

**BEFORE THE HEARING EXAMINER OF SKAGIT COUNTY**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**

**Applicant:** Challenger Ridge Estates, LLC  
c/o Ryan Costanti and Doug Spady  
P. O. Box 87  
Bow, WA 98232

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**File No:** PL06-0668

**Request:** Preliminary Plat (CaRD)  
“Challenger Ridge Estates”

**Location:** Along Highway 20, west of Concrete, at 42921 and  
43095 Challenger Road, within a portion of Secs 7&8,  
T35N, R8E, W.M.

**Land Use Designation:** Rural Reserve (RRv)

**Summary of Proposal:** To subdivide approximately 60 acres into 12 single-family residential lots and one open space lot through the CaRD process. The clustered residential lots will range in size from .30 to 1.36 acres in size. The open space lot will be 53+ acres in size. Potable water will be provided by a well. Sewage disposal will be by individual on-site septic systems.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 23, 2008.

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

## FINDINGS OF FACT

1. Challenger Ridge Estates, LLC, seeks to subdivide 60 acres of land into 12 residential lots on property currently used as a winery and for grapevine growing. The application takes advantage of the Conservation and Reserve Development (CaRD) land division process.

2. The project site is located west of the Town of Concrete along State Route 20. The address is 42921 and 43095 Challenger Road, within a portion of Secs 7 and 8, T35N, R8E, W.M. The land to be subdivided is situated north of the highway. The zoning is Rural Reserve (RRv). Parcel numbers are P43492, P43510, P53509.

3. The majority of the acreage (52.29 acres) lies north of SR 20 along Challenger Road. The remainder (7.72 acres) is located south of SR 20 adjacent to the Skagit River. The Cascade Trail (abandoned Burlington-Northern right-of-way) runs east-west through the northern portion of the property. Ebing Creek runs north-south across the eastern portion of the site.

4. The project proposes to locate nine of the proposed residential lots along the east property line, north of the highway and east of Ebing Creek, with two of these located north of the Cascade Trail. Two additional lots are to be clustered north of the Cascade Trail, west of Ebing Creek. The last residential lot will encompass the existing on-site winery. The remainder of the site will be left as open space with continued agricultural use or protected as critical area.

5. Access to lots 1 through 9 will be via a private road off of SR 20 with a hammerhead turn around for emergency vehicles. Access to the two lots north of the trail and west of the creek (Lots 11 and 12) will be via an extension of the driveway into the winery area (Lot 10). Easements from the County are required for crossing the Cascade Trail.

6. The residential lots will range in size from .30 to 1.36 acres in size, comprising approximately 6.75 acres of clustered development. The non-residential portion of the site, approximately 53.26 acres, will be designated Open Space-Rural Open (OS-RO).

7. The OS-RO designation allows retention of open areas within the rural portion of the County without having to be committed to a specific recreational use. The open space in this category may continue to be used for grapevine growing. The winery operation will continue.

8. Soils evaluation has provided sufficient information for preliminary approval of the site for on-site sewage disposal systems.

9. There is an approved Group B Public Water System (State System #AA 279) which now serves the winery (Lot 10). This system will be re-engineered to serve the domestic needs of the new residential lots. The State Department of Health has approved

the plans and specifications for the improvements to the system to serve the winery and the residential lots.

10. Withdrawals for the system will be controlled to insure that less than 5,000 per day are used. Planning for the system estimates the average day's usage at around 2,300 gallons. The water system will include an 11,000 gallon storage tank that will be available for any periods of extra demand, as well as providing fire flow storage. The residential owners will be restricted from using the system water for irrigation.

11. A homeowner's association, subjected to Covenants, Conditions and Restrictions (CC&R's) will be created. The association will have maintenance responsibilities for roads, drainage facilities, and buffer maintenance.

12. A detailed drainage report has been submitted and reviewed by the Department of Public Works. Storm drainage and access easements will be provided along with stormwater facilities. The proposal is adequate for preliminary approval.

13. The internal plat roads shall be built to County Road Standards. The Washington State Department of Transportation (WSDOT) has reviewed the application and concluded that the applicant need not apply for a State Access Connection Permit and that no state highway mitigation is required for this proposal.

