



**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

**Hearing Examiner's Office**

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**Millie Judge**  
Hearing Examiner

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DATE OF DECISION: January 25, 2011  
PLAT/PROJECT NAME: **LAKE GOODWIN III RCS**

APPLICANT/  
LANDOWNER: TMG/LGA, LLC  
P. O. Box 100  
Edmonds, WA 98020

FILE NO.: 06-126101 SD  
TYPE OF REQUEST: Rural Cluster Subdivision (RCS)  
DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

**BASIC INFORMATION**

LOCATION: 19100 block of Frank Waters Road, Stanwood WA 98292  
ACREAGE: 352 acres across 12 combined parcels  
NUMBER OF LOTS: 104  
AVERAGE LOT SIZE: 38,474 square feet  
MINIMUM LOT SIZE: 30,309 square feet  
GROSS DENSITY: 0.30 du/ac

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

ZONING: R-5

UTILITIES:  
Water: Snohomish County PUD No. 1  
Sewer: On-site individual septic  
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Stanwood-Camano School District No. 401

FIRE DISTRICT: Snohomish County Fire District No. 19

PDS STAFF RECOMMENDATION: Approve with conditions

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

### **FINDINGS OF FACT**

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on August 17, 2006, and was vested as of that date for purposes of regulatory review. The 120-day clock started on April 10, 2007. The applicant requested and was granted three extensions of time, extending the expiration of its application to June 27, 2011. (See Exhibits G.2, G.3 and G.4) A resubmittal was made on August 27, 2010. PDS and the applicant exchanged various plan sets and review comments from August through November 2010. As of the hearing date, 168 days of the 120-day period had elapsed.
2. **Public Hearing.** A public hearing was held on January 6, 2011. Appearing for the applicant was Brian Holtzclaw, Cher Anderson, and various expert consultants who worked on the project application and required reports. Appearing for PDS was Ed Caine and Ann Goetz. Notice was provided as required by SCC 30.70.050. Witnesses testifying at the hearing included Ed Caine and Brian Holtzclaw. No members of the public were present or participated in the hearing. No additional exhibits were added during the public hearing; however, amendments to the PDS Staff Recommendation were made to correct scrivener's errors as shown on Exhibit J.
3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record was considered by the Examiner in reaching this decision.
4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrence and Impact Fee Determinations as required by the County Code. (Exhibits F.1, F.2 and F.3)

#### **A. Background Information**

5. **Applicant's Proposal:** The applicant is requesting a 104-lot rural cluster subdivision (RCS) on a 352.5 acre parcel. Access is by a new public road from Happy Hollow Road that connects with a road that will be constructed with the plat of Lake Goodwin RCS I (06-12855-SD, preliminary approval on September 10, 2010). There are 12 additional internal public roads. Each lot will access the road network by individual driveways. Each lot will have public water that is provided by Snohomish County PUD No. 1 and each lot will be served with individual septic systems. The site is presently undeveloped and forested. Adjacent zoning is R-5. Neighboring uses are either undeveloped land or single-family residential.
6. **Issues of Concern:**
  - A. **Agency Comments.**
    - (1) The Tulalip Tribes submitted comments (Exhibit H.8) in response to the proposal for Seven Lakes Water Association to provide potable water for the project (Exhibits H.9 and H.10). Following those comments, the applicant's proposed water purveyor was changed to the Snohomish County PUD No. 1. (Exhibit H.11)

(2) Department of Ecology provided comments on December 13, 2010. (Exhibit H.14) They expressed concerns regarding grading in wetland and streams, including placing in excess of 500 cubic yards of fill in wetlands. They also requested conditions be included in the PDS Staff Report and the decision to require state and Corps of Engineers permits prior to ground disturbing activities on the site. PDS stated in response that the provision of potable water to the site will entail installation of a water line. However, the construction project and SEPA review for the waterline, the water reservoir, and the water pump station was included in the SEPA determination for Lake Goodwin RCS II (06-125856-SD) and Warm Beach RCS (06-126859-SD). The waterline, reservoir, and pump station are not a part of the SEPA determination for this project. The Land Disturbing Activities permit for the waterline and the Conditional Use Permits for the water reservoir and the water pump station are not a part of this proposal. The only potential disturbance of critical areas for this project is the installation of required frontage improvements along Frank Waters Road. PDS estimates the wetland buffer disturbance will be approximately 1,000 square feet (200 feet length x 5 foot width), with no wetland fill associated with the frontage improvements. These impacts are regulated by the County's Critical Areas Regulations (CAR) and mitigation will be provided. No state or federal permits are required for the disturbance of the wetland buffer.

