

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: May 27, 2010

PLAT/PROJECT NAME: Hanson RCS

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

FILE NO.: 07-103723 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 20115 Frank Waters Road, Stanwood, Washington 98292

ACREAGE: 60.69 acres

NUMBER OF LOTS: 18

AVERAGE LOT SIZE: 39,450 square feet

MINIMUM LOT SIZE: 25,956 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: Snohomish County PUD No. 1
Sewer: On-site individual septic

SCHOOL DISTRICT: Stanwood-Camano No. 401

FIRE DISTRICTS: SCFD Nos. 14 and 19

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The preliminary plat application for an 18-lot Rural Cluster Subdivision (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 several months.

The Examiner held an open record hearing on May 12, 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. At the public hearing, Exhibit B.1 (revised plan set) was substituted for a new Exhibit B.1. In addition, the Applicant provided an updated Exhibit A.4 (plat name reservation) and Exhibit G.8 (certification of water availability). The master list of exhibits, as updated, and witnesses which is a part of this file, were considered by the Examiner, is hereby made a part of this decision 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 F.1, F.2 and F.3)

A. Background Information

3. Applicant's Proposal: The applicant is requesting an 18-lot RCS. Lots 1-15 will take access from a new public road off of Frank Waters Road (to the east), and Lots 16-18 will take access

from a new private road off of Frank Waters Road (on the other side of the road to the west). Each lot will be served by public water from Snohomish County PUD No. 1 and each lot will have individual septic systems.

4. Site Description: The site is developed with a single-family residence and is a combination of forested areas and pasture/grassland. Eighty-four percent of the site has slopes that are less than fifteen percent, and 2.6 percent of the site has slopes greater than 33 percent. In addition to steep slopes on portions of the site, there are multiple wetlands and a fish and wildlife habitat conservation area (collectively, "critical areas") on the site. They include: seven wetlands (one Category IV, four Category III, one Category II, and one Category I) and one stream (Type 4, non-fish bearing).
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. Two public comments have been received on the proposed application. A flood control district requested to become a party of record (Exhibit H.2), and a citizen voiced concern regarding development in rural areas (Exhibit H.1). PDS responded that the development was allowed both by the Comprehensive Plan and by Chapter 30.41C SCC. PDS requested that the citizen provide a mailing address so that they could be added as a party of record. The citizen did not respond and, consequently, was not added as a party of record for the pending action. The flood control district has been added to the parties of record list.

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 17 single-family residences (SFR), of 162.69 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 \$42,950.16 (\$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 July 20, 2007. The expiration date of the concurrency determination is six years from that date, which is July 20, 2013. 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 8 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 Report at Exhibit I, which analysis is incorporated herein by this reference. Although the results concluded that road

conditions at 188th Street NW to 52nd Avenue NW do constitute an IRC requiring road improvements, the analysis also showed, and DPW concurred, that no traffic originating from the subject development would travel through this area. This conclusion was not refuted or challenged by any party of record. As such, no additional mitigation is required from the Applicant to make the road improvements needed at this location.

Additionally, the IRC evaluation for Lakewood Road at Frank Waters Road revealed that although the data score exceeded 40 for traffic volumes, the Board concluded and DPW concurred that it should not be designated as an IRC. However, the Board determined that additional traffic improvements (a westbound right turn pocket from Lakewood Road to Frank Waters Road) should be constructed at that location. Although 62% of the trips from the development will travel through this location, DPW is not requesting mitigation from the developer to construct these improvements. (Exhibit C.1) Instead, the information was forwarded to the DPW Program Planning Group to plan and design these improvements. (Exhibit I at p. 4(b))

Based on the foregoing analysis and further information provided in Exhibits C.1 and C.2, 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. 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. According to EDDS 3-030B, the required improvements shall consist of a 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.

In the present development application, the Internal Road System consists of:

- a) A private road stub (Tract 994) approximately 120 feet long and intersecting the west side of Frank Waters Road, serving lots 16, 17, and 18 (Exhibit B.1 and B.5);
- b) A public road (Road A) intersecting the east side of Frank Waters Road in the north area of the development property, serving lots 1 through 8, and lots 14 and 15¹ (Exhibit B.1 and B.5); and
- c) A public road (Road B) approximately 360 feet long, ending in a 40-foot radius cul-de-sac intersecting south off of Road A near the center of the property, and serving Lots 9 through 13 (Exhibit B.1 and B.5).

