

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 21, 2010

PLAT/PROJECT NAME: ***THE HIDEAWAY***

APPLICANT/
LANDOWNER: Jeremy and Traci Hoskins
3125 280th Street NW
Stanwood, WA 98292

FILE NO.: 06-127556 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 3520 Stanwood-Bryant Road, Arlington

ACREAGE: 34.84 acres

NUMBER OF LOTS: 11

AVERAGE LOT SIZE: 45,750 square feet

MINIMUM LOT SIZE: 43,561 square feet

GROSS DENSITY: 0.32 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential (1 DU per 5 acres, Basic)

ZONING: R-5

UTILITIES:
Water: Individual Exempt Wells
Sewer: On-site septic

SCHOOL DISTRICT: Arlington School District No. 16

06127556

FIRE DISTRICT: SCFD No. 18

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The preliminary plat application for a 14-lot development was originally submitted to Planning and Development Services (PDS) on October 24, 2006. The 120-day clock started on November 21, 2006. The project was changed to an **11-lot development**, with sufficient changes to require re-starting the 120-day clock, as allowed in Chapter 30.70.110(3)(c) SCC. The 120-day clock re-started on April 18, 2008. As of the hearing date, 274 days of the 120-day review period will have elapsed. The prolonged review for the project resulted from: (1) a change in the provision of potable water from proposing a community well proposing individual wells, (2) multiple changes in the PDS review staff that were assigned to this project, and (3) a change in the consultant that represented the applicant. (Exhibit A1, A2)

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

A SEPA Determination of Non-Significance (DNS) was made on November 5, 2009. (Exhibit E2) No appeal was filed.

The Examiner held an open record hearing on January 5, 2010. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all the evidence of record, the following Findings of Fact are entered.

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

A. Background Information

2. Applicant's Request: The applicant is requesting approval of an 11-lot Rural Cluster Subdivision (RCS) on a 34-acre parcel. Access is proposed by a new public road, 264th Street N.E., along the property's western boundary. Each lot will be served by individual septic systems. Potable water will be supplied by two existing wells on the site.

3. Site Description: The southern portion of the site is devoted to agriculture and growing Christmas trees, and the northern portion is large wetland. The site is relatively flat.
4. Adjacent Zoning/Uses: Adjacent zoning is R-5 and adjacent uses are either residential or undeveloped. The property to the south, which is owned by a different developer, is being developed as an 11-lot rural cluster subdivision (the plat of Pinebrook, 06-125486-SD, preliminary approval on May 5, 2008).
5. Issues of Concern: Other than the 120-day clock, PDS did not identify any areas of concern for the project. Citizen comments were received in the form of letters (Exhibits I.1 and I.2), which stated questions or concerns about the private road access and about drainage within the larger basin, and how the new development (and its eventual residents) would work with existing residents in the area to maintain the drainage flows to benefit all properties. Similar comments were received at the open record hearing through the testimony of Rand Pigott (the former owner of the subject property and neighboring land owner), and Allison Sheafor-Joy (a neighboring property owner). Neither citizen stated opposition to the overall project. PDS and the Applicant provided responses to those comments (which are discussed in more detail below), noting that the project's drainage will be handled on site and no upstream or downstream impacts are anticipated, and that there will be a homeowner's association responsible for maintenance of the drainage system who can work with neighbors on drainage maintenance issues.

B. Compliance with Codes and Policies.

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

The proposal is within River Meadows Park Service Area, No. 302, and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 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, is included as recommended condition of approval from PDS and has been agreed to by the Applicant.

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 a traffic analysis (Exhibit C1) for the proposed development which was used by PDS to determine the analysis below.

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

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 11 SFR's, which is 9.57 ADT/SFR. This rate comes from the 7th Edition of the ITE Trip Generation

Report (Land Use Code 210). The development will generate 105.27 new ADT and has a road system capacity impact fee of \$27,791.28 (\$2,526.48/lot) based on \$264.00/ADT. 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. PDS recommended that a condition be included to require payment of the mitigation fees prior to building permit issuance. The Hearing Examiner has included such a condition.

B. Concurrency [SCC 30.66B.120]

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works has made a preliminary determination that the development is concurrent as of December 12, 2006. The expiration date of the concurrency determination is six years from that date, which is December 12, 2012. The development was deemed concurrent based on SCC 30.66B.130(4). The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 8.25 a.m. peak-hour trips and 11.11 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips.

