

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND RECOMMENDATION

Applicant: Benson Family Trust
c/o Bruce D. Johnson, Project Manager
17536 Allen Road
Bow, WA 98232

Engineer: Young-Soo Kim
Summit Engineers and Surveyors, Inc.
2213 Old Highway 99 South
Mount Vernon, WA 98273

File No: PL06-0107

Request: Preliminary Plat (Saratoga Passage View)

Location: South of Cascade Ridge Court, east of the intersection of Stackpole Road and Kanako Lane, north of Sandy Creek, within a portion of Sec. 9, T33N, R4E, W.M.

Land Use Designation: Agricultural Natural Resource Lands (Ag-NRL), Rural Reserve (RRv), Secondary Forest Natural Resource Lands (SF-NRL), Industrial Forest Natural Resource Lands (IF-NRL).

Summary of Proposal: To subdivide 590 acres into 26 single family residential lots, one detention tract, and associated open space, using the Conservation and Reserve Development (CaRD) process. Except for Lot 26, the residential lots will not exceed one acre in size. The open space associated with Lot 26 will include approximately 550 acres.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on November 22, 2006. The Examiner visited the site.

Recommendation: The application should be approved, subject to conditions.

FINDINGS OF FACT

1. The Benson Family Trust (applicant) seeks approval of a Preliminary Plat through the CaRD process. The development will be called “Saratoga Passage View.”
2. The property consists of approximately 590 acres located south of Cascade Ridge Court, east of the intersection of Stackpole Road and Kanako Lane, north of Sandy Creek, within a portion of Sec. 9, T33N, R4E, W.M.
3. The project proposal calls for the creation of twenty-six (26) single-family residential lots, one detention tract, and associated open space. Twenty-five (25) residential lots will be no larger than one (1) acre in size. The detention tract (Tract A) will cover 3.81 acres. The road (Tract C) will take in about 6.2 acres. The open space will be associated with lot #26 and will encompass approximately 550 acres. A building envelope on Lot #26 will be set aside for a residence. The proposal will include placement of approximately 20,000 cubic yards of material for the construction of roadway and building pads and the excavation of approximately 7,500 cubic yards of material for the detention pond and biofiltration swale.
4. The site includes several zoning designations. Agricultural Natural Resource Lands (Ag-NRL), Rural Reserve (RRv), Secondary Forest Natural Resource Lands (SF-NRL), Industrial Forest Natural Resource Lands (IF-NRL).
5. The project combines the development rights from all those designations and proposes to locate them within the SF-NRL area along a hillside north of Sandy Creek and south of Cascade Ridge Court. The proposal clusters the residential lots pursuant to the Conservation and Reserve Development (CaRD) process. The non-residential acreage will be placed in a designated Open Space Preservation Area (OS-PA).
6. The location of the residential lots in the SF-NRL keeps the residential development on the hillside away from the flood plain and the agricultural lands to the south and west. The RRv portion of the site cannot be used because it is too steep. The SF-NRL area has been logged in the past and young second growth alder trees dominate the portion where development is proposed.
7. Carpenter Creek (Type 2) runs along East Stackpole Road within 200 feet of the site. Sandy Creek (Type 3) transits the site south of the residential area and flows into Carpenter Creek. Any wetlands are located south of the development area. All building will occur outside of the Critical Areas and their buffers. The western portion of the property below the toe of the hill is located within a designated flood zone. Critical Areas and the flood zone will all be included in the open space and protected by the execution of a Protected Critical Area Easement agreement (PCAE).

8. The proposal includes the construction of approximately 3, 500 lineal feet of paved roadway which will be built to County standards and dedicated as a County road. Access will be from Stackpole Road. A grading permit (BP06-0330) has already been issued and some grading has been performed. The original access to the two existing residences is called Kanako Lane. The access to the new subdivision will be at the same access point and then diverge to the east, forming a culdesac bordered on both sides by the acre-sized residential lots. This road will be called Saratoga Lane. Near the entry, the existing bridge over Carpenter Creek will be retrofitted to accommodate County requirements. Access for emergency vehicles to each lot will be constructed to County standards.

