

# DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 15, 2009

PLAT/PROJECT NAME: **Hazelnut Grove**

APPLICANT/  
LANDOWNER: Bryan Kelley

FILE NO.: 08-108940-000-00-SD

**TYPE OF REQUEST:** Rural Cluster Subdivision (RCS)

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

## BASIC INFORMATION

GENERAL LOCATION: 323 Russell Road, Snohomish, WA 98290-5623

ACREAGE: 10.55 acres

NUMBER OF LOTS: 5

AVERAGE LOT SIZE: 49,504 square feet

MINIMUM LOT SIZE: 43,660 square feet

DENSITY: .47 du/ac (gross)

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

ZONING: Rural-5 Acre (R-5)

### UTILITIES:

Water: Individual wells  
Sewer: On-site septic

SCHOOL DISTRICT: Snohomish School District No.201

FIRE DISTRICT: No. 8

PDS STAFF RECOMMENDATION: Approve with conditions

## **INTRODUCTION**

The preliminary plat application was originally submitted to the Department of Planning and Development Services (PDS) on September 29, 2008, and the application was determined to be complete as of the same date. (Exhibit A1)

PDS gave proper public notice of the open record hearing as required by the County code. (Exhibits F4, F5 and F6)

A SEPA determination was made on June 8, 2009. (Exhibit E2) No appeal was filed.

The Hearing Examiner held an open record hearing on November 18, 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 Hearing 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 5-lot rural cluster subdivision (RCS) on a 10.55 acre parcel. Access is proposed by private road off Russell Road. Each lot will be served by individual septic. Potable water will be supplied by individual wells.
3. **Site Description:** The site is developed with a single-family residence and outbuildings. The existing residence and garage will remain on proposed Lot 3. The area around the residence and garage are cleared, but the remainder of the site is forested. The southeast corner of the site is steeply sloped, with areas over 40% slope designated as unbuildable lands. Unbuildable lands compose 9200 square feet of the site, and constitute 4.4% of the proposed Restricted Open Space.
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.

One public comment was received (Exhibit H1). The e-mail merely requested information on the proposed plat and the sender requested to become a Party of Record. No further comments were received.

## B. Compliance with Codes and Policies.

### 6. Parks Mitigation.

The proposal is within Park District No. 303 (Robe Canyon) which does not require any park mitigation impact fees at this time.

### 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 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 38.28 new average daily trips (ADT) and has a road system impact fee of \$15,197.16 (\$ 3,799.29/lot) based on \$397.00 /ADT, the current fee rate for residential developments outside the Urban Growth Area (UGA), for TSA "B." 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 7<sup>th</sup> Edition of the Institute of ITE. Trip Generation Report as follows:

ITE Land Use Category:	Single Family Detached Housing
ITE Land Use Code:	210
Applicable Measurement Unit:	Single Family Residential Units
Number of applicable measurement units for this development:	4

#### **Trip Generation Calculations:**

Trip Generation Based on Average Rates

New average daily trips = <u>4 single family detached units</u> X <u>9.57 trips/unit</u> =	<u>38.28</u> ADT
New PM peak-hour trips = <u>4 single family detached units</u> X <u>1.01 trips/unit</u> =	<u>4.04</u> PM PHT
New AM peak-hour trips = <u>4 single family detached units</u> X <u>0.75</u> =	<u>3.00</u> AM PHT

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

#### B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of December 4, 2008. The expiration date of the concurrency determination is six years from this date. Consistent with the Department of Public Works' (DPW) Rule 4225.070, the point in time for which the concurrency analysis is based (the concurrency vesting date) is September 29, 2008.

The development has been deemed concurrent on the following basis: Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA "B" which, as of the date of submittal, had the following arterial units in arrears: Unit 238, 20<sup>th</sup> St. SE, from SR 2 WB trestle entrance to SR 9. Based on peak-hour trip distributions, the subject development will NOT add three (3) or more directional peak-hour trips to this arterial unit in arrears. Pursuant to SCC 30.66B.160(2)(a), the development is deemed concurrent. The development generates 3.00 a.m. peak-hour trips and 4.04 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 IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

The subject proposal will not impact any IRC locations identified at this time within TSA B with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

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

The DPW has concluded that the existing improvements on 147<sup>th</sup> Avenue NE include adequate travel lane and shoulder meeting EDDS standards. Therefore no frontage improvements are required.