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

Based on the traffic study, PDS has determined that the subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. (Exhibit C1) Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be required under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

According to Rule 4222.020(1), full rural frontage improvements are required along the subject parcel's frontage on Stanwood Bryant Road per EDDS 3-030B. The improvements shall consist of an 11-foot travel lane and an 8-foot paved shoulder. PDS has determined that Stanwood Bryant Road is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any frontage improvements towards the applicant's impact fee is not applicable. Construction of frontage improvements is required prior to recording. The Hearing Examiner has included a condition as part of the decision for construction of frontage improvements prior to recording the subdivision.

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

Access to the development is proposed via an extension of 264th St NE, a public road which was created in the recorded subdivision of Hidden Acres. 264th St NE connects to Tronson Road, which is an opened and constructed public road. A road serving more than 250 ADT is required to connect in at least 2 locations with another road or roads that meet the applicable standard(s) for the resulting traffic volume. (EDDS 3-10(B)(2) and (4)). However, a Category 2

wetland is on the eastern part of the subject property. Therefore, a road stub to the eastern property line is neither required nor desirable. An EDDS deviation was requested and granted to avoid impacting this wetland. (Exhibit G1)

The adjacent future rural cluster subdivision to the south boundary, Pinebrook (06-125486-SD), does not have a road stub for future connection to the subject development. Therefore, a road stub to the southern property line is not required.

A stub connection to the southeast corner of the subject parcel, between the wetlands, is shown on the preliminary plat for future circulation. A temporary turn around will be provided at the end of the proposed new public road.

There are utility poles along the development's frontage on Stanwood Bryant Road that are within the clear zone. For roads with a posted speed greater than 35 mph, the applicant needs to ensure existing utility poles are out of the clear zone according to Chapter 7 of the Washington State Department of Transportation Design Manual. The Hearing Examiner has included a condition to require relocation of the utility poles during plat construction.

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

In determining the extent of improvements required, the Director of Public Works 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 Staff Recommendation (Exhibit J), which is adopted herein by this reference, and finds that the recommended extent of improvements are consistent with the Department'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.

Stanwood Bryant Road is designated as a Major Collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. Twenty feet of right of way presently exists on the development's side of centerline. Twenty feet of additional right of way is required along the development's frontage on Stanwood Bryant Road. 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 20-foot section of right-of-way.

Stanwood Bryant Road is not in the cost basis analysis for Chapter 30.66B SCC, therefore credit for any right-of-way dedication towards the applicant impact fee is not applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement 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.

Originally, the applicant submitted a proposal to enter into a traffic mitigation agreement with the WSDOT based on 14 new SFR's in the amount of \$4,823.28 ($133.98 \text{ new ADT} \times \$36.00/\text{ADT} = \$4,823.28$ (\$344.52/SFR) to mitigate traffic impacts to State highways. WSDOT accepted this offer by concurring with the applicant's offer in a letter dated October 30, 2006 (Exhibit H.3). However, the project was redesigned and the number of lots has been reduced to 11 lots. The per lot amount remains the same, but the overall amount has been revised to \$3,789.72. The Applicant indicated at the public hearing that they accept this revised amount of mitigation fees and will pay this amount to WSDOT. The Hearing Examiner finds that the payment of such fees to WSDOT provides adequate mitigation of impacts to the State's highway system and has included a condition to require the payment of such funds.

I. Impacts to City Streets and Roads in Another County [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.

Snohomish County has executed an Interlocal Agreement with the City of Arlington regarding traffic impacts and this development is within the influence area that requires traffic impacts and mitigation be considered for the City. Based on Exhibit 3 of the interlocal agreement (ILA), for Sub Area #CO-ARL-4, 60% of the development's trips will pass through the City of Arlington.

The applicant submitted a traffic mitigation offer to the City of Arlington in the amount of \$8,802.24 based on 8.48 PM PHT and a mitigation fee is \$1,038.00 per PM PHT.

