

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 30, 2009

PLAT/PROJECT NAME: *Silvana View Estates*

APPLICANT/
LANDOWNER: Paul Bradford

FILE NO.: 08-102405-000-00-SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

GENERAL LOCATION: 2528 and 2532 219th Street NW, Stanwood, WA

ACREAGE: 19.74 acres

NUMBER OF LOTS: 9

AVERAGE LOT SIZE: 44,982 square feet

MINIMUM LOT SIZE: 43,595 square feet

DENSITY: .46 du/ac (gross)

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

ZONING: R-5

UTILITIES:

Water: Two community wells

Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No.16

FIRE DISTRICT: No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on March 10, 2008, which was determined complete on the same day. (Exhibit A1)

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

A SEPA determination was made on March 2, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on April 21, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all the evidence of record, the following findings of fact are entered.

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

A. Background Information

2. Applicant's Request: The applicant is requesting a 9-lot RCS on a 19.74 acre parcel. The site consists of three (3) existing parcels, two of which are developed with single family residences (SFRs) which will remain. The area around the existing residences is landscaped, and the remainder of the site is treed. The plat will be served by a private road off of Happy Valley Road. Each lot will be served by individual septic. Potable water will be supplied by two community wells.
3. Site Description: The site is developed with two single family residences. The area around the residences is landscaped, but the remainder of the subject property is forested. The northeastern border of the site is the Stillaguamish River. Associated with the river are steep slopes, some of which exceed 40% slopes. The entire sloping area is designated as Native Growth Protection Areas (NGPAs). A Category 2 wetland on the eastern portion of the site, and a small (487 square feet) Category 3 wetland is located within Tract 999, which is the tract containing the private road.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Adjacent uses are either single family residential or are undeveloped.
5. Issues of Concern: No issues of concern were identified by PDS during the review process, nor were any identified during the open record hearing. No citizen comments were received on the proposal.

B. Compliance with Codes and Policies.

- 6. Parks Mitigation: The proposal is within Park District No. 301 (Kayak Point) and is subject to Chapter 30.66A SCC, which requires payment of \$811.29 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies. The Hearing Examiner has included a condition to implement the recommended mitigation fees.
- 7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

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

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

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

The development will generate 66.99 new average daily trips (ADT) and has a road system impact fee of \$17,685.36 (\$2,526.48/lot) based on \$264/ADT, the current fee rate for residential developments outside the urban growth area (UGA), for TSA A. These figures do not include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report.

Trips	Calculations	
ADT	$(9 \text{ New SFR} - 2 \text{ Exist.}) \times (9.57 \text{ ADT/SFR}) =$	66.99
AM PHT	$(9 \text{ New SFR} - 2 \text{ Exist.}) \times (0.75 \text{ AM PHT/SFR}) =$	5.25
PM PHT	$(9 \text{ New SFR} - 2 \text{ Exist.}) \times (1.01 \text{ PM PHT/SFR}) =$	7.07

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

B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of April 18, 2008. The expiration date of the concurrency determination is six years from this date.

The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130 (4). The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development will generate 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.

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

Regardless of the existing level of service, any development which adds three or more p.m. 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 subject development proposal will not impact any IRC locations identified within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

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

As per DPW Rule 4222.020(1), full rural frontage improvements are required along the subject parcel's frontage on Happy Valley Road and consist of: asphalt concrete pavement consisting of 11 feet in width from roadway centerline with a seven foot paved shoulder. The Hearing Examiner has included a condition to require the frontage improvements.

Happy Valley Road, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

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

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

The County approves the use of the private roads shown on the preliminary plat for the subject development per: SCC 30.41A.210(3)(c). Private roads may be permitted as part of a RCS specifically approved by the county engineer.

The private subcollector road proposed in this RCS has an approved deviation to the following design standards (Exhibit G.1):

- The use of two elbows in lieu of the minimum horizontal radius curves required in the private subcollector road design;
- A design speed of 25 MPH; and

- A design of slightly over 1320 feet of dead end road.

This proposed subdivision road will also serve a 4 lot RCS, PFN 07-100485-SP, which lies north of the development. The basic road layout for the northerly RCS will be utilized and slightly modified to provide access for the new lots within this development.

