



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Gordon Sivley
Hearing Examiner

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DATE OF DECISION: April 5, 2013

PLAT/PROJECT NAME: **Woods at Warm Beach**

APPLICANT/
LANDOWNER: Murray Property Management
4943 Ocean Avenue
Everett, WA 98203

FILE NO.: 11-106296-000-00-SD

TYPE OF REQUEST: Preliminary Subdivision Approval – RCS

DECISION (SUMMARY): APPROVED SUBJECT TO CONDITIONS

GENERAL LOCATION: 19626 Marine Drive, Stanwood

ACREAGE: 22.6 acres

NUMBER OF LOTS: 7

AVERAGE LOT SIZE: 43,148 square feet
MINIMUM LOT SIZE: 29,555 square feet
GROSS DENSITY: 0.31 du/ac

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

ZONING: R-5

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

SCHOOL DISTRICT: Stanwood-Camano District No. 401
FIRE DISTRICT: Snohomish County Fire Protection District No. 14

PDS STAFF RECOMMENDATION: Approve with conditions

BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence at the hearing on March 27, 2013 (Exhibits A.1 through I), as well as the testimony of witnesses received at the Open Record Hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case and the Hearing Log are available at the Hearing Examiner's Office.

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearings.
3. Public Hearing. A public hearing was held on March 27, 2013. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notices of the application and public hearing were issued according to the provisions of SCC 30.70.050. (Exhibits F.1, F.2, and F.3) Notice was concurrently given concerning the SEPA Threshold Determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code.

At the hearing on March 27, 2013, David Levitan and Ken Crossman appeared and testified on behalf of the Department of Planning and Development Services (PDS). Appearing for the Applicant was Jon Rickey representing Murray Property Management and Richard Deccio of Deccio Engineering.

In addition, some interested citizens appeared at the public hearing. The following people offered testimony on the proposal: Roger Hill and Bob Landles.

4. Site Visit. The Examiner conducted a site visit to the subject property on March 22, 2013.

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. Applicant's Proposal: The Applicant is requesting a 7-lot Rural Cluster Subdivision of approximately 22.6 acres into seven single-family lots. The lots will be accessed via a private access tract (Tract 997) that extends westerly from Marine Drive and which ends in a cul-de-sac. The Warm Beach Water Association will provide water service, while sewage disposal will be by individual on-site septic tanks and drainfields. Access to the site will be via an existing driveway that connects to Marine Drive.
2. Site Description and Surrounding Uses. The project site is 22.6 acres and is located approximately 500 feet east of Port Susan Bay. The site is primarily undeveloped mixed forest, consisting of red alder, western red cedar, Douglas fir, big leaf maple and western hemlock in the canopy and salmonberry, Himalayan blackberry, red elderberry, sword fern and stinging nettle dominating the understory. The topography slopes from the southeast to the northwest, with slopes ranging from 3 to 6 percent. Five Category III depressional wetlands have been identified on the northern half of the site. Adjacent and surrounding uses within 1,500 feet of the parcel are single-family residential and zoned R-5 (Exhibit D.2). Properties further to the north

are zoned Forestry and Recreation (Warm Beach Camp and Conference Center), PRD-20,000 (a rural planned residential development of mobile homes) and A-10 (agriculture).

3. Project Chronology. The Rural Cluster Subdivision application was originally submitted to PDS on September 14, 2011. The 120-day clock started on October 12, 2011, when the submittal was determined to be complete for regulatory purposes, and stopped on November 22, 2011, when a review packet was provided to the Applicant's contact. A resubmittal of the application was received on November 19, 2012, which was determined on December 3, 2012 to be sufficient for further review. As part of the resubmittal package, the Applicant included a letter (Exhibit A.7) waiving the 120-day clock.
4. State Environmental Policy Act Compliance. PDS issued a Determination of Nonsignificance (DNS) (Exhibit E.2) for the subject application on February 24, 2013. The DNS was not appealed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
5. Issues of Concern:

- A. Agency Comments. The Stanwood-Camano School District requested that an off-street waiting area for school children be provided at the entrance of the development.

