

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 14, 2010

PLAT/PROJECT NAME: **KALMAKOFF**

APPLICANT/
LANDOWNER: Paul and Linda Kalmakoff

FILE NO.: 07-110973-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

GENERAL LOCATION: 32706 76th Avenue NW, Stanwood, WA 98292

ACREAGE: 18.92 acres

NUMBER OF LOTS: 5

AVERAGE LOT SIZE: 47,999 square feet

MINIMUM LOT SIZE: 44,145 square feet

DENSITY: .026 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential-5

ZONING: R-5

UTILITIES:

Water: Individual Wells

Sewer: On-site septic

SCHOOL DISTRICT: Stanwood-Camano School District No. 401

FIRE DISTRICT: No. 14

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The RCS application was originally submitted to the Department of Planning and Development Services (PDS) on September 20, 2007, and the application was determined to be complete as of the date of submittal on October 18, 2007. (Exhibit A1)

PDS gave proper public notice of the open record hearing as required by the County code. (Exhibits F1, F2 and F3)

A SEPA determination was made on September 23, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on December 8, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all the evidence of record, the following Findings of Fact are entered.

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

A. Background Information

2. Applicant's Request: The applicant is requesting approval of a 5-lot RCS on an 18.92 acre parcel. Access is proposed by a new private road off 76th Avenue NE (which is off 80th Drive NW). Each lot will be served by individual well and onsite septic system.
3. Site Description: The site is primarily pasture, with a treed area in the southeastern corner. The site gently slopes to the west (about 1.5% grade). There are Category 3 wetlands in the northwestern, central, and eastern portions of the site.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Lands to the southwest are small lots associated with Lake Ketchum. Lands to the south are 5-acre residential lots. Lands to the east, north, and west are in agricultural use, although not designated as commercial farmland.

5. Issues of Concern: Neither agency nor technical reviews have identified any issues of concern for the project.

One citizen comment was received. (Exhibit H.1) In her letter, Ms. Roberts asserted that the new development would result in impacts to wildlife, increased traffic on 76th Avenue NE, impacts to groundwater, and noise.

PDS provided the following response in its staff report:

RESPONSE:

Impacts to Wildlife: Although the comment asserts that the site is heavily wooded, that is not the case. There are scattered trees on the western part of the site, and some of those trees may be impacted. The eastern portion of the site, which is the heavily wooded portion, will be protected as NGPA/E with Tract 999.

Traffic: This is an application for a 5-lot development. PDS has determined that the traffic impact will be minimal.

The Examiner adds that impacts regarding development under the code are generally addressed by development regulations. The Examiner has read Ms. Roberts' letter and does agree with PDS. The applicants have the right to develop their property as permitted under the code. The Rural Cluster Subdivision Code provides for significant protection of critical areas: in this 18.92 acre tract, 12.5 acres will be preserved in its natural state. Approximately 78% of the plat will be open space or green space. Furthermore, putting five homes in this area will not significantly add to traffic or noise. Finally, as long as the Snohomish Health District approves the wells, the county will require no further study of the wells or septic. If Ms. Roberts wished a study of the groundwater, she would have needed to file a timely State Environmental Policy Act (SEPA) appeal, hired a groundwater expert, and proven to the Hearing Examiner that there was a likely significant environmental impact from the development to the groundwater.

B. Compliance with Codes and Policies.

6. Parks Mitigation. The proposal is within Kayak Point Park Service Area, No. 301, and is subject to Chapter 30.66A SCC, which requires payment of \$811.29 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Payment of impact fees is acceptable mitigation for parks and recreation impacts in accordance with county policies. The Hearing Examiner will include a requirement for payment of these fees as a condition of approval of the RCS.
7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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

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

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

The development will generate 47.85 new average daily trips (ADT) and has a road system impact fee of \$12,632.40 (\$2,526.48/SFR) based on \$264/ADT, the current fee rate for residential developments outside the urban growth area, for TSA A. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

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

ITE Land Use Category:	Single family detached housing
ITE Land Use Code:	210
Applicable Measurement Unit (ITE Independent Variable):	number of SFRs.
Number of applicable measurement units for this development:	5

Trip Generation Calculation

Based on Average Rates:

New average daily trips = $5 \times 9.57 = 47.85$ ADT

New PM peak-hour trips = $5 \times 1.01 = 5.05$ PM PHT

New AM peak-hour trips = $5 \times 0.75 = 3.75$ AM PHT

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

B. Concurrency [SCC 30.66B.120]

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

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of November 26, 2007. The expiration date of the concurrency determination is six years from this date, which is November 25, 2013.

Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130 (4): The subject development is located in TSA A, which as of the date of submittal of the application had no arterial units in arrears. The subject development generates 3.75 AM peak hour trips and 5.05 PM peak hour trips which is not more than the threshold of 50 peak-hour trips, in which case the development would also have to be evaluated under SCC 30.66B.035.

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

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

The subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to IRCs 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]

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

The project has no frontage on a public road, so no frontage improvements are required.

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

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

The applicant proposes to extend 80th Drive NW north and the intersection east as a private road within a 60 foot ingress egress easement; then easterly into the development within a 40 foot ingress egress easement, ending in a cul-de-sac. This road will be classified as a private local access road, with a design speed of 20 mph. The local access road shall be consistent with EDDS Plates 3-060 and 3-080.

The first 90 degree turn to the east from the existing 80th Drive NW road end is acceptable to DPW because there is a potential for a tee intersection when the property to the west of the subject project develops. The next curve to the north is a 90 foot radius horizontal curve, which meets EDDS minimum requirements for a design speed of 20 mph. The profile of the private road shows that the vertical curves will meet the requirements of EDDS Plate 3-110 and 3-120. The plans show the proposed access road with a 40 foot radius cul-de-sac consistent with EDDS Plate 3-150.

The applicant will construct a hammerhead turnaround as a temporary end adjacent to the north of the current end of pavement for 80th Drive NW, a public county road. The Examiner will include a condition in this decision requiring the applicant to require construction prior to final plat approval.

80th Drive NW can be extended north or west from the current end in the future, when the property north is developed. The 90 degree bend in the private road would then become an intersection with the public road. The Examiner will include a "Do not protest conversion to public" statement as a condition of approval for the 60-foot access easement in the section immediately north of the end of the public right-of-way for 80th Drive NW, so that the easement will eventually be converted to public right-of-way, and the road extended as a public road.

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

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

The development property is located at the north end of the existing terminus of county right of way for 76th Avenue NW. That road is identified on the county arterial circulation map as a minor collector arterial from 300th Street NW north to the county line. SCC 30.66B.520 sets the total right of way width requirement for a minor collector arterial as 70 feet.

PDS Transportation and DPW have agreed that provision for the extension of the right-of-way for the public road along the east property line of the development is necessary, however; construction of the road in that alignment is not necessary at this time. There are topography challenges that will make construction of the road challenging in the future due to the location of a large pond just east of the future alignment of the road.

SCC 30.66B.410 states as follows:

(2) In cases where the dedication, establishment, or deeding of additional right-of-way cannot be reasonably required as a direct result of the proposed development but such right-of-way is necessary for future expansion of the public road system, the developer shall reserve the area needed for right-of-way for future conveyance to the county. Building setback and all other zoning code requirements will be established with respect to the reservation line rather than the deeded, established, or dedicated right-of-way line. The area reserved for right-of-way may be donated to the county or will be purchased by the county through a county road project.

As indicated above, the right-of-way will be reserved through the 60-foot easement and “No protest” agreement described in Finding of Fact 7E.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the 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.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended. Pursuant to SCC 30.66B.055 written comments from WSDOT dated September 26, 2007, indicate no traffic mitigation is required of the applicant (Exhibit G.6).

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

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

The City of Arlington has requested traffic mitigation in the amount of \$3,388.55 (\$677.71 per lot), based on 5.05 PM peak hour trips x 20% sub area location x \$3,355 per PM peak hour trip. The applicant submitted a signed offer for that amount on March 13, 2009. Comments dated April 3, 2009 were received from Arlington indicating agreement with that offer, and attached was a copy of the offer signed as approved by Arlington (Exhibit G.1). Payment of that amount will be a condition of approval in this decision.

