

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: March 5, 2012

PLAT/PROJECT NAME: **THOMAS SHIRE ESTATES**

APPLICANT/
LANDOWNER: Darryl and Lora Thomas
12632 Wagner Road
Monroe, WA 98272

FILE NO.: 09-101363 SD

TYPE OF REQUEST: Preliminary Subdivision Approval – RCS
Under former Chapter 30.41C SCC

DECISION (SUMMARY): APPROVED WITH CONDITIONS

BASIC INFORMATION

LOCATION: 2120 44th Street NE, Lake Stevens, WA 98258

ACREAGE: 19.14 acres

NUMBER OF LOTS: 8

AVERAGE LOT SIZE: 20,000 square feet
MINIMUM LOT SIZE: 20,000 square feet
GROSS DENSITY: 0.42 du/ac

GMACP DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic), within the Rural/Urban
Transition Area (RUTA) Overlay

ZONING: R-5

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

SCHOOL DISTRICT: Lake Stevens School District No. 4
FIRE DISTRICT: Snohomish County Fire District No. 8

PDS STAFF RECOMMENDATION: *Approve with conditions*

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

FINDINGS OF FACT

1. **Regulatory Review and Vesting.** An application was submitted to the Department of Planning and Development Services (PDS) on March 12, 2009 and was vested as of April 9, 2009 for purposes of regulatory review. (Exhibits A.1, A.2, K) The 120-day clock started on April 9, 2009. PDS provided its review comments to the Applicant on May 26, 2009. (Exhibit H) A request for an application deadline extension was received on May 6, 2009 (Exhibit A.6), which was approved on May 27, 2009 (Exhibit G.2). Two years later, the Applicant resubmitted its proposal on March 9, 2011. PDS and the Applicant exchanged plan sets and review comments one more time and the project was determined to meet regulatory requirements on January 4, 2012. The Applicant waived the 120-day timelines applicable in this case. As of the date of the public hearing, 114 days of the 120-day timeline had elapsed.
2. **Public Hearing.** A public hearing was held on February 22, 2012. Appearing at the hearing on behalf of PDS was Ed Caine. Ry McDuffy appeared on behalf of the Applicant. Several members of the public were present, but no person asked to testify or provide additional comments as to the pending application.
3. **The Record.** All of the exhibits shown on the master List of Exhibits (Exhibits A.1 through J.1) were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. After the public hearing, the Hearing Examiner called for additional information from PDS, because information relating to recommended transportation improvements required by Chapter 30.66B SCC was inadvertently omitted from the record, although it was referenced in the Staff Recommendation. (See, Exhibit K.1 and K.1a) The requested information was received on February 27, 2011, in the form of a report prepared by Mark Brown dated March 22, 2011. (See, Exhibit K.2). The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits E.1, E.2, F.1, F.2 and F.3)

A. Background Information

5. **Applicant's Proposal:** The Applicant is requesting an 8-lot Rural Cluster Subdivision (RCS) on a 19.14 acre parcel. The parcel is located in an area designated as a Rural Urban Transition Area (RUTA) and is zoned R-5. Sixty-seven percent of the site is designated as Interim Open Space. Access to each lot is by individual driveways off of a new private road, taking access off of 44th St. NE. Each lot will be served by an individual septic system and potable water will be provided by Snohomish County PUD No. 1.
6. **Existing Conditions.** The site is bounded by 44th St. NE to the north and by the Centennial Trail, a County Parks trail system, to the south. The central portion of the site is upland, with a

Category 3 wetland located on the northwestern portion of the site, and Category 4 wetlands located on the eastern and southern portions of the site. The central and eastern portion of the site is pasture, with trees within the northwestern and southern wetland areas. The site contains a single family residence, with outbuildings. Surrounding properties are zoned R-5. Other properties in the area are either developed as single family residences or are undeveloped.

7. Issues of Concern:

- A. Agency Comments. No issues of concern were raised after technical and agency reviews.
- B. Citizen Comments. In response to the Notice of the SEPA Determination and Public Hearing, PDS received two (2) public comments (Exhibits I.1 and I.2) and one agency comment (Exhibit I.3). The public comments express concerns regarding drainage, traffic, and impacts to the existing wells in the area. The Applicant and PDS have addressed each of those concerns, as documented in the Staff Recommendation (Exhibit I), and through the testimony of Ed Caine and Ry McDuffy presented at the public hearing.

