

May 23, 2023

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **PLAT210006**
Proposed ordinance no.: **2023-0138**

CHA CHA

Preliminary Plat Application

Location: 4142 324th Avenue SE, Fall City

Applicant: Cha Cha
represented by **Robert Fitzmaurice**
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Bellevue, WA 98005
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King County: Department of Local Services
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to conditions
Examiner's Decision:	Approve subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	5/4/2023
Hearing Closed:	5/4/2023
Hearing Record Closed:	5/11/2023

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

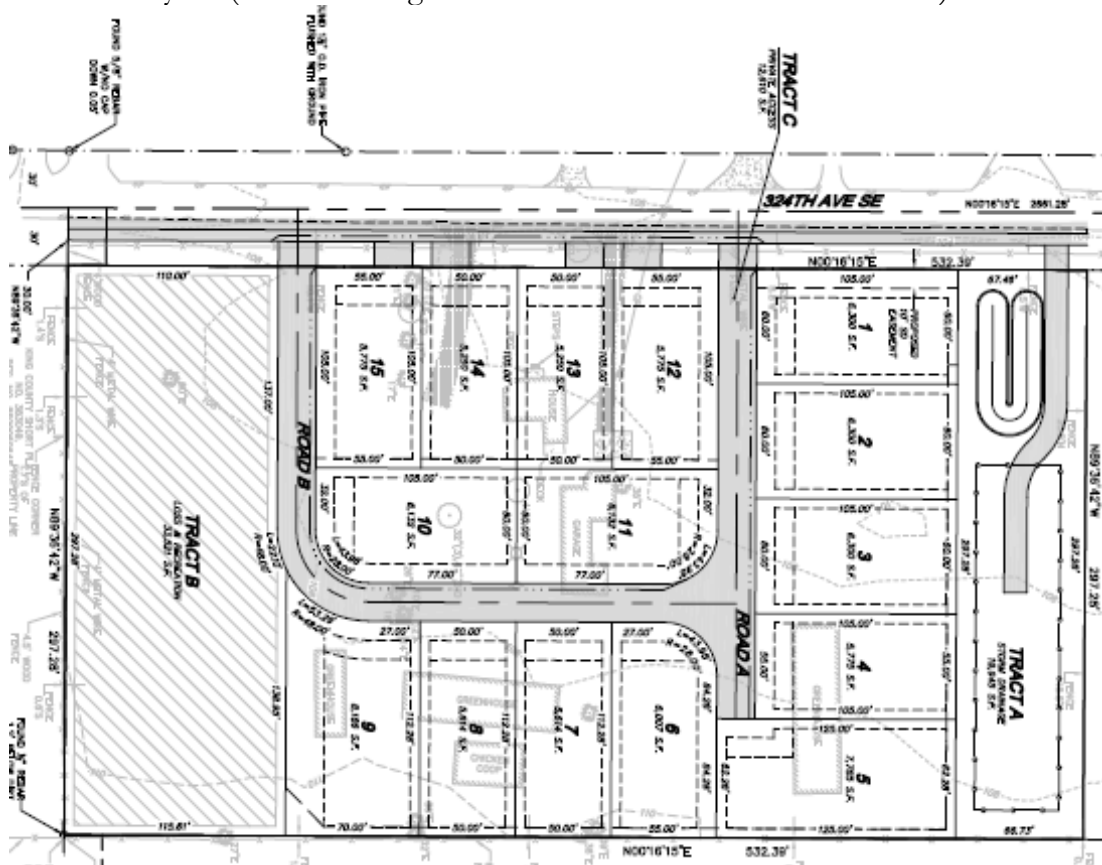
FINDINGS:

Preliminary Matters

1. The Examiner's review of a proposed preliminary plat generally begins with a review of the Department of Local Services, Permitting Division (Permitting or DLS) report to the Examiner (Staff Report) and the exhibits thereto. Except as modified herein, the facts set forth in the Staff Report and the County testimony are found to be correct and are incorporated herein by reference. Ex. D1.
2. It is helpful to understand the difference between a preliminary plat such as the one before the Examiner and a final plat, as well as what takes place between preliminary and final plat approval. A preliminary plat is a neat and *approximate* drawing of a proposed subdivision showing the *general* layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of Chapter 58.17 RCW. It is the basis for the approval or disapproval of the *general* layout of a subdivision. A final plat is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in Chapter 58.17 RCW and in local regulations adopted under Chapter 58.17 RCW. Detailed engineering and design takes place between the preliminary and final plat, often resulting in revisions to the preliminary plat. A final plat must contain a statement of approval from the county engineer as to the layout of streets, alleys and other rights-of-way, sewage and water systems, and other structures; RCW 58.17.020(4), (5) (emphasis added in *italics*), 58.17.160; KCC 19A.16.030.
3. In order to approve the proposed preliminary plat, the Examiner must make findings that 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 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. KCC 20.22.180.A; RCW 58.17.110(1).

Overview

4. Cha Cha Investments, LLC (Applicant) proposes a subdivision of approximately 3.63 acres (158,269 square feet), zoned R-4 (4 units per acre, Rural Town) into 15 lots for the future development of 3-bedroom single-family dwellings with associated roadways, utilities, stormwater facility, and recreation space (Cha or Project or proposed subdivision). The proposal includes separate tracts for storm drainage (Tract A), a large Onsite Septic System (LOSS) and recreation space (Tract B), and private access tract (Tract C). The access tract is proposed to provide internal access to the site via 30-foot-wide private access roads (Roads A & B) that will connect directly to 324th Ave SE. Exs. D1 – 001, D4; testimony of Maher Joudi.
5. The basic layout (rotated 90 degrees clockwise for fit and maximum size) is essentially:



Public Comments/Concerns

6. Permitting received the application for preliminary subdivision on June 10, 2021, and issued a Notice of Application (NOA) on July 22, 2021. Due to issues related to notice mailings and a missing notice board at the Project site, Permitting issued a revised NOA on November 18, 2021. The NOAs were distributed by 1) mailed notice to property owners within 500 feet of the subject property 2) one sign posted on the subject property, and 3) publication in the Seattle Times and Snoqualmie Valley Record, in accordance with KCC 20.20.060. Permitting also emailed the NOA to agencies listed in Section F of the Staff Report. Exs. D1 – 003, D2, D6, D7.

7. Permitting received numerous comments from the community. Concerns expressed related to pedestrian, bicyclist, and equestrian safety, and increased vehicular traffic; impacts to area schools, including the need for safe walking routes; allowed density, lot sizes, aesthetics, and inconsistency of new developments with the existing rural character of Fall City; adequacy of parking for residents and guests as well as for recreational vehicles and boats; loss of vegetation, particularly large trees, and wildlife habitat; water quality and impacts to area utilities, as well as the proposed LOSS system and potential cumulative effects of multiple LOSS systems proposed by Taylor Development entities in the Fall City Rural Town; and requests that the Applicant contribute to the West Side Trail. Permitting shared comments with the Applicant and staff. The Applicant provided a response to many of the comments. Exs. D1 – 003, D12, A12.
8. Community members submitted additional comments for the hearing in this matter as well as testimony expressing concerns about sight lines and increased vehicular traffic; the need for safe walking routes; allowed density, lot sizes, aesthetics, effect on views, and inconsistency of new developments with the existing rural character of Fall City and the King County Comprehensive Plan; tree preservation; adequacy of parking for residents and guests as well as for recreational vehicles, boats, and horse trailers; impervious surfaces; water quality, as well as the proposed LOSS system and potential cumulative effects of multiple LOSS systems proposed by Taylor Development entities in the Fall City Rural Town; requests that the Applicant contribute to the West Side Trail; and objecting to the road variance.¹ Exs. P2 – P10D, P10F, P10J – P10L, P11 – P12, P13A, P13C, P14 – P20; testimony of Megan Brocco, Angela Donaldson, Cory Huskinson, Rachel Shepard, Spencer Slominski, and Mike Suelzle.

Rural Character

9. The Project is located on the northwest portion of the R – 4 zone within the unincorporated Fall City Rural Town and abuts the RA – 5 zone to the west (across 324th Ave. SE) and R – 4 zones to the north, west, and south. The Project is between the developed Arrington Court to the north (separated by the depth of one lot) and the proposed Cedar 23 plat to the south (also separated by the depth of one lot). The proposed lots range in size from 5,114 square feet up to 7,785 square feet, with an average size of 5,839 square feet. Exs. D1 – 004 through – 005, D25; testimony of Maher Joudi and Brian Lee.
10. As many commenters point out, the Fall City Rural Town is not within King County’s Urban Growth Area (UGA). Rather, Rural Towns are one of the three rural land use categories established in the Comprehensive Plan. Compatibility of the Cha subdivision with the rural town character was a major focus of written comments received, as well as testimony and presentations at the hearing. In particular, Ms. Shepard cited to WAC 365-196-425(6)(c)(i)(A) which provides in relevant part that:

Development or redevelopment in LAMIRDs [local areas of more intense rural development] may be both allowed and encouraged provided it is

¹ To address the cumulative effects concern, where relevant, the Examiner discusses some of those other subdivisions, including Arrington Court (built out and formerly known as Fall City), Cedar 23, Fall City II, Mt. Si, and Stevens.

consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensities.

She contends that the Project is inconsistent with Fall City’s size and scale. Exs. D12; P2 – P6, P10A – D, P10F, P10J – L; testimony of Angela Donaldson, Rachel Shepard; King County Comprehensive Plan, page 3-8.

