

To be considered by the  
Metropolitan King County Council on  
October 8, 2012 at 1:30 p.m.

SUMMARY INFORMATION

FOR THE  
METROPOLITAN KING COUNTY COUNCIL  
REGARDING AN  
APPEAL  
FROM THE DECISION OF THE  
HEARING EXAMINER

Proposed Ordinance No. 2011-0404

Department of Development and Environmental Services  
File No. L04P0032

**Tall Chief Country Club**

Preliminary Plat Application

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**KING COUNTY**  
**Signature Report**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**August 1, 2012**

**Ordinance**

**Proposed No. 2011-0404.2**

**Sponsors Gossett**

1 AN ORDINANCE concurring with the decision of the  
2 hearing examiner to approve, subject to conditions, the  
3 preliminary plat of Tall Chief Country Club, located West  
4 side of West Snoqualmie River Road SE and the  
5 Snoqualmie River, north of 19th Way SE, between  
6 Redmond and Fall City, department of development and  
7 environmental services file no. L04P0032.

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. This ordinance does hereby adopt and incorporate herein as its  
10 findings and conclusions the findings and conclusions contained in the report and  
11 decision of the hearing examiner dated June 18, 2012, to approve subject to conditions,  
12 the preliminary plat of Tall Chief Country Club, West side of West Snoqualmie River  
13 Road SE and the Snoqualmie River, north of 19th Way SE, between Redmond and Fall  
14 City, department of development and environmental services file no. L04P0032, and the  
15 council does hereby adopt as its action the decision contained in said report.

16

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Larry Gossett, Chair

ATTEST:

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** A. Hearing Examiner Report dated June 18, 2012

EXAMINER'S SUMMARY OF APPEAL ARGUMENTS

RE: Department of Development and Environmental Services  
File No. L04P0032 and L07SH003  
Tall Chief Country Club Preliminary Plat Application and  
Shoreline Substantial Development Permit  
Proposed Ordinance No. 2011-0404

1. Examiner: Peter Donahue (Report and Decision)  
Stafford L. Smith (Council Appeal)

2. Parties to the Appeal:

Appellants: Steve and Janet Keller and  
Snoqualmie Valley Preservation Alliance  
*represented by* **Charles Klinge**  
Groen Stephens & Klinge  
11100 NE Eighth Street, Suite 750  
Bellevue, WA 98004

Respondent: John Tomlinson  
*represented by* **Thomas Pors**  
Law Office of Thomas Pors  
1700 Seventh Avenue, Suite 2100  
Seattle, WA 98101

3. Location:

West side of West Snoqualmie River Road SE and the Snoqualmie River,  
North of 19th Way SE, between Redmond and Fall City

4. Issues on Appeal:

- A. Did the Applicant's failure to comply with DDES's deadlines for submission of additional information require cancellation of the preliminary plat application?
- B. After initial submittal did the Applicant make substantial changes to the preliminary plat application that require it to be treated as a new application with a new vesting date?
- C. Which version of the Surface Water Design Manual is the Applicant's shoreline permit vested to, 1998 or 2007?

- D. Is approval of a shoreline permit for roadway construction within shorelines jurisdiction unlawful because it authorizes placement of fill in the floodway in violation of KCC 25.16.190?
- E. Should condition no. 20 be revised to require a separately recorded Right to Farm notice on title and include the statutory definition of “agricultural activity”?
- F. Should the preliminary plat application be denied because it violates the rural character of the area?
- G. Should the preliminary plat be revised or denied because it fails to meet zoning code requirements for density and clustering?
- H. Should the plat’s stormwater discharge be revised to require release away from the Keller farm and dispersion upslope of forested open space?
- I. Does the risk of flooding at the plat entry road require denial of the application for failure to provide adequate access?
- J. Does the applicable standard of review require the Council to defer to findings and code interpretations made by the Examiner and/or DDES?

5. Arguments:

By Appellants:

- A. The Applicant’s hasty plat application in 2004 was designed to vest the project before the effective date of the CAO and was fundamentally incomplete, as evidenced by its numerous revisions and delays in providing information requested by DDES. Repeated failure to meet submittal deadlines mandate cancellation of the application. Substantial changes to the application require assigning it a later vesting date.
- B. The original application did not propose any development within shorelines jurisdiction. Thus the 2007 shoreline application cannot be regarded as subsidiary to the original 2004 application and must be assigned a 2007 vesting date consistent with the requirement of KCC 20.20.070(C) for subsequently required permits. This means that, pursuant to the Shoreline Management Act, the entire project is vested to the 2007 Surface Water Design Manual, not the 1998 manual as incorrectly determined by the Examiner and DDES.
- C. Regarding road construction within shoreline jurisdiction, KCC 25.16.190 absolutely prohibits filling within the floodway. DDES’s conclusion that only a net increase in total fill is prohibited is not supported by the code language.

- D. To be effective, plat condition #20 governing the right to farm notice needs to be modified to include the statutory definition of “agricultural activity” and to require its separate recording as a notice on title.
- E. KCC 19A.08.060 requires preliminary plat applications to be reviewed for conformity with both the State Growth Management Act and county Comprehensive Plan. The application violates GMA and comprehensive plan policies for preserving rural character.
- F. The clustering proposed by the preliminary plat does not meet the requirements of KCC 21A.14.040(B) because a flood-prone access road is not an adequate rural roadway and flood-prone resource land tracts cannot support a sustainable working farm. The plat does not meet zoning density requirements because it transfers density between zones.
- G. Condition 7(j) should be revised to require stormwater flows to be directed away from wetland A adjacent to the Keller farm. To the extent that flows are culverted between wetlands, culvert maintenance should be required.
- H. A plat entry road that routinely floods does not assure adequate access nor provide for the public health, safety and general welfare, as required by RCW 58.17.110. If an entry road through the floodway is allowed, the surcharge construction method must be strictly conditioned and monitored to assure that no net fill increase remains after completion.

By Respondent:

- A. The Council must sustain the Examiner’s factual findings if they are supported by substantial evidence.
- B. DDES’s determination on January 25, 2005 that the Tall Chief application was complete is conclusive as to initial plat vesting on the December 27, 2004 application date. DDES never acted to terminate the Tall Chief plat application based on delay, and KCC 20.20.100 is not self-executing.
- C. DDES never concluded that there were substantial changes to the plat application. Therefore its initial determination of completeness stands.
- D. RCW 58.17.033, which provides for plat vesting on the date a complete application is filed, is a controlling authority. The minor amount of road grading proposed in shoreline jurisdiction is for development entirely subsidiary to the plat and is not a stand-alone proposal. The shoreline application is therefore subject to the basic vesting determination for the preliminary plat application.



- E. Reading KCC 25.17.190(D) as an absolute prohibition on placement of fill in a floodway is an improper interpretation because it produces an absurd result. Under this reading no roads, bridges or underground utilities could ever be constructed or repaired near a river or its floodway. DDES's "no net increase" interpretation is consistent with the legislative purpose and avoids an absurd outcome.
- F. The Appellants' demand for an unprecedented type of Right to Farm notice exceeds state requirements and is designed to discourage buyers from purchasing plat lots.
- G. The Rural Area zoning for the Tall Chief property constitutes the legislative implementation of the Comprehensive Plan's Rural Policies. State law is clear that specific zoning regulations cannot be nullified by resort to general plan policies.
- H. Regarding clustering in the RA zone, the application complies with the existing farm plan provisions of KCC 21A.14.040(B). The fact that DDES has authority to adopt a public rule setting forth more specific criteria does not affect review of the current application. There is no transfer of density, because both RA zones for Tall Chief have the same base density.
- I. Not all of the required forested open space on the Tall Chief site must be located down-gradient of impervious areas being dispersed. The open space being provided down-gradient is sufficient to meet SWM requirements. Runoff flows directed toward the Keller farm will first pass through intervening wetlands, which will provide natural detention.
- J. As the Examiner concluded, the site's main and emergency access roads in combination will provide safe plat access. The timing of placement and removal of the floodway fill surcharge is a construction management issue to be determined by DDES at time of development.