In addition, the Stillaguamish Tribe of Indians initially requested that the Applicant complete an archaeological survey of the project site. (Exhibit G.4) When it appeared that the Tribe's request had not been received by the Applicant, the Tribe later asked the County to request that an Inadvertent Discovery Plan be in place prior to construction, and that the Stillaguamish Tribe have the option of having tribal monitors present during ground disturbance. However, SCC 30.32D.200 only requires applicants to prepare an archaeological survey if their site is recorded as a known archaeological site on the Washington State Department of Archaeology and Historic Preservation's Geographic Information System (GIS). PDS indicated that the project site is located on the State's predictive model, but is not recorded as a known archaeological site. Therefore, the County has no legal basis for requiring an archaeological survey for this project. Instead, PDS Staff has requested that the Applicant be required to contact the Stillaguamish Tribe and the State of Washington Department of Archaeology and Historic Preservation to determine procedures for any cultural resources that may be discovered during construction of the project.

- B. Citizen Comments. Correspondence from eight citizens was received by PDS. (Exhibits H.1-H.8) These commenters included Arlen Hill, the Warm Beach Stewards, Tim Clancy, Paul Kellogg, Ross Kane, Keith and Donna Rex, Lisa Biehl, and Jennifer Matheson. They expressed concerns regarding the following subjects:

Stormwater: A number of the issues raised were related to concerns about drainage and stormwater infiltration/dispersal/discharge on the site, and the project's potential impacts on surrounding properties. These concerns, particularly regarding impacts to both the drainage ditch on Soundview Drive to the west of the subject site and the potential for eventual discharge to a fish bearing stream southwest of the site were also raised by Mr. Hill and Mr. Landles in public hearing testimony.

Landscaping and Tree Removal: Landscaping requirements (most notably the sight obscuring buffers), the protection of the Critical Area Protection Area (CAPA) tract and

the extent of clearing were concerns voiced by the comment letters and public testimony.

6. Approval criteria.

A. Subdivision Approval.

In order to grant preliminary subdivision approval, the Examiner must find that the Applicant has met the approval criteria set forth in SCC 30.41A.100 et seq. The Examiner considers each regulation in turn.

(i) Park and Recreation Impact Mitigation (Chapter 30.66A SCC). The proposal is within Kayak Point Park Service Area 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. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with County policies.

(ii) Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC). The 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.

(a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC).

(1) Road System Capacity Impacts (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 impact fee for this proposal is based on the new average daily trips (ADT) generated by 7 new homes, which is 9.57 ADT/home. This rate comes from the 8th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 66.99 new ADT. The proposal is located within TSA A and because an annexation to the City of Marysville removed a significant number of impact fee projects that were listed in the TNR Appendix D Impact Fee Cost Basis used in determining the road system impact fee within TSA A, the Director of Public Works, in accordance with SCC 30.66B.310(1)(a), adjusted the amount of the Road System Impact Fee in SCC 30.66B.330 from \$264.00 to \$50.00 per ADT. Thus, the proposal has a road system capacity impact fee of \$3349.50 (\$478.50/lot) based on \$50.00/ADT. The impact fee payments are due in accordance with the provisions of SCC 30.66B.340. Payment of such impact fees as mitigation for impacts to County roads demonstrates compliance with SCC 30.66B.310.

(2) Concurrency (SCC 30.66B.120). The County makes a concurrency determination for each development application to ensure the development will not impact a County arterial unit in arrears or cause a County arterial to go in arrears. The subject development is located in TSA A which, as of the date of

submittal, had no arterial units in arrears. Therefore, pursuant to SCC 30.66B.130(4), the development was determined concurrent. The proposed development generates 5.25 AM peak-hour trips and 7.07 PM peak-hour trips which is less than the threshold of 50 peak-hour trips and, therefore, the development was not evaluated under SCC 30.66B.035.

The development was determined to be concurrent as of October 5, 2011. The concurrency determination expires six years from the date of the determination, in this case October 5, 2017. (Exhibit I)

(3) Inadequate Road Conditions (SCC 30.66B.210). Regardless of the existing level of service, development which adds three or more PM peak-hour trips to a location in the road system determined to have an existing Inadequate Road Condition (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 Department of Public Works (DPW) has determined that the subject development proposal will not impact any IRC locations identified within TSA A with three or more of its PM peak hour trips, nor will it create any IRC. Therefore, 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 SCC 30.66B.210.

