

**BEFORE THE SAN JUAN COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Nook and Cranny Enterprises, Inc.  
c/o Tom Burg  
P. O. Box 1316  
Eastsound, WA 98245

**Agent:** Michael Murray, Attorney at Law  
P. O. Box 10  
Eastsound, WA 98245

**Appellants:** John and Lydia Miller  
c/o Jeff Otis  
Otis Land Use Consulting  
393 Bobbyann Road  
Eastsound, WA 98245

**File Nos:** HE 15-06 (05LP002, 05APL017)

**Request:** Preliminary Plat Approval (Rosario Ridge at Tomihi)

**Appeal:** Declaration of Non-Significance

**Location:** Off of Rosario Road, south of the Olga Road and Rosario Road Intersection, on Orcas Island.

**Summary of Proposal:** To subdivide 54 acres into 15 lots.

**Land Use Designation:** Rosario Residential Activity Center

**Public Hearing:** After reviewing the report of Community Development and Planning, the Hearing Examiner conducted a public hearing on March 24, 2006. The record was left open until the April 28, 2006, to allow for additional submissions and responses by the parties and staff.

**Post-Hearing Submissions:** On April 19, the Appellants advised that they were withdrawing their appeal. They submitted no further argument or materials beyond their presentation at the hearing. The Applicant submitted additional materials in support of the application on April 21, 2006, and those materials were admitted to the record. The record closed on April 28, 2006.

**Applicable Law:** RCW 58.17.110(2)(a) – Subdivision approval criteria  
Chapter 18.60 SJCC – Development Standards  
SJCC 18.70.050- Preliminary Subdivisions  
SJCC 18.70.060 – Subdivision Design Standards

**Decision:** The application is approved, subject to conditions.

### **FINDINGS OF FACT**

1. Nook and Cranny Enterprises, Inc. (Tom Burg) seeks a preliminary plat approval to subdivide approximately 54 acres into 15 residential lots for a development called Rosario Ridge at Tomihi.
2. The property is located within the Rosario Activity Center on Orcas Island. The acreage lies generally west and north of Rosario Road, south of its intersection with Olga Road. Firehouse Lane runs west from the east boundary of the property to Tomihi Drive. Tomihi Drive runs south through the north boundary of the property to its intersection with Firehouse Lane and then turns west and proceeds to the west property boundary. These two roads access all lots in the proposed subdivision except Lot 10 which is accessed by Veneda Trail.
3. The general topography slopes east toward Cascade Lake and south toward East Sound. The property is generally well forested but with significant outcrop areas.
4. The site is the only remaining large parcel in a neighborhood of more dense residential development. It is bounded by platted lots to the south and northeast and larger private lots to the north, west and east. Adjacent to the northeast is the Woodland Estates Subdivision approved at the request of the Appellants herein (Millers) in 2004.
5. Rosario Ridge will include a “common area” lot and a lot set aside for the community water well, in addition to the 15 residential lots. The residential lots will vary

in size between 8.0 acres and 1.5 acres. There is an existing house on Lot 1. Thus 14 additional residential lots are contemplated.

6. Beyond dividing the property, the platting project includes providing driveways for the 14 building lots, trenching for utility lines along existing roadbeds, clearing areas for house foundations, and providing for the water system, for sewage disposal and for drainage facilities. Homes will be built later by buyers of lots.

7. The preliminary plat map shows building sites within the lots with a 2,500 square foot rectangle indicating the approximate size and location of the future residences.

8. No specific road improvements are identified. The roads within the property are private roads, kept up through maintenance agreement among owners (the Rosario Hill Road Association). The applicant is currently a party to this agreement and, upon subdivision of the subject property, the purchasing lot owners will become parties to the agreement. Within the plat, the existing road easements will be improved as may be deemed necessary by the County Public Works Department.

9. The proposal is well within the density limits established for the property. In excess of 30% of the site will be retained as natural open space. Because the project is not in a rural, conservancy or resource designation, the Conservation Design Standards do not apply.

