

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: November 16, 2010

PLAT/PROJECT NAME: *Lake Goodwin RCS-IV*

APPLICANT/  
**LANDOWNER:** **LGAJV, LLC**  
P.O. Box 100  
Edmonds, WA 98020

FILE NO.: 06-126104 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

**BASIC INFORMATION**

LOCATION: Between Lakewood Road & Happy Hollow Road at 52<sup>nd</sup> Avenue NW,  
Stanwood, Washington 98292

ACREAGE: 345.7 acres

NUMBER OF LOTS: 102

AVERAGE LOT SIZE: 42,348 square feet

MINIMUM LOT SIZE: 30,755 square feet

GROSS DENSITY: .30 du/ac (gross)

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

ZONING: R-5

**UTILITIES:**

Water: Snohomish County PUD No. 1

Sewer: On-site individual septic

Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Stanwood-Camano Island School District No. 401 (Lots 1-90)  
Arlington School District No. 16 (Lots 91-102)

FIRE DISTRICT: Snohomish County Fire District No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

### **INTRODUCTION**

A complete application for a 102-lot Rural Cluster Subdivision (RCS) development was submitted to Planning and Development Services (PDS) on July 19, 2006. The 120-day clock started on August 16 2006. PDS and the applicant exchanged various plan sets and review comments from 2006 through 2008, when the applicant was granted an extension of the application. (Exhibit J) The applicant continued to resubmit materials through July, 2010. As of the hearing date, 197 days of the 120-day period have elapsed.

The Examiner held an open record hearing on October 27, 2010. At the hearing, witnesses were sworn, testimony was presented, and Exhibits A through K-1 were entered into the official record. The record was left open for the addition of Exhibit L-1, which was timely filed by PDS. Exhibit L-1 is added to the record in this matter.

Witnesses providing testimony included: Ed Caine, PDS, Brian Holtzclaw, attorney for the McNaughton Group, and Edward Koltonowski of Gibson Traffic Consultants, Inc. Other members of the applicant's design team were present at the hearing.

At the request of Mr. Caine, the following corrections were made to the PDS Staff Report (Exhibit J):

- Page 7 Item 5(b) – striking the second sentence
- Page 13 Item (i) - changing the number of additional homes from 611 to 585
- Page 14 Item (p) - changing the number of residential housing units from 49 to 102
- Page 17 School Impact Fees - changing the number of existing lots for which credit is allowed to read “35 existing lots” instead of “3 existing lots”
- Page 22 Chapter 30.41C.200(9) SCC – changing the third sentence to read “northeastern” instead of “northwestern”
- Page 23 Item (d) - changing the lot designations to read “Lots 49-71, 95-98, and 100-101 29 Lots” instead of Lots 49-58, 95-98, and 100-101 29 Lots”
- Page 23 Chapter 30.41C.200(12) – changing the number of remaining lots to read “84 lots” instead of “82 lots.”
- Page 25 Condition vi – changing the number of existing lots for which credit is allowed to read “35 existing parcels” instead of “3 existing parcels;” and changing the last sentence to read: “Lots 1 through 35 shall receive credit” instead of “Lots 1 through 3 shall receive credit.”

**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 Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits F1, F2 and F3)

### **A. Background Information**

2. Applicant's Proposal: The applicant is requesting a 102-lot RCS on a 345.7 acre parcel. Access for all lots will be by eleven (11) new public roads which either provide connections between 196<sup>th</sup> Street NW and 200<sup>th</sup> Street NW and between 200<sup>th</sup> Street NW and 204<sup>th</sup> Street NW, or are dead-end cul-de-sac roads. Public water is proposed to be provided by PUD #1 and sewer will be provided by individual septic systems.
3. Site Description: The site is undeveloped and forested. There are 21 wetlands and 4 streams on site, and 5.6% of the site is sloped in excess of 33%.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5. Neighboring uses are either undeveloped land or residential. Lake Goodwin RCS II (06-125856-SD), a 49-lot RCS, borders the site to the east and north. Lake Goodwin RCS II received preliminary approval on March 16, 2010. Lake Goodwin RCS III (06-126101-SD), a 104-lot RCS, borders the site to the west. Lake Goodwin RCS III has not received preliminary approval.
5. Issues of Concern:
  - A. Agency Comments. During the project review phase, the main issue of concern raised by the State Department of Health, Department of Ecology and Tulalip Tribes was whether the Seven Lakes Water Association had capacity to provide water supply to the site. That issue has been addressed as discussed herein. Agency reviews and PDS reviews have identified no other unresolved issues of concern.
  - B. Citizen Comments. During the review period, PDS received several comments and questions from citizens relating to the impact of the project on the surrounding area. Issues raised included the proposed density in light of the existing R-5 zone, conflicts with commercial agriculture (an egg farm), critical area, groundwater and stormwater impacts from the build out of this project and those proposed in the vicinity, road impacts, especially to Happy Hollow Road, and concerns about water supply to the development. (Exhibits I-1, I-2, I-3, I-4, I-5, I-6, I-7 and I-8) The Examiner finds that the issues raised by citizens were addressed by PDS and the Department of Public Works (DPW) during project review, as discussed in more detail herein.