B. Citizen Comments. Six citizens wrote letters or e-mails expressing concern or opposition to the RCS. (Exhibits I.1 through I.6) Their concerns related to access to Parcel No. [sic] 310317-001-003-00), traffic impacts from the development, increased noise related to the development, the loss of wildlife habitat, the potential for an increase in crime resulting from the proposed development, and impacts to the local aquifer. Each of these concerns was carefully addressed by both the applicant and PDS (Exhibit J) as shown in the record and through their testimony at the public hearing.

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

#### 7. 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.

#### 8. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC)

The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.

(a) Road System Impacts, Concurrency and Inadequate Road Conditions (IRC). The applicant shall be required to pay a road system capacity impact fee to the County in the amount of \$262,753.92 pursuant to SCC 30.66B.310. The application was deemed to be concurrent pursuant to SCC 30.66B.120 and SCC 30.66B.130(4) as of April 26, 2007. The expiration date of the concurrency determination is six years from this date. IRCs have been considered according to the requirements of SCC 30.66B.210, and as a result, the applicant shall be required to make improvements to two locations: (1) 188<sup>th</sup>

Street / 52<sup>nd</sup> Avenue NW, specifically Road Segment 63550; and (2) 52<sup>nd</sup> Avenue NW beginning at 192<sup>nd</sup> Street NW to 188<sup>th</sup> Street NW and ending at 40<sup>th</sup> Avenue NW.

- (b) Frontage Improvements (SCC 30.66B.410) Full rural frontage improvements are required along the subject property's frontage on Happy Hollow Road and Frank Waters Road consisting of an 11-foot paved travel lane and an 8-foot paved shoulder from centerline of right-of-way pursuant to EDDS 3-030A. Neither of those roads is in the cost basis analysis for Chapter 30.66B SCC; therefore credit for any frontage improvements towards the applicant's impact is not applicable. Construction of frontage improvements shall be required prior to recording.
- (c) Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) The Public Works Department (DPW) considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown on pages 7 through 14 of the PDS Staff Recommendation (Exhibit J), which is incorporated herein by this reference as if set forth in full. The County Engineer and DPW staffs have determined that with the imposition of the conditions set forth in Exhibit J, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.
- (d) In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.
- (e) Right-of-Way Requirements (SCC 30.66B.510 and 30.66B.520) The applicant will be required to dedicate five (5) feet of additional right-of-way along Frank Waters Road to meet the County's minor collector arterial standard of 35 feet. In addition, the applicant will be required to dedicate thirty (30) feet of additional right-of-way along Happy Hollow Road to meet the County's minor collector arterial standard of 35 feet. According to PDS, this is not adequately shown on the plat (Exhibit B1) and it must be revised prior to final plat approval.
- (f) Impacts to State Highways (SCC 30.66B.710) The applicant is responsible for paying impact fees to the State of Washington in the amount of \$32,094.70 for impacts from the development on state highways pursuant to the interlocal agreement (ILA) executed between the County and the Washington State Department of Transportation (WSDOT). WSDOT was provided notice of application for this project and has agreed to the proposed mitigation offered by the applicant. (Exhibit H.4) The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.
- (g) Impacts to City Streets and Roads (SCC 30.66B.720)

Mitigation requirements for impacts to streets within nearby cities will be established consistent with the terms of an interlocal agreement between the County and the other jurisdictions pursuant to the County's SEPA substantive authority. Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the Cities of Arlington and Stanwood.