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

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

The road serving this development, Happy Valley Road, is designated as a Minor Collector Arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to dedicate 15 feet of additional right-of-way. This dedication is adequately shown on the preliminary plat (Exhibit B.1 and B.3).

Happy Hollow Road is not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable.

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

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

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the WSDOT/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received by PDS. The applicant has offered: Proportionate Share Mitigation (ILA Section 5.2): no impact.

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT were received by e-mail on March 31, 2008 from the WSDOT stating: "The applicant is seeking approval for a 9 lot rural cluster subdivision located at 21733 Happy Valley Road. This development will not have a significant adverse traffic impact upon state highways. Therefore, WSDOT does not request any traffic mitigation for state highways from the applicant. We have no other comments on this application." (Exhibit H.3)

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

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions. There are city jurisdictions that have an ILA with the County that will be

impacted by new trips from the subject development. The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on city streets and is effected by the ILAs with the cities of Arlington and Stanwood.

Comments have been received from the City of Stanwood stating that no traffic impact mitigation will be required. (Exhibit H.2)

Snohomish County and the City of Arlington currently have an interlocal agreement (effective September 29, 1999) which provides for a reciprocal payment arrangement to mitigate traffic impacts within the two jurisdictions. In accordance with the interlocal agreement, transportation impacts of developments in the County can be determined and mitigated by making a “sub area” percentage payment. The project is located in “sub area CO-ARL-6” which is a percentage impact of 40% (estimates 40% of the project’s trips impact the City of Arlington street system). The applicant has offered to pay to the City of Arlington a total mitigation payment of \$9,494.65. The per lot amount distributed over 7 new lots is \$9,494.65/7 lots = \$1,356.38 per lot. (Exhibit H.1)

For impacts on the City of Arlington, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate impacts on city streets is required and was received with the initial application. The applicant has offered to provide the mitigation measures for impacts on city streets. A copy of the Traffic Mitigation Offer to the City of Arlington signed by the applicant and countersigned by the City of Arlington was submitted on July 19, 2008 (Exhibit H.1). The Hearing Examiner has included a condition of approval to implement the mitigation fees.

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

This proposal lies outside of the UGA. Therefore, the provisions of this section do not apply.

8. Pedestrian Facilities [RCW 58.17.110]

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision/short subdivision. Comments have been received from the Arlington School District dated March 12, 2008 stating that the students will attend the following schools (Exhibit H.10)

School Type	Elementary	Middle School	High School
School Name	Presidents	Haller	Arlington
Walk to School	No	No	No
Walk to School Bus	Yes	Yes	Yes
Will busses pick up children within/adjacent to this project	Yes	Yes	Yes
Bus Stop Locations	At the Development Entrance		

With the construction of the private road to private road subcollector standards, safe walking conditions will be provided for the school children from this development. No offsite improvements are required. However, because of the rural nature of this area and the fact that there is little lighting available, the Examiner imposes a requirement that the applicant provide an all climate protection (ACP) waiting area to the specification of DPW at the bus stop that is at the development entrance.

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

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Arlington School District No. 16, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the three existing lots. The Hearing Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

Drainage.

EXISTING CONDITIONS: The site is approximately 19.74 acres in size. Site soils are Alderwood Gravelly Sandy Loam with most slopes at 2% to 8% and 8% to 15% slopes (Hydrologic Group C soil). A wetland Critical Area is in the southwestern portion of the site. A Landslide Hazard Critical Area with Alderwood-Everett Gravelly Sandy Loam slopes of 25% to 70% borders the northeastern boundary which falls steeply to the Thomsen Slough (AKA South Slough) branch of the Stillaguamish River. Minimal stormwater runoff enters the site from the southeast as sheetflow. Sheetflow runoff exits the site via sheet flow across the northwestern property lines and flows into the ditch at the private road frontage which then flows into the Happy Valley Road ditch. Stormwater also enters the site as channel flow at the base of steep slopes from the southeast to the northeast via Thomsen Slough. Two drainage basins have been identified within the project site. One drainage basin, Basin A, is the bulk of the site and includes most of the new development. The other drainage basin, Basin B, flows to the east down the critical slope and into Thomsen Slough.

PROPOSED CONDITIONS: The project proposes to develop nine lots with the two existing SFR to remain: one on Lot 8 and one on Lot 9 (Exhibits B.1 and B.3).