Internal Road Classification: DPW has determined that Road A in the proposed development will be classified as a non-arterial rural public subcollector road, with a design speed of 30 mph. Upon review, DPW has also determined that the planned horizontal and vertical curves and the road grades meet EDDS requirements for a 30 mph design speed, and that the proposed right-of-way width of 60 feet is adequate for the required improvements. (Exhibits B.5 and I) The road is stubbed to the east property line (approximate length is 950 feet) to provide for a future road connection to the east. A paved cul-de-sac turnaround with a 40-foot radius is proposed just short of the plat boundary within a temporary easement. The access and cul-de-sac meet the minimum requirements of EDDS 3-10 and of Chapter 30.53A.512 SCC (Fire Code, Fire Apparatus Roads).

The connection of Road A to the east property line from Frank Waters Road was previously planned to continue east to serve as access into the proposed 26-lot plat of McCarty RCS (06-126865-SD), but that development application has expired. Nonetheless, DPW determined that the provision for the future connection was still needed because the future road would provide another circulation option between Frank Waters Road and 52nd Avenue NW for the residents in the area. DPW also determined that the subcollector road classification (to serve 250 to 1,000

¹Road A stubs at the east property line, and will have a paved cul-de-sac in a temporary easement, both of which would be removed if and when the road is connected to the east.

ADT) for Road A was appropriate given the expiration of McCarty RCS and the ultimate number of road connections that will result at full build out of all proposed subdivision developments in the area.

Road B has been classified by DPW as a non-arterial rural public local access road, with a design speed of 25 mph. DPW determined that the horizontal and vertical curves and the road grades meet EDDS requirements for a 25 mph design speed and that 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.

Finally, DPW classified Tract 994 as a rural, private, low volume access road, with a design speed of 20 mph. DPW found that the horizontal and vertical curves and the road grades meet EDDS requirements for a 20 mph design speed. EDDS Plate 3-080 specifies a minimum width of 20 feet, and the surfacing material may be gravel rather than asphalt. The road length is less than 150 feet, so per EDDS 3-10, it may end in a stub without a turnaround.

External Road Description: The property fronts both sides of, and takes all access from, Frank Waters Road. Frank Water Road 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 Major Collector Arterials on the County's Arterial Circulation Map; and both connect with state highways that connect to Interstate 5 to the east.

External Road Classification: PDS represents that Frank Waters Road is designated as a minor collector arterial road on the County's Arterial Circulation Map. (Exhibit I) It is a rural public arterial road serving approximately 1,975 ADT with the current traffic plus the subject development trips. PDS states that there is no design speed for arterial roads in EDDS, but EDDS 3-06 (B) specifies that operating speed shall be used on existing roads to determine stopping and intersection sight distance. Based on a speed study, DPW determined that the operating speed on Frank Waters Road was 45 mph. Frank Waters Road has 60-feet of deeded right-of-way between Marine Drive and Lakewood Road, and Chapter 30.66.B.510 SCC specifies a right-of-way width of 70 feet for a minor collector arterial road. As such, the applicant will be required to dedicate an additional 5 feet on each side of the right-of-way centerline where the development property fronts Frank Waters Road.

The frontage improvements that will be required for this development are that of a rural standard minor collector arterial road serving over 2,000 ADT per EDDS Plate 3-030B. PDS stated in its Staff Report that the trip count on Frank Waters Road taken March 25 and 26, 2008 by the DPW Traffic Operations Group resulting in just under 2,000 ADT, including the trips from the proposed development, did not include the trips associated with pending subdivision projects in the area. Consequently, the County Traffic Engineer determined that the design standard for over 2,000 ADT would be required for frontage improvements along Frank Waters Road.

DPW has determined that the road shown on the plans sheets (Exhibit B.1 and B.5) along the development property frontage with Frank Waters Road meets the minimum requirements of EDDS for road grades, horizontal and vertical curves. In addition, the section of the road from the north property line to approximately 1,500 feet south will be widened to a minimum of 40 feet as a result of frontage improvements on both sides by the applicant. South of that point, the road will be widened on the east side to a minimum of 20 feet where the property fronts only the east side for approximately 1,200 feet.

