



**Millie Judge**  
Hearing Examiner

M/S 405  
3000 Rockefeller Ave.  
Everett, WA 98201

(425) 388-3538  
FAX (425) 388-3201

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: February 1, 2011

PLAT/PROJECT NAME: **SPARKS RCS**

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

FILE NO.: 07-101441 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

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

**BASIC INFORMATION**

LOCATION: 1806 204<sup>th</sup> Street N.W., Stanwood, WA

ACREAGE: 314.7 acres across nine parcels

NUMBER OF LOTS: 137

AVERAGE LOT SIZE: 24,332 square feet square feet

MINIMUM LOT SIZE: 19,750 square feet

GROSS DENSITY: 0.435 du/ac

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

ZONING: R-5

UTILITIES:

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

SCHOOL DISTRICT: Arlington School District No. 16

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 April 2, 2007 and was vested as of that date for purposes of regulatory review. The 120-day clock started on April 31, 2007. PDS and the applicant exchanged various plan sets and review comments from May, 2007 through August, 2010. The applicant requested and was granted two extensions of time, extending the expiration of its application to January 28, 2011. (Exhibit G.5) As of the hearing date, 217 days of the 120-day period had elapsed.
2. Public Hearing. A public hearing was held on January 5, 2011. Appearing for the applicant was Brian Holtzclaw and Cher Anderson of the McNaughton Group, and expert consultants who worked on the project application and required reports including Edward Koltonowski, Gibson Traffic Consultants, Mark Flury, Flury-Wyrick & Associates and Ben Giddings. 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, Brian Holtzclaw, along with members of the public, Betty Burns, Bryan Braswell, and Kevin Buhr. At the start of the hearing, the applicant stated their objection to proposed Condition E.1 in the PDS Staff Recommendation on the grounds that the traffic inadequate road condition (IRC) investigation reports showed that traffic would not flow through the intersection of 52<sup>nd</sup> and 188<sup>th</sup> Street. Mr. Caine stated that neither PDS nor the Department of Public Works (DPW) had any objection to eliminating Condition E.1.
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 recording log. At the close of the public hearing, the record was closed except for the addition of (a) an updated plat name reservation by the applicant; (b) the addition of exhibit(s) from Mr. Braswell to support his contention that the applicant must extend 204<sup>th</sup> Street along the northern frontage of the property based on a prior agreement; (c) the applicant's response to the Braswell exhibit(s); and (d) a reply from Mr. Braswell to the applicant's comments, if desired. No other documents were authorized. (These documents were timely received and are marked as Exhibits L.1 through L.9) The entire record was considered by the Examiner in reaching this decision.

On January 6, 2011, the Hearing Examiner's clerk received a packet of information entitled, "Testimony of Thomas E. Barry," for the open record hearing of January 5, 2011. This information was submitted late, after the close of the record and is not one of the items authorized for late submission as noted above. Upon learning that his submission was late, Mr. Barry asserted that he did not receive notice of the public hearing. Mr. Barry previously provided comments for the record on April, 2007, in which he complains about the County's posted notice in addition to making other comments. (Exhibit I.2) The Hearing Examiner has reviewed the record and determined that proper notice of the public hearing was provided in this matter through posting, advertisement in the newspaper and mailing to affected property owners as required by the County Code. As such, the materials were not considered by the Examiner and are not part of the record.

4. Public Notice. The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits F.1, F.2 and F.3)

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

5. Applicant's Proposal: The applicant is requesting a 137-lot RCS on nine parcels comprising 314.7 acres of land. There are two single family residences on the site. The majority of the site is undeveloped and forested. Access will be by a series of new roads off of 212<sup>th</sup> Street NW and 204<sup>th</sup> Street NW, with 212<sup>th</sup> Street NW being extended to Sill Road (to the east). Each lot will access onto the new public roads by individual driveways. Each lot will be served by public water from the PUD and by individual septic systems. In its present condition, the site is undeveloped and forested. There are 27 wetlands and 14 streams on the site (Exhibit C.4). All impacts to critical areas are for right-of-way and access road improvements. Mitigation is provided for these impacts. Adjacent zoning is R-5. Adjacent uses are single-family residential and undeveloped properties.