In drainage Basin A, five (5) new SFRs will be constructed on Lots 1 through 5 and includes Lot 8 (an existing residence). Associated driveways, utilities, and the private access road are included in Basin A. The new construction creates approximately 50,000 square feet of new impervious surface and generates approximately 1.44 cubic feet per second (cfs) of net, new 100-year, 24-hour stormwater runoff. Water quality treatment is proposed through a bioswale before the project outfall. Quantity control is proposed by collecting runoff in ditches and conveying it to an open detention pond with control structure which will release the stored runoff at ½ of the predeveloped 2-year flow rate, and match the 10-year and 100-year predeveloped flow rate. The runoff will then outfall into the bioswale and into the existing drainage ditch along Happy Valley Road, where the predevelopment sheet flow presently collects.

In drainage Basin B, two new SFRs are proposed on Lots 6 and 7, and the existing residence on Lot 9. (The driveways to the new SFRs are in Drainage Basin A.) Drainage Basin B contains the Landslide Hazard Critical Area. While the net, new impervious surface proposed within this basin is less than 5,000 square feet and the net, new 100-year runoff is less than 0.1 cfs, the drainage from this area will be required to be directed away from the critical slope and into the proposed drainage Basin A water quality and quantity control drainage system or be tightlined down the Landslide Hazard Critical Area slope per SCC 30.62.B.

Frontage improvements on Happy Valley Road create less than 5,000 square feet of new impervious surface and less than 0.1 cfs of net, new 100-year, 24-hour stormwater runoff. Therefore water quality treatment and quantity control are not required per SCC 306.63A.210. This runoff does not flow onto the Landslide Hazard Critical Area slope.

The Landslide Hazard Critical Area slope is approximately 240-feet in height (H=240). According to SCC 30.62B, the required setback from top of slope should be H divided by 3 or 50-feet, whichever is greater, or per the analysis of a Geotechnical Engineer. For this slope, H divided by 3 is approximately 80-feet. The engineer has shown a 100-foot top of slope setback on the targeted drainage plan with no Geotechnical Engineering analysis. The 100-foot setback is adequate. SCC 30.62B requires that vegetation shall not be removed from a Landslide Hazard Critical Area. A condition of approval is included that requires the construction plans to show the Landslide Hazard Critical Area and 100-foot buffer in a Critical Area Protection Areas (CAPA) with appropriate permanent marking (signage). This will protect the native vegetation in the buffer and on the critical slope. In accordance with SCC 30.62B, discharge upslope of the Landslide Hazard Critical Area may only occur if: (A) it is dispersed onto a low-gradient undisturbed setback adequate to infiltrate all surface and stormwater runoff; and (B) the discharge will not decrease the stability of the slope. Infiltration in the Alderwood Gravelly Sandy Loam soils is questionable. A condition of approval is that all runoff from impervious surfaces on Lots 5, 6, and 7, and any new construction on Lot 9 direct runoff away from the critical slope, and into the proposed quantity control drainage system in Basin A. The runoff from Basin A and Basin B meet within approximately ¼ mile downstream of the project in the Thomsen Slough.

FINDINGS AND CONCLUSIONS: The development proposes approximately 50,000 sf of net, new impervious surface, which is over 5,000 sf, which per SCC 30.63A requires water quality treatment. Water quality treatment is proposed to be provided by a bioswale. The development proposes approximately 1.44 cfs of net, new 100-year, 24-hour stormwater runoff, which is over 0.1 cfs, which per SCC 30.63A causes it to be over the threshold for quantity control. Quantity control is proposed through an open detention pond with control structure which will store the runoff while it is slowly released at the predevelopment rates of ½ the 2-year stormwater runoff, match the 10-year, and match the 100-year predevelopment runoff flow rates. A final Drainage Report and Plan are required with full drainage construction plans.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project can meet the requirements of UDC Chapter 30.63A, 30.63B, EDDS 2004 Edition, Rule 3044, and the 1992 DOE Stormwater Management Manual.

