

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 22, 2010

PLAT/PROJECT NAME: ***Village Ranch***

APPLICANT/
LANDOWNER: Kearney and Gail Hammer
27212 28th Avenue N.W.
Stanwood, WA 98292

FILE NO.: 09-100175SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

BASIC INFORMATION

LOCATION: 27212 28th Avenue N.W., Stanwood, WA 98292

ACREAGE: 30.74 acres

NUMBER OF LOTS: 8

AVERAGE LOT SIZE: 49,477 square feet

MINIMUM LOT SIZE: 43,566 square feet

GROSS DENSITY: 0.26 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential - 5

ZONING: R-5

UTILITIES:
Water: Individual Wells – (Plat Exemption –Limit of 5,000 gpd)

Sewer: Individual On-Site Septic

SCHOOL DISTRICT: Stanwood-Camano School District No. 401

FIRE DISTRICT: North County Regional Fire Authority

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

A complete application for the preliminary plat approval for an 8-lot rural cluster subdivision was submitted to Planning and Development Services (PDS) on January 12, 2009. The 120-day clock started on February 9, 2009. As of the hearing date, 129 days of the 120-day review period had elapsed. (Exhibits A1, H)

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 19, 2009. (Exhibits E1, 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 8-lot Rural Cluster Subdivision (RCS) on a 30.7-acre parcel. Access to each lot is proposed by a new private road, off of 28th Avenue N.W. Each lot will be served by individual septic systems. Potable water will be supplied by individual wells.

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 single-family residential or undeveloped pasture or forested lands.
5. Issues of Concern: No issues of concern were identified by PDS or raised by other agencies. No written public comments were received. Mr. John Glastra, residing at 27333 28th Avenue N.W., Stanwood, WA appeared at the public hearing and testified. He raised concerns about the potential impacts of any street lights or other lighting from the new development on existing rural residents and asked questions about who monitors the exempt wells and enforces the restrictions on water withdrawals for residential use and lawn watering. PDS responded that the Department of Ecology and Snohomish County are responsible for the water withdrawal restrictions. The Applicant's Consultant, Randy Devoire, responded that there are no proposed street lights for this development, but acknowledged that there will be some additional lighting in the area associated with the 7 new single family residences. The Hearing Examiner finds that the effects of light and glare were discussed in the SEPA Checklist (Exhibit E1) at Page 12 and considered by PDS during technical review of the project. PDS issued a threshold determination of nonsignificance (DNS) which was not appealed.

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 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]

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

development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330.

The calculations for the present development application are set forth in the Staff Recommendation (Exhibit H) which is adopted and incorporated by this reference as if set forth in full. The Total Snohomish County Road System Impact Fee required by this development is \$17,685.36, or \$2,526.48 per single-family residence. Credit shall be given for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance. The Hearing Examiner has included such a condition.

B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120. The development has been deemed concurrent as of March 26, 2009. The concurrency determination approval will expire on March 26, 2015, six years from the date concurrency. The development has been deemed concurrent because it will generate 50 or more peak-hour trips in TSA A, which has no arterial unit in arrears. See, SCC 30.66B.130(4).

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

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. Therefore, no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements and Extent of Improvements [SCC 30.66B.410 and .430]

The road fronting the development property, 28th Ave NW, is currently a 21-foot wide paved public road and classified as a rural minor collector arterial. Standard frontage improvements are required along the subject development frontage with 28th Ave NW, per the EDDS 3-030B. An ADT between 400 to 2000 requires an 11-foot paved roadway from the centerline of the road/right of way and an 8 foot paved shoulder.

In determining the extent of improvements required, the County 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 H), 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.

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

The main public road serving the subdivision is 28th Ave NW, which is classified as a rural minor collector arterial road. The posted speed for the road is 35 mph. Access is proposed to lots 1 through 8 via a new private road off of 28th Ave NW that terminates in a 40 foot radius cul-de-sac. The private road is classified as a non-arterial private low volume access. The road will be a private rural road serving less than 90 ADT. The design speed for the road is 20 mph; the required width is 20 feet for travel lanes. The Applicant has proposed to construct the private road with travel lanes of 20 feet in width within a 40-foot easement that terminates in a 40 foot radius cul-de-sac per the EDDS 3-150. The private road meets the EDDS 3-060 and 3-080 for private low volume access road (rural).