(b) 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 is to be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if necessary.

The subject parcel has no frontage on an opened, constructed, maintained public road. Access will be provided via a private road easement that connects to Marine Drive. Standards for this road will be addressed under the Access and Transportation Circulation section (SCC 30.66B.420) below.

(c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC). 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 proposed development will take access from Marine Drive. Sight distance was evaluated at the proposed access point and was found to meet the minimum requirements of EDDS 3-08. The centerline road radius is 300 feet, which exceeds the required minimum of 165 feet.

The internal road is classified as a non-arterial local access road serving 10 ADT. The design speed for the road is 25 mph. The road standard will be 24 feet of paved driving surface and a five foot separated walkway. The road shown on the plans generally meets the minimum requirements of EDDS. Road vertical and horizontal curve/grade requirements are met.

Based on the above, the proposed access is acceptable to the DPW. A condition has been included requiring the Applicant to construct the new private road to EDDS standards.

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 Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with the requirements of SCC 30.66B.430.

(d) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520). A development is 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. Since the site does not front on a public road, right-of-way dedication will not be required.

(e) Impacts to State Highways (SCC 30.66B.710). When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement (ILA) between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

The Applicant's traffic study indicates that since no State projects will be impacted by three or more directional trips, mitigation should not be required for the State. Comment was requested but was not received from the State on the subject development. In accordance with the ILA between the County and the State, since more than 21 days passed after the request for comment was made, the County may assume that the State has no comment.

(f) Impacts to City Streets and Roads (SCC 30.66B.720). Mitigation requirements for impacts on streets inside cities and roads in other counties are to be established consistent with the terms of a Reciprocal Traffic Mitigation ILA between the County and the other jurisdictions.

Here, Snohomish County has an ILA with the City of Arlington. The project is located within the mitigation subarea for the City of Arlington. However, the Applicant's traffic study (Exhibit C.1) indicates that the project will not impact any of the City's planned improvements with three or more directional peak hour trips and, therefore, should not be required to contribute any mitigation payments to the City of Arlington. The County also has an ILA with the City of Stanwood and the project is located within the mitigation subarea for the City of Stanwood. As in the case of the City of Arlington, the Applicant's traffic study indicates that the project will not impact any of the City of Stanwood's planned improvements with three or more directional peak hour trips and, again, should not be required to contribute any mitigation payments to the City of Stanwood.

(g) 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.

Based on the Findings of Fact set forth above, the Examiner finds that the proposed subdivision as conditioned, will meet the County's traffic mitigation and road design standards.

(iii) Pedestrian Facilities (RCW 58.17.110) The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. The need for safe pedestrian facilities has been analyzed by PDS and the Stanwood-Camano School District. Comments from the School District indicate that the students who live in the development will be picked up at the entrance to the development on Marine Drive. The School District requests that a waiting area be provided at the pick-up location. The School District is not requesting additional off-site pedestrian facilities, nor does the Examiner find that any such off-site facilities are necessary.

(iv) Bicycle Facilities. The County's currently adopted County Wide Bicycle Facility System Map became effect 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.

(v) 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 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. (Exhibit G.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.

(vi) Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A, 30.63B and 30.63C SCC).

The 22.6 acre site is covered with second growth forest, and slopes from the south-west to the north-east at a range of 3 to 6 percent. The soils have been identified as Alderwood and Everett series per the SCS Soil Survey for Snohomish County. While some neighboring property owners have stated that the drainage ditch along Soundview Drive occasionally overtops during severe storm events, PDS indicated that no drainage complaints or flooding conditions have been identified by County Surface Water Management staff or the Applicant's engineer.

The Applicant proposes 38,500 square feet of new pollution generating impervious surfaces (PGIS) to include driveways and the internal road system. The Applicant proposes that individual roof runoff use infiltration systems. Roadway and driveway PGIS is proposed to be mitigated through Low Impact Development (LID) Best Management Practice (BMP) 5:30, Full Dispersion. The roadway will receive additional water quality treatment by being discharged to a 200 foot biofiltration swale. Non-pollution generating impervious surface (NPGIS) runoff is proposed to be discharged to native vegetation. While the neighbors who commented raised understandable concerns about the drainage design of the project in light of local soil conditions, considering all of the evidence presented, the Examiner finds that the drainage design proposed is appropriate for this site.