6. Examiner's Discussion and Recommendation:

KCC 20.24.222(A) authorized both appellants and respondents to file written appeal statements and supporting arguments. KCC 20.24.222(B) states that "consideration by the Council of the appeal shall be based upon the record as presented to the Examiner at the public hearing and upon written appeal statements based on the record."

Both the Appellants and Respondent herein have attached additional materials to their appeal statements and argument. These have been excluded from the appeal packet. They are mostly redundant or irrelevant but involve in some instances attempts to

introduce new evidence after the close of the hearing record. In addition, references to the excluded materials have been excised from the appeal statements.

The primary legal issue raised by this appeal is whether later changes to the plat application after its initial filing in 2004, including the 2007 shoreline permit application, require assigning a new vesting date to the proposal.

There is no plausible argument to be made that the original December 27, 2004 plat application initially vested to some other date. DDES issued a notice of complete application on January 25, 2005, and KCC 20.20.050(D) provides upon such issuance the application is “conclusively deemed to be complete and vested”. Rather, the question is whether the application’s later processing history requires a different vesting date as some sort of corrective measure.

There are various aspects to this question. First, the Applicant failed to meet a number of response deadlines set by DDES for the submission of specified supplemental information. Even though an application has been previously deemed complete, DDES may set reasonable deadlines for submission of new information. If an applicant fails to meet stated deadlines “after two written requests”, such delinquency “shall be cause for the department to cancel or deny the application” (KCC 20.20.100(D)). But, as the Applicant notes, this subsection is not self-executing. While DDES may have had a legally sufficient basis to cancel the Tall Chief application for failure to provide timely information, it declined to take such action.

A second issue is broadly whether over a course of years the Tall Chief application was revised to such an extent that it is required to be treated as a new application with a new vesting date. KCC 20.20.080(B) provides that if an applicant requests a modification or revision that “would result in a substantial change in a development proposal’s review requirements”, it shall be treated as a new application with a new vesting date. The relevant portion of KCC 20.20.080(C) defines “substantial change” as “changes that will lead to significant built or natural environmental impacts that were not addressed in the original development proposal.”

A comparison of the Tall Chief preliminary plat maps as originally proposed in 2004 and as finally revised in 2011 discloses that the number of lots and site acreage remain the same. Lot lines have been reconfigured, sensitive areas and open space tracts have been adjusted, the internal plat road has been shortened and moved further west, an emergency exit route has been specified, and direct discharge to the Snoqualmie River for drainage flows in the northern plat basin has been replaced by on-site detention and release.

Whether these changes should be regarded as quantitatively substantial may be debated, but it is clear that none of them will result in significant environmental impacts that were not addressed in the original proposal. Indeed, these changes should all reduce impacts, not increase them, and their review does not involve substantially different standards.

From the outset primary plat access has been proposed from West Snoqualmie River Road near the northeast corner of the site. At this location West Snoqualmie River Road lies adjacent to the river and within the 200-foot regulatory jurisdiction of the Shorelines Management Act. Of necessity, the intersection of the plat access road with West Snoqualmie River Road at this location also lies within shorelines jurisdiction, as well as any associated utility connections and drainage outfalls. Of the 191 acres comprising the Tall Chief site, about two acres adjacent to this proposed new intersection lie within SMA jurisdiction.

The 2004 preliminary plat map depicted this new intersection to be within 200 feet of the river but the project environmental checklist incorrectly failed to identify such fact. A shoreline permit application was filed in 2007 to authorize the access road connection and associated drainage conveyance facilities.

Following state law, KCC 20.20.070(A) provides that a subdivision application is to be reviewed under the zoning and other land use controls in effect on the date a complete application was filed. KCC 20.20.070(C) provides that “vesting of an application does not vest any subsequently required permits”. Under relevant case law, what vests at the time of plat application is not just the right to divide land “but also the right to develop or use property under the laws as they exist at the time of application.” *Mobile Manor v. Pierce County*, 133 Wn 2d 269, 283 (1997).

In this context the term “subsequently required permits” should be understood as referring to permit applications arising after the development contemplated by the original plat proposal has been completed, including issuance of all subordinate permits necessary to such proposal. No plat can be approved without adequate road access, and the 2004 preliminary map clearly depicted the primary access road connection as being located within shorelines jurisdiction, notwithstanding the failure of the checklist to properly characterize the regulatory consequences of this fact.

No changes are recommended from the June 18, 2012 Hearing Examiner’s decision.

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BEFORE THE COUNTY COUNCIL  
FOR KING COUNTY

TALL CHIEF COUNTRY CLUB/JOHN  
TOMLINSON,  
  
Applicant,  
  
SNOQUALMIE VALLEY PRESERVATION  
ALLIANCE, STEVE KELLER, and JANET  
KELLER.  
  
Appellants-Intervenors.

DDES File Nos. L04P0032 and  
L07SH003

**STATEMENT OF APPEAL**

TO: THE COUNTY COUNCIL FOR KING COUNTY

AND TO: ALL PARTIES OF RECORD

Appellants-Intervenors: **Snoqualmie Valley Preservation Alliance, Steve  
Keller and Janet Keller**  
  
Project: **Tall Chief Country Club**  
  
Applicant: **John Tomlinson**  
  
Hearing Examiner  
Report and Decision: **June 18, 2012**

**DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**

ORIGINAL



1 project is flawed for these and other reasons, and thus, the appellants seek reversal of the Hearing  
2 Examiner decision by the County Council.

3 3. The Snoqualmie Valley Preservation Alliance and Steven and Janet Keller were  
4 granted intervention status by the Hearing Examiner at the outset of the hearing on the Tall Chief  
5 Country Club preliminary plat whose applicant is listed as John Tomlinson. SVPA and the  
6 Kellers now appeal the decision of the Examiner to approve the preliminary plat for this project.

7 4. Snoqualmie Valley Preservation Alliance (SVPA) is a non-profit corporation  
8 organized to preserve quality of life for the residents, farmers, property owners, and businesses in  
9 the lower Snoqualmie Valley of King County. SVPA seeks to preserve and protect the  
10 environmental quality of the area. SVPA and its members are directly affected by the Tall Chief  
11 development as it not only affects the hydrology and flooding conditions of the valley, but  
12 directly impacts the rural character of the valley as well.

13 5. Steve and Janet Keller own, operate, and reside upon a dairy farm, known as the  
14 Keller Dairy, located directly adjacent to the Tall Chief Project. As with SVPA, the proposed  
15 development risks adversely affecting the hydrology of the Keller's land. In addition, the Kellers  
16 have a direct interest in preserving their right to farm.