10. A wetland reconnaissance was conducted by a wetland scientist to determine if a depression located west of and adjacent to the Tomihi Drive- Firehouse Lane intersection contains a regulated wetland. The review concluded that there is indeed a Category III wetland of approximately 4,300 square feet at that locale. Under the County's system, however, this wetland is too small to meet the threshold for regulation and therefore does not require a setback or buffer.

11. The reconnaissance report noted that the wetland is located within the common area of the plat and that no additional stormwater will be routed to it. It will not be graded, filled, or modified, and since no disturbance will occur, no other agency with wetland jurisdiction need be notified.

12. A water well intended to be used as a source of community supply has been drilled and determined to have a sustained yield of 10+ gallons per minute. The water quality has been analyzed and found to be excellent. The lot to be set aside for the well is large enough to accommodate the required 100-foot sanitary control area.

13. The existing residence is served with water by a connection to Rosario Utilities. Lot 10 has the right to Rosario water also. The other 13 lots will be served by the proposed community system. Water will be pumped from the well to storage tanks and distributed from there to the individual service connections. The community well output will be held to less than 5,000 gallons per day.

14. On-site storage of not less than 10,000 gallons shall be provided for fire flow in tanks separate from the storage for the domestic water system. Domestic water storage shall be of no less than 7,500 gallons. Domestic water storage shall provide 2.88 days of stored capacity for an average household usage of 200 gallons per day.

15. The water system infrastructure conform to Class A standards in order to provide the for likelihood that Rosario Utilities will be required to absorb this system into its larger Class A system at some future date. Rosario Utilities is expecting be approved for a significant number of new connections within the next year or two.

16. The Health Department has given preliminary Environmental Health Review approval for the water system. For final approval, the applicant must submit a completed design that anticipates eventual Group A status. The system must be built, with connections installed to all lots served. A plan to limit total withdrawals to less than 5,000 gallons per day must be submitted, including meters, water rates, restrictions on outdoor use and automatic shut-offs. Necessary easements and covenants must be recorded.

17. The Millers expressed concern that withdrawals from the Rosario Ridge well might interfere with the use of their well. An evaluation was prepared for the applicant by a professional hydrogeologist to address this concern. The two wells are located approximately 500 feet from one another. Significant differences in well depths, specific capacities, and static levels strongly indicate that the two wells are tapping different water sources. Thus, interference between the two wells is unlikely.

18. The hydrogeologic report concluded that the Rosario Ridge well has sufficient capacity and sustainability to provide water for the planned subdivision. The opinion also stated even if the Miller and Rosario Ridge wells were hydraulically connected, use of the Rosario Ridge well at 5,000 gallons per day or less is unlikely to impair the Millers' ability to produce water up to the 5,000 gallon per day limit of their right. There is no evidence in the record that convincingly calls these conclusions into question.

19. A Stormwater Site Plan and a Construction Stormwater Pollution Prevention Plan were prepared by a professional engineer for the applicant. The stormwater plan is designed to meet the requirements of the State Department of Ecology's Stormwater Management Manual for the Puget Sound Basin. The site is divided into five separate drainage basins, two of which require stormwater treatment to be provided. The plan calls for the installation of two detention ponds to perform this function. The ponds will be north of the on-site wetland. The Department of Public Works reviewed the Stormwater Site Plan and recommended approval.

20. Sewage treatment is to be accomplished by use of septic tanks and a community drainfield located on the west side of the common area. The drainfield site will be well over 100 feet from the nearest wet pond. Space for reserve drainfields will

be set aside on Lots 1 and 2. The soils appear to be appropriate for all proposed drainfield sites and the County Sanitarian has given approval to the proposed sewage disposal system.

21. Fire protection requirements were outlined in a letter from the Deputy Fire Marshal. There is nothing in the record to suggest that an adequate plan and adequate facilities for fire protection cannot be provided.