Through its traffic and SEPA reviews, DPW identified significant adverse environmental impacts from the development on the City of Arlington's street system which can be mitigated through the payment of an impact fee, as authorized through the ILA and SCC 30.66B.055(4).

For impacts to the City of Arlington's streets, and pursuant to the ILA and SCC 30.66B.055(4), a written proposal to mitigate the development's impacts is required. The applicant submitted a traffic mitigation offer of \$140,963.68 (\$1,355.42 per lot), which was accepted by the City. (Exhibit H.1) The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

Snohomish County has an ILA with the City of Stanwood that requires mitigation for impacts to City streets from new developments. However, the proposed development will not impact any City streets and, as such, no mitigation is required. (Exhibits C.1 and C.2)

(h) 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.

9. Pedestrian Facilities (RCW 58.17.110)

The County is required to make findings regarding safe walking conditions for school children who may reside in the subject subdivision, as well as the adequacy of pedestrian or bicycle facilities. The need for safe pedestrian facilities has been analyzed by the DPW and the Stanwood-Camano School District. (Exhibits H.12 and H.13) The road improvements to be required as part of the recommended conditions of approval for the new and existing roads within the development will provide the needed pedestrian facilities to the bus stops identified by the local school district. The Stanwood-Camano School District indicated that the bus stop location for public school students living in the subject development would be located on Happy Hollow Road at the access point to the development, which would be at the Road E intersection aligned with 62<sup>nd</sup> Avenue NW (Exhibit H.13). All roads inside the development will be constructed in accordance with EDDS and therefore will provide adequate pedestrian facilities to the bus stop location identified by the school district. Construction of frontage improvements on Happy Hollow Road will provide a paved area outside of the traveled way for students to wait for the bus. Therefore, neither party is requesting additional off-site pedestrian or bicycle facilities, nor does the Examiner find that any such off-site facilities are necessary. The Examiner finds that existing and proposed facilities are consistent with the County Code, EDDS, that no school children will be required to walk to school from the site, and that the facilities will provide for the general public health, safety and welfare.

10. Mitigation for Impacts to Schools (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. 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. (Exhibits H.13, H.14) Credit is to be given for 22 existing lots on nine consolidated tax parcels. Payment of school impact fees has been included as a condition of approval of the development.

11. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC)

Clearing and Grading. The applicant proposes to clear and grade approximately 10% of the site, with 6% proposed impervious areas including 104 single-family residence lots and associated roads. 69% (68.9) of site area will be designated open space. Grading in excess of 100 cubic yards is proposed and a Land Disturbing Activities (LDA) permit and a Stormwater Pollution Prevention Plan (SWPPP) will be required. The applicant will be required to submit for approval the following: a geotechnical report, construction plans (a full drainage plan), a SWPPP, and a LDA permit.

Stormwater. The applicant was granted a drainage waiver (Exhibit G.1) to use full dispersion and the provisions of the 2005 Department of Ecology Western Washington Stormwater Manual in addressing stormwater impacts from the development. The applicant's plan is to direct roof drainage to dispersion trenches with 100 feet minimum flow paths. Road drainage will be dispersed to native vegetation via 100 feet minimum flow paths as well. Flow paths are to remain unchanged from existing conditions. PDS has indicated that the proposed plat does not adequately demonstrate that the required 100 foot flow path will be met. In order to meet full dispersion requirements, either the dispersion trench 100 foot flow paths need to be placed in Native Growth Protection Areas (NGPA) protected tracts, or the dispersion trenches will need to meet requirements of infiltration trenches and maintain at least one foot of vertical separation from the bottom of trench to the high seasonal groundwater table. If full dispersion is determined to be unfeasible, then more traditional storm water detention systems will be required, either communally or on individual lots. Full dispersion compliance in complete detail for all lots will be evaluated at construction review. Though depth to groundwater is assumed to be relatively deep according to the drainage report, virtually all of the septic soil logs indicate mottling and high seasonal groundwater table at approximately 2-3 feet from the surface. The applicant will be required to correct and address this discrepancy during the project's construction review phase.