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

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

8. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject short subdivision. Comments dated October 2, 2007 were received from the Stanwood-Camano school district (Exhibit G.5) indicating all school children from the development will be picked up at the intersection of 76th Ave NW and 319th Place NW.

An e-mail dated May 29, 2008 from the Stanwood-Camano School District (Exhibit G.7) indicated that there is an existing bus stop at the intersection of 325th Place NW and 80th Drive NW, which is closer to the development property. A safe walkway for school children must be provided along the extended section of 80th Drive NW. The width of existing pavement at the northern end of 80th Drive NW to the intersection of 80th and 325th is approximately 22 feet. This provides two traveled lanes of 11 feet each.

PDS has recommended a condition of approval for the applicant to provide a seven foot paved shoulder along the existing and extended section of 80th Drive NW between 325th Place NW and where the private gravel road takes a 90 degree turn to the east (the future intersection). A 7-foot gravel shoulder shall be installed along the remaining section of the private road from the 90 degree turn to the intersection with the cul-de-sac road for the development. The Examiner will include the condition of approval as recommended by PDS.

With the provision of this offsite walkway to the bus stop, safe walking conditions will be provided for children that reside in the development.

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

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

10. Drainage and grading.

Drainage. The drainage design is for an open detention pond located at the west side of the project, with a wet pond/water quality component in the bottom of the facility. The discharge from the pond is by a level spreader at the northwest corner of the site. This discharge location and method simulate the existing drainage conditions. The peak rate of runoff from the development is controlled by the detention pond and discharge structure.

Drainage impacts are addressed by the required adherence to the county drainage code, Chapter 30.63A SCC, and other applicable police power regulations. Those requirements ensure that concerns about drainage impacts are addressed in conformity with county and state standards. Chapter 30.63A SCC requires submittal and implementation of a drainage plan for this proposal. PDS has reviewed the targeted drainage plan and report articulating the drainage concept detailed above, from which it concludes that the proposal can conform to drainage code requirements. Full drainage plan review will be conducted; the specifics of final drainage system design are matters under the administrative authority of PDS. Conformity with Chapter 30.63A SCC is the general standard. The appropriate level of review at the preliminary plat stage is whether the conceptual drainage approach, the submitted targeted drainage plan, shows that the development can feasibly conform to the requirements of Chapter 30.63A SCC.

Grading. Grading quantities are anticipated to be approximately 600 cubic yards of cut and 370 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations. PDS conducted a site visit on November 2, 2007 to review critical areas. Four wetlands were observed on the site plan. These wetlands were accurately flagged in the field and shown on the site plan (Exhibit B.1). The four wetlands on the site were determined to be Category 3. An existing 10-foot gravel road crosses wetlands and wetland buffers on the site.

The applicant is proposing to develop five lots on the subject property. Category 3 wetlands, located outside the urban growth area (UGA), have a standard buffer of 50 feet per SCC Table 30.62.310(1). Wetlands and buffers on the site will not be impacted by the proposed development and will be set aside and recorded as Native Growth Protection Areas/Easements (NGPA/Es) on the site as required per 30.62.320.

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare.

The Hearing Examiner has included conditions for protection of the NGPA/E areas.

12. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to 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 acre). This designation includes a large portion of the rural area that was formerly zoned R-5 prior to the GMA's enactment. It is still zoned R-5. The base density is one dwelling unit per five acres.

The 5 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

A. Water.

Water will be supplied by individual wells. The Snohomish Health District (SHD) recommended approval of the preliminary plat on February 28, 2008 (Exhibit G.2).

The plat consists of 5 lots. At 350 gallons per day (gpd) of typical usage, this computes to be 1,750 gallons per day for the plat. The computed value is less than the 5,000 gallon per day (gpd) 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 gallons per day in order to be approved by the SHD. The Examiner will include the following on the face of the final plat, as required by the SHD:

Well protection zones are shown in the Snohomish Health District records for Lots 1, 2, 3, 4, and 5 of 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.

B. On-Site Septic.

Each lot will be served by individual septic systems. The Snohomish Health District (SHD) recommended approval for the preliminary plat on February 28, 2008 (Exhibit G.2).