### **B. Compliance with Codes and Policies.**

6. Park and Recreation Impact Mitigation (Chapter 30.66A SCC).

The proposal is within Kayak Point Park Service Area, No. 301, and is subject to Chapter 30.66A SCC, which requires payment of \$811.29 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and is included as recommended condition of approval.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

PDS has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "A." The applicant has provided traffic analysis for both the subject application of 102 units, as well as for the entire group of subdivisions (totaling approximately 611 units) within the surrounding area. (Exhibits C1, C2 and C3) These studies were used by PDS to determine the applicant's compliance with Chapter 30.66B SCC and Title 13 SCC. A deviations from EDDS Section 3-01(B)(2) was granted by the County Engineer on November 26, 2007. (Exhibit G1)

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 TSA as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 102 new lots, which is 9.57 ADT/lot. This rate comes from the 7<sup>th</sup> Edition of the ITE Trip Generation Report. The development will generate 976.14 new ADT and has a road system capacity impact fee of \$257,700.96 (\$2,526.48/lot) based on \$264/ADT. The Hearing Examiner has included a condition requiring payment of traffic impact fees to the County.

B. Concurrency [SCC 30.66B.120 and SCC 30.66B.130(4)]

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 is located in TSA "A", which as of the date of submittal of the application had no arterial units in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of September 8, 2006. The expiration date of the concurrency determination is six years from this date or September 8, 2012.

However, the subject development generates 976.14 ADT, with 77 AM peak-hour trips and 103.02 PM peak-hour trips, which is more than the threshold of 50 peak-hour trips,

which triggers additional review under Chapter 30.66B.035 SCC. (Exhibit C1) The applicant has evaluated the future level-of-service on the road system consistent with the specific traffic study requirements imposed by the DPW and has found that there are no arterial units in arrears in the TSA based on forecast level-of-service conditions and the development is deemed concurrent under Chapter 30.66B.130(4) SCC. Id.

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

Regardless of the existing level of service, any development which adds three or more PM peak hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC. In response to concerns about the cumulative impacts on the existing road system by the surrounding RCSs proposed by the same developer in the area, the DPW determined that its Traffic Operations group should do an IRC evaluation of several locations that would be affected by the subject development.

The IRC data included the following information:

- a) the number of accidents within the 3-year time frame of 4/1/05 to 3/31/08,
- b) the accident rate
- c) accident severity
- d) traffic volume: capacity ratio
- e) sight distance ratio
- f) pedestrian/bicycle facilities
- g) traffic conflict
- h) driver expectancy

According to the DPW, a location is not identified as an IRC if the score is below 40. (Exhibit J at p. 4) If the score is over 40, the Internal Review Board reviews the evaluation to determine if the location should be classified as an IRC, depending upon what the issues were and what the fix was determined to be. In the present case, numerous locations were evaluated inadequate road conditions. (See, Exhibit J) Any IRC must be "eliminated" according to SCC 30.66B.210.

The result of that evaluation by the DPW found that as a forecast condition, after build out of the 49 lots proposed for Lake Goodwin RCS II, rather than as a current condition, one location is an IRC. That location is the section of road from the south development property line of RCS II on 52<sup>nd</sup> Avenue NW (192<sup>nd</sup> Street NW), around the curve for 188<sup>th</sup> Street NW to 40<sup>th</sup> Avenue NW (Road Segment 63550).

The DPW determined that the applicant must "widen and improve the IRC road segment to 30 feet of pavement and provide a guardrail, as needed" and address sight distance issues in the curve at 188<sup>th</sup> Street NW and 52<sup>nd</sup> Ave. SE." (Exhibit C3) The County Engineer's comments were "Alternate roadway section 24' with separated walkway may be used. Deviation may be required in critical areas." (Exhibit J) Improvements to remove the inadequate road condition (IRC) on 52<sup>nd</sup> Avenue NW beginning at 192<sup>nd</sup> Street NW to 188<sup>th</sup> Street NW and ending at 40<sup>th</sup> Avenue NW must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued pursuant to SCC 30.66B.220.

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. Here, DPW determined that full rural frontage improvements are required to be made along the subject property's frontage on Happy Hollow Road, 52<sup>nd</sup> Avenue NW, 44<sup>th</sup> Avenue NW, 192<sup>nd</sup> Street NW, 196<sup>th</sup> Street NW, 200<sup>th</sup> Street NW, 204<sup>th</sup> Street NW, and 212<sup>th</sup> Street NW. The frontage improvement

standard for all of the above roads, except for Happy Hollow Road, is an 11-foot paved travel lane and a 7-foot paved shoulder from centerline of right-of-way. The frontage improvement standard for Happy Hollow Road is EDDS 3-030A, because it is classified as a rural Minor Collector arterial road serving 400 to 2,000 ADT, and has an 11-foot paved travel lane and an 8-foot paved shoulder from centerline of right-of-way.