9. A geohazards assessment concluded that the slope to be developed is stable and will not experience adverse effects if recommended setback, drainage and erosion control measures are taken. Instability along Sandy Creek will be avoided by a 200-foot setback. A note on the face of the plat will require additional geotechnical review for any buildings to be constructed on areas with a slope ratio of 3 horizontal to 1 vertical.

10. Rural utilities will include PUD water, on-site septic systems, electric, phone, gas and cable installations. The water system will include a storage tank for the development and service lines to each proposed lot. The project is within a Fire District and adequate fire flow will be provided.

11. The County Environmental Health Unit has reviewed the proposal and determined that enough septic site evaluations have been approved for preliminary plat approval. However, some of the lots require further wet season review. Drainfields can be placed in open space if necessary. Hydrogeological analysis negates concerns for increased nitrates in nearby streams.

12. A detailed drainage report was submitted and reviewed by Public Works. The proposal includes the 3.81 acre detention tract located in the central portion of the site on the north side of proposed Saratoga Lane. To control sediment, the project also proposes to provide rock lined road ditches along with several energy dissipating quarry spill pads. The detention pond will be larger than the required volume to contain the 100-year flood and will function as a sediment settling basin. Outflows from the pond will go to a rock spreader and then into timber where biofiltration will occur. Ultimately some of this water will reach Carpenter Creek. However, stormwater discharges from the site will not exceed rates under pre-development conditions and will likely have no direct impact on existing flooding, temperature, and sedimentation problems affecting Carpenter Creek. A maintenance plan for all drainage facilities is required. The homeowners will maintain these facilities.

13. The developer will pay a fee to Skagit County Parks in lieu of providing park and playground facilities. Through a voluntary mitigation agreement the amount of \$100 per lot shall be paid prior to the issuance of building permits.

14. The project is within the Mount Vernon School District and students will take the bus to school. The District has adopted a Capital Facilities Plan that includes calculations relating to the impact of new housing on the District. The Capital Facilities Plan has been adopted as part of the County's Comprehensive Plan. Mitigation payments will be made in accordance with the Plan through impact fees made at the time of building permit issuance.

15. A Traffic Impact Analysis Report was prepared by Summit Engineers and dated May 23, 2006. The intersection studied was at Stackpole Road and Kanako Lane. The traffic generated by the project is not expected to increase the accident rate at this intersection. The Level of Service (LOS) currently exceeds the standard and no change is predicted. Conflicts with pedestrian and bicycle traffic are not anticipated. The project will add perhaps 249 Average Daily Trips to the local street system. This is within the capacity of the system. Sight distance improvements will enhance the visibility of the south bound traffic entering the project.

16. Covenants, Conditions and Restrictions (CC&R's) will be developed and imposed on residence purchasers, detailing the homeowners' responsibilities for maintaining common facilities. The applicant will retain the open space area.

17. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). As a result, a Mitigated Determination of Non-Significance was issued on July 13, 2006. Two comment letters were received. The MDNS was not appealed. Conditions in the MDNS were as follows:

- a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County drainage Ordinance. Said measures shall remain in place until completion of the project.
- b. The applicant shall comply with Northwest Clean Air Agency requirements.
- c. The applicant shall comply with the provision of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage, Water, Sedimentation Control Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
- d. The applicant shall comply with Fire Code Standards.
- e. An engineered soils compaction report shall be required for all structures placed on fill material.

f. The applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).

18. Review by various County Departments supports the proposition that the project can be approved if numerous conditions are met prior to final plat approval. These requirements are imposed as preliminary plat conditions.

19. Seven public comment letters were received. Four members of the public testified at the hearing. In general they expressed concerns about the drainage impacts, water flow and contamination, and population density.

20. Skagit County Diking District #3 sought assurance that the project would not aggravate existing fish passage problems in Carpenter Creek or damage the District's diking and drainage function in Carpenter Creek/Hill Ditch. They suggest restoration of the original Sandy Creek bed and alluvial fan into Carpenter Creek on Parcel 16585 within the subject site. The District asks that monitoring of sediments and flows be conducted after project completion and that the applicant thereafter participate in stream restoration as appropriate. The applicant has promised to work with relevant government agencies to develop and participate in a Memorandum of Understanding regarding problems of flow control and sedimentation.