Comments were received from the City of Arlington by the PDS on November 22, 2006. (Exhibit H.1) The City rejected the applicant's traffic mitigation offer. The City requested that the applicant submit a traffic mitigation offer based on \$3,355.00 per PM PHT. The number of lots was subsequently reduced to 11 lots. The City of Arlington accepted the revised mitigation offer. (Exhibit H.1) The applicant's obligation to the City of Arlington is $11 \text{ new lots} \times 1.01 \text{ PM PHT/lot} \times \$3,355 \text{ per PM PHT} \times 60\% = \$22,364.43$ (\$2,033.13/lot). The Hearing Examiner finds that the Applicant's proposed payment of impact fees to the City of Arlington adequately mitigates the impacts of traffic from the development on the City's streets, and a condition of approval has been included to require payment of such mitigation fees.

In addition, Snohomish County has executed an ILA with the City of Stanwood regarding traffic impacts, and this development is within the influence area that requires traffic mitigation be considered for the City. The applicant's Traffic Impact Analysis dated August 11, 2006 (Exhibit C.1), indicates that the development will add less than 5 directional peak hour trips to the City. The applicant submitted a written offer to the City in the amount of \$3,656.61 [\$332.42/lot] (11 lots X 9.57 ADT/lot X \$231.57/ADT X 15%), which was accepted by the City. (Exhibit H.2) The Hearing Examiner finds that the Applicant's proposed payment of impact fees to the City of Stanwood adequately mitigates the impacts of traffic from the development on the City's streets, and a condition of approval has been included to require payment of such mitigation fees.

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 that may reside in the subject development.

Revised comments in the form of an e-mail dated January 31, 2008, were received from the Arlington School District. (Exhibit H6) Those comments indicate that all students will walk through the newly recorded development of Hidden Acres and be picked by a school bus at the intersection of Tronson Road and 264th Street NE. The subject development will also be obtaining access through the new public road in an adjacent development, Hidden Acres. Both developments include pedestrian facilities as per the EDDS. Based on existing and approved infrastructure, and frontage improvements proposed for this development, no other off-site pedestrian facilities 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 Arlington School District No. 16, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot. 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. The proposed drainage system is to capture all stormwater runoff, infiltrate a portion of it on certain lots and route the remaining stormwater to the water quality treatment facility and then to the wet pond and infiltration facility. Covenants and restrictions, combined with the drainage facility maintenance covenant, will be included on the face of the plat requiring maintenance of the wetpond and infiltration facilities in perpetuity. Construction of the infiltration and wetponds will be required to meet the Engineering and Development Standards of Snohomish County (EDDS Chapter 5-14).

Although this property is part of a large regional drainage area, Surface Water Management did not provide comments as to any known drainage problems downstream of this project within a quarter mile offsite.

The site soils are very conducive to infiltration. The applicant furnished a letter from the geotechnical engineer (Exhibit C.3) addressing concerns over potential high seasonal water table that might impact the function of the infiltration and water quality ponds. No water table was encountered in soil logs dug up to 7 feet below the ground surface which is below the bottom of the proposed infiltration and wet ponds. There does not appear to be any impacts to the system's ability to control peak rate of runoff (however, at construction, a pond liner may be required in the wet pond to protect ground water quality if it is determined the high water table is within 5 feet of the bottom of the wet pond).

These are large lots on soils mapped as very conducive to infiltration. The percentage of impervious area relative to the size of the development is very small, and very unlikely to cause any drainage problems in the area.

Maintenance of the proposed shared drainage facilities will be managed by a homeowner's association for the plat. As discussed above, comments were received from neighboring land owners about the need to maintain the drainage flow for the surrounding properties. The Applicant and PDS have reviewed those drainage issues and responded that the proposed stormwater control system will not negatively affect offsite drainage. Their conclusions are consistent with the analysis set forth in the Targeted Drainage Report. (Exhibit C2)

Planning and Development Services (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 2,200 cubic yards of cut and 1,200 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 critical areas present on the subject property. The Applicant prepared a critical areas study entitled "Buffer Averaging and Restoration Plan and Mitigation." (Exhibit B4) A large Category 2 wetland dominates the site in the north and east. The proposed lots will be accessed via a private roadway that will be improved in the location of the existing private drive, thus minimizing impacts to critical areas and buffers as required per SCC 30.62.365. This existing private roadway currently bi-sects and separates two Category 3 wetlands, which were historically connected in the southwestern corner of the subject property.