The Applicant proposes greater than 5,000 square feet of new impervious in its drainage basin. Therefore a Full Stormwater Site Plan will be required prior to final plat approval and will be subject to Minimum Requirements 1-9 of Chapter 30.63A SCC and the Snohomish County

Drainage Manual. A Stormwater Pollution Prevention Plan (SWPP) is also required in accordance with Volume 2 of the Snohomish County Drainage Manual prior to construction.

PDS (Engineering) has reviewed the concept offered and determined it to be in conformance to all County regulations and requirements, subject to conditions which will be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Grading quantities are anticipated to be approximately 924 cubic yards of cut and 924 cubic yards of fill, primarily for road, drainage facility, and home site construction. As grading amounts exceed 100 cubic yards, a land disturbing activity (LDA) permit will be required. Water quality will 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.

PDS determined that, based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the SCC 30.63A and SCC 30.63B and the Drainage Manual.

(vii) Critical Areas Regulations (Chapters 30.62A, 30.62 B, and 32.62C SCC).

A Critical Areas Study for the site was prepared by Wetland Resources, Inc. on October 15, 2010, with a revised date of April 24, 2012. (Exhibit C.3) The site assessment conducted by Wetland Resources identified and categorized five jurisdictional wetlands on the site. The wetlands are located in the northern portion of the site. All five wetlands are classified as depressional. The wetlands rating score for each of the wetlands varied between 30-50 points and equates to a Category III wetland classification. Category III wetlands require the establishment of 60-foot protective buffers pursuant to SCC 30.62A.230, Table 1. No other critical areas were identified within 300 feet of the subject site's boundaries.

The overall project design clusters development in order to minimize overall project impacts. Approximately 15-acres of the property will be placed in restrictive open space. The five jurisdictional Category III wetlands and prescriptive buffers will be placed in a separate tract. No disturbance is proposed within the wetlands, buffers or restricted open space areas. The project has been designed to avoid critical area impacts and no critical area mitigation is required for this subdivision.

PDS has reviewed the Critical Areas Study and determined that the application is in conformance with Chapter 30.62A SCC (critical areas regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

(viii) International Fire Code (Chapter 30.53A SCC).

PDS indicated that the Office of the Fire Marshal completed review of the project on October 19, 2011 and determined that the project was in compliance with Chapter 30.53A SCC, provided it complies with the following conditions:

(a) Fire flow and fire hydrants must be provided in accordance with Snohomish County Code 30.53A.514 through 30.53A.520. Fire hydrants serving single-family dwellings must have a maximum lateral spacing of 600 feet with no lot or parcel more than 300 feet from a hydrant. Hydrant locations must be depicted on the face of the plat, and locations for new hydrants must be approved by the Fire Marshal.

(b) The minimum required fire flow for this project is to be 750 GPM at 20 psi for a one-hour duration. Prior to final plat approval, in order to assure consistency with the

applicable provisions of SCC 30.53A.520 (16), the Applicant must provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a one-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings must 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. The required signage and pavement 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. Prior to occupancy, an enforcement plan must be put in place for the towing of improperly parked vehicles.

(d) Approved numbers or addresses must be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

The Fire Marshal also determined that fire apparatus access as depicted on the preliminary plat meets the minimum requirements of SCC 30.53A.512.

PDS indicated that in review comments from the North County Regional Fire Authority received on October 6, 2011, fire hydrants would be required for the project. As discussed above, this is consistent with the recommendation of the Fire Marshal.

(ix) Utilities.

Water will be supplied by the Warm Beach Water Association. The Warm Beach Water Association provided a Certificate of Water Availability on February 15, 2013. (Exhibit G.6) Sewer service will be supplied by on-site sewage disposal and drainage facilities. The Snohomish Health District (SHD) has reviewed the proposal and provided a letter on October 11, 2011 (Exhibit G.2) noting that site and soil conditions meet SHD requirements for placement of on-site sewage disposal facilities. The Snohomish County Public Utility District provided correspondence on October 4, 2011 indicating that it can provide electrical service for the project. (Exhibit G.3)

(x) Zoning (Chapter 30.22 SCC). This project will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the Rural Cluster Subdivision Standards, as discussed below.