Grading. Grading quantities are anticipated to be approximately 1,880 cubic yards of cut and 645 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations. (Chapter 30.62 SCC) The applicant is proposing a nine-lot subdivision with a private road access from the public Happy Valley Road at the western edge of the subject property. No direct impacts are proposed to the on-site critical areas with the exception of the proposed fill of the small 487 s.f. BMP wetland located near the southeast corner of Lot 1 within the private road Tract 999. Very minor additional buffer impacts are proposed for widening and improving the access road in the western portion of the buffer to Wetland A where the existing shared driveway currently exists. Mitigation for these impacts is in the form of additional buffer to the south of Wetland A. The eastern portion of the site is dominated by a steep sloping forest that drops to the South Slough of the Stillaguamish River. All of the on-site critical areas and buffers are to be permanently protected as CAPA as required per Chapter 30.62A.160 SCC.

The applicant has provided a critical area study and mitigation plan (Exhibit C.3) which demonstrates compliance with the provisions for avoiding impacts to the ESA Type S water body known to contain Chinook salmon, steelhead trout and bull trout. The critical area extends from the Ordinary High Water Mark (OHWM) of the South Slough Stillaguamish River to the top of the bank plus 25 ft. as required per Chapter 30.62A.320(1)(a), (b) & (c) SCC. A small portion of this area has been averaged out of the protected area because of existing uses – a home and yard within proposed Lot 9, reducing the buffer on Lot 9 by 4,066 s.f. and adding 15,928 s.f. of buffer to the east of Lots 5-7 and to the north of Lot 9.

Compensation for 6,936 s.f. of additional buffer impacts to Wetland A along the existing driveway for widening and construction of the private road and for an access point to an existing well are to be off-set by providing 24,354 s.f. of additional buffer to the south of Wetland A. A small BMP wetland fill of 427 s.f. is also to be compensated for within the 24,354 s.f. addition. The applicant has minimized the impacts to the Wetland A buffer by placing the private roadway across an existing shared driveway.

An evaluation of the information submitted in the revised application, coupled with an on-site investigation, has resulted in a determination that the application is complete and in conformance with Chapter 30.62A SCC 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.

PDS has reviewed the Critical Areas Study and Mitigation Plan (Exhibit C.3) and determined that the project complies with the Critical Areas Regulations (CAR).

12. Consistency with the GMA Comprehensive Plan.

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

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. 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 may be increased consistent with Policy LU 6.B.9.

The 9 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

13. Utilities.

A. Water.

Water will be supplied by two community wells. One of the wells is located on-site within Tract 997, and the other well is on an adjacent property. Approval of community wells is under the authority of the Washington State Department of Health (DOH). DOH approved the community well system on January 26, 2009 (Exhibit H.5). Prior to approval of the community wells, DOH received a communication from Washington Department of Ecology that established water rights for the project (Exhibit H.4).

A 100-foot radius well protection zone covenant is hereby established around the existing well as located on the plat, and the existing off-site well (Exhibit B.1). The well protection zones are based on actual constructed wells. All owners of property shown within this protection zones agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100-foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners. The Hearing Examiner has included a condition of approval to implement the well protection zones.

B. On-Site Septic.

Each lot will be served by individual septic systems. The Snohomish Health District recommended approval for the preliminary plat on May 5, 2008 (Exhibit H.9).

C. Electricity.

Snohomish County Public Utility District provided correspondence on March 26, 2008 indicating that it can provide electrical service for the project. (Exhibit H.6)

14. Zoning. (Chapter 30.2 SCC)

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

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on March 2, 2009 (Exhibit E2). The DNS was not appealed.

16. Subdivision Code. (Chapter 30.41A SCC)

A complete application for the proposed plat was received by PDS on March 10, 2008. (Exhibit A1) The following general subdivision standards have been met:

A. Roads. The Examiner finds that based on the information provided in the file, staff report and in the public hearing, the design standards for roads are met. Finding of Fact

7 addresses how the applicant is meeting County road requirements. See SCC 30.41A.210.

- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. See 30.41A.110.
- C. Fire Code. The Staff Report (Exhibit I) provides the following information on compliance with the fire code:

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on May 1, 2008. The conclusions of the review were that:

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

The Examiner concludes that the subdivision meets the requirements of the fire code.

17. Rural Cluster Subdivision Standards—General.¹

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on July 10, 2008 (Exhibit B.1), and in an Open Space Management Plan (Exhibit A.3) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 45.1% (8.89 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with CAR, thereby minimizing the loss of the county's environmentally sensitive areas.

18. Rural Cluster Subdivision Code Design Standards. (SCC 30.41C.200)

The RCS code at SCC 30.41C.200 requires adherence to design standards beyond the regular subdivision standards. While some of the criteria predate other, more modern development regulations, there are some very specific and unique requirements to be met.