17  
18 **DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**  
19

20  
21 **APPLICATION, DECISION, HARM TO SVPA AND KELLER DAIRY**

22 7. The Applicant seeks to develop a suburban style country club right in the middle  
23 of the lower Snoqualmie Valley farming community that will severely disturb the rural qualities

1 of the area. The project's main access is within the critical area floodplain of the Snoqualmie  
2 River and would place suburban residents, including children, into the dangerous flooding  
3 conditions. The flooding conditions are not well understood by anyone that does not live in the  
4 Snoqualmie Valley, or who has not attempted to traverse the Valley during a flood. The  
5 residents live each November to May worrying about the next rain storm and the threat of  
6 flooding, and are glued to the flood forecasts. Ex. 26; *Testimony of Erick Haakenson, Deb*  
7 *Moery, and Steve Keller*. Importantly, the floods have been getting worse since the river  
8 widening in 2004-2005 upstream above the Snoqualmie Falls designed to benefit the City of  
9 Snoqualmie but making matters worse downstream. Ex. 26. That river widening was part of an  
10 Army Corps of Engineers project known as a Section 205 Project<sup>2</sup> and King County was a co-  
11 sponsor. Despite assurances by the Corps to the contrary, flooding has gotten worse since the  
12 Section 205 river widening above the Falls, and in fact three of the four largest floods in recorded  
13 history have occurred since 2005 after the Section 205 river widening was completed:

14           After the Corps 205 Project work, major flood events  
15           inundated the lower Snoqualmie Valley causing hundreds of  
16           thousands of dollars of property damage, and threatening lives. The  
17           flood events after the Corps 205 Project were more severe and more  
18           frequent than historical experience. Prior to the 2006, the largest  
19           flood event in history was in 1990 with 65,200 cubic feet per second  
20           (cfs) at the Carnation gage on the Snoqualmie River.

21           Since the 1990 flood, the 60,000 cfs level had not been  
22           exceeded since 1996. Then, on November 6-7, 2006, the Carnation  
23           gage reached a record 71,800 cfs in a massive flood event. Just one  
24           year later, on November 12-13, 2008, another big flood occurred and  
25           the Carnation gage reached 63,700 cfs, which was the highest flow  
26           since 1990 except for the 2006 event. Two months later, January 7-  
27           8, 2009, brought on the largest flooding in the history of the lower  
28           Snoqualmie Valley with the Carnation gage reaching 83,400 cfs.

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<sup>2</sup> Section 205 refers to a federal law authorization for such projects.

1                   These historic flood events caused massive damage to  
2 farmers in particular, by ruining hay stored in barns, damaging the  
3 barn structures, destroying tractors and other equipment, and  
4 harming animals. The farmers in the lower Snoqualmie Valley have  
5 been so devastated by these floods that they are concerned that any  
6 additional flood events will cripple them economically and could put  
7 them out of business.<sup>3</sup>

8           8.       The preliminary plat application was filed *on December 27, 2004*, just days  
9 before the new critical area ordinance went into effect. The project has numerous critical areas  
10 so the Applicant was attempting a last ditch effort to avoid those new rules. The project was  
11 flawed and incomplete from the start which is demonstrated by the contorted and disturbing  
12 application history—disturbing because DDES should have cancelled the application due to  
13 inactivity and failure to submit required information. Soon after the application was filed, DDES  
14 realized that the application was woefully short on information. Thus began a tortured history of  
15 DDES asking for important information and the Applicant failing to provide that information  
16 when requested. DDES stated that the information must be submitted by specific due dates or  
17 the application would be canceled, and yet the application was not cancelled when the  
18 information was not received when requested.

19           9.       These delay tactics by the Applicant started soon after the filing of the application  
20 in the last days of 2004. On July 15, 2005, DDES requested additional information by October  
21 15, 2005, and stated that if the requested information was not received by a stated due date,  
22 such noncompliance “shall be cause to cancel or deny the application.” (DDES  
23 Correspondence 7/15/2005).<sup>4</sup> The Applicant failed to provide the information and made no  
24 submission at all in response to the request that could be discerned from the file. Rather than  
25 cancelling the application as threatened, DDES sent another letter more than four months after

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<sup>3</sup> Ex. 26, p. 3-4, ¶ 9-11.

<sup>4</sup> DDES Correspondence is part of Exhibit 1.



1 the due date and again requested the additional information and provided a new due date of  
2 May 23, 2006. (DDES Correspondence 2/22/2006). Again, the Applicant did not make a  
3 timely submission and did not even make a submission the entire year. Instead, the Applicant  
4 finally made a submission *nearly a year past the due date on May 13, 2007*. (DDES  
5 Correspondence 5/13/2007).

6 10. The original application in 2004 was so defective and incomplete that the  
7 project had to undergo a major change in 2007 to include an application for a Shoreline  
8 Substantial Development Permit for work *within a regulated Shoreline of Statewide*  
9 *Significance*, namely the Snoqualmie River. In fact, it was determined at the hearing that the  
10 Applicant seeks to place thousands of cubic yards of fill in the floodplain within shoreline  
11 jurisdiction. Yet, the major project change of adding the Shoreline Substantial Development  
12 Permit application was not filed until May 2007.

13 11. The record reflects no action by DDES *for well over a year*. Finally, DDES  
14 acted in September 2008 and demanded additional information from the Applicant by  
15 December 31, 2008. (DDES Correspondence 9/30/2008). The Applicant waited until less  
16 than two weeks before the deadline and requested an extension, which DDES granted until  
17 March 31, 2009, but DDES stated: "If DDES does not receive the necessary information by  
18 March 31, 2009, *your application will be canceled or denied*." (DDES Correspondence  
19 12/29/2008). The Applicant again failed to comply with the deadline. DDES was required by  
20 its communications and policies to cancel or deny the application, and DDES's failure to do so  
21 must be corrected.

22 12. The Applicant finally responded on May 5, 2009. But, DDES still did not  
23 have enough information to process the application and requested the Applicant to again

1 provide more information by October 6, 2009. (DDES Correspondence 7/1/2009). The  
2 Applicant managed to only miss the due date by one day in that instance. So, at that point in  
3 time, it appeared that the Applicant had finally provided enough information to process the  
4 application, *but it had taken almost five years*, and yet DDES maintains that the application  
5 was complete in December 2004. Although, DDES may have had sufficient information to  
6 process the project as then proposed, the Applicant continued to make major project changes.

7 13. The project at some point was planned to have six lots accessed through  
8 Aldarra Ridge/Patterson Creek Preserve Plat to the east and the Applicant obtained a road  
9 variance for that proposal in August 2008. Ex. 19A. Yet, the project underwent major  
10 revisions and completely changed the road plan to have all the lots accessed from West  
11 Snoqualmie River Road with an emergency access to the east through the campground  
12 property. Ex. 19 (May 2011). The access through Aldarra Ridge/Patterson Creek Preserve  
13 Plat was eliminated.

14 14. Another major change occurring after the initial application had to do with  
15 stormwater drainage. The project, as initially designed, proved to be inconsistent with the  
16 County regulations or simply infeasible. So, the Applicant made a substantial change to the  
17 plan by applying for a Variance from the King County Storm Water Design Manual in 2007.  
18 That Variance sought to divert water from one natural drainage basin to another basin and to  
19 have direct discharge of the stormwater into the Snoqualmie River. Ex. 20. The Applicant  
20 then sought to change the entire stormwater discharge plan again in 2011. The Applicant  
21 sought to locate a massive detention pond that would be constructed directly in the floodplain,  
22 causing severe disruption to the flood fringe area and to discharge the stormwater into the  
23 floodplain in a manner that would cause downstream flooding impacts. However, the

1 Applicant failed to obtain a new Drainage Variance and this issue would cause disruption at  
2 the hearing.

3 15. Eventually, the Applicant stopped making major project changes and DDES  
4 eventually set the matter for hearing before the Hearing Examiner.