(xi) Subdivision Code (Chapter 30.41A SCC). As conditioned, the plat will meet all of the County's 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. Accordingly, the Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.

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

The Examiner has reviewed each of the criteria in Chapter 30.41C SCC and finds that the application is consistent with its requirements. Specifically, conditioned as set forth herein, the subdivision complies with each of the following provisions as discussed below:

(i) SCC 30.41C.010 (clustering lots). 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 percent 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.

(ii) SCC 30.41C.050(1) (view of site). The site is located on an internal lot, with the nearest building located almost 400 feet from Marine Drive. Properties to the east and south are heavily forested, and the project will provide a sight obscuring buffer on all sides. Thus, the post-development view of the site from Marine Drive will be similar to the pre-development view.

(iii) SCC 30.41C.050(2) (blend into rural landscape). The site is fairly flat, with slopes ranging between 3 and 6 percent. No lots are placed on ridgelines or other prominent topographic features.

(iv) SCC 30.41C.050(3) (landscaping). The site is forested on all sides, and over 15 acres (65 percent of the site) will be protected in Tract 999 as restricted open space. At least 50 percent of the site's tree canopy will be preserved, and the required sight obscuring buffers will be supplemented as needed. A detailed landscape plan will be required prior to permit issuance which illustrates conformance to all landscaping requirements in SCC 30.25.033 and SCC 30.41C, including the use of native species to supplement the sight obscuring buffers in those areas that the existing buffer does not meet the screening requirements.

(v) SCC 30.41C.050(4) (tree canopy retention). As depicted in the project plans, the project will retain at least 50 percent of the overall tree canopy.

(vi) SCC 30.41C.050(5) (incorporate existing features). The project will preserve forested portions of the site within the sight obscuring buffer areas, and will need to supplement the sight obscuring buffers as required by SCC 30.25.033, which will help maintain the rural character and familiar landscape of the site.

(vii) SCC 30.41C.050(6) (cluster configuration). The lots have been clustered in the center of the site, and grading will result in a relatively small amount of topographic alternation (approximately 924 cubic yards of cut and 924 cubic yards of fill).

(viii) SCC 30.41C.050(7) (visual diversity). The site plan proposes a variety of different setbacks for the seven proposed lots, will preserve large portions of the existing tree canopy, avoid the site's five wetlands (and their buffers), and preserve approximately 66.7 percent of the site as open space.

(ix) SCC 30.41C.050(8) (habitat connectivity). None of the adjacent properties contain open space tracts. However, Tract 999 (restricted open space) extends around the entire perimeter of the site, which will aid in maintaining existing natural habitat and wildlife corridors.

(x) SCC 30.41C.050(9) (use of low impact development). As discussed in the Drainage and Land Disturbing Activities section above, the project proposes the use of low impact development principles for dispersal of all on-site stormwater runoff through features such as biofiltration swales, and is subject to Section 7.2 of the LID Manual and BMP T5.30, "Full Dispersal".

(xi) SCC 30.41C.050(10) (phasing). The project is proposed to be constructed in one phase.

(xii) SCC 30.41C.070(1) (site design standards). The project proposes one cluster of housing with seven residential lots located in that cluster. The plat map (Exhibit B.1, Sheets 1 & 2) shows a front yard setback variation of at least 10 feet between any two adjacent lots. The property is not located adjacent to any natural resource lands. The project has identified five Category III wetlands, which require a minimum 60 foot buffer. The project will avoid any site disturbance within the wetlands or their buffers.

(xiii) SCC 30.41C.070(2) (tree retention). The project will retain at least 50 percent of the existing tree canopy and protect approximately 66 percent of the site as restricted open space while also meeting all fire protection requirements. The Fire Marshal has reviewed the project and determined it to be in compliance with the fire code, subject to the recommended conditions of approval.