14. An impact fee will be paid by each lot for impacts to County parks and recreation facilities. This shall be collected at the time of building permit application.

15. The proposal is located within the Concrete School District. The District does not currently have an impact fee policy and is not collecting such fees from developers. No schools are within walking distance of this project, so school children will be riding the bus.

16. The project will be required to meet the fire flow requirements of the Skagit County Coordinated Water System Plan. The proposed system will be capable of supplying adequate pressure and flow for residential sprinklers. There will also be a fire hydrant providing water from the 11,000 gallon storage tank. The development is located within the boundaries of a County Fire Protection District.

17. The proposal meets the density and lot size requirements of the County Code with regard to CaRD land divisions. The design calls for clustering of the residential lots and the requisite open space is being provided.

18. After environmental review, a Mitigation Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on January 11, 2007. The MDNS included both the land division and a forest practice conversion. The MDNS was not appealed. The following conditions were imposed:

- a. Skidder, tractor, cat and/or shovel yarding shall be prohibited at times of high soil moisture. Skidding shall stop if soil rutting exceeds 10 inches in depth.
- b. The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.
- c. The applicant shall comply with Northwest Clean Air Agency requirements.
- d. Temporary erosion and sedimentation control measures or drainage control measures may be required at the discretion of the Department of Natural Resources or the County.
- e. No harvest, road construction or any development activities shall occur on or within 50 feet of the type 4/5 streams and 100 feet from type 3 streams as indicated in the Fish and Wildlife Site Assessment report by Advanced Environmental Solutions, dated October 2006.
- f. Grading activities on the subject site shall not result in slopes greater than 2:1 (2 horizontal:1 vertical), except those reinforced by a geogrid which shall be installed according to the manufacturers recommendations.
- g. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage, as it relates to increased runoff resulting from additional impervious surfaces.
- h. An engineered soils compaction report shall be required for all structures placed on fill material.
- i. The applicant shall comply with all relevant provisions of 14.24 (Skagit County Critical Areas Ordinance).
- j. Operation of equipment/construction and daily operations shall comply with Maximum Environmental Noise Levels, Chapter 173-60 WAC, and address noise and vibration limitations and Skagit County Code 14.16.840 for light and noise conditions. This includes ventilation for safety, heating and cooling of any office and storage/garage/preparation/barns or recreational buildings, as well as operation of daily use and activities.
- k. Washington State WAC's 173-201A and 173-200 shall be complied with, as required to address surface water quality issues and ground water issues. Best management practices shall be utilized to prevent interference and/or degradation of water quality.

19. Compliance with the Critical Areas Ordinance requires protecting steep slopes from development and providing adequate buffers to protect on-site streams. The slope stability letter by Merit Engineering, dated February 14, 2008, and subsequent discussion with Merit, indicate the presence of limited areas in excess of 30%. These shall be protected by a condition of approval.

20. The major issue presented by the proposal relates to the width of the buffers to protect Ebing Creek. The Skagit River System Cooperative has, both in writing and through testimony, argued that the buffer on the east side of the creek should be 100 feet wide throughout, rather than subject to buffer averaging as is proposed. The Cooperative asserts that the buffer averaging plan will result in a loss of stream function and that the addition of buffer to the northwest beyond the 100-foot riparian strip does not provide the

same habitat value. Moreover, they maintain that reduction of the 100-foot buffer west of the creek to a 50-foot enhanced buffer does not provide adequate resource protection. In their view, the planting plan does not call for a fully functioning enhanced buffer.

21. The Cooperative's views were supported by field work they performed. The work substantiated the presence of rainbow and cutthroat trout in Ebing Creek on the north side of SR 20. After the Cooperative's opinion as to the adequacy of the buffers was initially expressed, applicant's environmental consultant, Advanced Environmental Solutions, produced plans to supplement the critical area buffers with additional plantings. The applicant's final Stream Buffer Averaging and Enhancing drawing, dated October 2, 2007, is Exhibit 22.