None of those roads are in the cost basis analysis for Chapter 30.66B SCC; therefore credit for any frontage improvements towards the applicant's impact is not applicable. The Examiner has included a condition requiring the specified frontage improvements.

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

According to SCC 30.66B.420, all developments are required to: (a) Provide for access and transportation circulation in accordance with the comprehensive plan and provisions of Chapter 30.66B SCC, applicable to the particular development, (b) Design and construct such access in accordance with the EDDS, and (c) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with Chapter 30.66B.430 SCC.

In addition, access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements.

Finally, all developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of the DPW determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of the DPW in accordance with Chapter 30.66B.430 SCC.

In the present case, extensive analysis of the road system was provided by PDS and DPW. Their findings are set forth in the record at Exhibit J (pages 7 through 12) and supported by the Traffic Analysis provided in Exhibits C1, C2 and C3. Their findings are hereby adopted by the Examiner as Findings of Fact and incorporated herein as if set forth in full.

The Examiner notes that the County Engineer approved a deviation from EDDS Section 3-01-B.2, which specifies the maximum distance between intersections or between an intersection and a road end. The request was approved November 15, 2004 by the County Traffic Engineer, based on the overall layout and design of the road system proposed by the applicant that showed the future developments in the vicinity of this project, and identified existing and future road access and circulation in accordance with the EDDS. Additionally, the design of the road system in the subject development is limited by topography because the road system had to be designed to avoid the wetlands, streams, and buffers to the maximum extent feasible.

The Examiner further finds that the applicant proposes to build the internal plat roads, including the road grades, vertical and horizontal curves, in accordance with the County's regulations and road standards set forth in EDDS. The Hearing Examiner further finds that the applicant has made adequate provisions for public access, road circulation and connection, adequate sight distances and emergency response vehicle access and turnaround by dedicating proposed right-of-way and constructing a new road to serve the development lots, along with the other proposed road improvements described above.



F. Extent of Improvements [SCC 30.66B.430]

In determining the extent of improvements required, the director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors as set forth in the PDS Staff Report (Exhibit J, pages 12 through 14), which analysis is adopted herein by this reference as if set forth in full, and finds that the recommended extent of improvements are consistent with the DPW's analysis of the factors required in SCC 30.66B.430 and the facts set forth in the entire record.

G. 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 adequacy of right-of-way was examined at nine (9) separate locations. The County Engineer determined that the proposed development requires the following dedication of right-of-way:

- Happy Hollow Road. Requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Thirty feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, five feet of additional right-of-way is required. This is adequately shown on the preliminary plat.
- 196<sup>th</sup> Street NW. Additional right-of-way is needed for a 40-foot paved radius cul-de-sac at the permanent end of 196<sup>th</sup> Street NW, because the road is longer than 150 feet, and will not be extended, due to a request to vacate the existing right-of-way by the applicant east of the proposed end of the road. This is adequately shown on the preliminary plat.
- Intersection of 44<sup>th</sup> Avenue NW and 204<sup>th</sup> Street NW. Additional right-of-way is needed for the intersection of 44<sup>th</sup> Avenue NW and 204<sup>th</sup> Street NW, because there is a missing piece of right-of-way at the northeast corner. This is adequately shown on the preliminary plat.
- 52<sup>nd</sup> Avenue NW. No additional right of way is required.
- 192<sup>nd</sup> Street NW. No additional right of way is required.
- 200<sup>th</sup> Street NW. No additional right of way is required.
- 204<sup>th</sup> Street NW. No additional right of way is required.
- 212<sup>th</sup> Street NW (east of 50<sup>th</sup> Avenue NW)

Based on the foregoing and the information in the record, the Hearing Examiner finds that the right-of-way is adequately shown on the preliminary plat. A condition has been included to require the dedication of additional right-of-way as described above.

H. Impacts to State Highways [SCC 30.66B.710]

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT) and Snohomish County effective December 21, 1997, and as amended. When a development's road system includes a state highway, mitigation requirements are established using the County's SEPA authority consistent with the terms of the ILA between the County and 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.

Here, the Traffic Study shows that the proposed development will impact State Highways. The applicant chose to make a voluntary, negotiated payment in lieu of construction, to mitigate their impact to the state highway system, and will pay towards three impacted projects located along SR 531 as follows:

- a) Interstate 5 at 172<sup>nd</sup> St NE (ID# DOT-01) with a fee of \$83.45 per ADT. The project would have an impact of 195 ADT. The mitigation fee for this project is  $\$83.45/\text{ADT} \times 195 \text{ ADT} = \$16,272.75$  (\$159.54 per lot).
- b) SR 531 from 43<sup>rd</sup> Ave NE to 67<sup>th</sup> Ave NE (ID# DOT-05) with a fee of \$176.35 per ADT. The project would have an impact of 49 ADT. The mitigation fee for this project is  $\$176.35/\text{ADT} \times 49 \text{ ADT} = \$8,641.15$  (\$84.72 per lot).
- c) SR 531 at Lake Goodwin Road (ID# DOT-42) with a fee of \$36.88 per ADT. The project would have an impact of 48 ADT. The mitigation fee for this project is  $\$36.88/\text{ADT} \times 48 \text{ ADT} = \$1,770.24$  (\$17.36 per lot).