11. The regulations applying within the boundaries of the Fall City Rural Town are a mixture of rural standards (such as the rural road standards for roads outside the preliminary plat) and more urban standards (such as the R-4 zone and the hybrid road standards the Roads and Permitting Divisions have been applying to the internal preliminary plat roads in the various Taylor Development subdivisions). Footnote 4 to the April 13, 2023, Report and Decision for the Mt. Si preliminary plat application, DLS file number PLAT210002 (Mt. Si Decision).
12. The King County Council has provided one regulatory tool to address Fall City rural character.² In response to a recommendation in the 1999 Fall City Subarea Plan that the King County Code be amended to eliminate the minimum density and maximum density requirements for R-4 zoned properties in Fall City, the King County Council adopted KCC 21A.12.030.B.22 and B.23 which expressly limit the maximum density in the R-4 zone in Fall City to four units per acre and eliminate the minimum density requirement. Elsewhere in the County, the R-4 zone allows a maximum density of six to eight units per acre. KCC 21A.12.030.A; September 15, 2017, Report and Decision for the Fall City preliminary application, DLS file number PLAT 60004 (Fall City I Decision).
13. If residential density calculations result in a fraction of 0.50 or above, the fraction is rounded up to the nearest whole number. In contrast, rounding up is not allowed within the adjacent rural and agricultural zones. This provision allows the base number of allowable dwelling units on the Cha subdivision property (14.52) to be rounded up to 15 dwelling units. Exs. D1 – 005 fn. 4, D17 – 002; testimony of Maher Joudi; KCC 21A.12.070.D.
14. In her Fall City I Decision (Fall City I is now known as and referred to herein as Arrington Court), this Examiner rendered a conclusion of law that the R-4 zoning as conditioned by KCC 21A.12.030.B.22 and B.23 is consistent with the 1999 Fall City Plan and the King County Comprehensive Plan and protects rural character.
15. The record developed in this matter does not allow the Examiner to reach the same conclusion as a matter of law.
 - A. There is no minimum lot size in the R-4 zone, although no construction is permitted on a lot that contains an area of less than 2500 square feet. KCC 21A.12.030.A, 21A.12.100.A.

² As Ms. Shepard and Ms. Brocco point out, KCC 21A.18.020 allows the director *upon request from the proponent* of any use located in a rural town to modify parking and circulation standards to for several purposes, including protection or enhancement of the historic character of the area and reduction of the need for pavement or other impervious surfaces. (Emphasis added in *italics*). The Applicant has not requested a modification of the standards in chapter 21A.18 KCC. Ex. P10A – 009; testimony of Megan Brocco.

- B. The use of residential LOSS systems as opposed to individual on-site septic systems (OSS) allows an applicant to increase significantly the number of lots that can be created and to reduce significantly the lot sizes. For example, in Cedar 23, 18 lots could be developed using OSS (assuming a 4-bedroom home on each lot) as compared to the 23 that can be developed using LOSS (assuming a 3-bedroom home on each lot). Ex. A4 – 001 through – 002, P10J; testimony of David Jensen.
- C. The reduced lots sizes permitted with a LOSS can result in significantly higher impervious surface percentages on each individual lot. Individual lots in R-4 zone that are less than 9,600 square feet may be developed with as much as 70% impervious surfaces, whereas those larger than 9,600 square feet are subject to a 55% maximum. KCC 21A.12.030.5.c; testimony of Maher Joudi.
- D. As found in in the Examiner’s Cedar 23 Decision:

In the intervening years, the Arrington Court plat has been built out using a LOSS system. The homes are large. While they are likely no larger than some of the homes recently constructed in subdivisions members of the community characterized as “traditional R-4 subdivisions” using OSS, the relatively small size of the lots and the proximity of the homes to 324th Ave. SE increases the appearance of their size.

March 22, 2023, Report and Decision for Cedar 23, DLS file number PLAT 210005, Finding 14.C (Cedar 23 Decision).

- E. The Arrington Court recreation space is located in the LOSS tract. The LOSS cannot be graded to make its surface flat, reducing its utility as a recreation area, although active and reserve drainfields generally can be used for grassy play areas and have footpaths laid over top the ground or with very shallow foundations. Ex. A11 – 001.
- F. Arrington Court, Fall City II, Cedar 23, Mt. Si (as revised by the Applicant’s Motion for Clarification) and Cha, all proposed by Taylor Development entities, do or will provide adequate parking for their residents, but little to no room for guests, service providers, delivery vehicles, or boats, trailers, RVs and other recreational vehicles typical in rural areas.
- G. Due to their width, no parking is permitted on the Arrington Court internal roads in order to provide for passage of emergency vehicles. Testimony of Maher Joudi.
- H. Following the development of Arrington Court, the County signed 324th Ave. SE “No Parking;” however, cars and service vehicles continue to park along the road on a weekly or even daily basis, frequently over the “fog line.” When contacted, the Sheriff’s office has responded that it does not have the resources to enforce no parking signs. It is not realistic to expect the King County Sheriff routinely to enforce the parking restriction. Exs. P11 – 003 (depicting car parked immediately

adjacent to “No Parking” sign), P14, P18-028; Mt. Si Decision, Finding 13.G; testimony of Megan Brocco Spencer Slominski, and Mike Suelzle.

- I. Cars parked on the shoulder of 324th Ave. SE interfere with safe walking routes to the buses students in Arrington Court, Cedar 23, Cha and Mt. Si will take to reach the current school bus stops on 324th Ave. SE. Exs. P11 – 003 (depicting car parked immediately adjacent to “No Parking” sign), P14; P20 (depicting car parked in safe walking route); testimony of Angela Donaldson.
 - J. The Applicant expects the County to post “No Parking” signs in front of the Cha subdivision. Ex. A12 – 001.
 - K. As described in the Examiner’s Mt. Si Decision, as a result of the smaller lots that can be accomplished using a LOSS system, the County has permitted hybrid, more urban road standards within plats employing a LOSS system rather than rural road standards it had formerly applied. Footnote 4 to Mt. Si Decision.
16. For these reasons, the Examiner is not persuaded that Cha is consistent with rural character. Exhibits D12, P10A-P10C, and P10J and testimony from numerous witnesses offered tools that would increase its compatibility, such as somewhat larger lots, somewhat smaller homes, variety in the design of homes, no clustering of lots, varying setbacks, reduced impervious surfaces, and large tree retention. However, the King County Council has not given Permitting or the Examiner tools other than the maximum density to address compatibility with rural character. Exs. D12, P10, P10A – 002, P10B – 009 through – 010, P10C, P10J; testimony of Angela Donaldson and Rachel Shepard.
17. As concluded below, the Project is consistent with the maximum density of four dwelling units/acre for the Rural Town of Fall City.

State Environmental Policy Act (SEPA)

- 18. Pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, the responsible official issued a threshold Determination of Non-Significance (DNS) for the proposed preliminary plat on September 29, 2022. Exs. D1 – 003, D9.
- 19. The 24 – day comment period closed on October 24, 2022 (the Staff Report incorrectly states that the appeal period ended October 10, 2022). No appeal was filed. Exs. D1 – 003, D9; testimony of Maher Joudi.

Cultural Resources

- 20. In 2021, the Applicant commissioned a Cultural Resources Assessment by Cultural Resources Consultants, LLC (Assessment). After conducting background research and field investigation, Cultural Resource Consultants identified no archaeological sites at the Project site. Exs. D1 – 003, D10.
- 21. It recommended that, if project activities result in the discovery of archaeological materials, Project staff should halt work in the immediate area and contact the technical

- staff at the Department of Archaeology and Historic Preservation (DAHP) and representatives of identified area Tribes. Work should be stopped until further investigation and appropriate consultation have concluded. In the event that human remains are inadvertently revealed, Project staff should immediately stop work, cover, and secure the remains against further disturbance, and contact law enforcement personnel, consistent with the provisions set forth in RCW 27.44.055 and RCW 68.60.055. The detailed protocol may be found in Attachment C to the Assessment. Ex. D10 – 042.
22. DAHP concurred with the result and recommendations made in the Assessment and asked that a standard Inadvertent Discovery Plan be followed during all ground disturbing activities. Exs. D1 – 003, D11.
 23. The Snoqualmie Indian Tribes Department of Archaeology and Historic Preservation requested the opportunity to be on site during ground disturbing activities. Ex. P1.
 24. The Applicant has been working directly with the Snoqualmie Tribe to allow access to the Project site during excavation. On March 20, 2023, the Applicant sent the Tribe a draft Access and Indemnity Agreement for Fall City II that would serve as a template for each of the Taylor Development projects in Fall City. Exs. A6 – 001, A7; testimony of Robert Fitzmaurice.
 25. Condition 18 establishes an inadvertent discovery protocol.

Critical Areas

26. CARA: Permitting issued a Critical Areas Designation for the property on September 2, 2019, confirming that it is within a Category I Critical Aquifer Recharge Area (CARA) and within a possible seismic hazard area. The site soil and groundwater conditions described in the geotechnical report do not appear to meet the definition of a seismic hazard area. No additional critical areas were identified on the parcel. The Snoqualmie River is located approximately 0.5 miles north/northeast of the site. The Raging River is located approximately 0.7 miles southeast of the site. Exs. D1– 006, D13, D16.
27. To protect the CARA, the Applicant must provide appropriate measures to protect groundwater according to the 2016 King County Surface Water Design Manual (2016 KCSWDM). Condition 9.G.
28. Wildlife: The Applicant commissioned Altmann Oliver Associates, LLC (Altmann) to perform a Wildlife Habitat Assessment. In January 2023 Altmann reviewed the Project site to identify any Wildlife Habitat Conservation Areas regulated under KCC 21A.24.382.B through .K and any active breeding sites of any federally or state listed endangered, threatened, sensitive or candidate species or King County species of local importance not listed in KCC 21A.24.382.B through .K It found none of the regulated Habitat Conservation Areas or active breeding sites on or adjacent to the property. Exs. D1 – 004, D24.

29. The Washington Department of Fish and Wildlife (WDFW) PHS database indicates a Township wide potential for the gray wolf in the vicinity of the site. However, the site does not provide habitat for the gray wolf and this database does not indicate the presence of any data points for any individual WDFW priority species, nor did Altmann identify any during its field investigation. Exs. D1 – 004, D24.
30. Prior to any clearing or grading activities during the breeding season Condition 16 requires:

A wildlife survey will be conducted 2 to 3 weeks prior to clearing and grading to identify any nests or habitat of species listed in KCC 21A.24.382 and of any active breeding site of any federal or state listed endangered, threatened, sensitive and candidate species or King County species of local importance not in listed in subsections KCC 21A.24.382.B. through J.

Ex. D1 – 004; Condition 16.