DPW further determined that the section of Frank Waters Road between Marine Drive and the north property line of the development, and between the south property line and Lakewood Road; meets EDDS requirements for road grades, horizontal and vertical curves. The east side of the road was widened to 18 feet from the centerline of the right-of-way by an earlier development for approximately 2,200 feet between the proposed development and Lakewood Road; otherwise the remainder of Frank Waters Road has a pavement width of approximately 20 feet. In determining the pavement width, DPW reasoned that 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.

Sight distance was checked at several intersections surrounding the development along the main travel routes. The sight distance at the intersections of Frank Waters Road and Road A, Frank Waters Road and Tract 994, Frank Waters Road and Marine Drive, and Frank Waters Road and Lakewood Road all meet the minimum requirements of EDDS 3-08.

SR 531 (Lakewood Road) and 40th Avenue NW: A site distance deficiency was noted to the left from 10 feet back on 40th Avenue NW looking east (319 feet, with 390 feet required based on the posted speed of 35 mph and a grade of plus 3 percent). The ISD was limited by trees and brush, and by the horizontal curve on the east leg of SR 531. However, the Traffic Study showed that no trips from the development would travel southbound on 40th Avenue to turn onto Lakewood Road. DPW reviewed and approved the trip distribution for this development. As such, this development is not required to mitigate the site distance deficiency as a condition of development approval. Given that inadequate site distance is a significant safety issue to be considered as part of the plat approval process pursuant to Chapter 58.17.110 RCW, the condition could be grounds for disapproval of the plat. Here, however, the Examiner does not need to make such a determination because PDS states that the ISD will be removed as a condition of approval of the Lake Goodwin RCS 2 (06-125856-SD).

Access and Circulation. The road system into this development from the Frank Waters Road / Road A intersection will be a dead end until other developments adjacent to the east have been constructed. The applicant has made provisions for future road circulation and connection by dedicating right-of-way and constructing (stubbing) Road A to the east property line, because it

was determined that the connection between Frank Waters Road and 52nd Avenue NW is needed in the future for the properties to the east when they develop.

The property adjacent to the east has development potential. Road A is needed for the future road circulation between Frank Waters Road and 52nd Avenue NW. Road A is also planned to connect southwest through the proposed plat of Lake Goodwin RCS 3 (06-126101-SD, a proposed 104 lots rural cluster subdivision). The future connection is proposed to intersect a proposed public road from the proposed development of Lake Goodwin RCS 1 (06-125855-SD, a 49 lot development). The north leg of the intersection would connect to Happy Hollow Road (212th Street NW), and the south leg would curve east into Lake Goodwin RCS 2 (06-125856-SD, serving 49 lots) and connect with 52nd Avenue NW, an existing County road that currently connects south to 188th Street NW, then east on 188th Street NW to 40th Avenue NW, and south on 40th Avenue NW to Lakewood Road or north via Happy Valley Road to Pioneer Highway. This proposed development, Hanson RCS, (07-103723-SD) is not dependant on any other development for it to be approved, constructed, recorded and function as a standalone independent development. (Exhibit I)

Private Road: As previously noted, there is one private road associated with this project, which is Tract 994 on the west side of Frank Waters Road, serving three lots. DPW approves the proposal of the private road in this situation because the property adjacent to the west is the proposed plat of Warm Beach (06-126859-SD), and the location of a stream, wetland and buffers preclude the development of the area that would be served by a public road extended from the subject development. (Exhibit I)

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 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. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 5 feet of additional right-of-way is required. This is adequately shown on the preliminary plat. PDS has included a recommended condition to require the right-of-way dedication. 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]

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. When a development's road system includes a state highway, mitigation requirements are established using the County's SEPA authority consistent with the terms of the ILA between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority. Here, in lieu of other mitigation, the Applicant proposes to pay impact fees to WSDOT in the amount of \$5,856.84 (or \$344.52/SFR). (Exhibits I, C.1, C.2, G.3) 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.

Comments dated August 17, 2007 have been received from WSDOT (Exhibit G.3) indicating agreement with the traffic mitigation offer. Payment of that amount will be a recommended condition of approval for this development. WSDOT expressed no other concerns about impacts from this development on the State's road network.