22. The proposal is for three buffer areas: the north stream area, the middle stream area and the south stream area. The south stream area lies south of SR 20 and will contain a buffer of 100 feet on either side of Ebing Creek. Improvements will be made to culverts to remove fish passage impediments. The middle area lies between SR 20 and the Cascade Trail. The north area is north of the trail. On the east side of the middle and the north areas will be a buffer that in some places exceeds 100 feet and in others is narrower. On the west side of the north area, the buffer will, in general, be at least 100 feet wide, but will be expanded at the upper end to a width of 247 feet. For all of these areas, the total buffer at 100 feet would be 245,318 square feet. The plan will produce averaged buffers totaling 243,591 square feet.

23. On the west side in the middle area, the buffer will remain 50 feet wide but will be enhanced by plantings as recommended. The area of this enhanced buffer will be 32,131 square feet. In this area, all existing grape vines will be removed (approximately 994 square feet). The existing forested area west of Ebing Creek will stay without modification (9,366 square feet). All non-forested areas remaining will be planted as specified in the buffer enhancement plan (22,765 square feet). A double-rail cedar split rail fence will be constructed along the entire west edge of this 50-foot buffer.

24. The 50-foot buffer on the west side of the middle area was adopted in order to save some existing grape vines. The use of this narrower but planting-enhanced buffer as well as the other buffer plans was reviewed the County staff. They agreed with applicant's consultant that the averaging plus enhancement scheme will produce environmental benefit. The County concluded that requirements of the Critical Areas Ordinance will be met.

25. After reviewing all of the evidence, the Examiner finds that the proposal set forth in Exhibit 22 will provide adequate protection and should be approved.

26. RCW 58.17.110(2) sets forth criteria for the approval of a preliminary plat. Under the statute "appropriate provisions" must be made for public health, safety and welfare, and for various items of project design and infrastructure. As applicable here these include open space, drainage, roads, potable water, sanitary wastes, parks and

recreation, and schools. In addition there must be a finding that the public use and interest will be served by the platting of the subdivision.

27. The Staff Report analyzes the development against the statutory criteria and determines that the proposal, as conditioned, will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff report is incorporated herein by this reference as though fully set forth.

28. The foregoing findings show that the plat, as proposed, will provide infrastructure sufficient to accommodate the impacts of development in the particular setting. The proposal will provide adequate services for water supply, sewage disposal, drainage control and fire protection. Access built to County standards will be constructed. The modest traffic generated will not exceed the capacity of surrounding roads. The plat design will preserve substantial open space and will protect critical areas from adverse impacts.

29. The project makes such “appropriate provisions” as are called for in RCW 58.17.110(2). The public use and interest will be served by the plat.

30. Planning and Development Services (PDS) recommends approval with conditions.

31. 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. Because of the vesting date, the application is being processed as a Level III matter, involving a recommendation to the Board of County Commissioners.

2. The requirements of SEPA have been met.

3. The application requirements for a long subdivision have been met. SCC 14.18.100.

4. The subject project will be consistent with the requirements of the Comprehensive Plan, the applicable zoning, and applicable development regulations. In particular, it will comply with the specific requirements for CaRD approval. See SCC 14.18.310, 330.

5. The proposal, as conditioned, will be consistent with the statutory requirements for preliminary plat approval. RCW 58.17.110(2).

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

## **CONDITIONS**

1. The preliminary plat shall be developed as set forth in the application materials, except as the same may be modified by these conditions.

2. The applicant shall acquire a grading permit for the construction of roadway and drainage facilities. Building permits shall be required for the individual residences.

3. The applicant shall obtain any other permits that may be required by local or state laws.

4. A Protected Critical Area (PCA) Easement will be required. The applicant shall follow SCC 14.24.170 and submit the easement to PDS for approval. The PCA shall be filed prior to final plat approval.

5. The applicant shall comply with the conditions set forth in the MDNS issued on January 11, 2007. (See Finding 18.)

6. Those areas with slopes in excess of 30% are not suitable for development and shall not be disturbed. This condition shall apply to both Tracts 1 and 2.

7. Driveways with easements shall be constructed prior to final plat approval per SCC 14.18.200(4)(h).

8. The grading permit application shall include engineered plans consisting of title sheet, plan and profile, erosion control plan, stormwater drainage plan, specifications and details. A preconstruction meeting shall be scheduled with Public Works prior to the start of road construction.