The applicant submitted a proposal to enter into a traffic mitigation offer to WSDOT in the amount of \$26,684.14 (\$261.61/lot) to mitigate traffic impacts to state highways. (The value is the rounded sum of the above three mitigation payments). WSDOT accepted this offer in an email sent to PDS on March 22, 2007 (Exhibit H6).

PDS reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and determined that the proposed mitigation measures are reasonably related to the impacts of the development. PDS recommended that they be imposed on the development as a condition of approval. The Hearing Examiner concurs and finds that the voluntary mitigation offer, made in lieu of construction of certain highway improvements, should be imposed as a condition of development approval.

I. Impacts to City Streets and Roads [SCC 30.66B.720]

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

Impacts to the City of Arlington. This development is subject to SEPA and thus is subject to the ILA with the City of Arlington. Here, the Traffic Study shows that the proposed development will impact the influence area that requires traffic mitigation for the City. Based on Exhibit 3 of the ILA, for Sub Area #CO-ARL-6, forty percent of the development trips will pass through the City of Arlington.

The applicant submitted a traffic mitigation offer for its impacts to city streets in the amount of \$42,773.90. Comments from the City of Arlington dated September 21, 2007 were received by PDS on September 27, 2007 (Exhibit H1). The City agreed to the mitigation measures proposed by the applicant. PDS reviewed the proposed mitigation for the City of Arlington submitted by the applicant and determined that the proposed payment is reasonably related to the impacts of the proposed development. PDS recommended that the payment of \$42,773.90 to the City of Arlington be imposed on the development as a condition of approval. The Hearing Examiner concurs and finds that the voluntary mitigation offer, made in lieu of construction of certain highway improvements, should be imposed as a condition of development approval.

Impacts to the City of Stanwood. Snohomish County also has an ILA with the City of Stanwood, and this development is within the influence area that requires traffic mitigation be considered for the City. The applicant's traffic impact analysis (Exhibit C1) indicates that the development will not add three directional peak hour trips to any projects that are part of the City's cost fee basis. Therefore, the development is not subject to any City mitigation requirements. The City of Stanwood acknowledged that no traffic impact fees are owed by the applicant as a result of this development proposal. Therefore no traffic mitigation fee will be required to be paid to the City of Stanwood (Exhibit H4).

There are no other City jurisdictions that have an ILA with the County that will be significantly impacted by the subject development.

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

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

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, as well as the adequacy of pedestrian or bicycle facilities. None of the roads in the area between the development and SR 531 are on the County's adopted bicycle plan. The need for safe pedestrian facilities has been analyzed. All

new roads will be constructed in accordance with the EDDS, which includes 7-foot paved shoulder walkways in addition to the travel lanes; and therefore will provide adequate pedestrian facilities for students walking to the bus stops. It was therefore determined by PDS that the road improvements included in the recommended conditions of approval for the new and existing roads within the development will provide the needed pedestrian facilities for Lots 1-90 to the Stanwood-Camano School District # 401 bus stops. It was also determined that the road improvements included in the recommended conditions of approval for the new and existing roads within the development will provide the needed pedestrian facilities for Lots 91-102 to the Arlington School District #16 bus stops. Therefore additional off-site pedestrian or bicycle facilities are not recommended. (Exhibits H15, H16, H17, H18.

The Examiner has included a condition requiring the construction of necessary pedestrian facilities. The extent of those improvements is discussed in Paragraphs 8 (E), (F) and (G). The Examiner finds that those improvements are consistent with the County Code, and EDDS and will provide safe walking conditions for school children as well as provide for the general public health, safety and welfare.

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

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. School impact mitigation fees are determined according to the Base Fee Schedule in effect for the Stanwood-Camano Island School District No. 401 (for Lots 1-90) and Arlington School District No. 16 (Lots 91-102), at the time of building permit submittal and collected at the time of building permit issuance for the proposed units.

For the Arlington School District No. 16 (Lots 91-102), credit is to be given for the two existing lots. For the Stanwood-Camano School District No. 401 (Lots 1-90), credit is to be given for the 35 existing lots. The Hearing Examiner has included a condition that requires payment of any school impact fees at the time of building permit issuance.

10. Drainage and grading.

Drainage. Stormwater runoff from pollution-generating surfaces will be directed to stormwater detention systems for dead storage and water quality treatment prior to discharge through level spreaders into established drainage pathways to the northwest, northeast and southwest. Stormwater from non-polluting surfaces may be allowed to flow untreated directly to the wetlands on site. (Exhibits B.5 and C.4) The detention facilities are shown on the plat map in Tracts 903, 906, 913, and 915. (Exhibit B1) The stormwater detention ponds have been sized for the total volume of runoff from the 6-month, 24-hour storm event in accordance with Chapter 30.63A SCC. PDS reviewed the Targeted Drainage Report and drainage concept offered and recommends approval of the project, subject to conditions which would be imposed during full drainage plan (construction) review pursuant to Chapter 30.63A SCC. The detention ponds shall be landscaped.