¹All citations are to the former Rural Cluster Subdivision Code. A new Rural Cluster Subdivision Code, with an effective date of April 5, 2009, is now in effect.

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

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

Applicant's development concept protects critical areas on site, as explained in Finding of Fact 11 under the heading "Critical Areas Regulations". The applicant has avoided almost all impacts to critical areas in developing this site plan and will treat stormwater, further protecting critical areas and water quality. (Exhibits C3 and C4)

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

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

The transition from residences and adjoining properties and from specified roads has been provided. (Exhibit B.1) Existing landscaping provides the intended function of the vegetated sight obscuring buffer in most locations. A "Visual buffers" section is located on page 2 of the Open Space Management Plan (Exhibit A.3) that requires any area that fails to meet the screening function shall be augmented with native vegetation at an ultimate density of trees at ten (10) feet on center and by shrubs at six (6) feet on center, planted in a triangular pattern, with a minimum of 75% of the plantings being conifers. PDS has determined that the vegetated sight obscuring buffer has been appropriately located, the buffer is of the required size, and that the Open Space Management Plan provides adequate requirements for augmenting the existing vegetation, should that become necessary. The Hearing Examiner will impose a condition of approval to implement the supplemental planting requirement.

C. SCC 30.41C.200(3)—Internal Roads.

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

All roads are proposed to be public roads and to be built to EDDS standards, as modified by the EDDS deviation. (Exhibit G.1) The EDDS Deviation (Exhibit G.1) is described in the Access and Circulation Section (page 11 of the Staff Report). PDS has determined that the project

meets this requirement. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the RCS code.

D. SCC 30.41C.200(4)—Utilities.

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

Applicant will be placing all utilities underground. (Exhibit H6; I.)

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

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

“Unbuildable land” is defined as “steep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of chapter 90.58 RCW.” (SCC 30.91U.060) The entirety of Tract 995 is designated as CAPA. Slopes greater than 40% and all lands covered by water, which are defined as unbuildable lands in SCC 91U.060, are located within Tract 995. The Hearing Examiner has determined that the project complies with this requirement.

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

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

Not applicable.

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

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

Not applicable.

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

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

...

*(b) Notice for mineral uses within required or optional open space:
Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not*

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

Not applicable.

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

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

Not applicable.

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

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

The applicant prepared an Open Space Management Plan which has been accepted by PDS. See Exhibit A3. These areas will be used as passive recreation areas, NGPA, and critical areas. The management plan provides guidance for maintenance and use of the open space in a manner that will maximize the homeowners' enjoyment of the site. Management objectives include:

- Minimize negative effects of soil erosion;
- Preserve and enhance appropriate wildlife habitat;
- Preserve existing native vegetation;
- Create quality recreation opportunities;
- Maximize natural visual screen along the exterior limits of the development.

The Open Space Management Plan specifies that removal of trees and visual screening vegetation will be restricted to removal of hazardous, dead or dying trees/shrubs. (Exhibit A3) The Homeowner's Association will ultimately be responsible for compliance with the Open Space Management Plan, as implemented through a condition of final plat approval.

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

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

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

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

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

Nine (9) lots are proposed. The computation of 75% of 9 yields 6.75 lots. A minimum of 7 of the proposed 9 lots need to abut a buffer or open space. All lots abut a required buffer or restricted open space tract. Therefore, the project complies with SCC 30.41C.200(12).

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

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

The subject property is constrained by critical areas. As discussed in the Critical Areas section of this report (above), impacts to critical areas has been kept to a minimum with the proposed lot layout. The lots are proposed to be within the central portion of the site (Exhibit B.1). Although the proposed location for the lots is at a higher elevation than either to the east or the west, the areas to the east are encumbered by steep slopes and the setback from the Stillaguamish River and the areas to the west are encumbered by a Category 2 wetland.

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

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

The applicant proposes on-site septic systems for this development. The Snohomish Health District has reviewed the proposed sites for the drainfield and reserve areas, and recommended approval of the preliminary plat. See Exhibit H9.

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

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

Lots are located near the interior of the site. The eastern and western portions of the site are comprised of critical areas. PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property and that the proposed lots are provided with a visual sight-obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. The Hearing Examiner concurs that the project complies with this requirement.