9. Construction of roadway and detention facilities for the plat will require certification by the project engineer that all items have been built in accordance with the approved construction plans. (See Section 12, Skagit County Road Standards.)

10. Lot corners must be set prior to final plat approval per SCC 14.18.200(4)(d).

11. The applicant shall comply with all requirements of WSDOT.

12. Prior to final plat approval, the applicant shall demonstrate compliance with all final approval requirements of SCC 14.18.200. The request for final approval shall refer to codes sections and verify that all items have been addressed.

13. All standard plat notes and appropriate departmental signoffs shall be required.
14. The address range, once assigned, shall be shown on the face of the plat map. This shall not be done until all road construction is completed and a road number has been assigned.
15. The road name(s) must be approved. Road name signs (if required) shall be installed on the plat roads per Public Works or WSDOT requirements.
16. If any portion of the parent parcel is in an Open Space taxation program with the County Assessor's Office, that office shall be contacted (360-336-9370) prior to proceeding with the land division.
17. Prior to final plat approval, copies of proposed CC&R's, the homeowner's association documents, and road maintenance agreements shall be provided to PDS for review.
18. The application shall provide a voluntary mitigation agreement for the collection and distribution of mitigation fees for County Parks and Recreation prior to final plat approval. This fee shall be noted on the face of the final plat and addressed in CC&R's for the project. Mitigation fees for parks and recreation of \$100 per lot shall be submitted with each building permit application.
19. Prior to final plat submittal, the applicant shall supply a set of stamped envelopes with the correct postage, addressed to all neighboring property owners within 300 feet of the subject property,
20. Prior to final plat approval, the final landscaping plan shall be approved and all required landscaping (if other than existing vegetation) shall be installed.
21. Prior to final plat approval, the applicant shall carry out the buffer averaging and enhancing plan shown on Exhibit 22 and as directed by Advance Environmental Solutions.
22. The applicant shall post one or more signs showing the names and business names of both the applicant and the project engineer as well as contact telephone numbers for each.
23. Approval of this land division does not permit any additional uses on the site that are not permitted outright within the underlying zone designation. A special use permit shall be sought for any uses that are not permitted outright.



24. Use of Lot #10, the winery parcel, shall be limited to wine tasting, agriculture and associated uses listed under SCC 14.16.320(2). Any other uses shall be requested by special use permit application.

25. The project shall meet the fire flow requirements of the Skagit County Coordinated Water System Plan (CWSP) Table 4-3. The water system shall be capable of supplying adequate pressure and flow for residential sprinklers meeting National Fire Protection Association (NFPA) Standard 13D. The system shall pipe water meeting those requirements to each lot proposed for new construction, as well as to a fire hydrant providing access to water in the 11,000 gallon storage tank.

26. The water system's engineered plans and specifications shall be submitted and approved prior to installation. Prior to plat approval the system shall be installed, inspected, tested and approved. The Fire Marshal's office shall inspect the installation and witness all required tests.

27. At this time, the developer **cannot** offer a second non-potable water system for irrigation to any of the new lots. Any mention of this option shall be removed from the project documents.

28. Proposed CC&R's state that all lot owners may have a hot tub not exceeding 1,000 gallons. This appears to conflict with the system that has an average-day demand of 170 gallons per unit and requires ultra low flow plumbing fixtures. If this is retained, it shall be discussed fully in the Water Users Agreement or Notice to Future Property Owners. Prior to submitting the plat for final review, any hot tub usage shall be justified by the engineer who included this usage in his design.

29. Prior to final approval, the project engineer shall submit all final water system documents to the State Department of Health and supply the County with a letter of approval from that department.

30. Prior to final approval, documentation shall be provided verifying through field inspection that water lines have been stubbed to all property lines and the updated water system has been installed.

31. Prior to final approval, the applicant shall provide a Water Well Report from a licensed driller showing the legal decommissioning of the dug well.

32. Prior to final approval, the applicant shall provide documentation showing that removal of all septic tanks and drainfields from the 100 sanitary control radius for the public system's well.