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.

Snohomish County has executed an ILA 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 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 \$23,042.14 (\$1,355.42/SFR) for impacts to the City street system based on the Traffic Report. (Exhibit C.1 and C.2), which amount has been accepted by the City. (Exhibit G.1)

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 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 G.2)

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]

PDS states in its Staff Report that it is assumed in the rural area that the amount of pedestrian activity is negligible, unless there is a specific draw area such as a park, school, bus stop, walkway, or neighborhood business. The nearest draw from the subject development is Lake Goodwin State Park, which is located over 4 miles to the southeast utilizing the existing roads of Frank Waters Road, SR 531, and East Lake Goodwin Road. All of those roads are on the County's adopted bicycle plan. The following factors were considered in PDS's decision on the need for offsite pedestrian and bicycle facilities:

- a) The applicant will provide an 8-foot wide paved shoulder and widen the travel lanes to 12 feet wherever the development fronts Frank Waters Road. PDS has included a recommended condition of approval to implement this requirement.
- b) The east side of the road was widened to 18 feet from the centerline of the right-of-way by an earlier development for approximately 2,200 feet between the proposed development and Lakewood Road.
- c) The proposed developments of Warm Beach RCS (06-126859-SD), Lake Goodwin RCS 3 (06-126101-SD), and The Park (06-132089-SD) will be required to construct that same standard required by EDDS for frontage improvements along Frank Waters Road.

- d) 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.
- e) Lakewood Road, between Frank Waters Road and East Lake Goodwin Road is listed in the county's six-year transportation improvement plan to widen the south side of Lakewood Road for a 6 to 7-foot pedestrian accessible shoulder.
- f) East Lake Goodwin Road (also known as SR 531) is under the jurisdiction of the state, so any improvements to that road would be required by WSDOT.

General Pedestrian and Bicyclist Facilities. The Examiner finds that the applicant will provide a safe shoulder for pedestrians and bicyclists along Frank Waters Road. The Examiner did not find that any other facilities for pedestrians or bicyclists are required by the Comprehensive Plan, development regulations or otherwise, with the exception of the provision for crossing Frank Waters Road, as discussed further below.

Safe Walking Conditions for School Children. In addition to considering safe pedestrian and bicycle facilities, in approving any subdivision 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 will be picked up/dropped off at the entrance of the development located on Frank Waters Road. (Exhibit G.10) A reasonable interpretation of this statement is that the District intends to transport children to and from the entrance to the development at Road A, where the majority of the lots are found. However, as proposed, the development is split into two groups of homes: (1) a cluster of homes consisting of lots 1-15 (on the east side of Frank Waters Road); and (2) another cluster of homes consisting of lots 16-18 (on the west side of Frank Waters Road). The access road to lots 1-15 is Road A, beginning at its intersection with Frank Waters Road. The access road to lots 16-18 is Tract 994, which is a short stub road that then adjoins a long, narrow access driveway to the north. The access driveway parallels Frank Waters Road and the site obscuring buffer to the east up to lot 18, which is directly across street from the main development entrance (Road A). Given that the plans clearly show the alignment of Lots 16, 17 and 18 across the street from Road A, it is foreseeable that school children will cross Frank Waters Road near Lots 17 or 18, where no crosswalk or other provision for a safe road crossing is planned, given that this is the shortest route to the proposed school bus stop, and Tract 994 is further south.

During the public hearing, the Examiner asked the parties about this issue and whether the applicant was planning to restrict children from crossing through the site obscuring buffer along the eastern edge of Frank Waters Road at Lots 16, 17 and 18 with a fence or other means, or whether they were planning to provide a safe crossing for children if they were required to move across Frank Waters Road to and from the bus stop. The parties were clearly surprised by the

issue and had not considered it. Based on the fact that it is foreseeable that school children will cross at the location of Lots 17 and 18 to access Road A, and the School District has not been clear in its plans for bus transport given the two “entrances” to the subdivision, the Examiner is required to add a mitigating condition to ensure that either a safe pedestrian crossing or a secondary waiting area for school children is provided by the Applicant, to the satisfaction of the County Engineer, depending on the School District’s transport plans for the children living in Lots 16, 17 and 18.