21. The Skagit Citizens Alliance for Rural Preservation (SCARP) expressed concerns over the adequacy of the environmental review, the removal of Secondary Forest Land from production, the concentration of all development rights for the parcel in the SF-NRL area, and the possibility of adverse impacts to streams.

22. The Friends of Skagit County (FOSC) said the CaRD process was designed for use with short plats and does not work so well for long plats. They argued that the County had erred in the density allowed for this project and expressed concerns about runoff impacts from steep slopes on streams.

23. Neighboring owners to the north, Brian and Laura Fraley, while not opposed to the project have a number of concerns. They are worried that the detention pond will inhibit their emergency ingress and egress, that the project will disturb surface and subsurface flows on their property, and that increased traffic will create dangers to pedestrians and drivers.

24. On the basis of the entire record, the Examiner finds that adequate provisions have been made for erosion control and drainage, that pollution of area waters is unlikely, that appropriate rural infrastructure will be provided, and that traffic concurrency has, in effect, been established.

25. The FOSC and the County Staff reached differing totals in computing the combined density figure for this acreage. The Hearing Examiner defers to Staff on this point and finds that the proposed density is within the total available.

26. The Examiner is convinced by the evidence of the project's engineer that disruption of surface or groundwater flows on nearby properties is not likely to occur as a result of this project.

27. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. The Examiner's role is to make a recommendation to the County Commissioners who will make a final decision after a closed record hearing. SCC 14.06.050(1)(c).

2. Since no appeal of the MDNS was filed, the process must be deemed to have complied with the procedural requirements of SEPA.

3. Both FOSC and SCARP object to combining the development rights for the various zoning districts to come up with the development rights available for this large parcel. They call this a transfer of development rights from one zone to another and state that the County Code contains no provisions for such transfers. The appropriate density, they argue, would be that for the 160 acres of Secondary Forest lands – a total of eight lots.

4. The CaRD provisions do not explicitly address the concept of combining development rights. However CaRDs are permitted in all of the zones involved here. SCC 14.18.300(2). The "allowable density" regulation (SCC 14.18.310(2)) merely provides a dwelling-units-per-acre table showing the maximum densities for each zoning type.

5. The combining of densities as proposed by the Staff appears to comply with the general purposes of CaRDs. A CaRD is

a method of single-family residential land development characterized by building lots or envelopes that are much smaller than typical of the zone, leaving open space for agriculture, forestry, continuity of ecological functions characteristic of the property, and preservation of rural character.

Explicit purposes include the protection of critical areas by transferring development potential from the critical portion of the site to a non-critical portion of a site. SCC 14.18.300(1).

6. The Examiner concludes that the combining of densities as proposed here is consistent with the CaRD regulations. Further, no transfer of development rights has occurred, since each of the zoning areas could be developed independently with the same total result as to density.

7. SCARP argues that the use of Secondary Forest land for houses is incompatible with the conservation of productive forestlands. While some forest land is converted here, the overall effect is to preserve a much greater area of agricultural land and industrial forest land. Moreover, detached single-family residential dwellings are expressly permitted under the SF-NRL zoning. SCC 14.16.420(2)(e).

8. Any interference by this project with the easements or other property rights of neighboring owners is a private matter that must be resolved between the parties, not in the context of preliminary plat approval.

9. Given the topographic position of the project and the relationship of the property to streams in the area, a condition should be added obliging the applicant to participate with concerned government agencies in developing a Memorandum of Understanding on the management of runoff and stream sedimentation in the vicinity.

10. SCC 14.18.100 requires that the segregation of land in the County shall comply with State laws. The State subdivision statute, in RCW 58.17.110(2) requires that:

- (a) Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, streets and roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (b) the public use and interest will be served by the platting of such subdivision and dedication.

11. The approval of a preliminary plat assures that adequate planning has been completed to assure that all necessary improvements will be made according to applicable standards. Conditions are imposed to cause needed physical works to be completed before the plat is finalized. The findings above support a conclusion that appropriate provisions have been made for relevant items of infrastructure, site preservation and public facilities.