(xiv) SCC 30.41C.070(3) (services and optional features). All utility lines are to be located underground and a condition of approval will require that this be a requirement shown on the face of the final plat. The project will utilize septic systems and drainfields and not public sewers. The project will not include street lights. As shown on Sheet 2 of the preliminary plat map, the entrance sign will incorporate materials typical of the rural character of the area, consistent with all applicable provisions of SCC 30.27.060. This will be included as a condition of approval. The project will receive water from the Warm Beach Water Association, which has provided a Certificate of Water Availability. (Exhibit G.6)

(xv) SCC 30.41C.070(4) (use of low impact development BMPs). The project proposes the use of low impact development for dispersal of all on-site stormwater runoff, meeting the requirements outlined in Section 7.2 of the LID Manual and BMP T.530, "Full Dispersal". Runoff from roofs, the road and driveway, and all pollution generating impervious surfaces (PGIS) will be fully infiltrated in accordance with BMP T5.30. The project will include a 200 foot long biofiltration swale to address water quality prior to dispersal.

(xvi) SCC 30.41C.075(1) (setback buffers). The project site is located on an interior lot, and has no rights-of-way that border the development. The project includes 100 foot sight obscuring buffers along the eastern perimeter of Lots 1, 6, and 7, which are contained in restricted open space Tract 999 and provide an additional buffer from the adjacent properties to the east and Marine Drive. As indicated on the landscape plan (Exhibit B.1, Sheet 3), the site will retain 50 percent of the existing tree canopy, provide sight obscuring buffers along all perimeter areas that abut adjacent residential properties, and provide supplemental plantings as required. The project will, therefore, comply with SCC 30.25.033. The project does not require or propose any exceptions to the vegetation retention requirements for utility easements or designated road rights-of-way.

(xvii) SCC 30.41C.075(2) (perimeter buffers). The project includes sight obscuring buffers of at least 50 feet in width along all perimeters of the site that abut residential properties, with 100 foot buffers present along most perimeters.

(xviii) SCC 30.41C.075(3) (separation of clusters). The project includes only one cluster and, therefore, no landscaping between buffers is required. Also, because no open space tracts have been retained for forestry uses, there is no need for a buffer between such tracts and residential lots.

(xix) SCC 30.41C.075(4) (minimum 45 percent open space). The project includes approximately 66.7 percent of open space. Open space within the sight obscuring buffers has been counted toward this open space calculation. There are no designated open space tracts on adjacent properties and open space within Tract 999 is adjacent to all seven clustered lots.

(xx) SCC 30.41C.080(1) (road design). The PDS Traffic Section determined that the project has been designed in accordance with the EDDS.

(xxi) SCC 30.41C.080(2) (use of private road). Access to the site will be provided by a private road easement.

(xxii) SCC 30.41C.080(3) (limited access). Access to the site from Marine Drive is limited to a single driveway entrance.

(xxiii) SCC 30.41C.080(4) (internal roads). The PDS Traffic Section determined that the internal road has been designed in accordance with the EDDS and Chapter 30.24 SCC.

(xxiv) SCC 30.41C.080(5) (trail connection of clusters). The project site includes only one cluster thereby requiring no trail connection of clusters.

(xxv) SCC 30.41C.080(6) (pedestrian facilities). The project does not require or propose any pedestrian facilities on the site.

(xxvi) SCC 30.41C.080(7) (entrance gates). The project includes entrance gates which have been designed to accommodate emergency vehicle access in accordance with SCC 30.53A.512. The gates have been reviewed by the Fire Marshall and the PDS Traffic Section they were determined to be in compliance with all County codes. A condition of approval will provide that language be included on the face of the final plat that requires that the project's entrance gates accommodate emergency vehicle access.

(xxvii) SCC 30.41C.090(1) (restricted open space). Tract 999 meets the open space requirements, is separate from all residential lots, is designated as restricted open space, and is marked on the face of the plat as restricted open space.