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

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

The proposed development will take access from 147<sup>th</sup> Avenue NE between OK Mill Road and 5<sup>th</sup> Street NE, with a private road to Lots 1 through 5. The County Engineer has approved the request for private roads for the subject development per SCC 30.41A.210(3)(c). Stopping sight distance and intersection sight distance to the right (north) and left (south) of the proposed private road serving Lots 1 through 5 will apparently meet minimum EDDS standards when obstructions caused by fences, mail boxes and power poles are removed or relocated during construction.

The private road serving Lots 1 through 5 may need to become a public road once surrounding properties adjacent to the road develop. The Hearing Examiner has included a condition to be included on the face of the final plat that property owners will not protest the conversion of the private road to a public road.

Section (c) of SCC 30.66B.420 requires the applicant to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.440; which lists the following factors to use when PDS Traffic considers the extent of improvements required to serve the development:

- (3)
  - (a) Extent of the development proposed;
  - (b) Priority of improvements to involved county roads in the county's six-year transportation improvement plan;
  - (c) Condition of existing transportation facilities in comparison to adopted standards.
  - (d) Existing and projected land uses and development densities;
  - (e) Current and projected levels of service on the affected road system;
  - (f) Availability of public transit;
  - (g) Any traffic study submitted;
  - (h) Availability of a specific improvement program;
  - (i) The number of dwelling units currently using the road system that must be improved and projected to use the road system after full occupancy of the development;
  - (j) The needs of low-income persons for decent, affordable, low-cost housing;
  - (k) Transportation system or demand management measures proposed by the developer;
  - (l) The need for pedestrian and bicycle facilities;
  - (m) Continuity with existing and proposed improvements;
  - (n) Development standards of adjacent cities;
  - (o) The need for safety improvements for school children; and
  - (p) The types, sizes and performance of vehicles generated by the development, including but not limited to large trucks.

PDS Traffic evaluated the above factors in relation to the proposed development and determined that no off-site improvements to the existing road system were necessary due to the addition of five homes in an area that has light traffic in a rural area, with no level of service issues. There are no IRCs on the existing road system in the area that would initiate the requirement for the applicant to do off-site improvements in order to provide for safety and the operational efficiency of the road.

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

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

The road serving this development, 147<sup>th</sup> Avenue SE (Russell Road), is designated as a non-arterial on the County's Arterial Circulation Map. This designation requires a right-of-way width of 30 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 10 feet of additional right-of-way. This is adequately shown on the preliminary plat. The Hearing Examiner has included a condition in the decision to require the dedication of right-of-

way. 147<sup>th</sup> Avenue NE is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credit towards the applicant's impact fee for the right-of-way dedicated 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 Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

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

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT via e-mail dated October 6, 2008 have been received by the County (Exhibit G.2). WSDOT states that the instant development will not have a significant adverse traffic impact upon state highways, and therefore they do not request any traffic mitigation fee from the applicant. WSDOT has no other comment.

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 no city jurisdictions that have an ILA with the County that will be impacted by new trips from the subject development.

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. Comments from the Snohomish School District dated October 8, 2008 have been received (Exhibit G.5). Those comments state that elementary students will walk to Machias Elementary School located approximately 1300 feet to the south of the instant development, and that middle and high school students will ride the bus to Centennial Middle School and Snohomish High School and be picked up at 113 Russell Road, approximately 300 feet south of the proposed development. Adequate pedestrian facilities exist to both of these locations, and therefore no off-site pedestrian improvements are required.

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 Snohomish School District No. 201, 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 two 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.

Stormwater runoff from the residences on Lots 4 and 5 will be dispersed using low impact development techniques. Stormwater runoff from residences on Lots 4 and 5 will be collected and routed to individual dispersion devices. Water exiting the dispersion device will have a maximum flow rate of less than 0.5 cubic feet per second (cfs) and will flow through a minimum of 100 feet of native vegetation.

Stormwater runoff from Lot 1, Lot 2, and the private road will be collected and routed to the water quality and detention system located within the private road easement. Stormwater runoff from Lot 3 will be allowed to sheet flow away from the structure because the residence is existing and the stormwater runoff is the existing stormwater pathway.

PDS (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

Grading.