33. Prior to final approval, the applicant shall provide evidence of a plan to provide metering and documentation for insuring that ground water withdrawals of the development stay below 5,000 gallons per day, as required for a permit-exempt well.

The burden of documentation lies with the Challenger Ridge LLC. Reports of daily water withdrawals shall be available upon request or sent as required to the State Department of Health or State Department of Ecology. When events are held at the winery, documentation will be needed to show that the 5,000 gallons per day limit was not exceeded.

34. The applicant shall provide a corrected “Notice to Property Owners” that does not offer an irrigation system. Language relating to the groundwater system’s limitations shall remain.

35. Water allocation to lots that require water review under RCW 19.27.097 (residential buildings) have a priority right to water over public and commercial events.

36. Prior to final approval, the applicant shall submit final CC&R’s, final Water User’s Agreement and final Notice to Future Property Owners to PDS.

37. The Mount Baker Silo storage tank shall be located and shown on the final plat map.

38. All drinking water line easements and water lines, as well as the creek intake and associated irrigation pipes and easements shall be shown on the face of the plat.

39. The Challenger Ridge wellhead protection area shall be located and shown on the plat map. If the winery owner plans to grow grapes in the area within a 1-5 year time-of-travel to the wellhead protection area, the use of herbicides or pesticides must be addressed in the hydrogeologic plan.

40. The names (uses) of buildings associated with Lot #10 shall be accurately identified on the plat map (e.g., house, wine tasting building, wine making facility, garage, etc.)

41. The water system shall be described in a plat note that advises of its limitations and provides clear notice of water restrictions and needs for conservation. The Water Users Agreement shall contain an expanded discussion of these issues. The note shall identify the State ID number of the public water system. The note may be worded as follows:

*Challenger Ridge Water System (ID #AA297)*

*This development and winery are served by a water system with a restricted source. The exempt well source is limited to a maximum of less than 5,000 gallons per day. The average day demand for each lot is 170 gallons and is designed for indoor use only, Outside irrigation is not permitted. Each home is required to use ultra low flow plumbing fixtures. Accessory dwelling units are not allowed. Drilling additional wells is prohibited within the boundaries of this project, as all of the water available has been allocated to*

*these lots. The State Department of Health approved plans include flow regulators, well pump controls and metering. Note: The controller will lock out the well pump when it reaches 5,000 gallons in a day. This system is required to have a Satellite Management Agency (SMA) overseeing its operations. This development has contracted with Water and Wastewater Services LLC, a State approved SMA*

42. After the plat is approved and parcel numbers have been assigned to all of the new lots, copies of the following recorded documents shall be provided to the State Department of Health and to the Skagit County Public Health Department: As-built drawings, list of the parcel numbers, Water Users Agreement, Notice to Future Property Owners, and Declaration of Covenants, Conditions, Easements and Restrictions.

43. Prior to final plat approval, soil/site evaluations must be submitted and approved for a representative on-site sewage disposal location on each parcel.

44. Per SCC 14.18.100(4), if the project is located on a transit route, and if requested by Skagit Transit Authority, a public transit stop shall be provided in coordination with Skagit Transit Authority and public transit regulations. The applicant shall provide confirmation from Skagit Transit Authority stating whether a transit stop will be required.

45. A nonprofit maintenance corporation or homeowner's association with the lots owners as members shall be established for the plat. The homeowner's agreement shall be recorded and the auditor's file number shall be shown on the face of the plat.

46. Appropriate property taxes shall be paid prior to final approval.

47. Final plat fees of \$100 per lot will be assessed at the time of final plat submittal. All applicable fees shall be paid prior to final approval.

48. Additional plat notes may be required prior to final approval.

49. Additional conditions or requirements may be added for final plat approval.

50. Per SCC 14.18.100(6)(b), this preliminary plat shall be valid for a period of five years from the date of approval.

51. Failure to comply with any condition may be grounds for termination of approval.

## RECOMMENDATION

The Hearing Examiner recommends that the preliminary plat of Challenger Ridge Estates be approved, subject to the conditions set forth above.

**DONE** this 19th day of May, 2008.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant: May 19, 2008