5 16. The hearing started on November 29, 2011. At that time, the Examiner  
6 granted intervention status to the current appellants SVPA and the Kellers *as a matter of right*  
7 due to their inherent interests in the outcome of this matter. *Order Memorializing Grant of*  
8 *Intervenor Status, Procedural Instructions, Interrogatories to Parties and Notice of*  
9 *Continuance (12/6/2011)*. Unfortunately, the first day of the hearing was unproductive  
10 largely because DDES and the Applicant were unprepared to answer questions about basic  
11 information related to the project. Thus, the Examiner had to continue the hearing and  
12 demanded that DDES and the Applicant provide additional information on nine listed subject  
13 areas encompassing numerous discrepancies in the application as well as gaping holes in data.  
14 *Order Memorializing Grant of Intervenor Status, Procedural Instructions, Interrogatories to*  
15 *Parties and Notice of Continuance (12/6/2011)*.

16 17. The hearing continued on December 15, 2011, as DDES and the Applicant  
17 attempted to repair all the numerous discrepancies and answer almost two dozen written  
18 questions from the Examiner. The Applicant submitted new and different Density and  
19 Dimension Calculations. Exs. 36, 36A, 36B, 36C, and 36D. The Applicant submitted a dated  
20 Downstream Analysis of stormwater impacts. Ex. 37. The Applicant attempted to address  
21 discrepancies related to fire access. The Fire District acceptance of the plan was based on the  
22 old plan with access through Aldarra Ridge that had been revised, but the new plan had not  
23 received acceptance from the Fire District. Ex. 39.

1           18.     As a result of the time taken up dealing with these problems, the hearing had to  
2 be continued again to January 4, 2012. SVPA and the Kellers presented the testimony of a  
3 drainage expert, Dr. Ed McCarthy, and he described the severe flooding problems created by  
4 constructing a massive detention pond in the flood fringe. Ex. 51; *Testimony of Edward J.*  
5 *McCarthy, PhD.* Additional testimony from Erick Haakenson, Deb Moery, and Steve Keller  
6 demonstrated conclusively that: (1) the plat entrance road would become impassable due to  
7 flooding two, three or more times every winter; and, other access roads would also be  
8 flooded; (2) the project residents would be placed in the middle of a severely dangerous  
9 flooding hazard in attempting to get to and from the proposed homes; (3) school children in  
10 particular would be in grave danger because the deepest flooded spot on the plat entrance road  
11 was not visible from the bus stop on the River Road; and, (4) the project site is more flooded  
12 than other surrounding areas and is not suitable for farming. Importantly, it was demonstrated  
13 that the Drainage Variance obtained by the Applicant (Ex. 20) and relied on by DDES in its  
14 approval recommendation (Ex. 2 at p. 4, ¶ 4, and Attachment 3) was for a completely  
15 different stormwater system plan than was now being proposed, namely the approved  
16 Drainage Variance was for direct discharge to the Snoqualmie River and the proposed  
17 stormwater system would discharge in the floodplain.

18           19.     Additional testimony, especially from SVPA Vice-President Erick Haakenson,  
19 thoroughly and conclusively explained how the proposed project represented a suburban  
20 neighborhood that was inconsistent with the rural character of the lower Snoqualmie Valley.  
21 The plat entrance road is accessed off the River Road. It was established that the River Road,  
22 the West Snoqualmie River Road, was designated as a Heritage Corridor as part of King  
23 County's Historic and Scenic Corridors Project and that the King County Landmarks

1 Commission designated the corridor as a Community Landmark. Ex. 49; *Testimony of Erick*  
2 *Haakenson*. The River Road and surrounding area is the center of farming activity. The  
3 River Road is frequently traversed by farm tractors and the area is subject to the aroma of  
4 working farms, including the Keller Dairy immediately east of the project. The mere Notice  
5 of Right to Farm on title does not prevent private and public complaints, and does not prevent  
6 the filing of meritless lawsuits that harass farming operations like the Keller Dairy.

7 20. The Applicant and DDES presented another surprise at the end of the hearing  
8 on January 4. DDES and the Applicant had determined that the approved Drainage Variance  
9 was in fact inadequate and defective to support the project. Thus, they requested time to  
10 process a new Drainage Variance. So, rather than proceeding to complete the hearing on the  
11 project as proposed, the Applicant was given the opportunity to make project changes and  
12 seek a new Drainage Variance. The hearing did not convene again until April 4, 2012.

13 21. It was revealed at the April 4 hearing that the Applicant went far beyond  
14 merely seeking a new Drainage Variance. Instead, the Applicant again made major changes  
15 to the project. Specifically, the stormwater drainage system was redesigned and substantially  
16 changed which resulted in the issuance of a new Drainage Variance. Ex. 57. But, in addition,  
17 *the access to the plat was changed again*. Now, the project would again utilize the Aldarra  
18 Ridge/Patterson Creek Preserve Plat for secondary access. The project documents were again  
19 re-worked. Exs. 54, 55, 56. Yet, the Examiner denied the Appellants' request to have the  
20 projected rejected or lose vesting due to the major project changes and refusal of DDES to  
21 cancel the application. However, DDES agreed that the new Drainage Variance was based on  
22 the old 1998 Stormwater Manual. Further, DDES represented that if it was determined that  
23

1 the project was not vested, then the Drainage Variance would have to be redone because it  
2 was not based on the application of the newer 2005 Stormwater Manual.

3         22.     The Applicant still failed to have the answers to basic questions about the  
4 project. The Applicant's consultant testified that 3,000 cubic yards of fill *in the floodplain*  
5 would be needed as part of the entrance road construction, but that the fill could be placed and  
6 removed in 8-12 weeks. *Testimony of Hal Hagenon.* But, the consultant's math was  
7 woefully flawed and he then admitted that *the true amount of fill in the floodplain would be*  
8 *14,000 to 15,000 cubic yards—5 times more and 700 truckloads in and 700 truckloads out.*  
9 The testimony made it clear that the massive dike created by the road would create a  
10 devastating flood hazard if not removed prior to the flood season, yet the Applicant failed to  
11 provide any special conditions or bonding to ensure that the work would occur as represented.  
12 It was also clear that the project included permanent fill in the floodplain.

13         23.     Finally, the hearing testimony closed and briefing occurred. Thus, DDES and  
14 the Applicant were given over four months to correct all the application discrepancies and  
15 flaws, and the Examiner and DDES allowed the Applicant to make major project revisions  
16 right in the middle of the hearing in an attempt to fix the flaws. Yet, these changes still failed  
17 to correct all the serious problems with the project as set forth in Intervenors' Post-Hearing  
18 Brief.

19         24.     Despite the pleas and arguments of Appellants-Intervenors (SVPA and the  
20 Kellers), the Examiner approved the project in a decision that failed to address numerous  
21 issues raised by Appellants. Therefore, the SVPA and the Kellers appealed the Preliminary Plat  
22 Report and Decision (L04P0032) dated June 18, 2012, issued by the Hearing Examiner and  
23 attached hereto as Exhibit 1. The Council is strongly encouraged to review the Examiner's

1 decision because it is sorely lacking in substantive discussion of the issues raised herein—the  
2 Examiner failed to fully and fairly address the issues raised by SVPA and the Kellers, which  
3 issues require denial of the permit. The following identifies the errors in the Decision and  
4 reasons for reversing the Decision to accept the application.