Stormwater/Drainage

31. The property is in the Patterson Creek Drainage Basin in the Snoqualmie River Watershed in the Snohomish WRIA. The site is subject to Conservation Flow Control and Basic Water Quality requirements pursuant to the 2016 KCSWDM Application Maps. Ex. D1 – 006; Condition 9.
32. D. R. Strong Consulting Engineers, Inc. (D. R. Strong) performed a Level 1 downstream analysis for the proposed preliminary plat pursuant to 2016 KCSWDM Core Requirement #2. It found no downstream nuisances such as erosion, sedimentation, under capacity and flooding. The Project is not anticipated to create new downstream problems. The analysis can be found in the preliminary Technical Information Report (TIR). Exs. D1 – 006, D18.
33. The Applicant proposes a bioswale for Water Quality Treatment followed by an infiltration facility for Flow Control. The two facilities combined will meet Conservation Flow Control and Basic Water Quality requirements in accordance with the 2016 KCSWDM. The analysis along with modeling is included in the TIR. Exs. D1 – 006, D18; testimony of Maher Joudi.
34. As the Project site is larger than 1 acre and the Applicant is proposing full infiltration, a mounding analysis for the infiltration facility will be required during engineering. As part of the infiltration facility design, the Applicant will be required to monitor groundwater in the area of the stormwater facility over the wet season. Testimony of Maher Joudi.

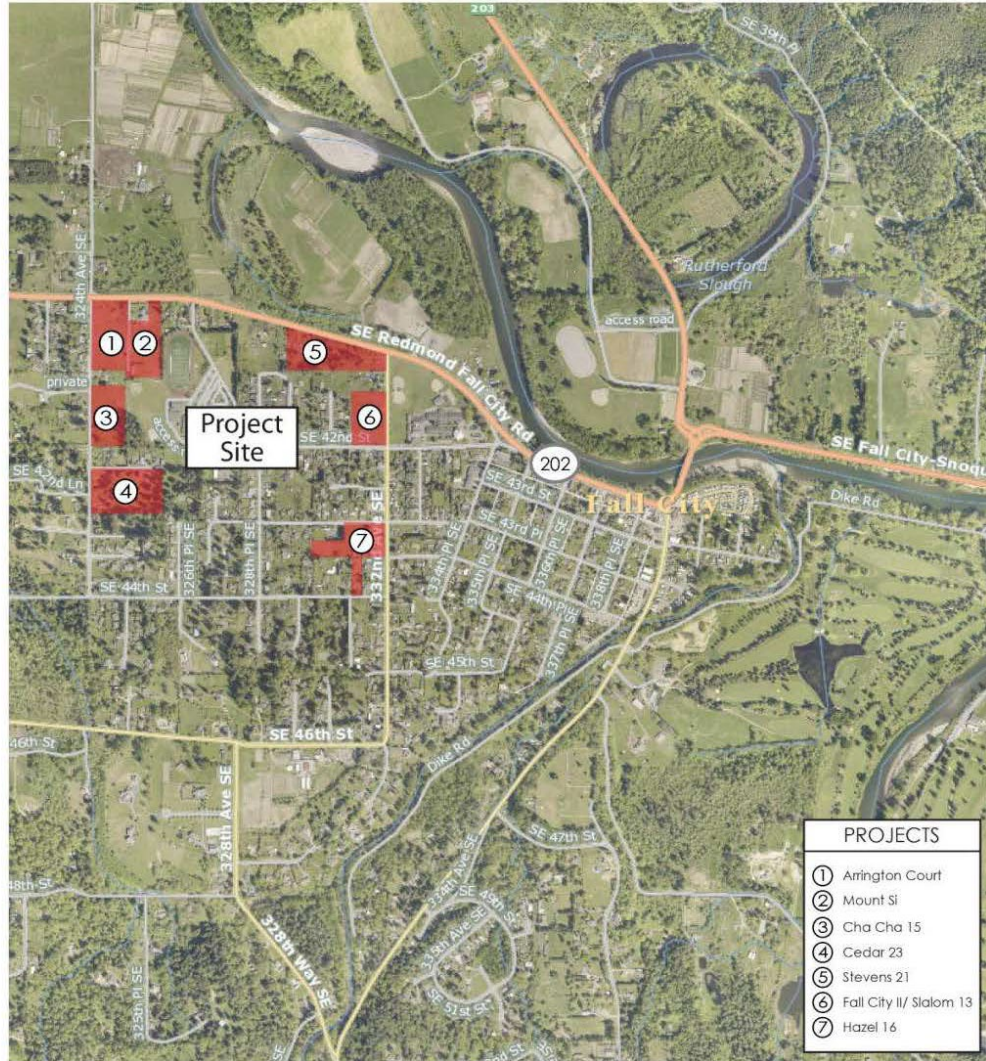
Transportation

35. The new private urban minor access roads, labeled “Road A” and “Road B” on the plans, are proposed to be within a 30-foot right-of-way that includes a 22-foot paved roadway, curb and gutter, and a 5-foot sidewalk on one side. Road A and Road B create a

- looped roadway through the subdivision connecting to 324th Ave. SE via two access points. On July 28, 2022, the County Road Engineer approved road variance VARR21-0004 eliminating a sidewalk on one side and reducing the required right-of-way from 40 feet to 30 feet. Exs. D1 – 005 – 006, D4, D14.
36. The Fire Department requires that a paved roadway with a width less than 28 feet of curb-to-curb pavement be signed “No Parking” on both sides of the road. Providing no parking in front of all fifteen lots will only exacerbate the parking problems observed at Arrington Court. For this reason, as well as the reasonably foreseeable difficulty in enforcing the “No Parking” signage and its consequent impact on emergency vehicle access, the Examiner concludes that, as currently designed, Cha does not make appropriate provisions for safety and general welfare and streets or roads. Therefore, she is requiring that the internal circulation be revised to provide 28 feet of curb-to-curb pavement to allow for some on-street parking and emergency vehicle access. Testimony of Maher Joudi and Megan Brocco; revised Conditions 10.B and 10.C.
37. The western frontage road, 324th Ave. SE, is classified as a rural subcollector. The 2016 King County Road Design and Construction Standards (KCRDCS) require a minimum right-of-way for a rural subcollector to be 60 feet or 30 feet on either side of the right-of-way centerline. The existing half of the right-of-way fronting the Project is 30 feet wide; therefore, no additional dedication is required. For this road classification, frontage improvements must include an 11-foot lane from the right-of-way centerline, and a 6-foot shoulder. The Applicant is proposing to include improvements that match with these requirements. The Examiner has revised Condition 10.A to require a “fog line” along the eastern edge of the shoulder as was done in Arrington Court and Cedar 23. Exs. D1 – 005, D4 – 003, A12 – 003; testimony of Maher Joudi; revised Condition 10.A.
38. Stopping sight distance requirements for 324th Ave. SE, a Rural Subcollector, are met at both driveways. Ex. A12 – 003; testimony of Maher Joudi.
39. Transportation Engineering NorthWest performed a level one traffic impact analysis (TIA) to evaluate the cumulative impacts of the seven residential plats proposed or under consideration by Taylor Development entities within what it refers to as the Fall City Assemblage.³ All seven of the developments are located south of SR 202 between 324th Ave. SE and 332nd Ave. SE. All Traffic Data conducted traffic counts from 7-9 AM and 4-6 PM in November 2021 when the schools were in session. The TIA used a 2% forecasted growth in the vicinity to the year 2025. The Cha development (the TIA refers to it as Cha Cha 15) is anticipated to generate approximately 176 new average daily trips with approximately 13 new AM peak-hour trips and approximately 17 new PM peak-hour trips. This calculation includes service vehicles (e.g., mail delivery, garbage pick-up, school bus trips) which may serve this proposed subdivision as well as work trips, shopping trips, etc. Exs. D1 – 006, D19.

³ Arlington Court (17 single-family houses); Mount Si (16 single-family houses); Cha (15 single-family houses); Cedar 23 (23 single-family houses); Stevens 21 (21 single-family houses); Fall City II (13 single-family houses); Hazel 16 (16 single-family houses).

40. These 7 residential plats are shown on Figure 1 of Ex. D19, copied below:



41. The TIA evaluated Level of Service (LOS) for the AM and PM peak hours, for existing, future without the seven developments and future with the seven developments, for two off-site intersections (SR 202/324th Ave. SE and SR 202/332th Ave. SE). The study concludes that the intersections will operate at level-of-service C or better with minimal queuing with the build-out of the seven developments (including the Cha subdivision). LOS C is an acceptable LOS. Exs. D1 – 007, D19.
42. The proposed preliminary plat is located within the Snoqualmie Valley travel shed that currently passes the King County concurrency standard, indicating that transportation improvements or strategies will be in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years, as required by RCW 36.70A.070(6). Ex. D1 – 007.

Parking

43. Each home will have a minimum two or three-car garage and a 20-foot-deep driveway, allowing 2 vehicles to park in the driveway. Ex. D8 – 013, A12 – 005; testimony of Maher Joudi.
44. Revised Condition 10.B, which requires that Roads A and B provide 28 feet of curb-to-curb pavement, will allow additional parking on-street. Revised Condition 10.B.