Grading quantities are anticipated to be approximately 8,000 cubic yards of cut and 8,000 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. There are two (2) wetlands on-site that extend off-site. No impacts to the on-site Category 2 wetland and to the on-site Category 3 wetland, or their associated buffers, are proposed. An automatic reduction of 15% on the corresponding buffers is proposed consistent with SCC 30.62A.320(1)(e)(i) for placing the wetlands and buffers into separate tracts (Tracts 999 and 998). No critical area study or mitigation plan was required or reviewed. PDS Staff did review the wetland rating forms for categorization of the two on-site wetlands as provided by Wetland Resources, Inc. dated September 24, 2008 (Exhibit C.4). The Hearing Examiner has included a condition to require Critical Area Protection Area (CAPA) signs prior to final plat recordation.

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 Estate on existing

subarea comprehensive plans, most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre (SA-1); or Rural Conservation (RC). 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 R-5 zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9.

The five 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 five individual wells, one on each lot. The Snohomish Health District (SHD) approved the wells on November 19, 2008, subject to the following final plat restrictions, which the Hearing Examiner will place as conditions in this decision:

For Proposed Wells:

Well protection zones are shown in the Snohomish Health Districts records for lots 1-5 of this plat. The well protection zones are not based on actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. 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. After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100-foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require plat alteration.

For Existing Wells:

A 100-foot radius well protection zone covenant is hereby established on lots 3 and 4 around the existing well as located on this 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.

(Exhibit G3 at 2-3).

B. On-Site Septic.

Each lot will be served by individual septic systems. The SHD recommended approval for the preliminary plat on November 19, 2008. (Exhibit G.3 at 2)



C. Electricity.

The Snohomish County Public Utility District provided correspondence dated October 8, 2008, indicating that it can provide electrical service for the project. (Exhibit G.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 (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on June 8, 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 February 22, 2008. (Exhibit A1) The following general subdivision standards have been met:

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

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the preliminary plat on December 19, 2008. The conclusions of the review were that:

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

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

17. Rural Cluster Subdivision Standards—General.

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat, the latest versions of which were received by PDS on April 22, 2009 (Exhibit B.1), and in an Open Space Management Plan (Exhibit A.4) 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 49.7% (9.86 acres) of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the County's environmentally sensitive areas.

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.

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

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

PDS and the Hearing Examiner have concluded that the application meets the requirements of the Critical Areas Code, Chapter 30.62A. SCC, as determined in Finding of Fact 11, above.

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 Applicant has included a landscaping plan that provides a sight obscuring buffer as required by the RCS ordinance (Exhibit B.3). Existing landscaping does not provide the intended function of the vegetated sight obscuring buffer in all areas. A landscaping note is located on Exhibit B.3 that requires supplemental plantings for any area that does not meet the sight obscuring buffer requirements of conifers at twenty (20) feet on center and of shrubs at

three (3) feet on center, planted in a triangular pattern. The vegetated sight obscuring buffer appears to be appropriately located, the buffer is of the required size, and the landscaping note 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;*

The proposed access road is proposed to be a public road and built to EDDS standards. The Hearing 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;*

The Applicant will be placing all utilities underground. The Hearing Examiner will include a condition requiring all utilities to be installed underground. (Exhibits G6; 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. Unbuildable lands have been placed in Tract 998 and designated as a Critical Area Protection Area.

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 resources 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 A4. There are three open space tracts within the subdivision: Tracts 997, 998, and 999. Tract 998 is only accessible to Lots 4 and 5. Tracts 997 and 999 are accessible to all residents. All open space tracts shall be held in common ownership by the Homeowners Association as conveyed at the time of plat recording.

The management objectives are as follows:

1. Maximize vegetative health;
2. Minimize negative effects of soil disturbance;
3. Preserve and enhance appropriate wildlife habitat;
4. Minimize the potential impacts of development on water quality;
5. Enhance and maintain an attractive natural environment; and

6. Allow use of a portion of Tract 997 (shown on the rural cluster subdivision preliminary plat plan as a horse run) for horse riding and pasturing in the currently existing fashion.

(Exhibit A4 at 2). Permanent vegetation removal will not be permitted within the Restricted Open Space, except as noted above for the maintenance of the existing forested horse run and trails, and for the removal of hazardous trees, as detailed in the Open Space Management Plan. 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.

- G. 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 five-lot development.

- H. 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;*

Five (5) lots are proposed. All lots abut an open space tract. Therefore, the project complies with SCC 30.41C.200(12).