B. Compliance with Codes and Policies.

- 8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within Centennial Park Service Area, No. 306, and is subject to Chapter 30.66A SCC, which requires payment of \$1,361.22 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies.
- 9. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC, EDDS, and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards. (See, Exhibit K.2)
 - A. Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). A development shall mitigate its impact upon the future capacity of the Snohomish County 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. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330.

PDS has reviewed the proposal and determined that an impact fee in the amount of \$26,595.03 is owed for impacts to County roads within TSA "B", based upon 9.57 ADT per unit (with certain allowed deductions and credits), for a total new ADT of 66.99 trips for the entire proposal. The amount to be paid per single family residence is \$3,799.29.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and was deemed concurrent as of June 2, 2009. The concurrency

determination approval expires on June 2, 2015, six years from the date concurrency was given.

The subject development is located in TSA "B" which, as of the date of submittal, had the following arterial units in arrears: Unit # 238 – 20th St. SE from SR 2 WB Trestle Entrance to SR 9. This unit is no longer in arrears. Based on peak-hour trip distributions, the subject development will not add three (3) or more directional peak-hour trips to this arterial unit. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent. The development generates 5.25 a.m. peak-hour trips and 7.07 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

Finally, the subject proposal will not impact any IRC locations identified at this time within TSA 'B' 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 inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

- B. Frontage Improvements (SCC 30.66B.410) DPW Rule 4222.020(1) requires full rural frontage improvements along the subject parcel's frontage on 44th St. NE which consist of: Asphalt concrete pavement consisting of 18 feet in width from roadway/right-of-way centerline with a 7 foot paved shoulder. The Applicant submitted a deviation request to the County Engineer to construct a partial improvement from the new access point on 44th St. NE to the western property boundary (Exhibit G.1). The proposal is for a 4 foot paved shoulder in this area in order to avoid wetland impacts. The request was approved. The Hearing Examiner finds that no additional frontage improvements are necessary to mitigate impacts of the proposed development.
- C. Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Department of Public Works (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items.

The DPW performed a site inspection of the subject property on May 28, 2009. Stopping and intersection sight distances were evaluated at the proposed entrance to the subject development on 44th St. NE. Stopping and intersection sight distances were found to meet the minimum requirements of EDDS 3-08.

Access to Lots 1 through 8 is shown to be by a private road off of 44th St NE. The new private road is proposed to be 20 feet wide within a 40 foot road tract that terminates in a 50 foot radius cul-de-sac. The new private road meets the minimum private road standards per the EDDS 3-060, and the minimum standards for road ends per the EDDS 3-150. Vertical and horizontal curves for the new private road within the subject development conform to the EDDS Table 3-4 for horizontal curves, and the EDDS Table 3-5 for maximum grades. The new private road angle of intersection with 44th St. NE meets the minimum standards of EDDS Section 3-09(A).

According to SCC 30.41A.210(1), all subdivisions shall be served by an open, constructed, and maintained public road to which the road system within the subdivision must connect. However, according to SCC 30.41A.210(3)(C), private roads may be permitted as part of a rural cluster subdivision where specifically approved by the County Engineer. The Applicant has submitted a request to allow the use of a private road

within the boundary of the subject development. The use of private roads is acceptable to the DPW.

- D. In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and discussion set forth in Exhibit K.2, and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

- E. Right-of-Way Requirements (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 road serving this development, 44th St. NE, is designated as a non-arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, 15 to 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate varying widths of additional right-of-way, between 0 and 15 feet, depending upon the specific location. The required right-of-way dedication is adequately shown on the preliminary plat plan (Exhibit B.1). A condition requiring the dedication of right-of-way has been included.

44th St. NE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credit towards the Applicant's impact fee for the dedicated right-of-way that is more than 30 feet from centerline is not applicable.

- F. Impacts to State Highways (SCC 30.66B.710) No impacts to state highways have been found as a result of the subject development application. The Washington State Department of Transportation (WSDOT) reviewed the Applicant's offer, and concurred that no mitigation is required (Exhibit H.8).

- G. Impacts to City Streets and Roads (SCC 30.66B.720)

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

Here, Snohomish County has an ILA with the City of Granite Falls and this development is within the influence area that requires traffic mitigation be considered for the City. The development is located within the CO-GF-8 mitigation sub-area; ten percent of the development's trips will pass through the City of Granite Falls. According to the Applicant's traffic study (Exhibit C.1), the Applicant submitted a traffic mitigation offer to the City of Granite Falls in the amount of \$1,750.00 (or \$250.00 per lot).