(xxviii) SCC 30.41C.090(2) (restricted open space standards). Tract 999 includes CAPA for the five on-site wetlands and their buffers and is included in the open space management plan as recreation space for all seven lots in the subdivision. Tract 998 is the project's detention tract. The project does not propose any of the uses listed in SCC 30.41C.090(2)(c) within Tract 999. Tract 998 meets the landscaping requirements of SCC 30.25.023. Sheet 1 of the plat map (Exhibit B.1) indicates that the entirety of Tract 999 will be left undisturbed, with the exception of dead, diseased, or hazardous trees. A condition of approval will be imposed that this requirement be stated on the face of the final plat

(xxix) SCC 30.41C.090(3) (minimum restricted open space). Properties in the R-5 zone not located on natural resource lands are required to provide a minimum of 45 percent restricted open space. The project proposes approximately 66.7 percent restricted open space.

(xxx) SCC 30.41C.110 (ownership and preservation of restricted open space). Open space will be provided in Tracts 998 and 999, which are to be held in separate ownership from residential lots and marked as restricted open space/CAPA (Tract 999) and restricted open space/detention tract (Tract 998) on the face of the plat. Tracts 998 and 999 will be owned by the Wood at Warm Beach Homeowners Association under the terms of the open space management plan. (Exhibit A.6) The Applicant will be required to provide the County with a description of the association, proof of incorporation of the association, a copy of its bylaws and a copy of the conditions, covenants and restrictions regulating the use of the property and setting forth methods for maintaining the open space. Membership in the homeowners association, and the payment of dues or other assessments for maintenance purposes, is required by SCC 30.41C.110 to be a condition of lot ownership within the development. No lands on the project site are classified as natural resource lands and forest practices are not proposed within restricted open space.

(xxxii) SCC 30.41C.120 (open space management plan). PDS determined that the Applicant's open space management plan (Exhibit A.6) meets all of the requirements of SCC 30.41C.120(1). Contact information will need to be updated as ownership changes. The open space management plan has been approved by the Director of PDS and it must be recorded a separate document. The open space management will be maintained by the project's homeowners association. The Director of PDS has determined that the designated parties are capable of maintaining the open space, and that the plan has adequate provisions for succession to other qualified and capable parties, and for indemnifying the County should said parties not fulfill their management obligations.

(xxxiii) SCC 30.41C.130 (rural cluster bulk regulations). The project is located within the R-5 zone, and will be required to meet all of the bulk regulations contained in SCC Table 30.41C.130. The preliminary plat includes conceptual locations for residences, two of which (Lots 1 and 2) do not meet the 25 foot side yard setback requirement, and the plat shows a side yard building setback boundary line (BSBL) of 5 feet. A recommended condition of approval has been included requiring compliance with all bulk regulations listed in Table 30.41C.030 prior to issuance of building permits

(xxxiii) SCC 30.41C.230 and 30.41C.240 (lot yield and bonus density). The application complies with the provisions of SCC 30.41C.230 and 30.41C.240 based on the following analysis. SCC 30.41C.240C, Subsections 2 and 3 do not apply to this project.

Basic lot yield:	984,685 square feet/200,000 square feet	= 4.92 lots
Required Open Space		= 45%
Provided Open Space		= 66.7%
Density Bonus (15% plus 1% per additional 1% of open space)		= 35%
Total lot yield (4.92 x 1.35)		= 6.64 lots
Total lot yield-rounded up		= 7 lots
Total lots proposed		= 7 lots

7. 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 Rural Cluster Subdivision (RCS) applications pursuant to Chapters 30.41A, 30.41C and 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. The subject RCS application has also been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. Conditioned as set forth herein, the proposal meets the requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

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 SCC and should be approved.

4. Adequate public and private 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

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

The Preliminary Rural Cluster Subdivision is APPROVED, subject to the following conditions:

- A. The preliminary plat received by PDS on November 19, 2012 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the County:

- i. Construction plans and a Full Stormwater Site Plan shall be submitted for review and approval, subject to Minimum Requirements 1-9.
- ii. A Land Disturbing Activities (LDA) permit shall be obtained, including a Stormwater Pollution Prevention Plan (SWPPP).
- iii. 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 the County Fire Marshal.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The lots within this development are subject to park impact fees 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, unless payment is deferred pursuant to SCC 30.66A.020(4). The parks impact fee is effective so long as the building permit has been issued within five years after the application was 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:

\$478.50 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.