C. Electricity.

On October 3, 2007, the PUD provided correspondence indicating that it can provide electrical service for the project. (Exhibit G.3)

14. Zoning (Chapter 30.2 SCC)

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

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on September 23, 2009 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on June 6, 2006. (Exhibit A.1) The following general subdivision standards have been met:

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

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

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

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on December 12, 2007. The conclusions of the review were that:

- (a) Each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office.
- (b) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements.

The application complies with the requirements contained in SCC 30.53A, including emergency vehicle access.

17. 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. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

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

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

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

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

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

Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210 (1);

The sight obscuring buffer is proposed to be a minimum of 35 feet in width and located within Lots 1 and 2, and on the perimeter of Lots 3, 4, and 5. The Landscape Plan (Exhibit B.3) has planting specifications for the sight obscuring buffers. Existing vegetation shall be retained to provide visual screen within the visual buffer. Additional plantings shall be comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of Snohomish County Code Table 30.41C.210. Trees planted are a mix of native evergreen trees, native deciduous trees, and native shrubs.

Where existing vegetation fails to meet the intended function of the vegetated sight obscuring buffer, then supplemental planting of native vegetation shall be made, with the ultimate density of the trees within the buffer remaining at 10 feet on center and shrubs at three feet on center. A minimum of 75% of the trees shall be conifers.

Maintenance of all vegetated sight obscuring buffers shall be the responsibility of the homeowner's association. Exhibit B3.

The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200 (3)—Internal Roads.

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

All roads are proposed to be private roads and to be built to EDDS standards. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the RCS code.

D. SCC 30.41C.200 (4)—Utilities.

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

Applicant will be placing all utilities underground. The Examiner will include a condition requiring all utilities to be installed underground. (Exhibit G.3; I)

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

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

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” SCC 30.91U.060. There are no unbuildable lands that meet the definition of SCC 91U.060. In this case delineated wetlands comprise most of the restricted open space and are protected by NGPAs.

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

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

Not applicable.

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

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

Not applicable.

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

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

...

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

Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not

limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.

Not applicable.

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

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

Not applicable.

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

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

The applicant prepared an Open Space Management Plan which has been accepted by PDS. A homeowner's association will be responsible for maintenance and management of Tracts 998 and 999. Tracts 998 and 999 will be held by a single individual or in common ownership by the Homeowners Association (HOA) as conveyed at the time of plat recording.

The management objectives are as follows:

1. Minimize negative effects of soil erosion;
2. Preserve and enhance appropriate wildlife habitat;
3. Preserve existing native vegetation;
4. Creative passive recreation opportunities; and
5. Maximize natural screen along the exterior limits of the development

(Exhibit A2 at 2). Any vegetation destroyed during installation of utilities or septic drainfields within a visual buffer will be restored with like kind landscape materials within the remainder of the visual buffer.

The homeowner's association is responsible will be responsible for maintaining the visual buffer designated on the final plat. The area depicted as Tract 999, restricted open space, may be available for the following permitted open space tract uses:

- (i) Beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, equestrian trails, playgrounds, equestrian centers or any non-motorized passive recreational facilities;
- (ii) Community wells, well houses, water lines, community drainfields, retention and detention ponds, water recharge and infiltration facilities, water system appurtenances and biofiltration swales.

Permanent vegetation removal within the restricted open space is not permitted except that the following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:

- (i) Construction of pedestrian or equestrian trails;
- (ii) Construction and maintenance of equestrian centers of playfields;
- (iii) Maintenance of existing pastures;
- (iv) Forestry, agriculture activities, or mineral operations;
- (v) Removal of dead, diseased or hazardous vegetation, consistent with best wildlife management practices;
- (vi) Selective thinning and enhancement of vegetation; and
- (vii) Fire breaks provided in accordance with fire district requirements.

Portions of the Open Space Tract shall be protected as Native Growth Protection Areas in accordance with Chapter 30.62 SCC. Restrictive language will be placed on the face of the final plat.

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

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

This requirement is not applicable, since this is a 5-lot development.

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

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

All of the lots abut buffers or open space tracts.