Grading. Grading quantities are anticipated to be approximately 225,000 cubic yards of cut and 225,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. A grading permit and a stormwater pollution prevention plan (SWPPP) will be required. PDS has included recommended conditions to require the construction plans, the SWPPP, and obtaining a grading permit.

The Examiner has included conditions of approval requiring completion of a full drainage plan, a SWPP plan, grading permit, and a right-of-way permit for any work within the county right-of-way.

11. Critical Areas Regulations.

PDS visited the subject property on multiple dates in late August and early September of 2006 and confirmed that the on-site critical areas were properly flagged in the field and accurately typed and categorized. The site contains 25 critical areas, consisting of 21 wetlands (17 Category 3, forested wetlands, three Category 2 forested wetlands and one Category 1 forested wetland) and five Type 4 streams.

Wetland No. 23 and its associated Type 4 stream are located within an area of steep slopes that are greater than 33%. The Type 4 streams located on the site flow into three different drainage basins: Foldens Creek, Silvana Terrace Creek and an unnamed creek. These five streams are non-fish bearing tributaries to the Stillaguamish River and Port Susan.

The applicant proposes construction impacts to Wetland No. 9 in the amount of 258 square feet. Additionally, the applicant proposes construction impacts to Wetland No. 19 in the amount of 2,775 square feet, and Wetland No. 20 in the amount of 644 square feet. The total wetland fill is approximately 3,677 square feet. All three of the impacted wetlands have a pre-disturbance square footage of less than 5,000 square feet. Consequently, the activities are allowed under the Critical Areas Regulations, and the only mitigation for the impacts is application of Best Management Practices (BMPs) (See, *former* Chapter 30.62.360(6) SCC). However, mitigation for impacts to the buffers of Wetlands 9, 19, and 20 will be made by enhancing approximately 7,354 square feet of buffer associated with Wetland 21, a mitigation ratio of 2:1.

In addition, the applicant proposes to impact approximately 15,800 square feet of the buffer to Wetland 5 (Tract 914), and an additional area of approximately 7,550 square feet of the Wetland 5 buffer for construction of Road F. Mitigation for the impacts to Wetland 5 will be made by designating approximately 32,200 square feet of upland areas as NGPA. The mitigation ratio for impacts to Wetland 5 is 1.4:1.

PDS reviewed the Critical Areas Study and Mitigation Plan (Exhibit C5) and determined that the application is in conformance with Chapter 30.62 SCC (Critical Areas Regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare. All critical areas and buffers are proposed to be permanently protected as NGPA/Es or in separate tracts as NGPA. (See Tracts 901, 907, 910, 911, 914, and 916 in Exhibit B1)

Based on the foregoing, the Hearing Examiner finds that the proposed Mitigation Plan requiring the protection of critical areas meets the requirements of the County Code and should be imposed as a condition of development approval.

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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county, respectively.

The subject property is designated Rural Residential - 5 (RR-5: 1 du/5 ac). This designation identifies all lands which are currently designated as Rural on existing subarea comprehensive plans and have subsequently been zoned to Rural 5. As the result of a joint planning effort between the county and the Tulalip Tribes, the RR-5 designation also applies to certain lands on the Tulalip reservation that were previously designated Rural Residential. This designation also includes some areas which were previously designated and zoned agriculture. It also includes lands for which the pre-GMA subarea comprehensive plan indicates as higher density but which were zoned R-5 by the county subsequent to the plan adoption date. The implementing zone in this designation will continue to be the R-5 zone. The 102 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2 SCC as modified by Chapter 30.41C SCC.

13. Utilities.

- A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on June 15, 2007. (Exhibit H8)
- B. Electricity. On August 3, 2006, the Snohomish County PUD No. 1 notified the County that they can provide electrical service to the development. (Exhibit G3)
- C. Water. The original application anticipated that water would be supplied by the Seven Lakes Water Association. The Seven Lakes Water Association provided a Certificate of Water Availability dated August 9, 2006 (Exhibit H12). However, the State Department of Health, Department of Ecology and Tulalip Tribes challenged their ability to provide potable water for the Lake Goodwin RCS II project (06-125856-SD), which also called into question their ability to provide potable water for this development. (Exhibits H10 and H11). As a result, the applicant has changed its source of water supply from the Seven Lakes Water Association to the Snohomish County PUD No. 1.

According to the Preliminary Certificate of Water Availability (Exhibit H13), the provision of water from the PUD will require significant improvements, including the addition of 85,000 feet of water main to reach the site, the construction of a distribution system, and pumping and storage facilities. In addition, the provision of water to the development will require an amendment to the water Comprehensive Plan, along with annexation or BRB approval to serve the lots located in the southern portion of the project. (Exhibit H.7)

This presents a question as to whether the Preliminary Certificate of Water Availability is sufficiently complete for purposes of preliminary subdivision approval, where it is contingent upon the successful completion of a comprehensive plan amendment and annexation or BRB approval. No evidence in the record addresses these processes and whether they have been undertaken or appear to have any chance of success.