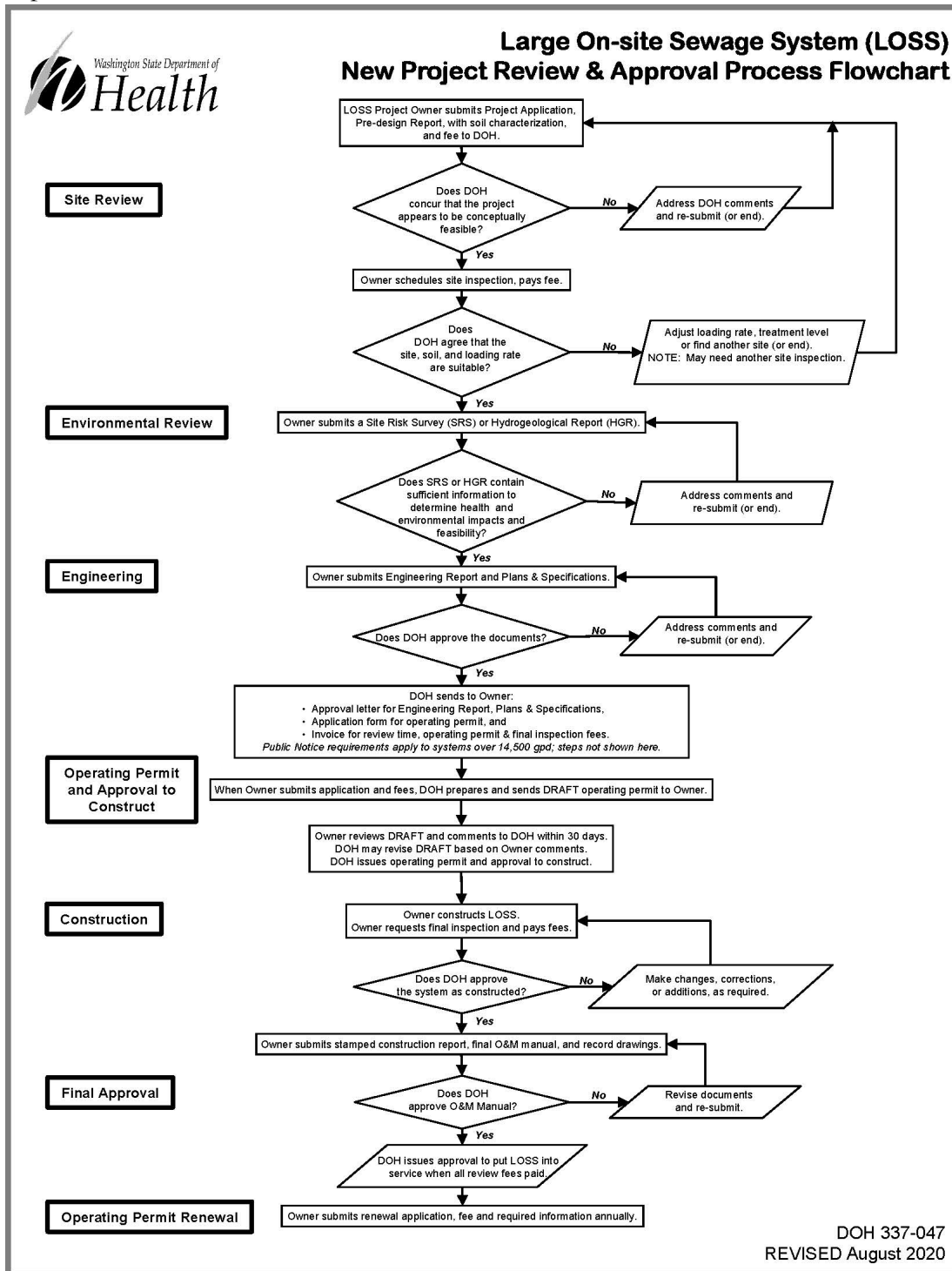
Fire Protection and Water Supply

45. The record contains persuasive testimony and documentation that it would be wise for the Fall City Water District to update its Comprehensive Water System and Wellhead Protection Plans, and perhaps even refrain from issuing water availability certificates until it has done so. However, the Certificate of Water Availability from the Fall City Water District indicates that it will be able to provide water service to the Project, pending construction of improvements (distribution system) and subject to a Developer Extension Agreement. Exs. D1 – 008, D21, P10F.
46. Prior to final recording of the plat, the water service facilities must be reviewed and approved pursuant to King County Fire Flow Standards. Ex. D1 – 008; Condition 7.
47. Fire District 27 has provided a Fire District Receipt, demonstrating this proposal will be served by the Fire Protection District. Exs. D1 – 008, D22.
48. Future residences must be sprinklered unless otherwise approved by the King County Fire Marshal or designee. Condition 7.

Sewage Disposal

49. The Applicant proposes to serve the Project with a LOSS subject to the High Quality Effluent (HQE) standard. Exs. D1 – 008; testimony of Maher Joudi and David Jensen.
50. The legislature adopted Chapter 70A.115 RCW to establish in a single state agency, the Department of Health (DOH), the comprehensive regulation of the design, operation and maintenance of LOSSs and their operators. To accomplish these purposes, Chapter 70A.115 RCW provides for the permitting and continuing oversight of LOSSs as well as the establishment of standards and rules for siting, design, construction, installation, operation, maintenance and repair of LOSSs. DOH's LOSS rules are contained in Chapter 246-272B WAC and are intended to achieve sustainable long term sewage management. RCW 70A.115.005, 70A.115.020; WAC 246-272B-01000.
51. Consistent with Chapter 70A.115 RCW, Permitting defers to DOH for review of LOSS systems.

52. The chart below and following Findings summarize the key steps in DOH’s review of a proposed LOSS:



- A. The owner submits a Predesign Report prepared, stamped, signed, and dated by a design engineer. If the conceptual treatment design appears to be viable, DOH issues a notice to proceed to site inspection. D. R. Strong submitted the LOSS Preliminary Engineering Report on September 9, 2021. DOH issued the notice to proceed to site inspection for the Cha LOSS on November 24, 2021. Exs. A3, A14 – 003; testimony of Maher Joudi; WAC 246 – 272B – 02000.
- B. After receiving the notice to proceed, the owner may proceed with the site inspection by scheduling the site inspection with DOH, the design engineer, and the person who prepared the soil logs if different than the design engineer. The field soils review took place on June 16, 2022. Ex. A14 – 003; WAC 246 – 272B – 02000.
- C. DOH determines that the soil information is consistent with the conceptual treatment design, it issues a notice of determination that includes the maximum loading rate and instructions to proceed to environmental review. DOH issued this notice for Cha on July 7, 2022. The notice indicates:

[DOH] completed a site visit on June 6, 2022, to verify the soil type in the area of the proposed drainfield for Cha Subdivision LOSS. The soils observed during the site visit were found to be predominately Type 4 soil consistent with soils logs provided in the September 2021 Predesign Report. The vertical separation was found to be greater than 36-inches.

The soils verification for this LOSS is complete. The hydraulic loading rate for the LOSS drainfield will be based on Type 4 soils.

This correspondence is your notification of approval to proceed with the environmental review. (Bold in original)

Exs. D23, A3, A14 – 003; testimony of Maher Joudi; WAC 246 – 272B – 02000.

- D. If DOH issues a notice to proceed, the owner may proceed with the environmental review, submitting a site risk survey (SRS) and, if required, a hydrogeology report (HGR). Included in the extensive list of information required, the SRS must identify critical areas designated by a local, state, or federal agency if the primary or reserve drainfield is located within a critical aquifer recharge area or designated wellhead protection area. The Applicant submitted the SRS on September 29, 2022. DOH has required an HGR for Cha. Exs. A12 – 001, A14 – 003; testimony of David Baumgarten; WAC 246 – 272B – 02050, 246 – 272B – 03200.
- E. If DOH determines that the SRS contains sufficient information to determine the public health and environmental impacts of the LOSS and the LOSS is feasible, it issues a notice of determination including instructions to proceed to engineering. WAC 246 – 272B – 02050.

- F. If it any of these steps, DOH is not able to instruct the owner to proceed to the next step, it discontinues review and treats any future LOSS proposal as a new project.
 - G. The engineering report must include a draft operations and maintenance (O&M) manual prepared by the design engineer and meeting the requirements of WAC 246 – 272B – 04000.
 - H. If DOH approves the engineering report and the draft O&M manual, the owner may proceed to plans and specifications. If DOH approves the plans, the owner may submit an operating permit application. WAC 246 – 272B – 02100.
 - I. Following issuance of the operating permit, which must be renewed annually, the owner may not begin construction until receiving DOH’s written approval to construct. WAC 246 – 272B – 02400.
 - J. DOH must conduct a final inspection. WAC 246 – 272B – 05300.
 - K. The design engineer must prepare a LOSS construction completion report which must include record drawings and a description of any changes from the approved plans and specifications, the final management plan, and the final O&M manual. WAC 246 – 272B – 05400.
 - L. For development including individually-owned lots, such as the Taylor Development entities’ proposals, the LOSS must be managed by either a public entity or wastewater company regulated by the Washington Utilities and Transportation Commission (WUTC) or a private management entity with a public entity or wastewater company regulated by the WUTC contracted as a third-party guarantor. The management plan must include a contingency plan to operate, maintain, and manage the LOSS so that public health and the environment are protected during a transition from one management entity to another. WAC 246 – 272B – 04100.
53. David Jensen is the design engineer for the Arrington Court, Cha, Fall City II, Cedar 23, and Mt. Si LOSS systems. David Baumgarten is the Applicant’s hydrogeologist.
54. In response to information provided to it by community members, DOH is requiring an HGR for Cha, Cedar 23, and Mt. Si to determine the aquifer types and extent for the Fall City area. It will help DOH determine if the groundwater below these subdivisions is part of a Group A well. Exs. A12 – 001, A15 – 009; testimony of David Baumgarten.
55. Mr. Baumgarten and Mr. Jensen discussed the scope of the HGR with DOH on April 25, 2023. Mr. Baumgarten is developing a formal scoping document for DOH approval, which he will make available to the Water District and its consulting hydrogeologist and consulting engineer. Ex. A13 – 003; testimony of David Baumgarten.

56. During the Mt. Si hearing, the Applicant agreed to share the scope of the HGR with Rachel Shepard for the Fall City Community Association and Mike Suelzle for Fall City Sustainable Growth. Mt. Si Decision, Finding 65.
57. The Applicant has since met with the Water District and members of the public, offering to coordinate with the Water District on the requested HGRs. The Water District agreed that the Applicant should communicate directly with Mr. Piechowski of Robinson Noble, the Water District’s hydrogeologist, copying the Water District. Ex. A9 – 001.
58. While, as found above, the scope of the HGR has not been finalized, the Applicant’s hydrogeologist expects that the HGR will review the regional hydrogeology of Fall City and site-specific aquifer parameters under the drainfield for each of the proposed subdivisions. The HGR will use a DOH Nitrate Balance model to determine if the proposed LOSS will meet the required nitrate level at the point of compliance (typically the property line). Input parameters include variables regarding the LOSS (volume, nitrogen concentration and effluent) and the hydrogeology of the receiving aquifer (aquifer thickness, aquifer hydraulic conductivity, aquifer width, aquifer gradient). As part of this analysis, the Applicant has or will install monitoring wells in each project to determine the seasonal high water levels and develop an understanding of the aquifer properties. Ex. A11 – 002; testimony of David Baumgarten.
59. Ms. Brocco has expressed concerns about LOSS contributing to the rise of arsenic. As found in the Mt. Si Decision, DOH has advised that arsenic is not typically a concern for domestic strength waste and that LOSSs are not expected to be a contributor to arsenic, since we have no sources of arsenic entering the waste stream outside of the source water. Ex. P12 – 002; Mt. Si Decision, Finding 67.
60. Many comments expressed concern about problems encountered with the Arrington Court LOSS and that the other LOSSs proposed by the Taylor Development entities could run into the same difficulties. Exs. D12, P2, P9, P10A, P10D, P10F, P10K, P10L, P12, P14, P15, P18.