5 **ALLEGED ERRORS AND REASONS FOR REVERSAL OF DECISION**

6 **I**  
7 **THE EXAMINER COMPLETELY**  
8 **MISAPPLIED THE PERTINENT VESTING LAW**

9 The Decision by the Examiner misapplied the law on vesting.

10 **A. The Substantial Project Changes and Failure to Comply with DDES**  
11 **Deadlines Requires Application Denial or Loss of Vesting.**

12 It is undisputed that the Applicant completed failed to meet the submission deadlines  
13 demanded by DDES. It is clear from the record that the Applicant basically submitted a  
14 placeholder application in December 2004 to try to become vested prior to the new critical  
15 area regulations, which went into effect right after the new year. The application was a  
16 placeholder that then required the Applicant to actually start figuring out what a feasible  
17 project would look like, and that resulted in numerous substantial changes to the application  
18 over the years. Further, the failure to respond to DDES in a timely fashion also shows that the  
19 Applicant was not prepared to move forward on the project as submitted and needed the  
20 delays to attempt to come up with a workable plan. Thus, even though DDES sent a  
21 “completeness letter” based on the first submission, it became clear that if the original  
22 submission technically included the documents on the list, the reality was that the submitted  
23 application could not be approved as submitted and needed major revisions.

1 After multiple requests for information beginning in July 2005, the Applicant did not  
2 respond until May 2007. Included in the requests for information was DDES' warning that  
3 the failure to comply "shall be cause to cancel or deny the application." (DDES  
4 Correspondence 7/15/2005). The Applicant delayed responding to additional requests for  
5 information and finally, DDES warned: "If DDES does not receive the necessary information  
6 by March 31, 2009, your application will be canceled or denied." (DDES Correspondence  
7 12/29/2008).

8 Yet, the Applicant did not provide the information by that deadline, did not obtain an  
9 extension and submitted information late in May 2009. Incredibly, DDES did not, but should  
10 have, cancelled the application. That submission made major changes, including the  
11 recognition, for the first time, that a shoreline substantial development permit was required  
12 due to substantial work within the protected shoreline jurisdiction of the Snoqualmie River—a  
13 Shoreline of Statewide Significance. Then, even more information was sought by DDES and  
14 received. The Applicant made more changes to the project after that submission in October  
15 2009 with a new site plan in 2011. Then, the Applicant changed the site plan and the  
16 stormwater system again in the middle of the hearing earlier this year, 2012.

17 The Council has the power to deny the application or to determine that the application  
18 lost its vesting status to December 2004 due to failure to comply with deadlines and due to the  
19 substantial changes to the project. DDES followed its own polices in demanding information  
20 within a certain time frame and the Applicant's failure to do so should have resulted in  
21 cancellation or denial of the application as stated by DDES. The Council must correct that  
22 mistake. Further, with respect to vesting, the Code requires that the application lost its  
23 vesting by making substantial changes. The Code is clear that modifications by the Applicant



1 which “would result in a substantial change in a development proposal’s review requirements  
2 . . . requires filing of a new application.” KCC 20.20.080.B. Further, “substantial change” is  
3 defined to include “changes that will lead to significant built or natural environment impacts  
4 that were not addressed in the original development proposal.” KCC 20.20.080.C. Of course,  
5 there were substantial changes, that is what took so long for DDES to process the application  
6 and for the Applicant to respond. The stormwater drainage system was proposed, then  
7 changed to direct discharge, then changed again to eliminate direct discharge, then changed  
8 again to take the detention pond out of the floodplain. The access originally was partially  
9 from the west and partially from the east, then it was completely from the east with an  
10 emergency access through the campground to the north, then it was changed during the  
11 hearing to add another emergency access through Alderra Ridge. The original proposal  
12 planned no impacts in the shoreline area, and then two and half years later proposed those  
13 changes needing a Shoreline Substantial Development Permit. These major changes meet the  
14 definition of “substantial change” and require the filing of a new application pursuant to KCC  
15 20.20.080.

16 Although these problems were brought to the attention of the Hearing Examiner, the  
17 Examiner rejected these arguments during the hearing and did not document that  
18 determination in the final written decision.

19 **B. The 2007 Shoreline Permit Application Requires Vesting to the 2007**  
20 **SWDM.**

21 The Examiner fails to recognize the impact of vesting because using 2004 versus 2007  
22 as vesting dates for the Shoreline Substantial Development Permit application makes a huge  
23 difference. The Shoreline Code expressly requires compliance with the Drainage Code, KCC

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1 9.04 (KCC 25.24.030), which in turn adopted the 2005 Surface Water Design Manual prior to  
2 the 2007 completeness date for the Shoreline permit application. The County is not allowed  
3 to piecemeal the review of projects that have any portion within shoreline jurisdiction—all  
4 aspects of a project are subject to review under the Shoreline regulations. *Merkel v. Port of*  
5 *Brownsville*, 8 Wn. App. 844, 849-851 (1973). Thus, the entire project is subject to review  
6 for compliance with the Shoreline Code, including reference to the Drainage Code, especially  
7 given the flooding impacts to the Shoreline area. In addition, the Shoreline Management Act  
8 requires that every project avoid adverse environmental impacts including adverse flooding  
9 impacts caused by stormwater. *Bellevue Farm Owners Ass'n v. State of Washington*, 100 Wn.  
10 App. 341, 351-355 (2000). This duty is independent of SEPA. *Id.*

11 The Applicant and DDES never asserted that the project complies with the 2005  
12 Manual simply because it does not. This alone is grounds for denial based on the applicable  
13 Code/2005 Manual. In addition, DDES agreed at the hearing on April 3<sup>rd</sup> that if the project  
14 was not vested to the 1998 SWDM, then the new drainage adjustment approval would have to  
15 be reconsidered.

16 **C. Vesting Rules under *Noble Manor* case.**

17 The Examiner's Decisions fails to address the appropriate issues raised in the *Noble*  
18 *Manor* case.

19 **1. Review of *That Application* As Stated in *Noble Manor* Means**  
20 **Reviewing What Was Sought in the Plat Application.**

21 The Supreme Court in *Noble Manor* stated:

22 We conclude that when the Legislature extended the vested  
23 rights doctrine to plat applications, it intended to give the party  
filing an application a vested right to have *that application*

1 processed under the land use laws in effect at the time of the  
2 application.

3 *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 278, 281 (1997) (emphasis in original).

4 This language affords the property owner the right to a specific application reviewed  
5 according to the then current laws—meaning a certain proposal or project and the disclosed  
6 uses and activities. Nothing in *Noble Manor* says that a developer can propose a project with  
7 certain uses or activities, then change the project, and expect that vesting shall still apply. The  
8 Court in *Noble Manor* was focused on ***that application***—the one that was submitted prior to  
9 the rule changes. The Court elaborated as follows:

10 The holding of this Court in the *Friends* case indicates that  
11 vesting for the requested subdivision includes the right to  
12 develop the land ***in accordance with the uses requested in the***  
13 ***application*** and the zoning laws in effect at the time the plat  
14 application was submitted.

15 *Id.* at 281 (emphasis added). Although this language is focused on “uses,” the decision later  
16 clarifies that the issue is “what is sought” in the plat application. The focus on “uses” was due  
17 to the use, single-family homes or duplexes, being the issue of the case. The Court addressed  
18 later “what development rights vest,” concluding that “an applicant should have the right to  
19 have the uses ***disclosed in their application*** considered by the county or local government  
20 under the laws in existence at the time of the application.” *Id.* at 283 (emphasis added). The  
21 Court explained:

22 The statute provides that the proposed division of land shall be  
23 considered under the zoning or other land use control  
ordinances in effect at the time of the application. RCW  
58.17.033(1). Our construction of the statute makes “permit  
speculation” less probable. Short plats could not simply be  
frozen under existing zoning for any possible use without an  
application for a particular use. Since we conclude that what is  
vested is what is sought in the application for a short plat, then

1 the question becomes what the Developer's application sought  
2 in this case.