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 four 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 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. A detention pond located within Tract 995 and individual lot detention pipes located within Lots 16, 17, and 18 are proposed to meet the detention requirements conforming to the Snohomish County standards, which have been sized to include a 30% factor of safety. The east basin outflows from the detention pond will be discharge into level spreaders that will sheet flow to an existing wetland “B” within Tract 993. The west overflow from the detention pipes will be discharged into two level spreaders that will sheet flow to Folden’s Creek within Tract 997.

Folden’s Creek currently flows under Frank Waters Road, which is an open and constructed public road. Road improvements include widening of the road and an extension of the existing culvert. Chapter 30.63A.200 (3)(C) SCC states “...bridges or bottomless arch culverts shall be installed instead of culverts at stream crossings...” PDS may grant a request for an oversized culvert with approximately 1/3 of the culvert to be filled with gravels. An HPA from Washington State Department of Fish and Wildlife maybe required for the culvert extension.

Water quality measures will include dead storage in the proposed detention ponds and within bypass areas dispersion through existing vegetation. The wet ponds will provide treatment for the total volume of runoff from the 6-month, 24-hour storm event. Discharge through level spreaders will be to the established flow paths mimicking pre-developed condition. PDS stated in the Staff Report that it 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 52,000 cubic yards of cut and 52,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Proposed grading is in excess of 100 cubic yards which triggers the need for a grading permit and SWPP Plan as required by Ch. 30.63B SCC and PDS Rule 3044. 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 shall 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 Temporary Erosion and Sediment Control Plan required by Chapter 30.63A SCC.

12. Critical Areas Regulations.

A Type 4 stream flows northwesterly across the southern half of the property through a large Category 1 wetland system that is currently dominated by pasture. Folden's Creek becomes subsurface off-site to the west due as the creek flows into gravelly outwash soils. The applicant has avoided most of the critical areas on the site. A large portion of the site shall be placed in restricted NGPA/E or NGPA to protect all critical areas and buffers, including sensitive eagle habitat. PDS has reviewed and approved the Critical Area Study and Bald Eagle Habitat Management Plan prepared by Curran Environmental Services dated May 29, 2007 (Exhibit C.4) in conjunction with the Addendum 1 Critical Areas Study/Habitat Management Plan by Curran Environmental Services, Inc. dated March 13, 2009. (Exhibits C.5 and C.6) PDS recommended conditions to provide protections of NGPA/E and NGPA areas which the Examiner has included.

In order to create Road B, the applicant proposes to impact one small wetland, a Category 4 wetland which is approximately 1,100 square feet in size (Wetland "A"). SCC 30.62A.365 exempts all development activities within such wetlands from certain regulatory requirements of the Chapter as long as best management practices are followed. Here, the Applicant has minimized the impacts and will provide mitigation for the wetland and buffer impacts in the form additional buffer at a ratio of 4:1 to the south of Lot 11. PDS determined through an evaluation of the information submitted in the revised application, coupled with an on-site investigation, that the application is complete and in conformance with Chapter 30.62A 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.

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.

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

The subject property is designated Rural Residential - 5 (RR-5: 1 du/5 ac). This GMA Comprehensive Plan designation identifies all lands which are currently designated as Rural on existing subarea comprehensive plans and which have subsequently been zoned "Rural 5." This designation also includes some areas which were previously designated and zoned as "Agriculture" lands. It also includes lands for which the pre-GMA subarea comprehensive plan indicates as higher density, but which were zoned R-5 by the county subsequent to the plan adoption date. The implementing zone in this designation will continue to be "R-5."

The 18 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 1, 2008. (Exhibit G.5)

B. Electricity

Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on June 8, 2007. (Exhibit G.6)

C. Water

Water will be supplied by Snohomish County PUD No. 1. They provided a Certificate of Water Availability on August 1, 2008 (Exhibit G.8). The offsite water line was included as a part of the SEPA DNS associated with the plat of Warm Beach RCS (06-126859-SD), notice of which was published on March 7, 2010, and the decision was not appealed. According to the PUD, the Extension of the water supply facilities to the plat requires an amendment of the Snohomish County Comprehensive Plan. (Exhibit G.8)

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 20, 2009. (Exhibit E.1). PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 5, 2010. (Exhibit E.2) The DNS was not appealed.