The Department of Public Works performed a site inspection of the subject property on March 25, 2009. Stopping and intersection sight distances were checked at the proposed access point on 28th Ave NW and were found to meet the minimum requirements of EDDS 3-08.

There is a private road associated with this project; tract 998 that intersects with 28th Ave NW at the south east boundary of the subject development. Public Works approves of the use of the private road shown on the preliminary plat for the subject development per 30.41C.200 (3).

If the County made a finding that there was a need for a future public road connection between the private road, or the development property and an adjacent location, it would be a requirement that the road system serving the development be public instead of private. However, the need for and the feasibility of providing for a future public road connection was evaluated, and it was determined that a public road connection was not feasible in this case. A stream runs through the subject development at the south west boundary. To the west, there are no public roads that are nearby. To the east, the subject development fronts 28th Ave NW. Therefore, because of the limitations of the topography and the absence of public roads in the vicinity of the subject development, a private road for this development is acceptable.

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

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

The road serving this development, 28th Ave NW, is designated as a Minor Collector Arterial and requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 43.5 feet of right-of-way exists on the development's side of the right-of-way. Therefore, the development is *not* required to dedicate additional right-of-way.

G. 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.

This development is subject to SEPA and thus is subject to the Interlocal Agreement (ILA) between Snohomish County and the Washington State Department of Transportation (WSDOT) that became effective on December 21, 1997, and as amended through the date of completeness for this application.

According to the Applicant's traffic study dated January 9, 2009 (Exhibit C.1), the subject development will not impact any WSDOT collection projects on the exhibit C list in TSA A with 3 or more directional pm peak hour trips.

WSDOT concurred with the applicant's traffic study that this development will not have a significant adverse traffic impact upon state highways in an email sent to the PDS on February 18, 2009 (Exhibit G.2). Therefore, WSDOT does not require traffic mitigation fees for the project.

H. 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 and City of Stanwood regarding traffic impacts and this development is within the influence area that requires traffic impacts and mitigation be considered for these Cities.

For impacts on the city of Arlington's street system, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal from the applicant proposing measures to mitigate impacts on City streets is required. The applicant has submitted an offer in the amount of \$0 as mitigation towards traffic impacts to the city generated by this development. The subject development will impact the City of Arlington with 10% of its total trips. Comments from the city, dated January 29, 2009 (Exhibit G.1), indicate they no impact fees are required for this development. Mitigation will not be imposed for the City of Arlington.

For impacts on the city of Stanwood's street system, and pursuant to the ILA and SCC 30.66B.055(4). The applicant has submitted an offer in the amount of \$0 as mitigation towards traffic impacts to the City generated by this development. The subject development will not impact any projects that are part of the city of Stanwood's cost fee basis with 3 or more directional peak hour trips, and therefore should not be required to pay city of Stanwood traffic mitigation fees. Comments from the City, dated January 22, 2009 (Exhibit G.9), indicate they

have accepted the offer and no impact fees are required for this development. Mitigation will not be imposed for the City of Stanwood.

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

I. 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. Comments from the Stanwood-Camano School District dated January 28, 2009 (Exhibit G.5), indicate that the students who live in the development will attend local schools and will be picked up at the entrance to the development by a District school bus along 28th Avenue N.W. Based on existing and approved infrastructure, and frontage improvements proposed for this development which will provide safe walking conditions for school children and a safe waiting area for the school bus, no other off-site pedestrian facilities are required.

The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required.

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 Stanwood-Camano School District No. 401, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the two (2) existing lots. The Examiner has included a condition requiring compliance with Chapter 30.66C SCC.

10. Drainage and Grading.

Drainage. The proposed drainage system for detention and water quality treatment of storm water is a wet pond meeting standards found in the County's currently adopted drainage manual. Non-pollution generating rooftops and driveways for lots 4, 5, 7 and 8 will bypass the stormwater wet pond. However, stormwater runoff in the wet pond will be over-detained to limit peak runoff leaving the site to pre-developed conditions, as required under the Drainage Code for major developments. The bypassed pollution generating driveway surfaces will be collected and directed to individual biofiltration systems such as bioswale or vegetated filter strip meeting the drainage manual and EDDS standards, prior to being released from the respective lots. 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 5,000 cubic yards of cut and 5,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. The Examiner has included a condition requiring submission and approval of construction plans.