12. The Examiner finds that, as conditioned, the platting of the subdivision and the dedication involved will serve the public use and interest. The completion of the conditions will create a development that conforms to County policies allowing for clustered residences on rural lands while preserving significant resources, rural landscapes, and environmental functions.

13. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The subdivision shall be developed as described in the application materials and as represented at the hearing, except as the same may be modified by these conditions.

2. The final plat shall comply with the provisions of SCC 14.18.200 and Chapter 58.17 RCW.

3. The applicant shall work with appropriate agencies to develop a Memorandum of Understanding (MOU) on the management or runoff and stream sedimentation in the vicinity and shall take such actions, including monitoring, as the MOU prescribes.

4. The applicant shall comply with all conditions of the Mitigated Determination of Non-Significance issued on July 13, 2006. (See Finding #17.)

5. In accordance with Section 3.02(A) of the Skagit County Road Standards, long plat roads will become County Roads and must be constructed in compliance with Figure B-3, Appendix B, Skagit County Road Standards.

6. The minimum acceptable radius for curve C-19 must be 115 feet with a maximum degree of curve of 50 degrees.

7. The road right-of-way must be wide enough to accommodate the entire roadway prism, top of the cut to the toe of the fill. The minimum road right-of-way is 50 feet.

8. If guardrail warrants are met, then guardrails will be required in those areas.

9. The existing bridge crossing Carpenter Creek must be upgraded to comply with Skagit County Road Standards.

10. In accordance with Section 12.09 of the Skagit County Road Standards, the applicant must post one or more signs showing both the names or business names of both the applicant and the project engineer, as well as contact telephone numbers for each.

11. All existing residences within the development may have to change their addresses depending on the location of the access.
12. Road name signs shall be installed on the roads in accordance with Skagit County Road Standards.
13. A note must be shown on the face of the plat referencing the drainage report and construction plans therein.
14. Lot corners must be set in accordance with SCC 14.18.200(4)(d).
15. The applicant shall submit lot closures that correspond with the face of the plat.
16. The applicant shall submit verification that all items set forth in SCC 14.18.200 have been complied with prior to final approval.
17. All standard plat notes are required after appropriate departmental sign-off.
18. The assigned address range will be forwarded to Summit Engineers and shall be shown on the face of the plat.
19. Prior to final plat approval, copies of proposed covenants shall be submitted to Planning and Development Services for review, as well as any copies of any Homeowners Association agreements or Road Maintenance agreements.
20. Prior to final plat approval, the maintenance plan for drainage facilities shall be submitted to Public Works and approved.
21. Final plat fees of \$100 per lot will be assessed at the time of final plat approval.
22. The final landscaping plan shall be approved and all required landscaping shall be installed prior to final approval.
23. A Timber Resource Management Plan shall be reviewed and approved for the Forestry designated portion of the property prior to final plat approval. The approved plan shall be recorded. A note referencing the plan shall be shown on the face of the plat.
24. The applicant shall comply with the recommendations of the CAO Geohazard Assessment and Addendum prepared by Material Testing and Consulting, Inc.
25. Appropriate improvements to sight distance at the entrance to the plat shall be made.

26. Prior to the issuance of building permits, a fee of \$100 per lot shall be paid to Skagit County Parks in lieu of providing park and playground. This requirement shall be set forth in the plat notes on the face of the plat and addressed in the covenants for the plat. A mechanism for collecting the fees shall be established by the applicant prior to final plat approval.

27. At the time of building permit issuance, mitigation payments shall be made to the Mount Vernon School District in accordance with the District's Capital Facilities Plan.

28. The applicant shall supply a set of stamped envelopes (with appropriate postage) addressed to all neighboring property owners within 300 feet of the subject property at the time of final plat submittal.

29. The following notes shall be shown on the face of the plat map:

“All private roads, easements, community utilities and properties shall be owned and maintained by a separate corporate entity or the owners of property served by the facility and kept in good repair and adequate provisions shall be made for appropriate pro-rata contributions to such maintenance by any future land divisions that will also use the same private road.”