22. The build out of the subdivision is predicted to generate approximately 140 trip per day. Traffic concurrency analysis was undertaken by the Department of Public Works. They concluded that Rosario Road passes concurrency review on the basis of State road capacity standards. A traffic study was conducted concerning Level of Service (LOS) impacts of the development on the Rosario Road-Olga Road intersection. The study determined that the LOS at that intersection will not change with the addition of traffic from the subdivision. The current delay there is well below the adopted LOS.

23. A set of proposed Covenants, Conditions and Restrictions have been developed for the subdivision. These would set up a homeowners association which would manage and maintain the common roads, the community drainfield, the community water system and the common recreation area. Provisions should be added that relate to drainage facility maintenance per the standards attached to the Stormwater Site Plan.

24. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on September 14, 2005. The Millers timely appealed, but later withdrew their appeal. There is, therefore, no issue as to SEPA compliance.

25. A number of supportive letters were received in connection with this application. There were no opposing sentiments, except those expressed by the Appellants.

26. The Appellants particular assertion was that the application was incomplete. The Examiner has reviewed their concerns and finds they were either satisfactorily responded to during the hearing or are appropriately addressed in conditions of approval.

27. The Hearing Examiner finds that proposed subdivision conforms to the natural features of the land. Each residential lot provides a usable area for the construction of a dwelling unit. Adequate community sewage disposal, community water supply and stormwater drainage control will be provided. Any needed improvements to internal roads can be provided. Individual lots will not be divided roads. Density, dimensional and open space standards can and will be met.

28. 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.

2. The requirements of SEPA have been met.

3. Before approving a subdivision application, the state platting statute at RCW 58.17.110(2) requires findings that:

(a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and all other relevant facts . . . and

(b) The public use and interest will be served by the platting of such subdivision. . . .

The findings above support a conclusion that the relevant infrastructure requirements of the statute will be met by the project, as conditioned. The Examiner further concludes that the public use and interest will be served by the plat.

4. The Examiner is persuaded the information provided for this preliminary approval provides a sufficient basis for concluding that the project can be prosecuted and completed in compliance with the UDC.

5. As conditioned, the project will be consistent with relevant development standards. See SJCC 18.60.020(water supply, 18.60.030 (sewage disposal), 18.60.070 (storm drainage), 18.50.100(private roads), 18.60.200(concurrency).

6. As conditioned, the proposal is consistent with the applicable land division design standards of SJCC 18.70.060, and with the criteria for approval of SJCC 18.70.050(F).

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

## CONDITIONS

1. This preliminary long subdivision approval allows the division of 54 acres into 15 residential lots and common areas as shown on the Preliminary Plat. This preliminary approval shall expire if the subdivision is not recorded within 60 months of the approval date hereof. The final long subdivision application shall be submitted to the Community Development and Planning Department at least 90 days in advance of the expiration date.

2. The applicant shall submit a revised Preliminary Plat map that shows the layout of the project as modified through the hearing process. Specifically the revised Plan shall show:

- a. the layout of streets and driveways;
- b. the layout, numbers and dimensions of residential lots;
- c. the layout of utilities, of the water system, and of the primary and reserve drainfields;
- d. the contemplated clearing limits within lots;
- e. the layout of the drainage system, including the location of retention/detention facilities.
- f. the location and dimensions of common areas.
- g. the location of all wells and the sanitary setback for the wells.

3. At least 30% of the area within the subdivision shall be retained in open space.

4. Subdivision roads and any private roads connecting with a subdivision road shall be built or modified to conform with the standards of SJCC 18.60.100, as directed by the Department of Public Works.

5. The Department of Public Works shall be consulted regarding any necessary improvements to access to County roads, including the achievement of adequate sight distance.

6. All required road improvements shall be completed prior to final plat approval.

7. The plat shall show easement locations and associated auditors file numbers.

8. Maintenance of the roads shall be through provision of a maintenance agreement submitted to and approved by the Community Development and Planning Department and then recorded with the final subdivision approval. All subdivision property owners shall participate in the agreement.