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 May 30, 2007. (Exhibit A.2) and a Revised Master Permit Application was received by PDS on September 24, 2008. (Exhibit A.1) 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. 14 and Snohomish County Fire District No. 19 on May 30, 2007. Neither Fire District responded to the request for review.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on June 16, 2009. The conclusions of the review were that:

- 1) Fire flow and fire hydrants shall be provided in accordance with Chapters 30.53A.514 through 30.53A.520 SCC. 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.

- 2) The minimum required fire flow for this project has been determined to be 750 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Chapter 30.53A.520(16) SCC, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems. If there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2006 edition of the International Fire Code.
- 3) Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Signage or pavement striping on both sides of the access road shall be provided to implement this requirement.
- 4) Fire apparatus access as depicted meets the minimum requirements of Chapter 30.53A.150 SCC and we have no further requirements.

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 Chapter 30.41C.010 SCC by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 70.14% (42.24 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 = 13.11 lots
Bonus residential density	= 15%
Additional bonus density	= 20%
Total lot yield	= 17.7 lots
Total lot yield-rounded	= 18 lots
Total lots proposed	= <u>18 lots</u>

- B. SCC 30.41A.200 (1) -- Critical Areas Compliance. This Code provision states that when environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to Chapters 30.62 SCC and/or other applicable County ordinances or policies, the areas

shall be designated as critical area protection areas. All critical areas are designated as either NGPA/E or as NGPA and located within Tracts 998, 997, and 993 (Exhibit B.1). The buffer to Wetland B extends on to Lot 13, and that area within Lot 13 will be designated as NGPA. Impacts to a small wetland is associated with construction of Road B; however the wetland is exempt from buffering and may be filled so long as best management practices are used (and the applicant has provided mitigation at a ratio of 4:1). Impacts to Folden's Creek will occur due to road improvements on Frank Waters Road, but mitigation will be provided. No other impacts will occur to either critical areas or to critical area buffers. PDS has determined that the project complies with the relevant critical areas codes, rules, and policies. Having reviewed the applicant's compliance with the critical areas regulations, above, the Examiner concludes that the application meets the requirements of this section.

C. SCC 30.41C.200 (2) – Vegetated Sight Obscuring Buffers. This Code provisions 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 applicant has designed a transition from residences and adjoining properties and from specified roads. (Exhibit B.1) Existing landscaping does not provide the intended function of the vegetated sight obscuring buffer in all areas, so supplemental plantings will be required. The Landscape Plan (Exhibit B.3) contains the planting specifications for the sight obscuring buffer. The sight obscuring buffer shall be a minimum of 50 feet in width, which is proposed, with an average of 75 feet and located within Tracts 999, 997, 006, and 993. 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. A condition of approval has been added to require implementation of the supplemental plantings within the site obscuring landscape buffer.

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;

Roads A and B are proposed to be public roads. Tract 994 contains a private road. All roads, either public or private, will be built to EDDS standards. These requirements are set forth in detail above. PDS and DPW have determined that the project meets this requirement.

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;

All utilities are to be located underground, and PDS has determined that the project complies with this requirement. PDS has recommended a condition of approval to require utilities to be located underground.

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

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

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of Chapter 90.58 RCW.” SCC 30.91U.060. There are approximately 0.77 acres 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. 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;

This provision is not applicable to the present development proposal.

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.

Neither agricultural nor forestry uses are proposed for any of the tracts within the RCS. Therefore, no disclosure statement is required. 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.