The City of Granite Falls was provided notice of application for this project and an opportunity to comment. Comments from the City have been received (Exhibit H.1). The City of Granite Falls agrees to the mitigation offer proposed by the Applicant. The County has reviewed the City of Granite Falls' requested mitigation and written proposal for mitigation submitted by the Applicant and has determined that the proposed

mitigation measures are reasonably related to the impacts of the development. A recommend condition has been included to require the City of Granite Falls' mitigation.

H. 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.

10. Pedestrian Facilities (RCW 58.17.110)

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision, as well as the adequacy of pedestrian or bicycle facilities. The need for safe pedestrian facilities has been analyzed by PDS and the Lake Stevens School District. (Exhibits H.7 and I) Comments from the School District indicate that elementary, middle, and high school students residing in the proposed development will be picked up by bus at the entrance to the development. The School District has requested that a waiting area be provided for school children at the entrance to the development. The provision of a school bus waiting area has been included as a condition of approval.

The School District is not requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. The County's current adopted County-wide Bicycle Facility System Map became effective on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required.

The Examiner finds that proposed facilities are consistent with the County Code, EDDS, and the rural character of the surrounding area. The Examiner further finds that no school children will be required to walk to school from the site and that the facilities will provide for the general public health, safety and welfare.

11. 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. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for Lake Stevens School District No. 4, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibits H.7 and I) Credit is to be given for one existing lot on the subject property. Payment of school impact fees has been included as a condition of approval of the development.

12. Drainage and Grading (Chapters 30.63A and 30.63B SCC) This project is vested to the codes in effect at the time of complete permit application, which was April 9, 2009. The new Land Disturbing Activities (LDA) regulations were not in effect at that time. Therefore, the application is subject to the provisions of *former* Ch. 30.63A SCC (Drainage Code) and Ch. 30.63B (Grading Code).

A. Grading. A private road will be constructed in Tract 996 as shown on the face of the plat. Lot access will be provided off this new private road. Approximately 1.53 acres of new impervious surfaces are proposed for the development, along with more than 100 cubic yards of grading. Frontage improvements also are required for this development, but less than 5,000 square feet of new impervious surface is proposed in the right of way.

Based on the volume of grading greater than 100 cubic yards, an LDA permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the 2005 DOE Stormwater Manual, are required.

- B. Stormwater Drainage. Stormwater quantity mitigation is proposed to be addressed by constructing a detention pond in Tract 997. Water quality is proposed to be addressed by construction a grass lined swale in Tract 999. The Applicant proposes greater than 5,000 square feet of new impervious surfaces which meets the definition of major development activity. As such, a full drainage plan is required pursuant to SCC 30.63A.120(b). Frontage improvements are required and construction plans are necessary to address work in the right-of-way.

PDS Engineering staff has reviewed the concept offered and recommended approval of the project, subject to the recommended conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. With the inclusion of the proposed conditions of approval, the Hearing Examiner finds that the Applicant has sufficiently demonstrated that code requirements and standards for storm water drainage, grading, water quality treatment, and construction stormwater pollution prevention can be met with development of this proposed site. Conditions have been included to require the approvals for the drainage plan, grading permit, and SWPPP.

13. Critical Areas Regulations (former Chapter 30.62 SCC)

Permanent wetland and buffer impacts including indirect impacts are proposed for this development. Proposed impacts are consistent with the provisions outlined in SCC 30.62A.320(2) and SCC 30.62A.340(3). Critical area impacts are proposed in disturbed pasture areas and within disturbed native scrub-shrub vegetation. The project has been designed to minimize impacts and to limit development impacts within areas that have been historically disturbed. Mitigation is proposed on site and consists of wetland and buffer creation, enhancement, buffer averaging and dedication of additional buffer. The proposed mitigation measures are consistent with mitigation ratios established by Table 3 in SCC 30.62A.320(3) for buffer impacts, and Table 4 in SCC 30.62A.340(4) for wetland impacts. A detailed analysis of wetland impacts, buffer impacts and proposed compensatory mitigation is outlined in the *Impact Mitigation Table* on page 14 of the Critical Area Study prepared by *Wetland Resources Inc. revised April 7, 2011* (Exhibit C.3).

Overall impacts for the proposed development consist of 4,780 square feet of Category III and Category IV wetland impacts. Total buffer impacts equal 18,517 square feet. Indirect impacts include designation of 15,300 square feet of wetland as buffer. The Type Ns stream adjacent to 44th St. NW shall be relocated due to required frontage improvements.