Buffer averaging is proposed to mitigate for minor buffer impacts for the construction of the drainage facility in Tract 997. Lots 1 through 8 border the buffers of the two on-site wetlands. Portions of the buffers fall onto these lots; however, not all of the buffer areas are restricted as NGPA/E because existing uses are allowed to be maintained per SCC 30.62.320.

PDS has reviewed the critical areas study and mitigation plan (Exhibits C5 and C6) 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. The Hearing Examiner has imposed conditions requiring the protection of critical areas.

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 (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres. The base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9.

The 11 lots proposed are consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2 SCC.

13. Utilities.

A. Sewage Disposal. Sewage disposal will be accomplished through individual onsite septic systems. Snohomish Health District has reviewed the proposed septic system

design and has recommended approval of the preliminary plat on March 31, 2008. (Exhibit H4)

- B. Electricity. Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on November 2, 2006. (Exhibit H5)
- C. Water. Water will be supplied through individual exempt wells. Snohomish Health District recommended approval of the preliminary plat on March 31, 2008. (Exhibit H.4) The plat consists of 11 lots. At 350 gallons per day (gpd) of typical residential usage, this computes to 3,850 gpd day for the plat. The wells are exempt under State law because the computed consumption value is less than the 5,000 gallon per day limit set forth in RCW 90.44.050. Although the wells are exempt, it should be noted that WAC 173-160-345(1) requires that wells must demonstrate a minimum of 400 gpd in order to be approved and PDS has established a value of 350 gpd for average consumption (87.5% of the minimum demonstrated capacity for approval of the wells).

Well protection zones are shown in the Snohomish Health District records for Lots 1 through 11 of this plat. 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. The Hearing Examiner has included a condition to establish the well protection zones.

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--SEPA)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 5, 2009. (Exhibit E2) The DNS was not appealed.

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 October 24, 2006 (Exhibit A2) and a Revised Master

Permit Application was received by PDS on March 19, 2008. (Exhibit A1) 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 7 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 (Chapter 30.53A SCC)

Although PDS sent a request for review document to Fire District No. 18 on October 25, 2006, no response was received.

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, 2006. The conclusions of the review were that:

- (a) Each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office; and
- (b) 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 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 Examiner have concluded that the application meets the requirements of the critical areas code, Chapter 30.62 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);

A landscape plan is a required component of the submittal documents for a rural cluster subdivision (SCC 30.41C.040(8)). Exhibit B.5, and the note on the Preliminary Plat Plan sheet (Exhibit B1) constitute the approved landscape plan for the project. The Landscape Plan (Exhibit B5) has planting specifications for the sight obscuring buffers. The Hearing Examiner will impose a condition of approval to implement the Landscaping Plan.

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 to be built to EDDS standards. The Examiner has detailed the PDS and DPW findings in Finding of Fact 7 of this decision, and finds that these meet the design requirements of the RCS code.

D. SCC 30.41C.200 (4)—Utilities.

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

The Applicant will be placing all utilities underground. The Examiner will include a condition requiring all utilities to be installed underground.

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. There are no unbuildable lands that meet the definition of SCC 91U.060. The Examiner finds that the project complies with this requirement.

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

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

Not applicable.

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

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

Not applicable.

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

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

...

(b) Notice for mineral uses within required or optional open space:

Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.

Not applicable.

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

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

The adjacent subdivision to the south (Pinebrook; 06-125486-SD) and the adjacent subdivision to the west (Hidden Acres; 05-120623-SD) abut with Tract 999 of this development, which causes the Vegetated Sight Obscuring Buffers of Pinebrook and of Hidden Acres to abut with the Restricted Open Space tract of this development. PDS has determined that this project has no open space tracts on adjoining properties, so this project is in compliance with this requirement.

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;

Four tracts are being created within the plat. (Exhibit B1) Tract 997 is the tract containing the water quality and infiltration system. Tracts 999 and 998 are restricted open space containing the NGPA/E areas. Tract 996 contains an existing access and utility easement tract. The Open Space Management Plan (Exhibit A5) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for the tracts as implemented through a condition of final plat approval. Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts.

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;
- and

5. Enhance and maintain an attractive natural environment.

(Exhibit A5). The Hearing Examiner has included a condition to require implementation of the Open Space Management Plan.

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

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

This requirement is not applicable, since this is an 11-lot development.

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

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

As proposed, all lots within the development abut required buffers. Therefore, the Examiner finds that the project complies with SCC 30.41C.200(12).