61. Exhibit P10D – 003 graphically depicts the location of the various Taylor Development project (existing, proposed and contemplated) in relation to the Water District well and private wells. There may be eight LOSSs within one-square square mile.

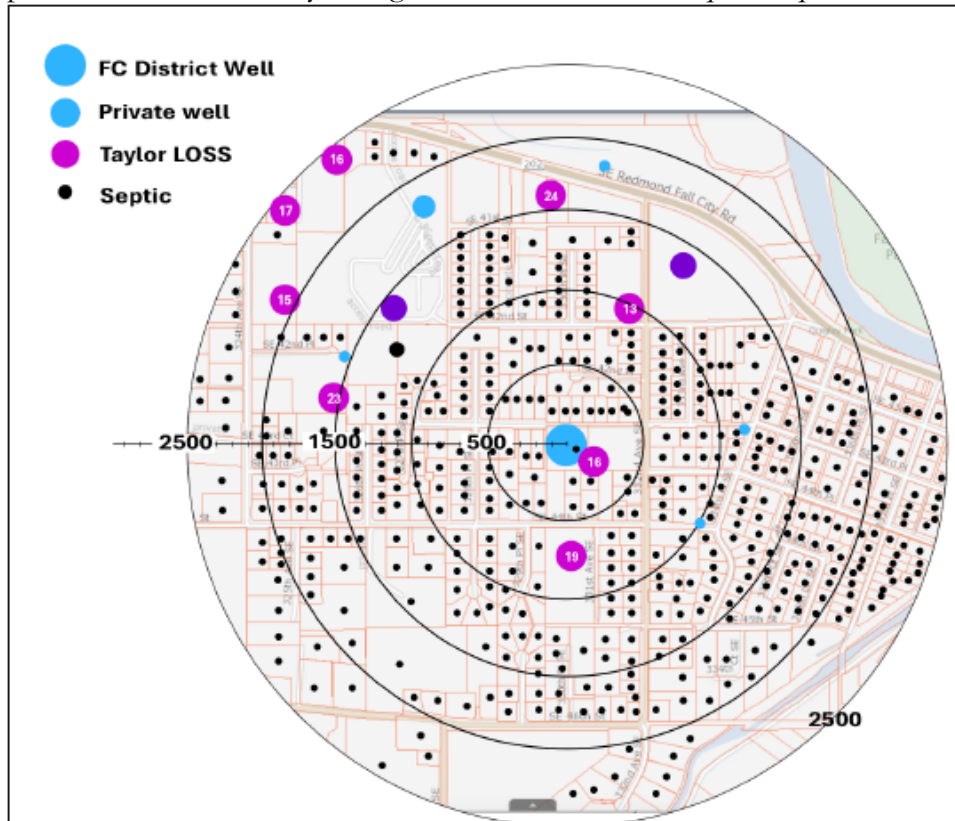


Exhibit P10D – 003; testimony of Megan Brocco.

62. During the hearing for Cedar 23, Mr. Jensen reviewed in some detail the challenges encountered at the Arrington Court subdivision. The following findings are taken from the Examiner's Cedar 23 Decision with additional information from the record in this matter as noted:
- A. The issues derive from the components on the individual lots, not the actual LOSS system where the effluent goes into the ground. A few of the residents disposed of waste products not suitable for septic systems; a few sent excessive amounts of water to the system. Testimony of David Jensen.
 - B. The main issue has been treatment of nitrogen and nitrates. Each home stubs out into a single-compartment 900-gallon tank which settles out products that are biodegradable. The tank has an outlet to a proprietary secondary waste treatment system using activated sludge and a biomembrane. Bacterial colonies grow within this system and break down the waste strengths. These colonies take time to establish themselves and are slower to do so during cold periods of the year. The effluent then goes to a pump chamber which pumps the effluent off the lot into a common collection pipe to a large pump chamber in the LOSS. The pump chamber doses the LOSS 24 times/day. Testimony of David Jensen. See also Cha Ex. A15 – 008.

- C. The membranes on each lot have been removed, cleaned, reinstalled, and the systems re-seeded (two had to be re-seeded again). Colonies are establishing themselves, but have not yet reached the necessary level to achieve the targeted waste strength. Nitrates are intended to be no more than 10 mg/L before being discharged into the drainfield. By comparison, the nitrate standard for a lot less than one acre in size on OSS is 30 mg/L. Testimony of David Jensen. See also Cha Ex. A15 – 008.
- D. Taylor Development and RM Homes (the builder of the Arrington Court homes) are working closely with DOH to resolve the nitrate issue. Options include installing a community denitrification system rather than treatment systems on each lot. Testimony of David Jensen at Cha hearing.
63. There are two theories about how to best instill a sense of responsibility for a successfully operating LOSS system. One is that placing individual treatment systems on each lot will accomplish greater responsibility by individual lot owners; the other is that it is easier and more effective to manage one treatment system rather than multiple individual ones. Testimony of David Jensen.
64. The Applicant is currently considering a community denitrification system for the Cha subdivision rather than treatment systems on each lot, but a final decision cannot be made until DOH determines the LOSS targets. Testimony of David Jensen.
65. For the Cedar 23 hearing, Mr. Jensen calculated mass loading in pounds per day for three scenarios: the Cedar 23 LOSS (Scenario 1) and two scenarios using OSS on Cedar 23. Mr. Jensen analyzed the applicable waste strength requirements for nitrates (N), biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and gas (O&G). Scenario 1 assumes a three-bedroom home generating 360 gallons per day of effluent; Scenarios 2 and 3 assume a four-bedroom home generating 570 gallons per day of effluent. The Applicant submitted these calculations as Exhibit A4 in this matter. Ex. A4.
66. Scenario 2 is not particularly relevant as it assumes five lots, each of which is larger than 1 acre. Ex. A4.
67. Scenario 3 examines the maximum number of lots which could be created on the Cedar 23 property using OSS. Based on the site soils and Cedar 23's location in a Category I CARA, a maximum of 13 lots could be developed on OSSs. Ex. A4.

68. The following table compares the total mass loading from the LOSS (Scenario 1) with 13 individual OSSs (Scenario 3):

Mass Loading	Scenario 1 23 homes using LOSS	Scenario 3 13 homes using OSS (cumulative)
N	0.69 pounds per day	1.23 pounds per day
BOD	0.69 pounds per day	7.72 pounds per day
TSS	0.69 pounds per day	4.94 pounds per day
O&G	0.0 pounds per day	1.23 pounds per day

Ex. A4.

69. Ms. Brocco, on behalf of Fall City Sustainable Growth, contends that Scenario 3 considerably overstates the mass loading that would be generated from OSSs; OSS are safer than LOSS; and LOSS will generate greater mass loading than OSS due to the increased number of homes it permits. Her research indicates that the OSSs for the 12 most recently permitted single-family homes in Fall City which are located within a Type I or II CARA used Advanced Treatment Units (ATUs) with subsurface/drip pressure distribution. She then revised Mr. Jensen’s Scenario 3 (a) using NSF/ANSI test results for the BioMicrobics MicroFast ATUs and (b) reducing the number of assumed bedrooms from four to three. In response, Mr. Jensen points out that her calculations contain mathematical errors⁴ and do not compare like factors. The comparison should be NSF values to NSF values or field values to field values, not NSF values to field values. Unfortunately, the record does not contain information which would allow the Examiner to compare like factors. Even if it did, as concluded below, the Examiner has no authority to direct an applicant to use OSS rather than LOSS. Exs. P12, P18, A17; testimony of Megan Brocco and David Jensen.
70. The mass loading from the LOSS would occur in the drainfield area and dissipate as it mixes with groundwater. DOH typically allows for an increase in groundwater nitrate at the point the compliance (as noted above, typically the property line) of no more than 2 mg/L. More mixing occurs as the effluent moves downgradient in the aquifer, further reducing waste strength. Ex. A13 – 002.
71. The southeast portion of the property is located within the one-year travel zone for Fall City Water District wells 1, 2, and 5. Exs. P10D – 002; King County iMap.

⁴ For example, Ms. Brocco failed to reduce the discharge from 570 to 450 gallons per day (gpd)/home when she reduced the number of bedrooms. Mr. Jensen corrected her calculations using an effluent discharge of 450 gpd but does not explain why he uses 450 gpd for a 3-bedroom home rather than the 360 gpd he assumed for Scenario 1. Had he used 360 gpd the mass loading from Scenario 3 would have been lower. Ex. A17-004.

72. Mr. Baumgarten addressed the cumulative effects of multiple LOSS systems. He reviewed the Water District's Comprehensive Plan and Wellhead Protection Plan and a letter from the Water District's hydrogeologist, Robinson Nobel. The Cha LOSS, as well as the other LOSS systems being proposed by Taylor Development entities, will discharge into the upper sand and gravel aquifer, which is separated from the aquifer from which the Water District Well Nos. 1, 2, and 5 draw their water by a confining layer occurring at about 85 feet below grade. Ex. A13 – 001.

73. In response to concerns expressed by community members that the LOSS singly or cumulatively may change the direction of groundwater flow, Mr. Baumgarten opined that:

The LOSS system will be infiltrating water into the water table beneath the footprint of the LOSS. The extent and height of groundwater mounding is determined by the conductivity of the aquifer. The lower the conductivity (fine sand, silty sand) the greater the potential for mounding. The higher the conductivity (sand, gravel) the lower potential for mounding. If a mound develops it would be fairly localized beneath the LOSS. In this case the coarse sand and gravel from the aquifer would limit the potential for localized mounding and the highly conductive unconfined aquifer gradient would overwhelm any small change in localized flow. There would be no effect on groundwater flow in the lower confined aquifer in which the District's wells are completed.

Ex. A13 – 002 through – 003.