Upstream drainage will flow onto Lots 95 through 99, and full dispersion compliance in complete detail will be required for all lots at construction review. A geotechnical engineering analysis addressing drainage impacts will be required as a part of that analysis and the road construction on steep slopes.

With the inclusion of the proposed conditions of approval, the applicant has sufficiently demonstrated that code requirements and standards for storm water detention, water quality treatment and construction storm water pollution prevention can be met with development of this proposed site.

12. Critical Areas Regulations (Chapter 30.62 SCC)

Wetlands. There are 13 wetlands located either wholly or partially on the site, including; one Category 1 wetland requiring protection with a 100-foot standard buffer, four Category 2 wetlands requiring protection with 75-foot standard buffers, six Category 3 wetlands requiring protection with 50-foot standard buffers, and two Category 4 wetlands requiring protection with 25-foot standard buffers.

FWHCAs - Streams. There is an unnamed Type 3 stream (Stream R) that is a tributary to Puget Sound located in the southern portion of the site within Wetland Z. Based on the physical characteristics and accessibility of Stream R to anadromous fish, it is presumed habitat for bull trout, which is listed as a "threatened" species listed under the Endangered Species Act. Therefore, Stream R is subject to a 150-foot buffer the *Salmonid Habitat Management Plan* (SCC 30.62.110) adopted by PDS in an administrative rule.

Impacts to Critical Areas From the Proposed Water Supply Infrastructure Improvements. The project is required to provide potable water, which requires the extension of a new water main within an existing gravel road, averaging between 12 and 25 feet wide. The gravel road is an existing condition on the site and has been determined to be wide enough to accommodate installation of the waterline with no impacts to wetlands or buffers. As such, no additional mitigation is required. PDS has reviewed the critical areas study (Exhibits C.5 and C.6) and determined that the application is in conformance with Chapter 30.62 SCC (CAR) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare.

13. 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). The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres (1 du/5 ac) may be increased consistent with Policy LU 6.B.9. The proposal is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

14. Utilities.

A. Sewer. Sewer will be supplied by individual septic systems. The Snohomish Health District recommended approval of the preliminary plat on September 21, 2007. (Exhibit H.5)

B. Electricity. The Snohomish County PUD No. 1 notified the County on April 17, 2007, that they can provide electrical service to the development. (Exhibit H.7)

C. Water. Potable water will be supplied by the Snohomish County PUD No. 1 (PUD). The PUD has indicated that adequate water supply is available to serve the development, however an extension of the utility's infrastructure will be required to serve the proposed subdivision. (Exhibit H.11)

15. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements. (Exhibits D.1, D.2, D.3, and J)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 17, 2010. (Exhibit E.2) Notice was properly given of the SEPA determination. (Exhibits F.1, F.2, F.3) The DNS was not appealed. The requirements of SEPA have been met.

17. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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. In addition, the subdivision meets all of the County's transportation and road regulations and design standards. The Examiner finds that all 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) The Fire Marshall has determined that the project will meet the County's fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit J) Accordingly, the Hearing Examiner finds that 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.

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

The subject development application is vested to the *former* provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The Hearing Examiner has reviewed each of the criteria in *former* Chapter 30.41C SCC and finds that the application is consistent with its requirements.

Specifically, as conditioned according to the PDS Staff Recommendation set forth in Exhibit J, the subdivision complies with the provisions of: SCC 30.41C.010 (clustering lots), SCC 30.41A.200(1) (critical areas protection), SCC 30.41C.230 and SCC 30.41C.240 (rural cluster subdivision lot yield calculations) SCC 30.41C.200(2) (vegetated sight-obscuring buffers), SCC 30.41C.200(3) (access roads), SCC 30.41C.200(4) (utilities), SCC 30.41C.200(5) (unbuildable land), SCC 30.41C.200(10) (open space management plan), SCC 30.41C.200(11) (physical separation of clusters), SCC 30.41C.200(12) (lots abutting open space or buffer), SCC 30.41C.200(13) (design fits with natural features and maintains rural character), SCC 30.41C.200 (14) (no sanitary sewers absent health order), SCC 30.41C.200(15) (Location of lot clusters) SCC 30.41C.200(16) (location within fire district required), and SCC 30.41.C.200(17) (rural concurrency standards).