6. Issues of Concern:

A. Agency Comments. No issues of concern were raised during agency reviews.

B. Citizen Comments. Public comments were received from 14 citizens. (Exhibits I.1 to I.14, plus Exhibits L.1 through L.7). Their concerns relate to signage, the width of the required vegetated sight-obscuring buffer, categorization of wetlands, the incorrect assumption that right-of-way on 204<sup>th</sup> Street NW would be vacated, water supply by Seven Lakes Water Association, inadequate right-of-way on 212<sup>th</sup> Street NW, the failure of the traffic study to consider flooding concerns, IRC considerations, whether the boundaries of the plat are contiguous, stormwater runoff and off-site flooding, and alleged inadequacies of the SEPA checklist.

Lastly, the Examiner received a letter from Curtis, a 10-year old boy, (who did not give his last name) stating his concern about the impacts of such a large subdivision on the rural character of the area, wildlife, traffic, and public safety. The Examiner thanks Curtis for his well-written letter and for participating in these proceedings. The Examiner has reviewed each of these letters and the corresponding responses from both the applicant and PDS (Exhibits K and J) and finds that these issues have been satisfactorily addressed either through compliance with the County's regulations or through additional conditions included in this decision.

#### **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. The Examiner finds that such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies.
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 \$341,074.80 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 May 9, 2007. The expiration date of the concurrency determination is six years from this date. The proposal will not impact any IRC location with three or more trips. As such, no improvements to correct IRCs is required under SCC 30.66B.210.
- B. Frontage Improvements (SCC 30.66B.410) Full rural frontage improvements are required along the subject property's frontage on Happy Valley Road and on 204<sup>th</sup> Street NW. On Happy Valley Road, which is a rural minor collector arterial road, required improvements shall consist of asphalt concrete pavement, 12 feet in width from the right-of-way centerline, with an 8-foot paved shoulder pursuant to EDDS 3-030B. In addition, full rural frontage improvements are required along 204<sup>th</sup> Street NW, consisting of asphalt concrete pavement, 11 feet in width from the right-of-way centerline, with a 7-foot paved shoulder. A portion of 204<sup>th</sup> Street NW (off-site, east of Happy Valley Road) was constructed outside of the public right-of-way. Specifically it is north of the existing 20 feet of right-of-way, and there is a strip of private property (off-site to the north of the development) between the south edge of the road pavement and the existing right-of-way so that the development property does not touch the pavement for 204<sup>th</sup> Street for about 700 feet just east of Happy Valley Road. In that off-site segment, the applicant proposes to construct a new road with a 30-foot pavement width within the existing right-of-way plus the right-of-way to be dedicated south of the existing road. The required minimum pavement width for 204<sup>th</sup> Street from Happy Valley Road to the current end (east of Road F) is 30 feet per EDDS 3-060 for a public rural Subcollector road (typically serving 250 ADT to 1,000 ADT). Happy Valley Road and 204<sup>th</sup> St NW are not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are 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 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 8 through 14 of the PDS Staff Recommendation (Exhibit K), 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 K, 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) Of all the existing public roads that are part of the external road system to be utilized by the proposed development, DPW and PDS Transportation has determined that 212<sup>th</sup> Street NE/NW

and 204<sup>th</sup> Street NW must be improved by the developer to provide for safety and the operational efficiency of the road system based on the number of vehicle trips projected to use the road after full occupancy of the development. Currently 212<sup>th</sup> Street and 204<sup>th</sup> Street do not meet the minimum standard 20-foot pavement width required for county roads. 212<sup>th</sup> Street has an existing right-of-way width of 60 feet between the subject development property and Sill Road, which is adequate for widening the pavement to 30 feet, which the developer proposes to do.

The section of 204<sup>th</sup> Street NW to be improved has a varying amount of existing right-of-way, and the additional right-of-way needed for the improvements will be dedicated by the development since the property fronts the existing right-of-way along the entire length of the road.

At the public hearing, Bryan Braswell and Betty Burns testified that there is an agreement between the prior owners of the subject property (Langsjoen) and the Braswells to establish an easement for road and utility right-of-way purposes along the northern portion of Tax Parcel 310414-001-001-00 (the "Carlson Estates" RCS, PFN 05-100472 SD), which is binding upon the applicant as a successor-in-interest. Mr. Braswell asserts that whoever developed the underlying property first was responsible for upgrading the road to public road standards and dedicating it to the County for an open public road. If correct, this requirement would have the applicant, LGAJV, LLC, extend the right of way along 204<sup>th</sup> to the east, past the boundary of the Sparks RCS plat, and improve it to current County standards and dedicate the property to the County. Mr. Braswell supplied Exhibits L.1, L.4 and L.6 in support of his argument. Mr. Braswell further cites to the Carlson Estates RCS decision issued by a prior Hearing Examiner in support of his claim. (Exhibit L.4)