No mineral resource uses are proposed for any of the open space tracts within the RCS. 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;

The northwestern plat boundary abuts to the plat of Warm Beach RCS (06-126859-SD). The open space tracts of Warm Beach RCS abut Tract 997 of this proposal. PDS has determined that this project complies 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), which has been reviewed by PDS and they found that it meets the requirements of the Code. The Examiner concurs and has included a condition to require compliance with the Open Space Management

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));

The development proposal consists of 18 lots, divided into two groups: one 3-lot grouping on the east side of Frank Waters Road, and the remaining 15 lots to the west of Frank Waters Road. The Landscape Plan (Exhibit B.3) contains the planting specifications for the sight obscuring buffer. The sight obscuring buffer shall be a minimum of 50 feet in width, which is proposed, with an average of 75 feet and located within Tracts 999, 997, 006, and 993. 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. A condition of approval has been added to require implementation of the supplemental plantings within the site obscuring landscape buffer. The Examiner finds that subject to the implementation of the required conditions, this requirement 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;

In the present development, all but 3 lots (Lots 7, 8, and 14) abut open space. Here, 83 percent of the lots abut open space. The development has exceeded the requirement and 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;

The subject property is relatively flat and has no prominent topographic features. The southern portions of the site are constrained by critical areas. As discussed above, impacts to critical areas has been avoided or minimized. In addition, the site is an irregular rectangle with a long north-south axis and a narrower east-west axis. The lots have been placed in the northern portion of the site and are located as central to the site as possible. The large lots and site obscuring buffer help maintain rural character in the area. PDS has determined and the Examiner concurs 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 lots are proposed to be served by individual septic systems. The Snohomish Health District has reviewed the proposed sites for the drainfield and reserve areas, and recommended approval of the preliminary plat. (Exhibit G.5) PDS has determined and the Examiner concurs that the project complies with this requirement.

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;

The subject property is relatively flat and has no prominent topographic features. The southern portions of the site are constrained by critical areas. Natural resource uses are not found on adjacent properties. As discussed above, impacts to critical areas has been avoided or minimized. In addition, the site is an irregular rectangle with a long north-south axis and a narrower east-west axis. The lots have been placed in the northern portion of the site and are located as central to the site as possible. The large lots and site obscuring buffer help maintain rural character in the area. PDS has determined and the Examiner concurs 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 boundaries for Fire Districts No. 14 and No. 19. The Examiner finds that the project complies with this requirement.

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

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

DPW and PDS determined the project is concurrent as of November 8, 2006. The concurrency determination is valid for 6 years. 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.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 17. 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 70% of the subject property (approximately 42.24 acres) 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 drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

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

CONCLUSIONS OF LAW

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

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

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

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

DECISION

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

CONDITIONS:

- A. The preliminary plat received by PDS on March 26, 2010 (as shown in updated 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. Construction plans shall be submitted for review and approval.
 - iii. A SWPPP shall be submitted for review and approval.
 - iv. A grading permit shall be obtained.
 - v. A right-of-way permit shall be obtained for any ground disturbing activities within the county right-of-way.
 - vi. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The dwelling units within this development are subject to park impact fees in the amount of \$811.29 (Kayak Point # 301) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
 - ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:

\$2,526.48 per lot for mitigation of impacts on County roads paid to the County
\$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 4 existing parcels. Lots 1 through 4 shall receive credit."
- vi. All critical areas shall be designated Native Growth Protection Areas (NGPA) with the following language indicated on the face of the plat:

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in Chapter 30.91N.010 SCC are allowed when approved by the County."

- vii. The Open Space Management Plan (Exhibit A.5) shall be fully implemented.
- viii. The Landscape Plan for the sight obscuring buffers (Exhibit B.3) shall be fully implemented.
- ix. All utilities shall be placed underground.
- x. The minimum required fire flow for this project has been determined to be 750 GPM at 20 psi for a two-hour duration. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems.
- xi. If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined using Appendix B of the 2006 edition of the International Fire Code.
- xii. An improved path (or paths) within the subdivision to the waiting area(s) on Frank Water Road shall be provided for school children.

- xiii. A waiting area for school children shall be provided at the eastern entrance to the development at its intersection with Frank Waters Road. If the school district requires a second waiting area at the western entrance to the development at Frank Waters Road (Tract 994), such a waiting area shall be provided. If, however, school children from Lots 16, 17 and 18 are required by the School District to cross Frank Waters Road to reach the bus waiting area, the Applicant shall be required to provide a safe pedestrian crossing across Frank Waters Road to the satisfaction of the County Engineer.

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 Areas (NGPA) boundaries 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 landscaping within the sight obscuring buffers shall be installed in accordance with the approved landscape plan.

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

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

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

Decision issued this 27th day of May, 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 **June 7, 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 **JUNE 10, 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.