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

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

The subject property is constrained by critical areas and is relatively flat. As discussed in the Critical Areas section of this report (above), impacts to critical areas has been minimized. PDS has determined that the project complies with this requirement.

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

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

The applicant proposes on-site septic systems for this development. The SHD has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. (Exhibit H4)

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

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

There are no prominent topographic features on which lots are proposed. Lots are not located near the interior of the site because the interior of the site is comprised of critical areas. PDS has determined that the lots have been sited in the least environmentally sensitive portions of the subject property that are accessible from existing road systems, and that the proposed lots are provided with a visual sight obscuring buffer that will minimize the visibility of the development from adjoining roadways and properties. The Examiner determines that the applicant has met this design requirement to the extent possible on this application.

P. SCC 30.41C.200 (16)—Fire District;

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

The development is located within the service boundary for Fire District #18.

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

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

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

18. 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: 1,517,502 square feet/100,000 square feet	= 15.17 lots
Total lot yield	= 15.17 lots
Total lot yield-rounded	= 15 lots
Total lots proposed	= <u>11 lots</u>

19. 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 August 12, 2009 (Exhibit B1), and in an Open Space Management Plan (Exhibit A5) 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 17. 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 56% of the subject 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.

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

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

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

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

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review The Hideaway 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 a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED** subject to the following **CONDITIONS**:

CONDITIONS:

- A. The preliminary plat received by PDS on March 19, 2009 (Exhibit A.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. Construction plans shall be submitted for review and approval.
 - iv. The construction plans shall show the relocation of utility poles along the development's frontage on Stanwood Bryant Road that are within the clear zone.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. The following language shall be indicated on the face of the final plat.
 "The dwelling units within this development are subject to park impact fees in the amount of \$48.82 (River Meadows # 302) 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. The following language shall be indicated on the face of the final plat.
 "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - A. \$2,526.48 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.
 - B. \$344.52 per lot for mitigation of impacts on state highways paid to the County.
 - C. \$2,033.13 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment of the above amount shall be provided.
 - D. \$332.42 per lot for mitigation of impacts on City streets for the City of Stanwood paid to the City. Proof of payment of the above amount 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 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 by PDS.

- iii. The following language shall be indicated on the face of the final plat:
“The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive credit.”

- iv. All critical areas shall be designated Native Growth Protection Areas (NGPA) with the following language indicated on the face of the plat:

"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 SCC 30.91N.010 are allowed when approved by the County."

- v. “The Open Space Management Plan (Exhibit A5) shall be fully implemented, including all maintenance activities.”
“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.”

- vi. “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.”

- vii. “The lots in this subdivision do not qualify as duplex lots per Snohomish County Code.”

- viii. “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.”

- ix. “All utilities shall be located underground.”

- x. "20 feet of additional right-of-way is required along the development's frontage on Stanwood Bryant Road, for a total of 40-feet. This has been shown on the preliminary plat plans (Exhibit A.1)."

D. Prior to recording of the final plat:

- i. The roads within the plat shall have been constructed in compliance with the EDDS.
- ii. Rural frontage improvements shall be constructed along the parcel's frontage on Stanwood Bryant Road to the satisfaction of the County.
- iii. 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 plattor 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 PDS for review and approval prior to installation.

- iv. The preliminary landscape plan for the sight obscuring buffer (Exhibit B.5) shall be implemented. All required detention facility landscaping shall be installed in accordance with Type A landscaping.
- v. Utilities shall be located underground.
- vi. The applicant shall have constructed a safe area for children to wait for the school bus in compliance with the EDDS and DPW specifications.

E. 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.

F. In conformity with applicable standards and timing requirements:

- i. The Visual Buffer Landscape Plan (Exhibit B.5) shall be implemented. All required sight-obscuring buffer landscaping shall be installed in accordance with the approved landscape plan.
 - ii. The Open Space Management Plan shall be fully implemented.
 - iii. PDS shall review the sight- obscuring buffer for adequacy. Additional plantings shall be required for areas where necessary within the sight-obscuring buffer.
- G. 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; and
 - ii. Establish a Homeowner's Association, guaranteeing management and maintenance of restricted open space in as required by the Open Space Management Plan (Exhibit A.4).

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 21st day of January, 2010.

 Millie Judge, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **FEBRUARY 1, 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **FEBRUARY 4, 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.