A summary of the proposed mitigation measures include; 7,821 square feet of wetland creation, 18,081 square feet of wetland enhancement, 16,725 square feet of buffer will be enhanced and 6,593 square feet of buffer averaging pursuant to the provisions outlined in SCC 30.62A.320. Additional 48,781 square feet of buffer will be designated as a Critical Area Protection Area (CAPA) to compensate for the designation of wetland as buffer. The Type Ns stream will be placed in a more natural channel and shall be done in accordance with the approved HPA approved mitigation plan as submitted.

Currently the property contains 296,934 square feet (6.82 acres) of wetland area, 230,160 square feet of buffer (6.40 acres) and two Type Ns streams. Post development the recorded

CAPA for this plat shall be comprised of 304,755 square feet of wetland (6.99 acres), 278,940 square feet of buffer (6.40 acres) and two Type Ns streams. All critical areas including mitigated and enhanced areas will be established in separate tracts pursuant to SCC 30.62A.160(3) SCC and designated as Critical Area Protection Areas (CAPA) to be permanently protected pursuant to SCC 30.62A.160. Conditions have been included to implement the critical area requirements.

An evaluation of the information submitted in the revised application has resulted in a determination that the application is 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.

Recommended conditions are included to establish the Native Growth Protection Areas (NGPA) and to provide the required NGPA protections. In addition, a condition is included to require the off-site area containing the drainage easement to be recorded in a Critical Area Site Plan (CASP).

With the recommended conditions, the Hearing Examiner finds that the project complies with the requirements for the protection of Wetland and Fish & Wildlife Habitat Conservation Areas provisions contained in Chapter 30.62A SCC. (Exhibits C.3) The Hearing Examiner further finds that the application is consistent with the purpose and objectives of the chapter, to safeguard the public health, safety and welfare.

14. 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 (RR: 1 du/5 acre, Basic). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

15. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on May 18, 2009. (Exhibit G.3)
- B. Electricity. The Snohomish County PUD No. 1 notified the County on April 1, 2009 that they can provide electrical service to the development. (Exhibit G.4)
- C. Water. Potable water will be supplied by Snohomish County PUD No. 1. A Certificate of Water Availability was provided on March 27, 2009. (Exhibit G.5)

16. International Fire Code (Chapter 30.53A SCC)

Review comments were requested from Snohomish County Fire District # 8 on March 13, 2009. The District did not respond to the request. The Office of the Fire Marshal completed the review of the project on May 26, 2009. (Exhibit I) The project was recommended for approval with the following comments and recommended conditions of approval:

- A. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A. 520. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.
- B. The minimum required fire flow for this project has been determined to be 1,000 gpm at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.520 (16), the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2-hour duration can be provided. 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.
- C. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Either signage or pavement striping on both sides of the access road shall be provided if the access road is less than 28' in width. Either signage or pavement striping on one side of the access road shall be provided if the road is at least 28' wide but less than 36' wide. The required signage and striping shall state "NO PARKING – FIRE LANE" to ensure access availability. If pavement striping is used, then curbs are required with the curbs painted yellow with black lettering.
- D. Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.512 and we have no further requirements.

17. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. (Exhibits D.1, D.2, D.3 and I)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on January 6, 2012. (Exhibits E.1, E.2, F.1, F.2, F.3) Notice was properly given of the SEPA determination. *Id.* The DNS was not appealed. The requirements of SEPA have been met.

19. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads, except where an EDDS deviation has been approved. In addition, the subdivision meets all of the County's other transportation and road regulations and design standards. The Examiner finds that all 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) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed

conditions included in the PDS Staff Recommendation. (Exhibit I) Accordingly, the Hearing Examiner finds that 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.

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

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The PDS staff analysis relating to the Rural Cluster Subdivision requirements set forth in Exhibit I, Pages 11 through 14 are hereby incorporated herein as if set forth in full. The Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements. Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit I, the subdivision complies with the provisions of:

SCC 30.41C.010 (clustering lots),
SCC 30.41A.200(1) (critical areas protection)
SCC 30.41C.200(2) (vegetated sight-obscuring buffers),
SCC 30.41C.200(3) (access roads),
SCC 30.41C.200(4) (utilities),
SCC 30.41C.200(5) (unbuildable land),
SCC 30.41C.200(6) (buffers for resource land),
SCC 30.41C.200(7) (designated resource land disclosure statements),
SCC 30.41C.200(8) (mineral resource land disclosure statements),
SCC 30.41C.200(9) (location of open space tracts near tracts on adjacent properties).
SCC 30.41C.200(10) (open space management plan),
SCC 30.41C.200(11) (physical separation of clusters),
SCC 30.41C.200(12) (lots abutting open space or buffer),
SCC 30.41C.200(13) (design fits with natural features and maintains rural character),
SCC 30.41C.200 (14) (no sanitary sewers absent health order),
SCC 30.41C.200(15) (Location of lot clusters),
SCC 30.41C.200(16) (location within fire district required),
SCC 30.41.C.200(17) (rural concurrency standards), and
SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations).