74. The Applicant must obtain final DOH approval before recording the final plat. KCC 19A.16.030.F; Condition 17.

75. The size of a residential LOSS is based on soil types, number of homes served, and the number of bedrooms within each home. In Washington, the residential flow rates are based on 120 gallons per bedroom per day with a minimum design flow of 240 gallons per day. The Cha LOSS will be designed for three-bedroom homes. Thus, if the homes were actually developed with more than three bedrooms, the effluent discharged to the LOSS system could easily exceed the design volume. To address this possibility, New Condition 22.F requires a note on the face of the final plat limiting each home constructed within Cha to three bedrooms. Exs. P2, P9, P10F, P10K, P15, P18; testimony of Megan Brocco, David Jensen, and Spencer Slominski; New Condition 22.F.

76. For the Mt. Si subdivision, the Applicant offered to place a deed restriction on each lot limiting the number of bedrooms to three. In the Cha hearing, the Examiner explained that she expected the Applicant would impose a similar deed restriction for the Cha lots. The Applicant did not indicate otherwise; therefore, the Examiner finds that the Applicant will impose such a deed restriction on the Cha lots. New Condition 22.E.

77. Given the considerable concern about the individual LOSS system as well as the potential cumulative impacts of multiple LOSS systems, the Examiner will retain jurisdiction in the event DOH denies LOSS design. New Condition 23.

78. A number of commenters pointed out that KCC 23.24.110 authorizes the County to deny a development proposal permit if “any person has been found in violation and remains in violation of any ordinance, resolution, regulation or public rule of the county that regulates or protects the public health or the use and development of land or water...” until the violation is cured by restoration accepted as complete by the County and payment of any civil penalty imposed. Ex. P10F-016, P15-007.
79. Fall City Sustainable Growth submitted a complaint to the County, DOH, and the Board of Engineers and Land Surveyors (BRPELS) asking each to find that Taylor Development and D. R. Strong misrepresented the number of bedrooms in Arrington Court and the Arrington Court LOSS design. Ex. A15 – 005 through – 029.
80. BRPELS treated the request as an informal complaint and investigated it to ensure that laws and regulations under its authority had been met. On April 20, 2023, Ken Fuller, the Director of BRPELS, advised D.R. Strong that BRPELS had discussed Arrington Court with DOH which concurred that the project design meets the DOH standards and that there “had not been a violation of RCW 18.43 nor WAC 196 nor the DOH rules and laws in the professional work completed on this reference [sic] project.” Exhibit A15 – 001 through – 002.
81. Permitting also conferred with DOH and met with RM Homes in May 2023. Ex. P10K – 001 through – 002; testimony of Brian Lee.
82. The County has not found the Applicant to be in violation of any ordinance, resolution, regulation or public rule of the County.

Recreation

83. The nearest public park is Quigley Park, located .75 miles east. It provides river access, picnic benches, and play areas. The Examiner notes that, to access it, residents would have to cross SR 202. Fall City Park, which is located approximately 1.2 miles of travel distance from the proposed preliminary plat, includes amenities such as baseball diamond, oval track, picnic tables, restroom facilities, and a walking path to and along Snoqualmie River. The Staff Report indicates that Chief Kanim Middle School, located adjacent to this proposed subdivision, provides additional recreational opportunities. However, the Examiner takes note of the fact that field is fully fenced, with a gate requiring key card access. D1 – 007; Mt. Si Decision, Finding 85.
84. In addition, all residential subdivisions of more than four units in the R-4 zone at a density of eight units or less per acre must provide recreation space for leisure, play and sport activities at a rate of 390 square feet per unit, which results in a minimum required recreation area of 5,850 square feet. Exs. D1 – 007 through – 008, D17 – 002; KCC 21A.14.180.A.
85. The Applicant proposes to locate the required recreation space over the reserve drainfield. Condition 14.D requires that, in order to approve this location, Permitting must find that it will accommodate leisure, play *and sport* activities. In the event either DOH or Permitting does not approve this use of the reserve drainfield, the Applicant

has developed two alternative configurations of Tract B which would locate the required recreation area adjacent to and around the exterior of the drainfields. Exs. D27 and D28; testimony of Maher Joudi; revised Condition 14.D.

86. KCC 21A.14.185 allows for fees in lieu of on-site recreation space, at the County’s discretion, if “recreation space provided within a county park in the vicinity will be of greater benefit to the prospective residents of the development.” Phases 1 and 2 of the West Side Trail (WST) would provide a 12-foot, shared-use trail suitable for use by pedestrians, bicyclists, and equestrians along the south side of SR 202 from milepost 21.37 to milepost 20.57 or from its intersection with 334th Pl. SE to 324th Ave. These two phases would provide non-motorized access to the Fall City Library, Fall City downtown, Fall City Elementary School, and Chief Kanim Middle School. Phase 1 is fully funded, with construction planned to take place in 2024. The King County Parks and Open Space program provided a \$500,000 grant for Phase 1 equating to 42.37% of the total cost. The Fall City Metropolitan Park District has applied for a grant for Phase 2 from the same program. If the grant is awarded, construction is planned to occur in 2025. Mt. Si Decision, Finding 87.
87. The WST will be immediately adjacent to the Mt. Si, Arrington Court, and Stevens plats and easily accessible by the Cha, Cedar 23, and Fall City II plats. In the foreseeable future, a contribution to the WST would arguably provide a greater benefit to the prospective residents of Cha than a small on-site recreation space, particularly if other proposed plats in Fall City similarly contribute. While the WST is not literally a county park, Phase 1 was significantly funded by the County. Phase 2 may be as well. Given the discretionary nature of KCC 21A.14.185, the Examiner urges Permitting to consider in-lieu fees for the WST rather than an on-site recreation area.
88. If on-site recreation is provided, a detailed improvement plan for the recreation tract with equipment landscaping, surfacing, etc. is required for submittal, review, and approval by Permitting prior to engineering plan approval. Ex. D1 – 0081; KCC 21A.14.180.A; Condition 14.A.
89. If on-site recreation is provided, Conditions 14.C and 14.D require that the recreation space improvements constructed prior to recording of the final plat and that Permitting confirm that that required recreation area is provided and usable for leisure, play *and sport* activities. Conditions 14.C and 14.D.
90. If it is determined during DOH and/or engineering plan review that additional area is required for the LOSS, on-site recreation space and improvements may have to be relocated. This may result in the reconfiguration and/or loss of lots. Condition 14.E.

Schools and Safe Walking Routes

91. Students residing within the Project will be served by Fall City Elementary, Chief Kanim Middle, and Mount Si High Schools, all within Snoqualmie Valley #410 School District. Exs. D1 – 007, D20.
92. The Applicant has provided a School Walkway Analysis (Walkway Analysis) that identifies the expected travel routes to area schools or bus stops. Staff has reviewed the analysis and determined that the analysis and photographs adequately support a safe school walk route from the Project. Exs. D1 – 007, D20.
93. Bus service is available to all three schools. Currently, the bus stops for all three schools are located along 324th Ave. SE to the west of the property. The Walkway Analysis indicates that students attending Fall City Elementary School will walk south on 324th Ave. SE to catch the 7 – a.m. school bus at 4201 324th Ave. SE, across from the entrance to Cedar 23. The 7 – p.m. reverses the route to drop the students off after school. Middle School and High School students will cross 324th Ave. SE and walk south to catch the 35-a.m. school bus across the street at 4209 324th Ave. SE. The 35 – p.m. will reverse the route to drop students off after school. Exs. D1 – 007, D20.
94. In preparation for the hearing, the Applicant checked the School District’s web tool and conferred with the School District, confirming the bus routes described in the previous Finding. Testimony of Maher Joudi.
95. The shoulders on 324th Ave. SE are discontinuous. The School District added a bus stop in front of Arrington Court after occupancy of that subdivision indicated that a stop was warranted. It may add a stop at the Cha subdivision. If the School District does not add a stop in front of the Cha subdivision, the Applicant either will (a) connect the Cha shoulder improvement for 324th Ave. SE with the Arrington Court shoulder improvement to provide a continuous walkway to the bus stop in front of Arrington Court, if that improvement is viable; or (b) construct a 5-foot asphalt walkway in the right-of-way adjacent the parcel separating the Cha and Arrington Court subdivisions. Ex. P20; testimony of Maher Joudi; Revised Condition 10.E.
96. The Staff Report explains that Condition 10 (now numbered Condition 11) reflects the fact that the location of bus stops are somewhat fluid and that further analysis of school walkway needs and any required improvements may be required during detailed site engineering review. Ex. D1 – 007; Condition 11.
97. Chapter 27.44 KCC requires that an impact fee per lot be imposed to fund school system improvements to serve new development within this district. Payment of this fee in a manner consistent with KCC 27.44.010 is a condition of subdivision approval. The current fee is \$16,203 per single-family dwelling unit. Ex. D1 – 007; Condition 13.
98. Any Finding of Fact which should more properly be considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS:

1. Any Conclusion of Law which should more properly be considered a Finding of Fact is hereby adopted as a Finding of Fact.
2. Although the Examiner must determine whether provisions are made for the factors enumerated in RCW 58.17.110, including sanitary waste disposal, compliance with the health regulations applicable to a completed development is not required for a preliminary plat approval. *Topping v. Pierce County Bd. Of Comm'rs*, 29 Wn. App. 781, 783, 630 P. 2d 1385 (1981).
3. The Examiner has no authority to direct an applicant to use OSSs rather than a LOSS.
4. Nor does the Examiner have authority over the design of a LOSS. Through Chapter 70A.115 RCW the legislature established this authority in the Department of Health. Based on DOH's Notice to Proceed to Environmental Review, Exhibit A3, Condition 17 which requires final DOH approval of the LOSS prior to recording of the final plat, and the Examiner's retention of jurisdiction in the event DOH denies the LOSS design, the Examiner concludes that appropriate provision has been made for sanitary wastes.
5. The purpose of Chapter 365-196 WAC is to provide criteria to assist counties and cities in adopting comprehensive plans that satisfy the Growth Management Act (GMA) requirements and development regulations that implement those plans. WAC 365-196-020, 365-196-030(4). Development regulations do not include decisions on project permit applications such the proposed Cha preliminary plat. WAC 365-196-200(8), RCW 36.70B.020(4). WAC 365-196-425 in particular guides the development of the rural element of a comprehensive plan. Again, it does not apply directly to individual projects such as the subject preliminary plat.
6. Similarly, counties and cities are to include best available science in developing policies and development regulations to protect the functions and values of critical areas, including critical aquifer recharge areas. Best available science does not apply directly to individual project review. RCW 36.70A.172.
7. Further, during Project review, applicable development regulations are determinative of the type of land use permitted at the site. RCW 36.70B.030(2)(a). It is true that, in the absence of applicable development regulations, the local government may consider appropriate elements of the comprehensive plan adopted under the GMA to determine the type of land use, level of development and characteristics of the development, among other things. RCW 36.70B.030(1), 36.70B.040(1). However, that is not the case here. The King County Council has designated the Cha subdivision property (as well as the other Taylor Development entities' plats) R-4. The Examiner has no authority to change the zoning designation or to "fill in" perceived or real gaps in applicable regulations. The King County Council has adopted specific density requirements for the Fall City Rural Town and has chosen not to adopt other regulations many of those submitting written or oral comments would prefer. Finally, even assuming there were an inconsistency between the zoning and the King County Comprehensive Plan, a specific zoning

ordinance prevails over an inconsistent comprehensive plan. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn. 2d 861, 873, 947 2nd 1208 (1997).