3 To answer the question of "what the Developer's application sought," the Court turned to the  
4 Application and to the Environmental Checklist.

5 **2. The 2004 Application Never Disclosed Use or Activity in Shoreline  
6 Jurisdiction, So Shoreline Use and Activities Are Not Vested to  
7 2004 Rules.**

8 The Applicant never attempts to explain "what the Developer's application sought," in  
9 spite of the fact that the Applicant bears the burden of proof on this issue as with all issues,  
10 especially when Intervenors challenged vesting prior to the beginning of the hearing. The  
11 Examiner failed to compare the Environmental Checklists for the original 2004 plat  
12 application and the 2007 shoreline application to see that use/activity in the shoreline was not  
13 disclosed in the 2004 application, and thus cannot be afforded vested rights. The 2004  
14 Environmental Checklist, in the section devoted to Water at part 3.a.1, asks whether surface  
15 water is in the immediate vicinity. The response states: "Snoqualmie River, small streams  
16 and several wetlands are on or near the site." Exhibit 4A at page 3. The next part, 3.a.2,  
17 states asks the following question with Applicant's answer in **bold**:

18 Will the project require any work over, in, or adjacent to (within  
19 200 feet) [of] the described waters? If yes, please describe and  
20 attach available plans.

21 **No construction expected within 200' of the River, but will  
22 be within 200' of some of the wetlands and stream.**

23 *Id.* The 2004 application had no construction at all within shoreline jurisdiction (*i.e.*, within  
200 feet of the Snoqualmie River). The 2004 application materials also contain no reference

1 to work in shoreline jurisdiction. Exhibit 3A. The contrast with the 2007 application is  
2 decisive. Exhibit 4A at page 3. Part 3.a.1 is not changed, but part 3.a.2 reads as follows:

3 Will the project require any work over, in, or adjacent to (within  
4 200 feet) [of] the described waters? If yes, please describe and  
attach available plans.

5 **A portion of the existing street and associated utilities are in**  
6 **the shoreline area and will be upgraded to County**  
7 **standards. Some other streets will also be within 200' if the**  
**shoreline jurisdiction and within 200' of some of the**  
**wetlands.**

8 *Id.* The 2004 application did not contemplate or disclose work within shoreline jurisdiction  
9 or any basis upon which to think that the project needed to comply with the Shoreline Code.  
10 It should also be noted that the option of directly discharging stormwater into the Snoqualmie  
11 River was not even contemplated in the 2007 Environmental Checklist. Exhibit 4B, at page 4  
12 paragraph 3.c.1 (water runoff). Rather, the direct discharge was yet another major change  
13 demonstrating the project lost its vested rights.

14 In *Noble Manor*, the court agreed that duplexes were vested because that use or  
15 activity was disclosed in the Environmental Checklist. The court specifically rejected the  
16 alternative approach, holding that the plat application would vest to “all uses allowed by the  
17 zoning and land use laws on the date of the application for the short plat should be vested at  
18 the time of application, irrespective of the uses sought in an application.” *Noble Manor*, 133  
19 Wn.2d at 283. The inverse rule in *Noble Manor* states that if duplexes had **not** been  
20 disclosed, then the future application for building permits would have had to comply with the  
21 new rules (*i.e.* the would have lost vesting). The same rule applies here—because the 2004  
22 plat application did not contain construction within Shoreline jurisdiction, the new 2007  
23

1 application, which **did** contain construction within the Shoreline Jurisdiction, is not vested  
2 and thus must comply with the new rules, including the 2005 SWDM.

3 **D. The Hearing Examiner Erred in Failing to Apply KCC 20.20.070.**

4 The King County Code provision pertaining to the vesting of subsequent applications  
5 is straight forward. It states: "Vesting of an application does not vest any subsequently  
6 required permits, nor does it affect the requirements for vesting of subsequent permits or  
7 approvals." KCC 20.20.070.C. This provision is absolutely clear when applied to the case at  
8 hand: the vesting of the 2004 application does not create any vested rights for subsequent  
9 permits, including the 2007 Shoreline permit application.

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15 **DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**  
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12 The Supreme Court's most recent pronouncement regarding interpretation or  
13 construction of code provisions is found within the **unanimous** decision in *Sleasman v. City*  
14 *of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007). The *Sleasman* court states the important rule  
15 that: "An unambiguous ordinance will be applied by its plain meaning." *Id.* Here, the Code  
16 provision is unambiguous, which the County and Applicant more or less admits by failing to  
17 assert that the provision is ambiguous or otherwise to provide any meaning contrary to  
18 precisely what the words say.

19 After considering the plain meaning, the *Sleasman* court then turned to the city's  
20 argument that the city's interpretation of the code was entitled to deference. The Court stated  
21 that deference would only be appropriate for ambiguous ordinances. 159 Wn.2d at 646. The  
22 Court went on to analyze whether deference was due to the city's interpretation as an  
23 alternative ground for its decision. The Court rejected the argument for deference because the

1 city's interpretation was, "not part of a pattern of past enforcement, but a by-product of  
2 current litigation." The Court explained that the city's interpretation arose for the first time  
3 when, "the trial court asked for further briefing," and that the only other example occurred  
4 when the city fined the Sleasmans' neighbors after Sleasmans' action in cutting the trees. *Id.*  
5 at 647.

6 The same is true here since no other example is cited. The *Sleasman* Court compared  
7 the instant case to one in which the Supreme Court rejected an agency interpretation based on  
8 two instances in 14 years. *Id.* (citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d  
9 801, 828 P.2d 549 (1992)). Division Two followed this aspect of *Sleasman* in concluding that  
10 the appellant "cannot show a pattern of enforcement." *Milestone Homes, Inc. v. City of*  
11 *Bonney Lake*, 145 Wn. App. 118, 130, 186 P.3d 357 (2008). In an earlier case, the court  
12 afforded deference because the city had uniformly construed the disputed ordinances for  
13 many years and had issued numerous permits accordingly. *Morin v. Johnson*, 49 Wn.2d 275,  
14 279, 300 P.2d 569 (1956); *see also Hama Hama Co. v. Shorelines Hearings Board*, 85 Wn.  
15 2d. 441, 448-49, 536 P.2d 157 (1975) (formal rules adopted to interpret statute); *Keller v. City*  
16 *of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (prior tacit approval of  
17 interpretation by city council); *see also RCW 36.70C.130(1)(b)*, Land Use Petition Act ("The  
18 land use decision is an erroneous interpretation of the law, after allowing for such deference  
19 as is due the construction of a law by a local jurisdiction with expertise"). In short, the courts  
20 afford **reasonable** deference to an agency interpretation in cases where such an interpretation  
21 has some meaningful historical basis.

22 The County and the Examiner failed to identify any basis at all to afford any deference  
23 to DDES' phantom construction of KCC 20.20.070.

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1 **DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**

2  
3 Rather, the County and the Applicant assert without any  
4 citation to authority that the Code provision be essentially re-written based on case law. Of  
5 course, the Council does not have the power or authority to ignore this duly enacted Code  
6 provision, and the Council has no power or authority to declare that this provision to be  
7 invalid as being contrary to State law or precedent. *See* KCC Chapter 20.24. DDES and the  
8 Applicant cited to no such authority. Besides, as explained above, the Shoreline permit  
9 application is not vested under case law, and so KCC 20.20.070 can and should be applied  
10 consistent with that law. Yet, the Examiner ignores this law and rules that the 2007 Shoreline  
11 permit application is subordinate to 2004 application. This ruling turns the Shoreline  
12 Management Act upside down. The Shoreline regulations are *State regulations* that  
13 predominate over local ordinances. RCW 90.58.100(1); *Citizens for Rational Shoreline*  
14 *Planning v. Whatcom County*, 172 Wn. 2d 384, 396-97, 258 P.3d 36, 43 (2011) (“SMP  
15 [shoreline master program] regulations are the product of state action”).