The applicant's attorney, Mr. Holtzclaw, responded through a memo dated January 11, 2011. (Exhibit L.8) In it, he makes several arguments and notes that the Easements (Exhibits L.1 and L.6) executed by Mr. Braswell's parents and an accompanying Agreement to Construct Road (the 1976 agreement),<sup>1</sup> do not require the improvement of the easement area by Langsjoen or Garka Mill Company (and by extension, neither would it bind LGAJV, LLC as a successor-in-interest). He asserts that by its express terms, *Braswell* is the party required to initially construct the easement "road" pursuant to the 1976 Agreement. Repair is required by the party that damages it. The agreement is silent as to future development of the underlying parcels and who is responsible for upgrading the road to public standards.

The Hearing Examiner agrees with the applicant. There are no provisions in the easements or the "Agreement to Construct Road" that would require the successors-in-interest of either Langsjoen or Garka Mill Company to construct a new road after the easement was opened and constructed by Braswell.

Absent such an agreement, the County's regulations do not require the construction of the road beyond the area used or impacted by the Sparks RCS development application. The Hearing Examiner finds no evidence to support the argument presented by Mr. Braswell. The Carlson Estates RCS decision is not binding on this Hearing Examiner. Additionally, the facts in that case and the design of the plat are not the same as the

---

<sup>1</sup>The Agreement to Construction Road is attached to the Garka Mill Co. easement. However, it is believed to be the document incorporated in the Langsjoen easement agreement by reference, but it is not attached to it. See, Attachment to Exhibit L.6).

facts presented here. The DPW has determined that dedication of right-of-way for future use as a public road is sufficient in this case and that is what will be required.

Specifically, the applicant will be required to dedicate the following additional right-of-way to meet the County's road standards:

- (i) The applicant shall dedicate 15 feet of additional right-of-way along Happy Valley Road to meet the County's minor collector standard of 35 feet.
- (ii) The applicant shall dedicate a varying amount of right-of-way on the development's side of the right-of-way on 204<sup>th</sup> Street NW between Happy Valley Road and the northeast corner of property parcel 310414-002-001-00 to total 30 feet south of the section line.
- (iii) 212<sup>th</sup> St NW is unopened right-of-way west of the current end (approximately 1,200 feet west of the intersection with Sill Road at the Burlington Northern railroad tracks). It is designated as a non arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on both sides of the right-of-way centerline except for property parcel 310411-004-001-00, which is part of the proposed development, and has no existing right-of-way for 212<sup>th</sup> Street on the development's side of the right-of-way centerline. Therefore, 30 feet of additional right-of-way is required along the north side of that property parcel. This is adequately shown on the preliminary plat plan.

Happy Valley Road, 212<sup>th</sup> St NW, and 204<sup>th</sup> St NW are not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credit towards the applicant's impact fee for the right-of-way dedicated that is more than 30 feet from centerline is not applicable. Recommended conditions to require the road improvements are included.

F. Impacts to State Highways (SCC 30.66B.710) The applicant is responsible for paying impact fees to the State of Washington in the total amount of \$26,794.70 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. (See Exhibits H.8 and K) 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 ILA 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 \$182,981.70 (\$1,335.63 per lot), which was accepted by the City. (Exhibit H.3. H.4) 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, C.2, H.5, H.6, and H.7)

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 Arlington School District. (Exhibits H.16 and K) 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. Specifically, comments from the Arlington School District dated April 10, 2007 state that the bus stop location for Presidents Elementary, Haller Middle School, and Arlington High School will be at the intersection of the following internal roads inside the development: Roads G and F, Roads E and F, and Roads A and B. Although there is no intersection of Roads E and F on the plans, PDS asserts that it is likely that the bus stop location would be on 204<sup>th</sup> Street NW between Roads E and F, which is along the route between the other two bus stops identified by the school district. All the internal roads will be constructed in accordance with EDDS 3-040 with 7-foot wide paved shoulders and therefore will provide adequate pedestrian facilities for all students. Therefore, adequate walking conditions will have been provided for children walking to the bus stops.