PDS found that adequate provisions for potable water have been made and recommend approval of the RCS. (Exhibit J) The Examiner takes official notice of a legal memorandum from the Snohomish County Prosecuting Attorney's Office dated May 29, 2008, which considered this issue. Under PDS's current practice, making "appropriate provisions" for potable water in a proposed subdivision has meant providing evidence of either plans to utilize an existing public water system or plans to use groundwater wells. Here, PDS required a letter from the public water system evidencing intent to supply water to the development, which was provided by the PUD. (Exhibit H13)

The Prosecuting Attorneys' Office noted that there is a difference between the level of certainty required for the preliminary plat approval stage, which is governed by County regulations and RCW 58.17.110, and the level of certainty required to obtain a building permit (which requires evidence of a water right according to RCW 19.27.097). In analyzing the meaning of the phrase "appropriate provisions" for potable water supply,



the Prosecuting Attorney noted that a court will look to the dictionary or common law for a definition when a term in a statute is undefined. Here, “appropriate” is not defined in RCW 58.17.110. The term “appropriate” is defined as “proper” or “suitable.” See *Webster’s New Twentieth Dictionary* 91 (1977). “Provision” is defined as “preparatory arrangements.” *Id.* at p. 1450. Here, it is clear that preparatory arrangements of public water supply have been made, but are not yet final.

The applicant must provide specific evidence of water availability prior to final plat approval and/or prior to the issuance of a building permit for any lot on the site. Accordingly, the Hearing Examiner finds that for purposes of achieving preliminary plat approval, the applicant has sufficiently demonstrated that preparatory arrangements have been made to provide potable water through a public water supply system.

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. (Exhibit J)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on August 31, 2010 (Exhibit E.2). Notice was properly given of the SEPA determination. The DNS was not appealed. The requirements of SEPA have been met

16. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on August 3, 2006. The proposed plat, as conditioned, also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, the PDS Staff Report and in the public hearing, the design standards for roads are met. Finding of Fact 8 above, addresses how the applicant meets 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. (SCC 30.41A.110)
- C. Fire Code Compliance. (Ch. 30.53A SCC) PDS sent a request for review to Fire District No. 19 on July 19, 2007. Fire District No. 19 did not respond to the request.

Additionally, the Office of the Fire Marshall within PDS reviewed the project for compliance with the fire code and emergency vehicle access. Based upon the Fire Code (Chapter 30.53A SCC), the preliminary plat plan (Exhibit B1), and the civil plans sheets (Exhibit B5, Sheets 7, 8 and 9), the Fire Marshall recommended that the following conditions be required as part of preliminary plat approval:

- (1) Fire flow and fire hydrants shall be provided in accordance with Chapter 30.53A.310 SCC. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.
- (2) The minimum required fire flow for this project has been determined to be 750 gpm at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Chapter 30.53A.300 SCC, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems.
- (3) Fire apparatus access, as depicted, meets the minimum requirements of Chapter 30.53A.150 SCC. No further requirements should be imposed for this purpose.

With inclusion of the recommended conditions, the Examiner finds that the fire apparatus access as depicted meets the minimum requirements of Snohomish County Code Chapter 30.53A.150.

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

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The standards applicable to the subject development are reviewed below:

A. Rural Cluster Subdivision Lot Yield Calculations

The application complies with the provisions Chapter 30.41C.010 SCC by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining approximately 67% (231.7 acres) of the property in restricted open space.

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

Basic lot yield: 15,059,633 square feet/200,000 square feet	= 75.29 lots
Residential Density Bonus	= 35%

Additional bonus density lots	= 26.35 lots
Total lot yield	= 101.65 lots
Total lot yield-rounded	= 102 lots
Total lots proposed	= <u>102 lots</u>

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

This Code provision states that 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 SCC and/or other applicable County ordinances or policies, the areas shall be designated as Critical Area Protection Areas (CAPA). Analysis of critical area impacts and mitigation requirements is described in Finding of Fact No. 12. All critical areas are designated as either NGPA/E or as NGPA and located within Tracts 901, 907, 910, 911, 914, and 916 (Exhibit B.1). Impacts to Wetlands 5, 9, 19, and 20 are associated with road construction, and mitigation has been provided. PDS has determined that the project complies with the relevant critical areas codes, rules, and policies. Based on the foregoing, the Hearing Examiner finds that this provision has been met.

C. Former SCC 30.41C.200 (2) – Vegetated Sight Obscuring Buffers

This Section states:

...

- (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);*

A landscape plan is a required component of the submittal documents for a RCS (Chapter 30.41C.040(8) SCC). The applicant has provided Exhibit B4, which is the approved landscape plan for the project.