8. The Examiner has no authority to impose mitigation conditions under the State Environmental Policy where no appeal of the threshold determination was filed.
9. The Examiner has no authority to require the Applicant to contribute to the west side trail, but the Examiner has encouraged that. See Finding 87.
10. The Examiner has no authority to require the Fall City Water District to update its Comprehensive Plan or Wellhead Protection Plan or to place the Cha preliminary plat on hold until it does so.
11. The proposed preliminary plat, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4 zoning regulations for the Rural Town of Fall City.
12. If approved subject to the conditions below, the proposed preliminary plat will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
13. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

DECISION:

1. The preliminary plat Cha Cha, is approved subject to the following conditions of approval.
2. The plat configuration shall be developed in substantial conformance with the revised preliminary drawings revision date August 3, 2022 (Exhibit D4).
3. Compliance with all platting provisions of Title 19A of the King County Code (KCC).
4. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
5. The plat shall comply with the density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of DLS – Permitting in accordance with KCC 19A.12.030.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DLS-Permitting prior to the submittal of the engineering plans. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary, or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title. Note this may result in the reconfiguration and/or loss of lot(s).

6. All construction and upgrading of public and private roads shall be done in accordance with the 2016 King County Road Design and Construction Standards (2016 KCRDCS) established and adopted by Ordinance 18420, as amended.
7. The applicant must obtain the approval of the King County Deputy Fire Marshal for the adequacy of the fire hydrant, water main, and fire flow standards of KCC Chapter 17.08. Any future residences are required to be sprinklered unless otherwise approved by the King County Fire Marshal or designee.
8. Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2016 KCRDCS or VARR21-0004.
9. Final plat approval shall require full compliance with the drainage provisions set forth in Chapter 9.04 KCC. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in Chapter 9.KCC 04 and the 2016 King County Surface Water Design Manual (2016 KCSWDM) must also be satisfied during engineering and final review.
 - A. Drainage plans and analysis shall comply with the 2016 KCSWDM and applicable updates adopted by DLS– Permitting. Approval of the drainage and roadway plans is required prior to any construction.
 - B. Current standard plan notes and ESC notes, as established by DLS - Permitting Engineering Review, shall be shown on the engineering plans.
 - C. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # (DLS – Permitting-issued plan record number to be inserted in space provided) on file with DLS - Permitting and/or the King County Road Services Division. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file.
 - D. The site is within the mapped Conservation Flow Control and Basic Water Quality Areas. A full drainage review is required demonstrating compliance with all nine (9) core requirements and all five (5) special requirements of the 2016 KCSWDM. Level 2 Flow Control is required for the on-site basin.

- E. The Flow Control and Water Quality Facilities shall meet the design requirements of the 2016 KCSWDM. The Facilities shall be shown on the final engineering plans and documented in the Technical Information Report (TIR) to demonstrate compliance with the 2016 KCSWDM.
 - F. To implement the required Best Management Practices (BMPs), the final engineering plans and TIR shall clearly demonstrate compliance with all applicable design standards. The requirements for BMPs are outlined in the KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMPs for site development.

The required BMPs shall also be shown on the individual residential building permit applications upon submittal of the permits. The individual building permit applications shall also include the required covenants, easements, notes and other details to implement the BMP design.
 - G. The project is located within a Critical Aquifer Recharge Area (CARA) and must provide the appropriate measures to protect groundwater as per 2016 KCSWDM. These measures may include lining Water Quality and Flow Control Facilities as specified in 2016 KCSWDM.
 - H. Retaining walls that are over 4 feet in height measured from the bottom of the footing to the top of the wall shall be designed by a licensed structural engineer.
10. The proposed subdivision shall comply with the 2016 KCRDCS, including the following requirements:
- A. 324th Avenue SE shall be constructed at a minimum to the rural subcollector standard per KCRDCS Section 2.02 and shall include a “fog line” along the eastern edge of the shoulder.
 - B. The new interior roads shall be constructed at a minimum to the urban minor access standard per KCRDCS Section 2.03, except as provided by road variance VARR21-0004. They shall have a minimum curb-to curb pavement width of 28 feet in order to allow parking on one side of the streets.
 - C. Comply with Road Variance VARR21-0004. VARR21-0004 allows for sidewalk on only one side of the interior roads on the condition that the ADA access to the sidewalk shall be provided so that residents on the opposite side of the interior roads have access to the sidewalk by use of an ADA compliant curb cut at a minimum every 150 feet. The same variance record also allows for a reduced right-of-way width to 30-foot from 40-foot. This width may need to be increased to accommodate curb-to curb pavement width of 28 feet.

- D. Private access tracts (PAT) and Joint use driveway tracts (JUD), if any, shall be improved to the PAT and/or JUD standard pursuant to section 2.09 and 3.01 of the 2016 KCRDCS.
 - E. School access and walkway shall meet the minimum width and surfacing requirements per 2016 KCRDCS Sections 3.08 and 3.09. Detailed plans for the construction of a minimum 5-foot walkways shall be included in final engineering plans for review and approval. If the School District does not add a stop in front of the Cha subdivision, the Applicant shall either (1) connect the shoulder improvement for 324th Ave. SE for the Cha subdivision with the Arrington Court shoulder improvement to provide a continuous walkway to the bus stop in front of Arrington Court; or (b) construct a 5-foot asphalt walkway in the right-of-way adjacent to the parcel separating the Cha and Arrington Court subdivisions.
 - F. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.13 of the 2016 KCRDCS.
- 11. If the expected routes to schools and/or bus stops are altered from what have been identified in the School Walkway Analysis (Exhibit D20), an updated School Walkway Analysis shall be submitted to the department for review and approval prior to final STRV approval.
 - 12. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 - 13. Lots within this subdivision are subject to KCC Chapter 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 - 14. If Permitting does not accept a fee in lieu of on-site recreation space, suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A. 14.190 (e.g., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - A. A detailed recreation space plan (e.g. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DLS – Permitting concurrent with the submittal of the engineering plans.
 - B. Recreation Tract(s) shall be fenced where adjacent to right-of-way and/or private roadway(s) to alleviate potential conflicts between users of recreation tract and vehicles. Fencing shall be a minimum split rail with landscaping and/or vinyl chain link and shown on the detailed recreation plan. Split rail with landscaping is preferred.

- C. Except as provided in KCC 19A.08.160.B, the recreation space improvements shall be constructed prior to final plat recording.
 - D. Prior to recording of the final plat, the DLS –Permitting shall confirm that that required recreation area will be usable for leisure, play *and sport* activities.
 - E. Recreation space is proposed within the LOSS drainfield area in Tract B, the Applicant shall obtain comments and/or approval(s) of the improvements from DOH and Permitting (i.e. play equipment, benches, landscaping, etc.) prior to engineering plan approval. If any conflicts are identified with the proposed location of recreation improvements within the drainfield area, the recreation space and improvements shall be relocated. This may result in the reconfiguration and/or loss of lots.
15. A homeowners' association or other workable organization satisfactory to DLS, shall be established and shall provide for the ownership and continued maintenance of the community drainfield, recreation facilities, and private road(s).
 16. Prior to starting any clearing and grading activity, a wildlife survey shall be conducted 2 to 3 weeks prior in order to identify any nests or habitat of species listed in KCC 21A.24.382 and of any active breeding site of any federal or state listed endangered, threatened, sensitive and candidate species or King County species of local importance not listed in subsections KCC 21A.24.382 B. through J.
 17. Final Health approval shall be obtained from the Washington State Department of Health for the community drainage field prior to final recording.
 18. The standard Inadvertent Discovery Plan shall be followed during all ground disturbing activities.
 19. If any employee, contractor, subcontractor, etc. believes a cultural resource and/or human remains have been uncovered at any point in the construction of the project, all work in the area must stop and the location be secured (see Chapter 27.44 RCW). The appropriate Tribes, agencies and authorities (e.g. Snoqualmie Indian Tribe, archaeological consultant, Washington State Department of Archaeology and Historic Preservation, King County Historic Preservation, King County Medical Examiner, King County Sheriff) must be consulted. Work may not resume until all agencies involved have reviewed, made final determinations and approved resumption of work.
 20. The preliminary plat approval will be valid for a period of 60-months from the date of approval. Pursuant to KCC 19A.12.020, if the associated final plat is not recorded within the time limit provided, preliminary plat approval shall become void.
 21. The subdivision shall conform to Chapter 16.82 KCC relating to grading on private property.
 22. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division. Preliminary approval of this application

does not limit the applicant's responsibility to obtain any required permit or license from the State or other regulatory body. This may include, but is not limited to the following:

- A. Forest Practice Permit from the Washington State Department of Natural Resources.
- B. National Pollutant Discharge Elimination System Permit from the Washington State Department of Ecology.
- C. Water Quality Modification Permit from the Washington State Department of Ecology.
- D. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.
- E. A deed restriction shall be placed on each lot limiting the number of bedrooms to three.
- F. The following note shall be shown on the final recorded plat:

Homes in this Subdivision are served by a Large Onsite Sewage System (LOSS). Washington Department of Health (WDOH) regulations limit the amount of effluent that each home can discharge to the LOSS. TO COMPLY WITH THESE REGULATIONS AND THE SUBDIVISION'S LOSS DESIGN, HOMES WITHIN THIS SUBDIVISION ARE LIMITED TO A MAXIMUM OF THREE (3) BEDROOMS. This restriction runs with the land and may be enforced by the Homeowners' Association, WDOH, DLS-Permitting or any other agency with jurisdiction. This restriction shall remain in effect until the home is connected to a municipal sewer system or approval is granted in writing by WDOH.