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 Arlington School District No. 16, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibit H.16) Credit is to be given for nine existing lots. 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. Grading is proposed to be in excess of 100 cubic yards and more than 5,000 square feet of impervious surface will be created. The applicant will be required to submit full drainage plans, to obtain a land disturbing activity permit, and to submit a stormwater pollution prevention plan (SWPPP). During construction, water quality shall be controlled 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.

Stormwater. The site consists of a single drainage basin which will be divided into seven (7) separate drainage facilities in order to capture all stormwater runoff and to treat all stormwater runoff. Stormwater runoff will be collected and routed to detention systems within each of the drainage basins, and located within tracts 988, 987, 986, 985, 984, 983, and 982, respectively. (Exhibits B.5 and C.3) Road improvements will require replacement of some of the existing culverts.

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 27 wetlands located either wholly or partially on the site, including; six Category 2 wetlands (Wetlands D, N, O, P, Q, and S), 21 Category 3 wetlands (wetlands A, B, C, DD, E, F, G, H, K, L, M, R, U, V, W, Z1, Z2, Z4, Z7, Z8, and Z9), and six Category 4 wetlands (wetlands I, J, T, Z3, Z5, and Z6). The level of functions and values presented by each wetland varies across the site. Wetlands N, O, P, Q, and S form a large Category 2 wetland complex. The wetland is associated with Stream D and its tributaries that are used by anadromous fish (salmon). This wetland complex provides a wide variety of habitat niches, contains several vegetation classes and is an integral part of the stream habitat. The critical areas and buffers will be protected in Native Growth Protection Areas (NGPA) and Restricted Open Space (ROS) tracts using at least the standard buffer widths required in the County's Critical Areas Regulations (CAR) (Ch. 30.62 SCC), and will continue to provide a patchwork of wetland and upland habitat. The smaller and/or isolated wetlands provide significant water storage and water quality functions important to the downstream watershed. (Exhibit C.4) The applicant proposes partial impacts to 17 wetlands (mainly for road work or road crossings) comprising 67,360 square feet or 1.55 acres. Mitigation will be provided for those impacts at a 2:1 ratio through the creation of new wetlands. The wetland creation is to occur in two separate locations in the western and southwestern portions of the site in areas that have been previously degraded and used as pasture. The wetland creation areas are to be planted with native trees and shrubs and will be bonded for performance after installation in the estimated amount of \$35,246.00.

FWHCAs - Streams. There are 14 streams on the site, including Streams D, E, F and G and its tributaries, which are presumed habitat for bull trout, which is listed as a "threatened" species listed under the Endangered Species Act. Therefore, Streams D, E, F and G are subject to the



*Salmonid Habitat Management Plan* ("the HMP rule") (SCC 30.62.110) adopted by PDS in an administrative rule. The applicant has chosen to use Option B under the HMP rule, and has provided a site-specific habitat protection plan as detailed in the Critical Areas Study, which has been approved by PDS. (Exhibit C.4)

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 November 19, 2008. (Exhibit H.9)

B. Electricity. The PUD notified the County on April 19, 2007, that they can provide electrical service to the development. (Exhibit H.12)

C. Water. Potable water will be supplied by the PUD. The PUD indicated on August 1, 2008 that adequate water supply is available to serve the development. (Exhibit H.15)

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.2, D.3, and K)

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 1, 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 K) 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(9) (location of open space tracts near open space tracts on adjacent properties), 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), and SCC 30.41C.200(8) (mineral resource land disclosure statements).

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.5). 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 CAR, 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 August 25, 2010 (Exhibit B.1) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - iii. A final mitigation plan based on the Critical Area Study & Habitat Management Plan for Sparks RCS prepared by Curran Environmental Services, LLC dated Revision #1 October 2008 (Exhibit C.4) shall be submitted for review and approval during the construction review phase of this project.
  - iv. Construction plans (full drainage plans) shall be submitted for review and approval.
  - v. A Stormwater Pollution Prevention Plan (SWPPP) shall be submitted for review and approval.
  - vi. A Land Disturbing Activity permit shall be obtained prior to any ground disturbing activities.
- 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 each single-family residential building permit:

\$341,074.80 (\$2,489.60 per SFR permit) for mitigation of impacts on County roads paid to the County,

\$12,934.75 (\$94.41 per SFR permit) for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-01)

\$11,462.75 (\$83.67 per SFR permit) for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-05)

\$2,397.20 (\$17.50 per SFR permit) for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-45)

\$182,981.70 (\$1,335.63 per SFR permit) for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

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

- iii. "The lots within this subdivision will be subject to school impact mitigation fees for the Arlington School District No. 16 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for nine existing parcels. Lots 1 through 9 shall receive credit."

- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA);

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

- v. "All utilities shall be located underground."

- vi. "The Open Space Management Plan (Exhibit A.5) shall be fully implemented and maintained."

- vii. "The Landscape Plan (Exhibit B.4) shall be fully implemented and maintained."

- viii. Fire flow and fire hydrants shall be provided in accordance with Snohomish County Code 30.53A.310. Fire hydrants serving single-family dwellings shall have a maximum lateral spacing of 600 feet with no lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of the plat, and locations for new hydrants shall be approved by this office.

- ix. "The minimum required fire flow for this project has been determined to be 750 GPM at 20 psi for a 2-hour duration. Prior to final plat approval, in order to assure consistency with the applicable provisions of Snohomish County Code 30.53A.300, the developer

shall provide the required fire hydrants and written confirmation from the water purveyor that the minimum required fire flow of 750 gpm at 20 psi for a 2- hour duration can be provided. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems.”

- x. The final plat shall show a 15-foot wide strip of right-of-way dedication along the property’s frontage with Happy Valley Road; to total 35 feet of right-of-way.
- xi. The final plat shall show additional right-of-way dedication to total 30 feet south of the section line for 204<sup>th</sup> Street NW west of Happy Hollow Road to the northeast property corner of property parcel 310414-001-001-00 (the section corner of 11/12/14/13).
- xii. The final plat shall show 30 feet of right-of-way dedication for 212<sup>th</sup> Street NW along the north side of property parcel 310411-004-001-00.

D. Prior to recording of the final plat:

- i. All new public roads shall be constructed in accordance with the EDDS, or as determined by DPW.
- ii. Rural standard frontage improvements shall have been constructed along the subject property’s frontage on Happy Valley Road, or as determined by DPW.
- iii. 212<sup>th</sup> Street NW shall have been improved between Sill Road and the west property line of property parcel 310411-001-009-00 to include two paved 10-foot travel lanes, a 7-foot paved shoulder walkway on one side and a 3-foot paved shoulder on the other side, or as determined by DPW.
- iv. The improvements to 212<sup>th</sup> Street NW shall include standardizing the intersection with Knutson Road to improve the sight-distance and the operational efficiency as determined by DPW.
- v. 204<sup>th</sup> Street NW shall have been improved between Happy Valley Road and the southeast property corner of parcel 310411-004-001-00 to include two paved 10-foot travel lanes, a 7-foot paved shoulder walkway on one side and a 3-foot paved shoulder on the other side, or as determined by DPW.
- vi. The developer shall make improvements to Happy Valley Road so that the sight-distance at the intersection with 204<sup>th</sup> Avenue NW meets the minimum requirements of EDDS 3-08, or as determined by DPW.
- vii. Temporary turnarounds shall have been constructed at the temporary ends of 212<sup>th</sup> Street NW, 204<sup>th</sup> Street NW, Roads D, and E or as determined by DPW.
- viii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

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

- ix. The final mitigation plan shall be completely implemented.

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) 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 1<sup>st</sup> day of February, 2011.



Millie Judge, Hearing Examiner

#### EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

#### Reconsideration

Any party of record may request reconsideration by the Examiner **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 11, 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 15, 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.



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  
07-101441-SD SPARKS RCS  
HG: 1/5/11  
07-101441-SD