19. The Hearing Examiner further finds that based on the facts and circumstances of the proposed development application, the following provisions of the *former* RCS regulations do not apply: SCC 30.41C.200(6) (buffers for resource land), SCC 30.41C.200(7) (designated resource land disclosure statements), SCC 30.41C.200(8) (mineral resource land disclosure statements), and SCC 30.41C.200(9) (location of open space tracts near open space tracts on adjacent properties).



20. Rural Cluster Subdivision Standards—General

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The applicant has provided the information required on an RCS development plan and preliminary plat (Exhibit B1), and an Open Space Management Plan (Exhibit A.4). The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed in Findings of Fact 17 and 18. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density. The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining over 50% of the property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

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

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe pedestrian facilities 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 within the subdivision will be in character with the rural area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the PUD and sewage disposal will be provided by individual wastewater septic systems.

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

**CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

RCW 58.17.110. The Examiner concludes the applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

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 RCS application should be approved as described 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 of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

### **DECISION**

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

#### **CONDITIONS**

- A. The preliminary plat received by PDS on November 15, 2010 (~~Exhibit A.1~~) (Exhibit B.1)<sup>1</sup> shall be the approved plat configuration, except as provided below. 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 platlor 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.

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<sup>1</sup> Scrivener's Error – Corrected 2/8/11

- iii. Construction plans (full drainage plans) shall be submitted for review and approval prior to any ground disturbing activities.
- iv. A Stormwater Pollution Prevention Plan shall be submitted for review and approval prior to any ground disturbing activities.
- v. A Land Disturbing Activity Permit shall be obtained.
- vi. A geotechnical engineering report addressing drainage impacts on Lots 95 through 99, steep slopes, and erosion shall be submitted for review and approval prior to any ground disturbing activities.
- vii. Fire hydrant location shall be reviewed during the construction review and approval phase of development. Fire hydrants shall be installed with a maximum lateral spacing of 660 feet and with no lot in excess of 300 feet from a fire hydrant.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees (Kayak Point #301) in the amount of \$811.29 per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:
  - \$262,753.92 (or \$2,526.48 per lot) for mitigation of impacts to County roads shall be paid to the County;
  - The following impact fees shall be paid to the County to mitigate the project's on State highways:
    - \$20,695.60 (or \$199.00 per lot) for mitigation of impacts on I-5 at 172<sup>nd</sup> Street NE Interchange (ID# DOT-01);
    - \$8,817.50 (or \$84.78 per lot) for mitigation of impacts on SR 531 (43<sup>rd</sup> Avenue to 67<sup>th</sup> Ave NE) (ID #DOT-05); and
    - \$2,581.60 (or \$24.82 per lot) for mitigation of impacts on SR 531 at Lake Goodwin Road (WSDOT ID #DOT-42).
  - \$140,963.68 (or \$1,355.42 per lot) for mitigation of impacts on the streets, which shall be paid to the City of Arlington.

Proof of payment shall be provided to PDS. 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 lots therein."

- iii. The final plat shall be revised to show a 30-foot wide strip of right-of-way dedication along the property's frontage with Happy Hollow Road; to total 35 feet of right-of-way.
- iv. The final plat shall be revised to show a 5-foot wide strip of right-of-way dedication along the property's frontage with Frank Waters Road; to total 35 feet of right-of-way.
- v. "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 22 existing parcels. Lots 1 through 22 shall receive credit."
- vi. "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."
- vii. "The Open Space Management Plan (Exhibit A.5) shall be fully implemented and all specified maintenance shall be performed."
- viii. "The landscape plan (Exhibit B.4) shall be fully implemented and maintained."
- ix. "All utilities shall be placed underground."
- x. "The minimum required fire flow for this project is 750 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Chapter 30.53A.300 SCC, the developer shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2-hour duration can be provided. If the required fire flow cannot be provided, the new dwellings shall be provided with NFPA 13-D fire suppression systems."

