiring utilities to be located underground has been 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 1.26 acres (4.9% of the restricted open space), unbuildable lands that meet the definition of Chapter 91U.060 SCC. These areas are located within tracts 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;

There are no adjacent RCSs and no adjacent properties with designated open space tracts. The Examiner finds that this project has no open space tracts on adjoining properties, so this project is in compliance with this requirement.

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 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));

The development proposal consists of 12 lots. This provision does not apply because the proposed plat does not consist of more than 30 lots. (Exhibit J2)

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 abut either required buffers or restricted open space tracts. 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 can be divided into four separate bands in a northwest to southeast direction. The northernmost and the third band contain sloped areas with wetlands and streams. Between the bands, to the northeast, is a relatively flat area that contains nine lots. The southernmost band, adjacent to 195th Avenue SE, contains three lots. Impacts to critical areas have been minimized. The only areas that are not contained in lots, detention tracts, and NGPA tracts are located along the northern property border. This design works with the topography of the site.

One citizen noted that the development places new homes along a ridgeline which will impact the rural character of the area. Ed Caine, PDS staff, responded that the County does attempt to avoid placing structures along ridges to the greatest extent possible, but it is not an absolute requirement. He testified that in this case, the placement of those lots along the ridge is done to avoid and protect the critical areas on the site. The Examiner finds that the site design is consistent with the requirements of SCC 30.41C.200(13), and the County's policies and regulations requiring the avoidance of impacts to critical areas.

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 SHD. (Exhibits G2, G3)

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 critical areas including wetlands, streams, and steep slopes. Lots 2-10 have been placed near the center of the site. 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. 16. 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 12, 2007. The concurrency determination is valid for six 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.1), and in an Open Space Management Plan (Exhibit A.4) 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 63.4% (25.7 acres) 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 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 in the plat 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 RCS 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**:

- A. The preliminary plat received by PDS on March 26, 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 Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

 - iii. A final mitigation plan shall be submitted for review and approval during the construction review phase of this project.

 - iv. Construction plans (a full drainage plan) shall be submitted for review and approval prior to any ground disturbing activities.

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

 - vi. A Stormwater Pollution Prevention Plan shall be submitted for review and approval prior to any ground disturbing activities.

- 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, but it has been determined that *no payment* is required for the Robe Canyon Service Area (# 303) pursuant to Chapter 30.66A SCC. Mitigation fees are 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 each single-family residential building permit: \$45,591.48 (\$3,799.29 per lot) for mitigation of impacts on County roads paid to the County.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein."

- iii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of 195th Ave SE shall be shown as dedicated to the County along the development's frontage such that 30 feet of right-of-way exists from centerline of the 195th Ave SE right-of-way.
- iv. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit."
- v. "All Critical Areas and buffers, referenced as Tracts 992, 995 shall be designated Native Growth Protection Areas (NGPA)."
- vi. "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. "Well protection zones are shown in the Snohomish Health District records for all lots within this plat. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100 foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100 foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration."
- viii. "The Open Space Management Plan (Exhibit A.4) shall be fully implemented."
- ix. "The Landscape Plan (Exhibit B.4) shall be fully implemented and all required landscaping, including sight-obscuring buffers, shall be maintained. Any supplemental plantings that are required in order to create and to maintain the intended function of the sight-obscuring buffers shall be installed and maintained."

- x. "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 or by a means acceptable to the local fire district. In the event of power failure the gate shall open automatically and remain in the open position until the power is restored. The gate shall provide a minimum 20' clear opening for fire apparatus access."
- xi. "Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping shall be provided on both sides of the access road if it is less than 28' in width and on one side of the road if it is 28' wide but less than 36' wide stating "NO PARKING – FIRE LANE" to ensure access availability."
- xii. "All utilities shall be located underground."

D. Prior to recording of the final plat:

- i. Rural frontage improvements along the subject development's frontage on 195th Ave SE shall be constructed to the satisfaction of the County.
- ii. The new private road inside the subject development shall be constructed in accordance with EDDS.
- iii. Pedestrian facilities shall be constructed from the subject development to the intersection of Carpenter Road and 195th Ave SE to the satisfaction of the county. [RCW 58.17.110].
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- v. The final wetland mitigation plan shall be completely implemented.

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 31st day of August, 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 10, 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 14, 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.