9. An owners association shall be created with the responsibility for maintaining and operating the water system, drainage system, community drainfields, and common areas.

10. Prior to any clearing and grading, the applicant shall submit a geotechnical report showing how the requirements of SJCC 18.30.120(B)(2) will be met, unless a waiver or modification is approved by the Administrator.

11. Clearing and grading shall meet all the requirements of SJCC 18.60.060. If grading will be of 500 cubic yards or more a clearing a Clearing and Grading Permit shall be obtained. Clearing and grading shall be completed prior to final plat approval.

12. Prior to final plat approval, the applicant shall submit fire protection plans that meet all the requirements of the Deputy Fire Marshal's letter of September 12, 2005. Prior to the issuance of any building permits, the fire protection measures shall be in place, inspected and approved by the Fire Marshal's office and the District Fire Chief.

13. The applicant shall comply with the Construction Stormwater Pollution Prevention Plan.

14. The applicant shall comply with the Stormwater Site Plan. Final design and engineering of the stormwater system shall be submitted to Public Works and approved and drainage improvements shall be installed, inspected and approved prior to final plat approval.

15. To the extent practicable, grass or other appropriate vegetation shall be established in roadside ditches to provide bio-filtration of stormwater runoff, prior to final subdivision approval.

16. The final design of the community sewage disposal system shall be submitted to the Health Department and approved and the system shall be installed, inspected and approved prior to final plat approval.

17. The applicant shall obtain final approval of the water system from the Health Department prior to final plat approval. Such approval shall require a completed, submitted and approved system design; system construction with connections installed at all lots; an approved plan to limit water withdrawal to 5000 gallons per day.

18. Prior to final plat approval, the applicant shall obtain approval of concurrency for all relevant concurrency facilities.

19. All survey standards and requirements shall be complied with pursuant to SJCC 18.70.070(F)(2).

20. Building setbacks shall be as specified in SJCC 18.60.050, Table 6.1.



**The following conditions shall be shown as restrictions of the face of the plat, in addition to those restrictions and dedications required by SJCC 18.70.100:**

22. The approved water source for the lots within this subdivision shall be the community water system and any approved connections to the Rosario water system. If in the future another source of water is desired for any or all of the lots within the subdivision, the source shall be approved by Health and Community Service for quality and quantity.

23. Well sites shall be subject to a sanitary setback.

24. Best management practices for controlling erosion and sedimentation shall be used during construction of all roads, ponds, and structures.

25. All utilities shall be placed underground.

26. All disturbed areas not converted to impervious surface shall be restored to pre-project configurations and replanted with local vegetation. The vegetation shall be maintained until it is firmly established.

27. The common area and the well site are not residential lots. Other than roads and driveways, no construction shall occur within the common area.

28. The subdivision has been approved by the responsible county officials on the premise that each residential lot will be occupied by no more than one single family dwelling and lawfully related outbuildings. No lot shall be otherwise occupied unless the owner can first demonstrate to the county's satisfaction that the provisions for water supply, sewage disposal, circulation, lot size and related planning considerations are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the Subdivision Administrator who shall be responsible for coordinating the review of such requests and for making the required determination.

29. Maintenance of the private roads serving the lots of this subdivision is shared equally by the lot owners.

30. There may be additional private conditions, covenants or restrictions in addition to those shown on the face of this plat. Such private conditions may not be shown on plats. Any private deed restrictions are supplemental the requirements of the Unified Development Code. The county shall not be party to any private restrictions.

31. If during excavation or development of the site an area of potential archaeological significance is uncovered, all activity on the immediate vicinity of the find shall be halted immediately and the Administrator shall be notified at once.

**DECISION**

The appeal of the Determination of Non-Significance is dismissed. The application for Preliminary Plat approval for Rosario Ridge at Tomihi is approved, subject to the conditions set forth above.

DONE this \_\_\_\_\_, day of May, 2006.

  
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Wick Dufford, Hearing Examiner

**APPEAL**

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, chapter 36.70RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.