Payment of these fees, except for mitigation for impacts on County roads, is due prior to or at the time of building permit issuance for each single-family residence. Payment of mitigation for impacts on County roads is due in accordance with the payment timing provisions of Chapter 30.66B SCC. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lots therein."

- iii. "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. Credit will be given for the one existing lot."

- iv. "The minimum required fire flow for this project has been determined to be 750 GPM at 20 psi for a one-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 750 gpm at 20 psi for a one-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 2009 edition of the International Fire Code."

- v. "Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. 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. Prior to occupancy, an enforcement plan shall be put in place for the towing of improperly parked vehicles."
 - vi. "The project's entrance gates shall accommodate emergency vehicle access, in accordance with SCC 30.53A.512".
 - vii. "The landscape plan shall be fully implemented and maintained by the Homeowner's Association, including the sight obscuring buffers."
 - viii. "The open space management plan shall be recorded and fully implemented and maintained by the Homeowner's Association. Any changes to the open space management plan shall require a minor revision, per SCC 30.41A.330."
 - ix. "All utilities shall be located underground."
- D. Tract 999 is Critical Area Protection Area (CAPA)/Restricted Open Space (ROS), shall be permanently protected pursuant to SCC 30.62A.160, and shall remain undisturbed except for dead, diseased or hazardous vegetation or trees. The following restrictive language shall be indicated on the face of the final plat:
- "All CRITICAL AREA 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 dead, diseased or hazardous vegetation or trees."
- E. Construction plans shall demonstrate compliance with the required side yard setbacks and all other bulk regulations listed in SCC Table 30.41C.130. This will require a revision from the conceptual location of residences shown on the preliminary plat for Lots 1 and 2 and the building setback boundary line for all lots which do not show the required 25 foot side yard setback.
 - F. Construction plans shall include a landscape plan that illustrates conformance with all requirements and provisions of SCC 30.25.033 and SCC 30.41C.
 - G. If any cultural resources are discovered during construction of the project, the Applicant shall contact the Stillaguamish Tribe and the State Department of Archaeology and Historic Preservation to determine procedures for addressing such cultural resources.
 - H. The entrance sign shall incorporate materials typical of the rural character of the area, consistent with all applicable provisions of SCC 30.27.060.
 - I. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and must be in place prior to occupancy. Numbers shall contrast with their background, as required by Section 505.1 of the International Fire Code.

- j. Prior to recording of the final plat:
- i. A pedestrian waiting area shall be constructed adjacent to the private road at Marine Drive to the satisfaction of the County.
 - ii. The internal public road shall be built to EDDS standards.
 - iii. Critical Area Protection Areas (CAPA) boundaries 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 plat 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 wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.

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 April, 2013.


Gordon Sivley, 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 April 15, 2013**. 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 has been 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 April 19, 2013**, 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: David Levitan

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.

PARTY OF RECORDS REGISTER
11-106296-SD WOODS AT WARM
BEACH
HG: 03/27/2013

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WM & LINDA MURRAY
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EVERETT WA 98203

SNO CO PLANNING & DEV/LAND USE
LEVITAN / WHEELER
3000 ROCKEFELLER AVE #604
EVERETT WA 98201

SNO CO PUD NO 1
ELISABETH TOBIN
PO BOX 1107
EVERETT WA 98206-1107

WA ST DEPT OF TRANSPORTATION
STEVE BENENATI
PO BOX 330310
SEATTLE WA 98133-9710

SNOHOMISH HEALTH DISTRICT
BRENT RAASINA
3020 RUCKER AVE SUITE 104
EVERETT WA 98201-3900

SNO CO DEPT OF PUBLIC WORKS
COUNTY ENGINEER
3000 ROCKEFELLER AVE #607
EVERETT WA 98201

STILLGUAMISH TRIBE OF INDIANS
KERRY LYTE
3310 SMOKEY POINT DR
ARLINGTON WA 98223

JON RICKEY
PO BOX 1204
MUKILTEO WA 98275

N CO REGIONAL FIRE AUTHORITY
DALE FULFS
19727 MARINE DR
STANWOOD WA 98292

WARM BEACH WATER ASSOC
ALETA WALKER
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STANWOOD WA 98292

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DISTRICT
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STANWOOD WA 98292

PAUL KELLOGG
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