The sight-obscuring buffer is proposed to be a minimum of 50 feet in width and located within Tracts 901, 907, 909, 910, 911, 914, 916, 917, and 918. The Landscape Plan (Exhibit B4) has planting specifications for the sight-obscuring buffers. PDS has included a recommended condition of approval to implement the landscape plan. The transition from residences and adjoining properties and from specified roads has been provided (Exhibit B1). Existing landscaping currently provides the intended function of the vegetated sight-obscuring buffer in all areas. Should any impacts to the areas that are designated as sight-obscuring buffer, supplemental plantings will be required. The Landscape Plan (Exhibit B4) contains the planting specifications for the sight-obscuring buffer. PDS has determined that the vegetated sight-obscuring buffer has been appropriately located, the buffer is of the required size, and the landscaping plan provides adequate requirements for installation of the plants. PDS has determined that the project meets this requirement. PDS has recommended a condition of approval to implement the supplemental planting requirement.

The Examiner finds that the provisions of SCC 30.41C.200(2) have been met. A condition of approval has been added to require implementation of the supplemental plantings within the site-obscuring landscape buffer where appropriate.

D. Former SCC 30.41C.200 (3)—Internal Roads

This Section states:

- (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 the roads will be built to EDDS standards. PDS has determined that the project meets this requirement. The Examiner concurs and finds that these requirements are set forth in detail above.

E. Former SCC 30.41C.200 (4)—Utilities

This Section states:

- (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;*

All utilities are to be located underground, and PDS has determined that the project complies with this requirement. PDS has recommended a condition of approval to require utilities to be located underground. The Hearing Examiner concurs. Such condition will be included by the Examiner.

F. Former SCC 30.41C.200 (5)—Unbuildable land

This Section states:

- (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 “[s]teep 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) Here, there are approximately 12.37 acres of unbuildable lands that meet the definition of Chapter 91U.060 SCC. These areas are located within Tracts and are designated as NGPA. PDS has determined that the project complies with this requirement. The Examiner finds that the project complies with this requirement of SCC 30.41C.200(5).

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

This Section states:

- (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;*

The Examiner finds that this provision is not applicable to the present development proposal.

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

This Section states:

- (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.*

The Examiner finds that neither agricultural nor forestry uses are proposed for any of the tracts within the RCS. Therefore, no disclosure statement is required.

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

This Section states:

*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.*

Here, no mineral resource uses are proposed for any of the open space tracts within the RCS. Therefore, no disclosure statement is required. The Examiner finds that the project complies with this requirement.

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

This Section states:

- (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;*

The southwestern plat boundary abuts the plat of Lake Goodwin RCS II (06-125856-SD), which received preliminary approval on March 16, 2010. A portion of the southeastern plat boundary abuts the proposed plat of Nysether RCS (06-134099-SD). The northeastern corner of the plat boundary abuts the proposed plat of Lake Goodwin RCS V (07-101623-SD). The restricted open space tracts of this proposal abut with the open space tracts of the three adjacent RCSs.

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

This Section states:

- (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;*

An Open Space Management Plan has been provided in the record (Exhibit A4), which has been reviewed by PDS which found that it meets the requirements of the Code. The Examiner concurs and has included a condition to require compliance with the Open Space Management Plan.

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

This Section states:

- (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));*

For the proposed 102-lot RCS, there are six clusters of lots. They consist of:

a)	Lots 1-8	8 lots
b)	Lots 9-22	14 lots
c)	Lots 23-48	26 lots
d)	Lots 49-71, 95-98, and 100-101	29 lots
e)	Lots 72-94	23 lots
f)	Lots 99 and 102	2 lots

The clusters of lots are separated by vegetated tracts of the required dimensions. No cluster exceeds the maximum of 30 lots. The Examiner finds that the project complies with this requirement.

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

This Section states:

*(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;*

Here, 18 lots (Lots 21, 42, 55, 56, 57, 60, 61, 62, 63, 64, 68, 73, 74, 77, 80, 81, 82, and 83) do not abut either required buffers or restricted open space tracts. The remaining 84 lots do abut with either required buffers or restricted open space tracts. Thus, 82.4% of the residential lots abut either required buffers or restricted open space tracts, exceeding the County's requirement. The Examiner finds that the project complies with this requirement.

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

This Section states:

*(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 has some sloping areas, the majority of which are located within the Restricted Open Space tracts. The areas that are proposed for the lots are relatively flat and have no prominent topographic features. The lots have been placed to avoid the critical areas on site and are located as central to the site as possible. Accordingly, the Examiner finds that the natural features of the site and the site design maintain its natural features and maintain rural character to the greatest extent feasible.

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



This Section states:

- (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;*

All lots in the plat will be served by individual septic systems, which have been approved by the Snohomish Health District. (Exhibits C6, H8)

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

This Section states:

- (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;*

The subject property has no prominent topographic features. The Examiner finds that the proposal complies with this requirement.

Q. SCC 30.41C.200 (16)—Fire District

This Section states:

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

The development is located within the service boundaries for Fire Districts No. 19. The Examiner finds that the project complies with this requirement.