16  
17 **II**  
18 **THE APPLICANT HAS FAILED TO COMPLY WITH**  
19 **REQUIREMENTS, HAS FAILED TO MEET ITS BURDEN OF**  
20 **PROVING COMPLIANCE WITH NUMEROUS REQUIREMENTS, OR**  
21 **HAS FAILED TO ESTABLISH A PREPODERANCE OF THE**  
22 **EVIDENCE DEMONSTRATING COMPLIANCE**

23 The burden of proof in this proceeding falls squarely on the Applicant as set forth in  
the Examiner’s Rules of Procedure (XI.8 at page 23). Also, the Applicant must establish  
proof by a preponderance of the evidence. *Id.* at XI.9. The Applicant has failed to meet these

1 burdens for demonstrating compliance on numerous issues and the Examiner’s decision is  
2 flawed in concluding otherwise.

3 **A. Landfilling in the Floodway is Prohibited.**

4 While DDES goes through the proper rules regarding the prohibition on filling in the  
5 floodway, it nevertheless seeks to *change* the rule rather than apply it. The Conservancy  
6 Environment provision (KCC 25.24.140) adopts the rules in the Urban Environment. The  
7 applicable provision states clearly and unambiguously that: “Landfill . . . shall be prohibited  
8 within the floodway.” Former KCC 25.16.190 (applicable per Ord. No. 13247 § 3, 1998).  
9 DDES admits that the proposal “will require fill within the floodway.” This statement should  
10 be the end of the discussion—the fill is prohibited. However, DDES seeks to redefine the  
11 absolute prohibition of filling within the floodway to *allow* filling so as long as it does not  
12 cause a net increase. There is nothing in the words of the provision that would support such  
13 an interpretation. To do so is to simply read the provision out of the Code considering the  
14 special prohibition for floodway while other fill is regulated. The Examiner must apply the  
15 plain meaning of the requirements. *Sleasman*. Again, DDES does not assert any ambiguity in  
16 the Code, and hence there is no need to “construe” and there is no established practice cited  
17 for the proffered redefinition of the provision.<sup>55</sup> Actually, the opposite is true. Grading has,  
18 for at least the last 20 years, been defined to include filling or excavation of soil *without*  
19 *regard to the net effect*. The amount of fill and/or excavation is calculated to determine the  
20 total grading amount, and there has never been in recent memory any basis to say that no  
21 filling is incurring because of the offsetting excavation. Yet the Examiner Decision blindly  
22

23 <sup>55</sup> The Applicant similarly makes a general reference to other projects without any identification of the facts or  
circumstances to indicate that the fill was actually in the floodway and otherwise similar.

1 defers “to DDES’s interpretation” without consideration of the proper rules of construction  
2 discussed above.

3  
4 **B. Notice of Right to Farm.**

5 With ever-increasing suburban sprawl spilling into areas long-utilized for agricultural  
6 purposes, there arose the concern that the new communities would not mesh well with certain,  
7 necessary agricultural processes, especially within the area of law pertaining to the tort of  
8 nuisance. As such, legal jurisprudence carved out an exception in nuisance law to protect  
9 farmers and ranchers from suburbanites “coming to the nuisance.” Out of this jurisprudence  
10 sprung laws incorporating the general policy of the “Right to Farm.”

11 The State of Washington, as well as King County, has codified provisions relating to  
12 the preservation of the Right to Farm. RCW 7.48.300 states that its purpose is to “provide  
13 that agricultural activities conducted on farmland and forest practices be protected from  
14 nuisance lawsuits.” Taking this policy a step farther, King County requires a notice to be  
15 made in relation with plats and a number of permit approvals including building permits.  
16 KCC 20.20.100(G). However, this provision does not specify the contents of the notice or  
17 whether the notice should be a separate notice on title such as occurs with Sensitive Area  
18 Notices. The provision merely says that plats shall contain a notice. The provision does not  
19 say that the notice shall be on the face of the short plat, as argued by DDES and accepted by  
20 the Applicant. Rather, Intervenors request that the notice be like a Sensitive Area Notice—a  
21 separate document recorded against the title via the property legal description. Then, the  
22 Notice will actually show up on title reports as an exception that would call attention to it. A  
23 Notice on the face of the final plat would not show up on a title report, except with language

1 such as “restrictions delineated on the plat.” The Code is unclear, but the policy of giving  
2 notice is clear and notice should be effective. The Examiner improperly rejected this request.

3 The other issue is the contents of the Notice. First, the title of the Notice as proposed  
4 by DDES should add the italicized portion, OF RIGHT TO FARM, so it reads: “NOTICE ON  
5 *TITLE OF RIGHT TO FARM*, THIS NOTICE APPLIES TO ALL LOTS AND TRACTS  
6 WITHIN THIS SUBDIVISION AND TO ALL FUTURE PURCHASERS AND SELLERS.”

7 Otherwise, the DDES proposal is satisfactory as far as it goes, but Intervenors request merely  
8 that the text of the statute, RCW 7.48.310(1), providing a definition of “Agricultural Activity”  
9 should be added to the Notice after the text provided by the DDES:

10 "Agricultural activity" means a condition or activity which  
11 occurs on a farm in connection with the commercial production  
12 of farm products and includes, but is not limited to, marketed  
13 produce at roadside stands or farm markets; noise; odors; dust;  
14 fumes; operation of machinery and irrigation pumps;  
15 movement, including, but not limited to, use of current county  
16 road ditches, streams, rivers, canals, and drains, and use of  
17 water for agricultural activities; ground and aerial application of  
18 seed, fertilizers, conditioners, and plant protection products;  
19 keeping of bees for production of agricultural or apicultural  
20 products; employment and use of labor; roadway movement of  
21 equipment and livestock; protection from damage by wildlife;  
22 prevention of trespass; construction and maintenance of  
23 buildings, fences, roads, bridges, ponds, drains, waterways, and  
similar features and maintenance of streambanks and  
watercourses; and conversion from one agricultural activity to  
another, including a change in the type of plant-related farm  
product being produced. The term includes use of new practices  
and equipment consistent with technological development  
within the agricultural industry.

21 The statute provides a legislatively approved definition that communicates the  
22 meaning and scope of the law. Providing notice of the law is *de facto* reasonable. The  
23 Applicant’s complaint that notice of the law recorded in a separate notice will cast an

1 “unnecessary shadow and burden on the marketability” demonstrates the need for a stronger  
2 and better placed notice. The premise of the Applicant’s argument is that giving real notice of  
3 the law is harmful. In reality, this is just one more instance of the Applicant seeking to avoid  
4 the normal burdens that must be placed on this project. The Examiner improperly rejected  
5 this request.