21. 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 (Exhibits B.1, B.3), and an Open Space Management Plan (Exhibits A.2, A.4). The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 8 through 20. 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 50% 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.

22. 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 pedestrian facilities for students.

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

23. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, 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. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based County codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the RCS application meets the requirements of Chapter 30.41C and should be approved as described in that Chapter.
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 of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

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

CONDITIONS

- A. The preliminary plat received by PDS on December 21, 2011 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:**
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.
 - iii. A final mitigation plan based on the Mitigation Plan – Thomas Shire Estates as prepared by Wetland Resources, Inc. dated April 7, 2011, and date stamped received by PDS on April 11, 2011 (Exhibit C.3) shall be submitted for review and approval during the construction review phase of this project.
 - iv. Construction plans and a Full Drainage Plan shall be submitted for review and approval.
 - v. A Land Disturbing Activities (LDA) permit shall be obtained, including the Stormwater Pollution Prevention Plan (SWPPP).
- C. The following additional restrictions and/or language 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 \$1,361.22 (Centennial # 306) 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 or twice the amount shown for a duplex:

\$3,799.29 per lot for mitigation of impacts on County roads paid to the County. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per-lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

\$250.00 per lot for mitigation of impacts on City streets for the City of Granite Falls paid to the City. Proof of payment of the above amount shall be provided to the County.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot[s] therein.”
- iii. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District No. 4 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 one existing parcel. Lot 1 shall receive credit.”
- iv. All Critical Areas shall be designated Critical Area Protection Area (CAPA) in accordance with Section 30.62A.160 SCC containing the following restrictive language; “In consideration of Snohomish County Code requirements, except as otherwise provided herein, the CAPA (Critical Area Protection Area) 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 within said CAPA, except the allowed activities set forth in Snohomish County Code (30.62A.010(2), 30.62A.510, 30.62A.530) when approved by the County.”
- v. “Agricultural uses are proposed within open space Tracts 995 and 999 of the development. A minimum of a 25-foot buffer is required from lot property lines for plowing, tilling, mowing, and placement of small gardens. A minimum of a 50-foot buffer is required from lot property lines for livestock, including barns, livestock in pastures, and placement of manure.”
- vi. “Lots within a rural cluster subdivision or short subdivision, and adjacent to or within 1,300 feet of agricultural or forestry uses located in a designated open space tract may be subject to inconvenience or discomforts arising from agricultural or forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind, timber harvest, brush control, the storage and disposal of manure, the application by spraying or otherwise of chemical and organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural or forestry activities.”
- vii. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A. 520. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300

feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.

- viii. “The minimum required fire flow for this project has been determined to be 1,000 gpm at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.520(16), the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 1,000 gpm at 20 psi for a 2-hour duration can be provided. 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.”
- ix. “Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. Either signage or pavement striping on both sides of the access road shall be provided if the access road is less than 28’ in width. Either signage or pavement striping on one side of the access road shall be provided if the road is at least 28’ wide but less than 36’ wide. The required signage and striping shall state “NO PARKING – FIRE LANE” to ensure access availability. If pavement striping is used, then curbs are required with the curbs painted yellow with black lettering.”
- x. “The approved Landscape Plan for the Sight Obscuring Buffers, including maintenance, shall be fully implemented by the Homeowner’s Association.”
- xi. “The approved Open Space Management Plan, including maintenance, shall be fully implemented by the Homeowner’s Association.”
- xii. “All utilities shall be placed underground.”
- xiii. Appropriate right-of-way shall be dedicated to the County to establish a 30-foot right-of-way width from the right-of-way centerline on the development’s side of the right-of-way.

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel’s frontage on 44th St. NE to the satisfaction of the County.
- ii. A waiting area shall be provided at the entrance to the development to the satisfaction of the County.
- iii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The Applicant may use other permanent methods and materials provided they are first approved by the County. Where a CAPA 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.
- iv. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per critical area feature, and at least one Type 1 sign shall be placed in any lot that borders CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- v. The Final Mitigation Plan shall have been implemented, completed and inspected by PDS.
- vi. A Land Use Binder for the Interim Open Space shall be recorded with the County Auditor.

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 seven (7) 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 5th day of March, 2012.



Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before March 15, 2012**. 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before March 19, 2012**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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.