11. Critical Areas Regulations

There is a Type 4 stream, five Category 3 wetlands, and a Category 4 wetland on the site. Some of the wetlands extend offsite. The Applicant's approach has been to completely avoid all critical areas and place required buffers around them. Portions of the wetland and wetland buffers in the southern and eastern portions of the site will be planted with native vegetation because the areas are designated as Vegetated Sight Obscuring Buffer.

However, complete impact avoidance was not possible with regard to the Wetland D buffer. An existing easement for a septic drainfield from offsite will be located within Tract 994, and the existing drainfield line will be relocated (adjacent to the private road). The relocation of this drainfield line will slightly impact the buffer to Wetland D. Additionally, there is a pre-existing well within the buffer to Wetland D which will be placed in a separate Tract 993. The well serves as potable water for the existing single family residence on Lot 1. There are no other development impacts to the critical areas and buffers. The Applicant has proposed mitigation for the impacts to buffers (1,487 square feet) by providing 20,545 square feet of additional area as CAPA, which represents a mitigation ratio of 13.8:1. (Exhibit C3 and C4)

PDS has reviewed the critical areas study and mitigation plan (Exhibits C3 and C4) and determined that the application is in conformance with Chapter 30.62A SCC (critical areas regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare. Conditions are included for the preservation of the Critical Area Protection Areas (CAPAs).

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). The implementing zone in this designation will continue to be the R-5 zone. The 8 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 July 27, 2009. (Exhibit G4)
- B. Electricity. Snohomish County Public Utility District has provided correspondence indicating that they can provide electrical service for the project on January 27, 2009. (Exhibit G7)
- C. Water. Water will be supplied through individual exempt wells.

Snohomish Health District recommended approval of the preliminary plat on July 27, 2009. (Exhibit G4) The plat consists of 8 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 2 through 8 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.

In addition, a 100-foot radius well protection zone covenant is hereby established on Lot 1 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s).

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 19, 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 January 12, 2009. 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.

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 (Ch. 30.53A SCC) PDS sent a request for review document to the North County Regional Fire Authority (NCRFA), on January 14, 2009. PDS received a response from the NCRFA, dated January 20, 2009 (Exhibit G.6), indicating "no comments" on the proposed application.

The County Fire Marshall of Snohomish County conducted an internal review of the proposed plat and recommended approval of the Preliminary Plat on February 26, 2009. The conclusions of the review were that: (a) Each lot is a minimum of 1 acre or more in size and is therefore exempt from fire hydrant and fire flow requirements by this office. (b) Fire apparatus access as depicted meets the minimum requirements of Snohomish County Code 30.53A.150 and we have no further requirements. The 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 30.62A. SCC, as determined in Finding of Fact 11, above.

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

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

Exhibit B4, is the approved landscape plan for the project. The sight obscuring buffer is proposed to be a minimum of 35 feet in width and is designated on the Preliminary Plat Plan (Exhibit B1). The Landscape Plan (Exhibit B4) 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;

All roads are proposed to be private roads and will 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;

No natural resource uses are proposed within open space areas for this development. Accordingly, this provision does not apply.

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.

No natural resource uses are proposed within open space areas for this development. Accordingly, this provision does not apply.

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.

No natural resource uses are proposed within open space areas for this development. Accordingly, this provision does not apply.

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;

There are no existing open space tracts on adjoining properties. Accordingly, this provision does not apply.

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;

Thirteen (13) tracts are being created within the plat (Exhibit B.1):

- Tracts 987, 989, and 991 are Restricted Open Space and contain portions of the Sight Obscuring Buffers.
- Tracts 988 and 990 are Restricted Open Space and are designated as CAPA.
- Tract 992 is Restricted Open Space and is designated as CAPA.
- Tract 993 is Open Space and contains the access to the existing well, and the well.
- Tract 994 is Open Space and is located between Tract 995 (septic drainfield for the offsite property) and Tract 998 (the private road tract).
- Tract 995 is Open Space and contains the septic drainfield for an offsite parcel.
- Tract 996 is Restricted Open Space containing the detention system.
- Tracts 997 is Restricted Open Space and designated as CAPA.
- Tract 998 contains the private road.
- Tract 999 is Restricted Open Space containing CAPA areas.

The Open Space Management Plan (Exhibit A.4) stipulates that the Home Owners Association (HOA) will have ownership, control, and maintenance responsibilities for 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.

Any vegetation destroyed during installation of utilities or septic drainfields within a visual buffer will be restored with like kind landscape materials within the remainder of the visual buffer. The homeowner's association is responsible will be responsible for maintaining the visual buffer designated on the final plat.