- 23. Given the considerable concern about the individual LOSS system as well as the potential cumulative impacts of multiple LOS. S systems, the Examiner will retain jurisdiction in the event DOH denies LOSS design.

DATED May 23, 2023.



Alison Moss
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

A person appeals this Examiner decision by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s decision.

Prior to the close of business (4:30 p.m.) on *June 16, 2023*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *June 16, 2023*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *June 16, 2023*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE MAY 4, 2023, HEARING ON PRELIMINARY PLAT APPLICATION CHA CHA, DEPARTMENT OF LOCAL SERVICES FILE NO. PLAT210006, PROPOSED ORDINANCE NO. 2023-0138

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were David Baumgarten, Megan Brocco, Angela Donaldson, Robert Fitzmaurice, Cory Huskinson, David Jensen, Maher Joudi, Brian Lee, Cindy Parks, Rachel Shepard, Spencer Slominski, and Mike Suelzle.

The following exhibits were offered and entered into the hearing record by the Department:

Exhibit no. D1	Department of Local Services Staff Report
Exhibit no. D2	Land Use Application, dated May 12, 2021
Exhibit no. D3	Updated Land Use Application, dated December 21, 2022
Exhibit no. D4	Revised Preliminary Plans, dated August 3, 2022
Exhibit no. D5	Preliminary Landscape Plans, dated August 2022
Exhibit no. D6	Notice of Application, dated July 22, 2021
Exhibit no. D7	Revised Notice of Application, dated November 12, 2021
Exhibit no. D8	State Environmental Policy Act Checklist, dated July 28, 2022

Exhibit no. D9	State Environmental Policy Act Threshold Determination of Non-significance, issued September 29, 2022
Exhibit no. D10	Cultural Resources Assessment, dated November 1, 2021
Exhibit no. D11	Department of Archaeology and Historic Preservation Concurrence, dated April 6, 2023
Exhibit no. D12	Public Comments
Exhibit no. D13	Geotechnical Report, dated July 9, 2020
Exhibit no. D14	Variance VARR21-0004
Exhibit no. D15	Boundary & Topography plan, dated May 12, 2021
Exhibit no. D16	CADS19-0207, dated September 2, 2019
Exhibit no. D17	Density Calculation Worksheet, dated July 28, 2022
Exhibit no. D18	Technical Information Report, dated August 3, 2022
Exhibit no. D19	Updated Traffic Impact Analysis for Fall City Residential Assemblage, dated August 2, 2022
Exhibit no. D20	School Walkway Analysis, dated July 28, 2022
Exhibit no. D21	Certificate of Water Availability, dated January 30, 2023
Exhibit no. D22	Fire District Receipt, updated April 17, 2023
Exhibit no. D23	Septic System Notice to Proceed, dated July 7, 2022
Exhibit no. D24	Wildlife Habitat Assessment, dated January 17, 2023
Exhibit no. D25	Assessors Map
Exhibit no. D26	Recreation Space Alternative Memo, received April 7, 2023
Exhibit no. D27	Recreation Space Alternative 1
Exhibit no. D28	Recreation Space Alternative 2
Exhibit no. D29	Notice of Recommendation and Hearing
Exhibit no. D30	Presentation, submitted May 4, 2023

The following exhibits were offered and entered into the hearing record by the Applicant:

Exhibit no. A1	Applicant Status Permit Transfer, effective December 21, 2022
Exhibit no. A2	Permit Application; Applicant Affidavit, effective December 21, 2022
Exhibit no. A3	LOSS Preliminary Engineering Report (issued September 2021) and Notice to Proceed Letters
Exhibit no. A4	Septic Mass Loading Calculations
Exhibit no. A5	Expert Witness List and Qualifications
Exhibit no. A6	Email, to Steve Moses Snoqualmie Tribe, dated April 12, 2023
Exhibit no. A7	Email, to Adam Osbekoff Snoqualmie Tribe, dated April 5, 2023
Exhibit no. A8	Email, FCWD Project Clarification (not Cha), dated March 3, 2022
Exhibit no. A9	Email, Taylor Development Coordination with FCWD, dated April 7, 2023
Exhibit no. A10	DAHP Concurrence Letter & Email Correspondence dated 4-6-23
Exhibit no. A11	Email, between Jensen Engineering and Department of Health, playground-LOSS Drainfield, dated October 12, 2021
Exhibit no. A12	Local Services' response to public comments, dated April 27, 2023
Exhibit no. A13	Letter, from Riley Group Hydrogeology, dated April 25, 2023
Exhibit no. A14	Letter, from Jensen Engineering, Department of Health process and project status, dated April 26, 2023

- Exhibit no. A15 Email, misrepresentation complaint and correspondence, dated April 2023
- Exhibit no. A16 Fall City Water District Special Meeting Agenda and Minutes, dated April 4, 2023, submitted April 28, 2023
- Exhibit no. A17 Response to P12, from David Jensen, submitted May 8, 2023

The following exhibits were offered and entered into the hearing record by the public:

- Exhibit no. P1. Email, from Adam Osbekoff, submitted April 4, 2023
- Exhibit no. P2. Email, from Spencer Slominski, submitted April 20, 2023
- Exhibit no. P3. Email, from Patricia Rose, submitted April 27, 2023
- Exhibit no. P4. Email, from Rebecca Miller, submitted May 1, 2023
- Exhibit no. P5. Email, from Teresa Kluver, submitted May 1, 2023
- Exhibit no. P6. Email, from Jim and Laurie Needham, submitted May 1, 2023
- Exhibit no. P7. Email, from Sherri Ballantyne, submitted May 1, 2023
- Exhibit no. P8. Email, from Alison Apple, submitted May 1, 2023
- Exhibit no. P9. Revised email, from Spencer Slominski, submitted May 1, 2023
- Exhibit no. P10. Letters and documents, from Rachel Shepard, submitted May 1, 2023
- A. Letter, from Rachel Shepard
 - B. King County Rural Towns Code Review
 - C. Impervious
 - D. Cumulative
 - E. Critical Aquifer Recharge Areas Guidance, by State Department of Ecology, revised March 2021
 - F. Presentation, Arrington Court + Loss Bedroom Misrepresentation
 - G. King County Comprehensive Plan, updated December 5, 2016
 - H. King County Urban Growth Capacity Report, dated June 2021
 - I. Fall City Water District Comprehensive Water Plan 2016
 - J. Parcel Analysis (excel)
 - K. Email, bedroom misrepresentation
 - L. Email, cumulative impacts
- Exhibit no. P11. Presentation, from Mike Suelzle, submitted May 1, 2023
- Exhibit no. P12. Presentation and Fall City Water District Notes, from Megan Brocco, submitted May 1, 2023
- Exhibit no. P13. Letter and supporting documents, from Megan Brocco, submitted May 1, 2023
- A. Letter including documents
 - B. Wastewater Technology, by Bio-Microbics Inc, dated 2015
 - C. Rural Development Planning, by State Community Trade and Economic Development, dated June 1999
 - D. Avoiding Sprawl, by Amy Kosterlitz, dated August 1997
- Exhibit no. P14. Email, from Kelly Young, submitted May 1, 2023
- Exhibit no. P15. Presentation, from Spencer Slominski, submitted May 4, 2023
- Exhibit no. P16. Emails, Cumulative Impacts and SEPA, from Rachel Shepard, submitted May 4, 2023
- Exhibit no. P17. Presentation, from Rachel Shepard, submitted May 4, 2023
- Exhibit no. P18. Presentation, from Megan Brocco, submitted May 4, 2023

- Exhibit no. P19. Arrington Court lab test results, from Megan Brocco, submitted May 4, 2023
- Exhibit no. P20. Photograph, from Angela Donaldson, submitted May 4, 2023
- Exhibit no. P21. Emails, Records Request, Megan Brocco, submitted May 4, 2023
- Exhibit no. P22. Email, Records Request Supporting Documentation, submitted May 4, 2022

May 23, 2023

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **PLAT210006**
Proposed ordinance no.: **2023-0138**

CHA CHA

Preliminary Plat Application

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED May 23, 2023.



Jessica Oscoy
Office Manager

Alsbury, Thomas/Joyce
Hardcopy

Apple, Alison
Hardcopy

Ballantyne, Sherri
Hardcopy

Baumgarten, David
The Riley Group Inc
Hardcopy

Bird, Frank

Bortko, Amber
Department of Local Services

Brocco, Megan

Cha Cha

Dobkins, Doug
Department of Local Services

Donaldson, Angela/Jeff
Hardcopy

Escobar, Lisa

Fitzmaurice, Robert
Taylor Development
Hardcopy

Gao, Clara
Department of Local Services

Gariepy, Daniel
Department of Local Services

Huskinson, Lena/Cory

Jensen, David
Jensen Engineering Inc
Hardcopy

Jones, April
Taylor Development

Joudi, Maher
DR Strong Consulting Engineers Inc
Hardcopy

Kluver, Teresa

Lee, Brian
Department of Local Services

Linney, Lacy

Miller, Dwight

Miller, Rebecca/Dwight
Hardcopy

Morgan, Kassandra

Mullaney, Patrick
Stoel Rives LLP
Hardcopy

Needham, Jim/Laurie

Osbekoff, Adam
Snoqualmie Tribe Enviro and Natural Resources Dept
Hardcopy

Parks, Cindy
Hardcopy

Pedroza, Melani
Metropolitan King County Council

Rose, Patricia

Scheffler, Ryan
Department of Local Services

Schramm, Jeff
Transportation Engineering NorthWest
Hardcopy

Shepard, Rachel

Slominski, Spencer
Hardcopy

Suelzle, Mike
Hardcopy

Vance, Cory

Young, Kelly