D. Prior to recording of the final plat:

- i. All new public roads shall be constructed in accordance with the EDDS, or as determined by the DPW.
- ii. The intersection of 52<sup>nd</sup> Avenue NW and 188<sup>th</sup> Street NW shall be improved to remove the IRC as determined by the DPW.
- iii. The intersection of 188<sup>th</sup> Street NW and 40<sup>th</sup> Avenue NW shall be improved as determined by the DPW.
- iv. The intersection of 40<sup>th</sup> Avenue NW and SR 531 shall be improved as determined by the DPW.
- v. The public road connection proposed from the southeast property corner through Lake Goodwin RCS I (PFN 06-125855-SD) shall be made public and constructed to EDDS public rural road standards to connect with the existing road system at 192<sup>nd</sup> Street NW, west of 52<sup>nd</sup> Avenue NW, as determined by the DPW.

- vi. Rural standard frontage improvements shall have been constructed along the subject property's frontage on Happy Hollow Road and Frank Waters Road as determined by the DPW.
- vii. All Native Growth Protection Areas 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 plat may use other permanent methods and materials provided they are first approved by the county. Where a 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. The Salmonid Habitat Management Plan requirements and mitigation to protect critical areas shall be fully implemented.

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 critical area feature, and at least one Type 1 sign shall be placed in any lot that borders a NGPA, unless otherwise approved by the county. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

E. In conformity with applicable standards and timing requirements:

- i. Improvements to the satisfaction of the DPW to remove the inadequate road condition (IRC) on 52<sup>nd</sup> Avenue NW beginning at the intersection with 52<sup>nd</sup> Avenue NW to 188<sup>th</sup> Street NW and ending at 40<sup>th</sup> Avenue NW; must be complete or under contract before a building permit for the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued; per the requirements of SCC 30.66B.220.
- ii. Stormwater drainage plans shall be revised during the construction review phase to meet the County's design standards set forth in Ch. 30.63A SCC and the 2005 DOE Western Washington Stormwater Management Manual, as determined necessary by PDS.

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 seven (7)<sup>1</sup> 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 25th day of January, 2011.

  
Millie Judge, Hearing Examiner

<sup>1</sup> Scrivener's error – corrected January 26, 2011

## 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before FEBRUARY 4, 2011**. 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 **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before FEBRUARY 8, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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.

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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.

PARTY OF RECORD REGISTER  
06-126101-SD LK GOOWDIN RCS III  
HG: 1/6/11

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EDMONDS WA 98020

SNO CO PLANNING & DEV/LAND USE  
CAINE/WHEELER  
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EVERETT WA 98201

DEPT OF PUBLIC WORKS  
COUNTY ENGINEER  
3000 ROCKEFELLER AVE # 607  
EVERETT WA 98201

CARSTEN ANDERSON  
4624 DEVONSHIRE DRIVE  
ANACORTES WA 98221

J.C. ANDERSON  
710 BROWN ROAD  
CAMANO ISLAND WA 98282

WA STATE DEPT OF ECOLOGY  
PAUL ANDERSON  
3190 160TH AVE SE  
BELLEVUE WA 98008

CITY OF STANWOOD  
BRET BEAUPAIN / ANN SKINNER  
NO ADDRESS GIVEN

WA STATE DEPT OF  
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JAMES BRAIN & DEBE SCHNEIDER  
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STANWOOD WA 98292

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RESOURCES  
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TULALIP WA 98271

ELLEN HIATT-WATSON  
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STANWOOD WA 98292

SANDRA & DALE LABOVSKY  
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SILVANA WA 98287

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SEATTLE WA 98101

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PAUL LUCAS  
17507 W LK GOODWIN RD  
STANWOOD WA 98292

CITY OF ARLINGTON  
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ARLINGTON WA 98223

GIBSON TRAFFIC CONSULTANTS  
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EVERETT WA 98201

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DISTRICT  
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SNOHOMISH HEALTH DISTRICT  
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