Permanent vegetation removal within the restricted open space is not permitted except that the following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:

- (i) Construction of pedestrian or equestrian trails;
- (ii) Construction and maintenance of equestrian centers of playfields;
- (iii) Maintenance of existing pastures;
- (iv) Forestry, agriculture activities, or mineral operations;
- (v) Removal of dead, diseased or hazardous vegetation, consistent with best wildlife management practices;
- (vi) Selective thinning and enhancement of vegetation; and
- (vii) Fire breaks provided in accordance with fire district requirements.

Portions of the Open Space Tract shall be protected as CAPAs in accordance with Chapter 30.62 SCC. Restrictive language will be placed on the face of the final plat.

Prior to transfer of the tracts to the HOA, the developer will be responsible for control and maintenance of the tracts. PDS determined that the Open Space Management Plan complies with the requirements of SCC 30.41C. PDS has included a recommended condition to require implementation of the Open Space Management Plan. (Exhibit J3). 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 8-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, 7 of the 8 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 Finding of Fact 11, above, impacts to critical areas have been minimized. The project design consists of large tracts, preserved open spaces and critical areas and is consistent with the rural character of the surrounding area. The Examiner finds 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 Snohomish Health District has reviewed the proposed sites for the drainfield and reserve areas, and has recommended approval of the preliminary plat. (Exhibit G4)

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 finds that the project complies with this requirement.

P. SCC 30.41C.200 (16)—Fire District;

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

The development is located within the service boundary for the North County Regional Fire Authority and therefore meets this requirement.

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: $1,339,102 \text{ square feet} / 200,000 \text{ square feet} = 6.695 \text{ lots}$

Bonus residential density	= 15.0%
Additional bonus density	= 10.4%
Total lot yield	= 8.4 lots
Total lot yield-rounded	= 8 lots
Total lots proposed	= <u>8 lots</u>

Accordingly, the Examiner finds that the projects meets the required lot yield calculations.

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 January 12, 2009 (Exhibit A1), and in an Open Space Management Plan (Exhibit J-3) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 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 61.65% of the subject property in restricted open space (exceeding the required amount of 45%); 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, 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 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 Village Ranch 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 September 29, 2009 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the

proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.

- iii. Construction plans (a full drainage plan) shall be submitted for review and approval prior to ground disturbing activities.

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

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

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.”

- ii. 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 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 SCC 30.66C.010. Credit shall be given for 2 existing parcels. Lots 1 and 2 shall receive credit.”

- iii. All critical areas shall be designated Critical Area Protection Areas (CAPA) with the following language indicated on the face of the plat;

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

- iv. The following language shall be indicated on the face of the final plat.

“The Open Space Management Plan (Exhibit J3) shall be fully implemented.”

- v. The following language shall be indicated on the face of the final plat.

“All utilities shall be located underground.”

- vi. The following language shall be indicated on the face of the final plat.

“Well protection zones are shown in the Snohomish Health District records for Lots 2-8 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. A recommended condition has been included to establish the well protection areas.”

- vii. The following language shall be indicated on the face of the final plat.

“A 100 foot radius well protection zone covenant is hereby established on Lot 1 around the existing well as located on the plat. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the subdivision boundaries without written consent and recorded well protection covenant from the affected property owner(s). A recommended condition has been included to establish the well protection area.”

- ¹viii. “The dwelling units within this development are subject to park impact fees (Kayak Point # 301) in the amount of \$811.29 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”

D. Prior to recording of the final plat:

- i. Rural frontage improvements shall be constructed along the parcel’s frontage on 28th Ave NW to the satisfaction of the County according to EDDS.
- ii. Critical Area Protection Areas (CAPA) boundaries shall have been permanently marked on the site prior to final inspection by the county, with both CAPA signs and adjacent

¹ Scriveners error corrected – moved paragraph from under Condition B.iii to be Condition C.viii. (1/27/10)

markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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

- iii. The preliminary landscape plan (Exhibit B4) shall be implemented for the Vegetated Sight Obscuring Buffer. All required detention facility landscaping shall be installed.
 - iv. Utilities shall be located underground.
 - v. 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.
- F. In conformity with applicable standards and timing requirements:
- i. The Open Space Management Plan shall be fully implemented.
 - ii. 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 J3).

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 22nd 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 15 , 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.