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

This Section states:

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

The DPW and PDS determined the project is concurrent as of September 8, 2006. The concurrency determination is valid for six years from that date. The Examiner finds that the project complies with this requirement.

18. 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 (Exhibit B1), and in an Open Space Management Plan (Exhibit A4) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Finding of Fact 18. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining over 67% (230 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.

19. 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, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

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

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . . .

RCW 58.17.110. The Examiner concludes the applicant has met its burden in showing the established criteria have been met.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the applicant has met its burden in showing that the rural cluster preliminary subdivision application should be approved as outlined in Chapter 30.41C SCC.
4. Adequate public services exist to serve this proposal.
5. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

## DECISION

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

### CONDITIONS

- A. The preliminary plat received by PDS on August 30, 2010 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
  
- B. **Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:**
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the County.
  - iii. A final mitigation plan based on the Critical Area Study and Conceptual Mitigation Plan for Lake Goodwin RCS IV prepared by Curran Environmental Services, Inc. (Revision #1) dated February 27, 2007, shall be submitted for review and approval during the construction review phase of this project.
  - iv. Construction plans shall be submitted for review and approval.
  - v. A Stormwater Pollution Prevention Plan shall be submitted for review and approval.
  - vi. Fire flow and fire hydrants shall be provided in accordance with Chapter 30.53A.310 SCC. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by the Office of the Fire Marshall.
  - vii. A grading permit shall be obtained.
  
- 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 \$811.29 (Kayak Point # 301) 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 each single-family residential building permit:

\$2,526.48 per lot for mitigation of impacts on County roads paid to the County,  
\$159.54 per lot for mitigation of impacts on state highways paid to the County,  
\$84.72 per lot for mitigation of impacts on state highways paid to the County,

\$17.36 per lot for mitigation of impacts on state highways paid to the County,  
\$419.35 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein."

- iii. The final plat shall show a 5-foot wide strip of right-of-way dedication along the property's frontage with Happy Hollow Road west of 50<sup>th</sup> Avenue NW; to total 35 feet of right-of-way.
- iv. The final plat shall show a 30-foot x 30-foot square of property dedication for right-of-way at the southwest corner of Section 10, Township 31 North, Range 4 East to complete the right-of-way needed in the northeast quadrant of the future intersection of 204<sup>th</sup> Street NW and 44<sup>th</sup> Avenue NW.
- v. The final plat shall show additional property to be dedicated for the cul-de-sac at the permanent end of 196<sup>th</sup> Street NW.
- vi. "Lots 1-90 within this subdivision will be subject to school impact mitigation fees for the Stanwood-Camano School District No. 401 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of Chapter 30.66C.010 SCC. Credit shall be given for 35 existing parcels. Lots 1-35 shall receive credit."
- vii. "Lots 91-102 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 Chapter

30.66C.010 SCC. Credit shall be given for 2 existing parcels. Lots 91-92 shall receive credit.”

- viii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

“All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in UDC 30.91N.010 are allowed when approved by the County.”

- ix. “The minimum required fire flow for this project is 750 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Chapter 30.53A.300 SCC, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2-hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.”
- x. “All utilities shall be located underground.”
- xi. “The landscape plan shall be fully implemented.”
- xii. “The landscape areas, including the sight-obscuring buffers, shall be maintained.”
- xiii. “The Open Space Management Plan shall be continuously implemented.”

**D. Prior to recording of the final plat:**

- i. All new public roads shall be constructed in accordance with the EDDS, or as determined by DPW.
- ii. The applicant shall improve the intersection of 188<sup>th</sup> Street NW and 52<sup>nd</sup> Avenue NW as determined by DPW.
- iii. The applicant shall improve the intersection of 40<sup>th</sup> Avenue NW and SR 531 as determined by DPW.
- iv. The public road connection proposed through Lake Goodwin RCS II, Lake Goodwin RCS IV, and Lake Goodwin RCS V shall be constructed to connect with an existing open constructed public road as determined by DPW.
- v. Rural standard frontage improvements shall have been constructed along the subject property’s frontage on Happy Hollow Road, 52<sup>nd</sup> Avenue NW, 44<sup>th</sup> Avenue NW, 192<sup>nd</sup>

Street NW, 196<sup>th</sup> Street NW, 200<sup>th</sup> Street NW, 204<sup>th</sup> Street NW, and 212<sup>th</sup> Street NW as determined by DPW.

- vi. 212<sup>th</sup> shall have been improved between the intersection with Road F and 50<sup>th</sup> Avenue NW to include two paved 10-foot travel lanes, a 7-foot paved shoulder walkway on the south side and a 3-foot paved shoulder on the other side to the satisfaction of the County.
- vii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- viii. The final mitigation plan shall be completely implemented.
- ix. The applicant shall make all improvements necessary to provide potable water to the development as determined by PDS in conjunction with the Washington State Department of Health and Washington State Department of Ecology.

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 16<sup>th</sup> day of November, 2010.

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Millie Judge, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **November 29, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

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

The grounds for seeking reconsideration are limited to the following:

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

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

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for



reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 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 **NOVEMBER 30, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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

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

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

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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