SNO CO PUD NO 1  
DEAN SAKSENA/BRANT WOOD  
PO BOX 1107  
EVERETT WA 98206-1107

SNO CO PLANNING & DEV/LAND USE  
ED CAINE/WHEELER/GOETZ  
3000 ROCKEFELLER AVE # 604  
EVERETT WA 98201

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

WA STATE DEPT OF  
TRANSPORTATION  
GEORGE CHAMBERS  
PO BOX 330310  
SEATTLE WA 97133-9710

SNOHOMISH HEALTH DISTRICT  
BRENT RAASINA  
3020 RUCKER AVE SUITE 104  
EVERETT WA 98201

GIBSON TRAFFIC CONSULTANTS  
MATTHEW J PALMER  
2802 WETMORE AVE SUITE 220  
EVERETT 98201

STILLAGUAMISH TRIBES  
SHAWN YANITY  
PO BOX 277  
ARLINGTON WA 98223-0277

LGAJV LLC  
CHER ANDERSON / BRIAN  
HOLTZCLAW  
PO BOX 100  
EDMONDS WA 98020

CURTIS NO LAST NAME GIVEN  
NO ADDRESS GIVEN

TOM BARRY  
PO BOX 480  
SILVANA WA 98287-0480

ESTHER BORG  
20907 HAPPY VALLEY ROAD  
STANWOOD WA 98292

BRYAN & CHRIS BRASWELL  
626 212TH STREET NW  
ARLINGTON WA 98223

CDE LEIGH LLC  
BETTY BURNS  
17455 14TH AVENUE NW  
SHORELINE WA 98177

BARB HANSEN  
1925 196TH STREET NW  
STANWOOD WA 98292

JIM HOWELL  
20717 HAPPY VALLEY ROAD  
STANWOOD WA 98292

RAY HUSBY  
1416 KNUTSON ROAD  
ARLINGTON WA 98223

STILLAGUAMISH FLOOD CONTROL  
DISTRICT  
C/O HENRY LIPPEK  
999 THIRD AVENUE SUITE 1080  
SEATTLE WA 98101

MICHAEL & CANDACE PATTON  
NO ADDRESS GIVEN

TOM, ROSE & TERRY PUGH  
19231 22ND AVENUE NW  
STANWOOD WA 98292

ELLEN HAITT-WATSON  
7006 179TH PLACE NW  
STANWOOD WA 98292

CHAD KRUTSINGER  
17710 34TH AVENUE NW  
STANWOOD WA 98292

ROSEMARY STRUIKSMA  
1620 KNUTSON ROAD  
ARLINGTON WA 98223

CITY OF ARLINGTON  
YVONNE PAGE/LAURA BROWN  
NO ADDRESS GIVEN

CITY OF STANWOOD  
ANN SKINNER  
NO ADDRESS GIVEN

SEVEN LAKES WATER DISTRICT  
PAUL LUCAS  
17507 W LAKE GOODWIN RD  
STANWOOD WA 98292

ED & GERALD NYSETER  
20716 36TH AVE NW  
STANWOOD WA 98292

CHARLOTTE RUSKO  
514 KNUDSON RD  
ARLINGTON WA 98223

THOMAS SPARKS / SHERIDA  
TAYLOR  
1804 204TH ST NW  
STANWOOD WA 98292

VAUGHN VAN ZANT  
5930 74TH ST NE  
MARYSVILLE WA 98270

DELBERT & TRUDY DAHL  
4270 TANDA AVE  
BREMERTON WA 98312

DAVID RONNING  
19205 18TH AVE NW  
ARLINGTON WA 98223

JAMES & JANET JONES  
2216 204TH ST NW  
STANWOOD WA 98292

ANNE-MARIE BERGER/CATHERINE &  
TRICIA BERGLUND/MARJORIE  
JONES  
406 NW 45TH ST  
SEATTLE WA 98107

BENEFICIARY TO BERGER  
JAMES T JONES  
NO ADDRESS GIVEN

US NATIONAL MORTGAGE  
COMPANY  
BENEFICIARY TO RONNING  
NO ADDRESS GIVEN

BANK OF AMERICA  
BENEFICIARY TO SPARKS  
NO ADDRESS GIVEN

GREENPOINT FINANCIAL SERVICES  
BENEFICIARY TO JONES  
NO ADDRESS GIVEN

ARLINGTON SCHOOL DISTRICT  
SID LOGAN  
NO ADDRESS GIVEN

HENRY QUALEY  
P O BOX 252  
SILVANA WA 98287

KEN HOAG  
20126 36TH AVENUE NW  
STANWOOD WA 98292

DANE ELDER  
daneelders@msn.com

ALYSSA HERNANDEZ  
alyssa-hernandez19@hotmail.com

WA ST DEPARTMENT OF ECOLOGY  
PAUL ANDERSON  
3190 160TH AVENUE SE  
BELLEVUE WA 98008

STANWOOD-CAMANO SCHOOL DIST  
LEE HEINRICHS  
lheinrichs@stanwood.wednet.edu

WA ST DEPT OF FISH & WILDLIFE  
JAY SHEPHERD  
16018 MILL CREEK  
BLVDEAGLE4@DFW.WA.GOV  
MILL CREEK WA 98012

BARBARA FRANCIS  
9018 NE 195TH STREET  
BOTHELL WA 98011

KEVIN BUHR  
kbuhr@live.com