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

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

The subject property is constrained by critical areas and is relatively flat. As discussed in the Finding of Fact 11, impacts to critical areas have been avoided. The Hearing Examiner has determined that the project complies with this requirement.

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

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

The applicant proposes on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. See Exhibit G2.

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

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

There are no prominent topographic features on which lots are proposed. PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property that are accessible from existing road systems, and that the proposed lots are provided with a visual sight-obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. The Examiner determines that the applicant has met this design requirement to the extent possible on this application.

- P. SCC 30.41C.200 (16)—Fire District.

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

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

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

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

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

18. Rural Cluster Subdivision Lot Yield Calculations.

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

Basic lot yield: 824,373 square feet/200,000 square feet	= 4.12 lots
Bonus residential density	=15%
Additional bonus density	= 20%
Total lot yield-rounded	= 5.6 lots
Total lots allowed	= 6 lots
Total lots proposed	= 5 lots

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, the latest versions of which were received by PDS on December 3, 2008 (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 approximately 66.3% (12.6 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the

project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

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

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

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

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC, 30.41C SCC, and Chapter 2.02 SCC.
2. The Examiner must review the Kalmakoff 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 August 12, 2009 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above, and this Decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. Construction plans shall be submitted for review and approval by PDS.
 - iv. A full drainage plan shall be submitted for review and approval for the construction of the plat.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The dwelling units within this development are subject to park impact fees (Kayak Point # 301) in the amount of \$811.29 per newly approved dwelling unit pursuant to Chapter

30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”

- ii. “SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

\$2,526.48 per lot for mitigation of impacts on county roads paid to the county.

\$677.71 per lot for mitigation of impacts on Arlington streets paid to the city.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

- iii. The final plat shall show a 70-foot right-of-way reservation along the east property line for future extension of 76th Avenue NW.

- iv. “In consideration of the access approval, the owners of the lots in the development, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the sixty (60) foot wide access easements (recorded under AFN 9206120489, 9410110300 and 200805230499) and private road north of the existing right-of-way for 80th Drive NW to public road right-of-way at any time the county determines a public road is necessary, or a public road is required for further development of any lots that have access to or abut on said road. The owners of the lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the county, to accomplish the dedication and/or conversion of the private road to the county for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public 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 1 existing parcel. Lot 1 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 SCC 30.91N.010 are allowed when approved by the County."

- vii. "The Open Space Management Plan (Exhibit A.2) shall be implemented."
- viii. "Well protection zones are shown in the Snohomish Health District records for Lots 1, 2, 3, 4, and 5 of 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."
- ix. "All utilities shall be placed underground."
- x. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."
- xi. "The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation as indicated in the Preliminary Landscape Plan. (Exhibit B.3)"
- xii. "The lots in this subdivision do not qualify as duplex lots per Snohomish County Code."

D. Prior to recording of the final plat:

- i. The paved hammerhead turnaround shall have been constructed north of the current pavement end for 80th Drive NW within the existing right-of-way, in accordance with the EDDS and to the satisfaction of PDS/DPW.
- ii. Construction of an offsite walkway to the nearest bus stop location for the public school students as identified by the Stanwood-Camano School District (currently the

intersection of 325th Street NW and 80th Drive NW) must have been completed along the existing and extended section of 80th Drive NW between 325th Place NW and where the private gravel road takes a 90 degree turn to the east (the future intersection), in accordance with the EDDS and to the satisfaction of PDS /DPW.

- iii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iv. Utilities shall be located underground.
- v. The preliminary landscape plan (Exhibit B.3) shall be implemented. All required sight-obscuring buffer landscaping shall be installed in accordance with the approved landscape plan. All required detention facility landscaping shall be installed.

E. In conformity with applicable standards and timing requirements:

- i. The Open Space Management Plan shall be fully implemented.
- ii. PDS shall review the sight- obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the sight-obscuring buffer.

F. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:

- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
- ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space in as required by the Open Space Management Plan (Exhibit A.4).

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

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

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

Decision issued this 14th day of January, 2010.

Barbara Dykes, 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 **JANUARY 25, 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 **JANUARY 28, 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.