- I. 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 rectangular. It is also quite flat, with the exception of the southeastern corner of the site which is a critical area. The lots have been placed toward the central portion of the site along the long axis (east-west), to the extent possible, but approach the edges of the site along the short axis of the rectangle (north-south axis).

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

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

The Applicant proposes on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. See Exhibit G3.

K. 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;*

Because of the topography and shape of the parcel, the Applicant is unable to comply with this requirement. The Hearing Examiner determines that this design requirement is inapplicable to this application.

L. 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 # 8.

M. 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*.

20. 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: 459,886 square feet/100,000 square feet	= 4.59 lots
Total lot yield-rounded	= 5 lots
Total lots proposed	= <u>5 lots</u>

21. 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 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 individual wells and sewage disposal will be provided by individual wastewater septic systems.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Hearing Examiner must review the Hazelnut Grove RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Hearing 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 Hearing Examiner concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision 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 Hearing 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 April 22, 2009 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the County:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above, and this Decision.
  - ii. The plattor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the County.
  - iii. A full drainage plan shall be submitted for review and approval for the construction of the plat.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
  - i. "The dwelling units within this development are subject to park impact fees in the amount of \$0.00 (Robe Canyon # 303) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. No payment of 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. "In consideration of the subdivision access approval, the owners of the lots of the subdivision, their heirs, successors, and assigns, covenant and agree not to protest the conversion of the thirty [30] foot easement and private road, on the south side of the parcel, to a public road at any time the County determines a public road is necessary, or a public road is required for further development of any lots that have access to said road. The owners of the subdivision lots, their heirs, successors, and assigns further agree and covenant to provide all necessary authorizations and to execute all necessary conveyance documents, at no cost and expense to the County, to accomplish the dedication and/or conversion of the private road to the County for public road purposes. This covenant touches and concerns the property, runs with the land, and is binding upon all subsequent purchasers, heirs, successors, and assigns. This covenant to provide right-of-way in no way obligates the owners to fund any construction or maintenance of a public road."
  - iii. "Chapter 30.66B SCC requires new lot mitigation payments in the amounts shown below for a single-family residence:
 

\$3,799.29 per lot for mitigation of impacts on County roads paid to the County.

Credit for certain expenditures may be allowed against said payments to the extent authorized by County code. Any reduction of the per lot amount shall be documented in the RECORDS OF DEVELOPER OBLIGATIONS FORM.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any



deeds involving this subdivision or the lot[s] therein. Once building permits have been issued, all mitigation payments shall be deemed paid.”

- iv. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 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 two existing parcels. Lots 1 and 3 shall receive credit.”
- v. All Critical Areas shall be designated Critical Area Protection Areas (CAPA) with the following language on the face of the 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 hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County.”
- vi. “The Open Space Management Plan (Exhibit A.4) shall be fully implemented.”
- vii. “Well protection zones are shown in the Snohomish Health District records for Lots 1-5. The well protection zones are not based upon actual constructed wells. The well protection zones may require revision if the well cannot be located as proposed. If moved, the 100-foot radius well protection zone shall not extend beyond the subdivision exterior boundaries without written consent and recorded well protection covenant from the affected property owner(s). After installation of any water well to serve lots within this subdivision, all owner(s), and successors agree to maintain 100-foot well protection zones in compliance with current state and local well siting and construction regulations, which, at a minimum, prevent installation of drainfields within the well protection zone. The revision of the well protection zone location is a private matter between the affected lot owners and does not require a plat alteration.”
- viii. “A 100-foot radius well protection zone covenant is hereby established on lots 3 and 4 around the existing well as located on this 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.”
- ix. “The Open Space Management Plan (Exhibit A.4) shall be implemented, including all maintenance responsibilities. 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.”
- x. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the rural cluster subdivision as shown on the approved site plan and the approved open space management plan. Covenants, conditions and restrictions as recorded with the plat, and

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

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

D. Prior to recording of the final plat:

- i. The development shall dedicate 10 feet of additional right-of-way on Russell Road.
- ii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platter 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.

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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit B.3) shall be implemented. All required sight obscuring buffer landscaping shall be installed in accordance with the approved landscape plan.
- 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. Utilities shall be located underground.
- iv. The Open Space Management Plan shall be fully implemented.

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 A4).

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 15<sup>th</sup> day of December, 2009.

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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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **DECEMBER 28, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **DECEMBER 29, 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.