P. SCC 30.41C.200 (16)—Fire District.

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

The development is located within the service boundary for Fire District # 19.

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

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

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

19. Rural Cluster Subdivision Lot Yield Calculations.

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

Basic lot yield: 860,009 square feet/100,000 square feet	= 8.60 lots
Total lot yield-rounded	= 9 lots
Total lots proposed	= <u>9</u> lots

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

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

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

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the Silvana View Estates 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.

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

DECISION

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

CONDITIONS:

- A. The preliminary plat received by PDS on July 10, 2008 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above and to this decision.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapters 30.62A and 30.62B SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county, including but not limited to the 100-foot setback from the landslide hazard area as referred to in Finding 10.
 - iii. The applicant shall submit full drainage plans for review and approval.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. The dwelling units within this development are subject to park impact fees (Kayak Point # 301) in the amount of \$811.29 per newly approved dwelling unit pursuant to Chapter

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

- ii. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:

\$2,526.48 per lot for mitigation of impacts on county roads paid to the county,
\$1,356.38 per lot for mitigation of impacts to the City of Arlington paid to the City of Arlington. Proof of payment is required.

The developer of this subdivision has elected to defer the payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this short subdivision or the lots therein. Once a building permit has been issued, all mitigation payments shall be deemed paid.”

- iii. “The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 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 three existing parcels. Lots 7 through 9 shall receive credit.”

- iv. All Critical Areas shall be designated NGPAs (unless other agreements have been made);

“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. “A 100-foot radius well protection zone covenant is hereby established around the existing well as located within Tract 997 of the plat. The well protection zone is based on actual constructed wells. All owners of property shown within this protection zone agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owners.”

- vi. “The Open Space Management Plan (Exhibit A.4) shall be implemented. Changes to the Open Space Management Plan may be accomplished through a plat alteration, per SCC 30.41A.700, 30.41A.710, 30.41A.720, 30.41A.730, 30.41A.740, and 30.41A.750.”

- vii. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and

as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”

- viii. “The landscape buffers qualify as open space to be protected in perpetuity and shall be maintained as vegetated buffers. The entire buffer width shall be maintained with sight-obscuring vegetation. “
- ix. “The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.”

D. Prior to recording of the final plat:

- i. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Happy Valley Road shall be dedicated to the County along the development’s frontage such that 35 feet of right-of-way exists from the right-of-way centerline.
- ii. Frontage improvements along the development frontage on Happy Valley Road shall have been constructed by the developer and approved by the county in conformance with chapter 30.66B and the Engineering Design and Development Standards.
- iii. Rural frontage improvements shall be constructed along the parcel’s frontage on Jordan Road in conformance with chapter 30.66B and the Engineering Design and Development Standards.
- iii. An All Climate Protection (ACP) waiting area to the specification of DPW shall be provided at the bus stop that is at the development entrance.
- iv. 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 platlor 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.
- v. 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 the Land Use Division for review and approval prior to installation.
- vi. The construction plans show the Landslide Hazard Critical Area and 100-foot buffer in a CAPA with appropriate permanent marking (signage).
- vii. All impervious surface runoff from Lots 5, 6, and 7, and any new impervious surface on Lot 9 direct runoff away from the Landslide Hazard Critical Area slope and into the proposed quantity control drainage system in Basin A.
- viii. Rock check dams are to be placed in open channel ditches for slopes greater than 5%.

- ix. Utilities shall be located underground.
 - x. The Open Space Management Plan shall be fully implemented.
 - xi. The Wetland Mitigation Plan shall be completely implemented.
- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit A3), contained within the Open Space Management Plan, shall be implemented. All required landscaping within the Sight-Obscuring Buffer and within the detention facility shall be installed in accordance with the approved landscape plan.
 - ii. PDS shall review the sight-obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the sight-obscuring buffer.
 - iii. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- F. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with, final plat recording shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall at a minimum:
- i. Establish all restricted open space as shown on the approved preliminary plat in separate tracts.
 - ii. Establish a Homeowner's Association, guaranteeing maintenance of restricted open space as required by the Open Space Management Plan (Exhibit A3).
- G. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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

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

Decision issued this 30th day of April, 2009.

Barbara Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **MAY 11, 2009**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **MAY 14, 2009** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.