“This parcel lies within an area or within 500 feet of an area designated as natural resource lands (agricultural, forest and mineral lands of long-term commercial significance) in Skagit County. A variety of natural resource land commercial activities occur or may occur in the area that may not be compatible with non-resource uses and may be inconvenient or cause discomfort to area residents. This may arise from the use of chemicals; or from spraying, pruning, harvesting, or mineral extraction with associated activities, which occasionally generates traffic, dust, smoke, noise, and odor. Skagit County has established natural resource management operations as a priority use on designated natural resource lands, and area residents should be prepared to accept such incompatibilities, inconveniences, or discomfort from normal, necessary natural resource land operations when performed in compliance with best management practices and local, State, and Federal law. In the case of mineral lands, application might be made for mining-related activities including extraction, washing, crushing, stockpiling, blasting, transporting and recycling of materials. In addition, greater setbacks than typical may be required from the resource area, consistent with SCC 14.16.810.”

“Buyer should be aware that a portion of the subdivision is located in the flood plain as identified by FEMA on flood insurance rate map panel

number 530151 0065C with the effective date of January 3, 1988. Significant elevation may be required for the first floor elevation of construction.”

“Additional geotechnical review will be required for any buildings to be constructed on areas with a slope ratio of 3 horizontal to 1 vertical.”

30. The applicant shall submit a Protected Critical Area Easement (PCAEE) agreement for review and approval. A plat note shall reference the auditor’s file number for the agreement.

31. The plat map shall indicate the location of the PCA (OS-PA) signs. Typically signs shall be located every 200 feet or line of sight, whichever is closer. Signs shall be placed along Lots 2 through 6.

32. Per SCC 14.24.170(1), the PCAEE agreement and the plat map shall include a note that any future development within the area designated as OS-PA shall require a critical areas site assessment for that portion of the OS-PA within 200 feet of the proposed development.

33. Public Utility District (PUD) requirements for the water system, as outlined in a current PUD letter shall be completed and accepted by the PUD engineer and PUD board. A written copy of the work acceptance by the PUD board shall be supplied to the County.

34. All side service lines to all lots shall be installed and approved in writing by the land division engineer, Planning and Development Services. All bonding must be approved per SCC 12.48.190.

35. The plat shall show utility easements for water lines and any off-site septic systems. Any water system changes shall be completed and approved by County staff prior to final plat approval.

36. Soil site evaluations shall be approved for all lots within the development. Further wet season review will be required by the County for some lots. This review shall be complete and approved prior to final plat approval.

37. Fire flow shall be required per the Coordinated Water System Plan (CWSP) Table 403, item (5).

38. The fire flow (as shown on Table 4-3) is a minimum of 500 gpm for a 30 minute duration. Hydrant spacing is a minimum of 900 feet. This requires a hydrant within 450 feet of each lot. If the line extends to Stackpole Road, a fire hydrant will be required at that intersection.

39. The access to each proposed lot shall be constructed to meet Skagit County Emergency Vehicle Assess Standards (503 Standards) for a driveway, from the Plat road to the lot line of each proposed lot. Access within each lot to each proposed building site shall also meet these standards as a building permit condition.

40. The appropriate property taxes shall be paid prior to final plat approval.

41. The legal description on the face of the plat map shall be corrected.

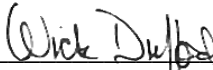
42. During construction, operations shall comply with Maximum Environmental Noise Levels as established in Chapter 173-60 WAC. Operations shall likewise comply with SCC 14.16.840 for light, noise, vibration, and ventilation.

43. The project shall comply with surface and groundwater quality standards, per Chapter 173-201A and 173-200 WAC. Best management practices shall be used to prevent degradation of water quality or conditions that could lead to such degradation.

44. Per SCC 14.18.100(6)(b), this preliminary plat approval shall be valid for a period of five year from the date of approval thereof by the Board of County Commissioners.

RECOMMENDATION

The preliminary plat of Saratoga Passage View should be approved, subject to the above conditions.



Wick Dufford, Hearing Examiner

Date of Action: December 15, 2006

Date Transmitted to Applicant: December 15, 2006