6 **C. The Project is Inconsistent with Rural Character.**

7 As a preliminary matter, the preliminary plat application is reviewed based on the  
8 County Code Title for Land Segregation, Title 19. That Title contains the requirements that  
9 govern consideration of preliminary plat applications in KCC 19A.08.060 as follows:

10 **19A.08.060 Review for conformity with other codes, plans**  
11 **and policies.** Applications for approvals pursuant to this title  
12 shall be reviewed in accordance with the applicable procedures  
13 of any combination of this title and K.C.C. chapters 20.20 and  
14 20.24. Furthermore, applications for subdivisions, short  
subdivisions and binding site plans may be approved, approved  
with conditions or denied in accordance with the following  
adopted county and state rules, regulations, plans and policies  
including, but not limited to:

- 15 A. Chapter 43.21C RCW (SEPA);
- 16 B. Chapter 58.17 RCW (Subdivisions);
- 17 C. Chapters 36.70A and 36.70B RCW (Growth  
Management and Project Review);
- 18 D. K.C.C. Title 9 (Surface Water Management);
- 19 E. K.C.C. Title 13 (Sewer and Water);
- 20 F. K.C.C. Title 14 (Roads and Bridges);
- 21 G. K.C.C. Title 17 (Fire Code);
- 22 H. K.C.C. chapter 20.44 (SEPA);
- 23 I. K.C.C. Title 21A (Zoning);
- J. K.C.C. Title 23 (Code Enforcement);
- K. K.C.C. Title 25 (Shoreline Master Program);
- L. Administrative rules adopted pursuant to K.C.C. chapter  
2.98;
- M. King County board of public health rules and  
regulations;
- N. King County approved utility comprehensive plans;
- \_O. King County Comprehensive Plan;

1 P. County wide Planning Policies;  
2 Q. This title.  
3 (Ord. 13694 § 41, 1999).

4 The Applicant's argument that both the County Comprehensive Plan and the Growth  
5 Management Act are irrelevant is belied by the criteria governing the Examiner's  
6 consideration of this application. Defining this rural designation, KCC 21A.04.060 states:

7 The purpose of the rural zone (RA) is to provide for an area-  
8 wide long-term rural character and to minimize land use  
9 conflicts with nearby agricultural or forest production districts  
10 or mineral extraction sites. These purposes are accomplished  
11 by:

- 12 1. **Limiting residential densities** and permitted uses to those  
13 that are **compatible with rural character** and nearby  
14 resource production districts and sites and are able to be  
15 adequately supported by rural service levels.

16 The County Code must be understood within the context of the overall mission to protect rural  
17 character. This provision of the code is simply the codification of the "rural legacy"  
18 provisions contained within the King County Comprehensive Plan (Comp Plan) and  
19 protection of rural character provision of the GMA. The Comp Plan has important policies  
20 dedicated to protecting rural character in the Rural Legacy Chapter. The first provision, R-  
21 101, refers to the GMA for the definition of rural character (citing RCW 36.70A.030(14),  
22 which states:

23 (15) "Rural character" refers to the patterns of land use and  
development established by a county in the rural element of its  
comprehensive plan:

- (a) In which open space, the natural landscape, and  
vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based  
economies, and opportunities to both live and work in rural  
areas;

- 1 (c) That provide visual landscapes that are traditionally  
found in rural areas and communities;
- 2 (d) That are compatible with the use of the land by wildlife  
and for fish and wildlife habitat;
- 3 (e) That reduce the inappropriate conversion of  
undeveloped land into sprawling, low-density development;
- 4 (f) That generally do not require the extension of urban  
governmental services; and
- 5 (g) That are consistent with the protection of natural surface  
water flows and groundwater and surface water recharge  
6 and discharge areas.

7 These provisions of the Comp Plan and the GMA were previously applied by the Office of  
8 King County Hearing Examiner in the *Treemont* Decision (Revised Report and  
9 Recommendation and Shoreline Decision, May 9, 2002. File Nos. S128903, L98SH006). The  
10 Examiner in that case found that:

11 Impacts to traditional rural lifestyles and the rural-based  
12 economy derived from the fact that Treemont will continue the  
13 conversion of rural properties into upscale suburban estates.  
14 Traditional rural lifestyles and rural-based economic activity  
15 flourish lower on the social and income scale, and their  
16 continued viability is threatened by encroaching gentrification.

17 . . . .  
18 Adverse impacts to traditional rural lifestyles and economic  
19 activities cannot be mitigated without altering the essential  
20 purpose of the Treemont development, which is to appeal to an  
21 upscale residential market, and so they must be regarded as  
22 unavoidable.

23 Decision at page 44, paragraph 143(D) and page 45, paragraph 144; *see also* pages 43-45,  
paragraphs 138-144. The same is at least as true here.

Aside from the Comp Plan and GMA, the County Code requires projects to be  
“compatible with rural character” (KCC 21A.04.060), and that must be given a reasonable  
meaning and applied here. While that meaning can be found in the Comp Plan and GMA, it  
can also be based on the understanding of the people in the affected area like Erick

1 Haakenson, Steve Keller, and Deb Moery. The testimony of Erick Haakenson in particular  
2 explained the incompatibility of this project with the rural character of the Valley. The main  
3 entry road exits on an “historic and scenic” farm road as determined by the Landmarks  
4 Commission, lauded for its “peaceful ambience, low traffic levels, and bucolic views.” This  
5 project will put hundreds of suburban vehicle trips per day right into the farm traffic on that  
6 road. The view of the hillside will become the view of estate homes—these are not farm  
7 houses on 10 acres, but likely mini-mansions looming on the hill. The Treemont proposal  
8 was more up on the hill, and this proposal will be on the face of the steep hillside. The  
9 “essential purpose” of this project is an upscale residential market, and not a connection to  
10 rural lifestyle. Protection of historic resources and historical character are part of the Comp  
11 Plan at R-101. The Examiner’s Decision does not reflect consideration of any of these issues,  
12 and simply approves the project based on the Zoning alone.

13         The Council must recognize and respect the importance of “preserving the rural  
14 legacy” of the Snoqualmie River Valley, and thus should ensure that proposed developments  
15 within or adjacent to this area do not harm or infringe on the agricultural nature of the  
16 Valley’s community. This project is inconsistent with these requirements and should be  
17 denied.

18         **D.         The Project Does Not Comply with the Clustering Requirements.**

19         The only authorization for clustering is located within KCC 21A.14.040(B)—an  
20 extensive provision that applies generally to all the RA lots (but not to the small area zoned  
21 A-35). The Applicant has the burden of proof to demonstrate compliance with the eight parts  
22 under (B) and the nine subparts of (B)(7). Part (B)(4) requires adequate rural roads.

23         However, as set forth below, the flooding of the entry road multiple times per year renders



1 this road not adequate. The County has moved, belatedly, to require compliance with the 50  
2 foot landscape screen required by (B)(5), but even that is a vague future consideration. The  
3 project falls with (B)(7) which is the provision for implementing the working farm option.  
4 The Applicant seems to think that providing a Farm Plan is all it must do, but the Farm Plan is  
5 only one part of subpart (b) of (B)(7), leaving the remaining subparts of (B)(7) unaddressed.  
6 These extensive Code requirements are designed to ensure that the project will be compatible  
7 with rural character, *i.e.*, implementing the Comp Plan and GMA. Roughly, the intent is to  
8 ensure that the open space will be permanently utilized as a working farm, and will not be left  
9 to become a field overgrown with blackberries. The testimony of Erick Haakenson  
10 demonstrated that the flooding problems on this site will make farming impractical or  
11 impossible. The Applicant has failed to demonstrate compliance with the Public Rule  
12 requirement, or established criteria for impervious surface, clearing limitations, or  
13 identification of buildings in the resource tract area. Alternatively, to the extent that the  
14 Public Rule has not been adopted by the County, then this option should not be available at all  
15 since compliance is impossible.

16  
17 **E. Forested Open Space Uphill of the Discharge Point for Stormwater is  
Inconsistent with the Stormwater Manual.**

18 The Examiner's Decision completely fails to address the important issue of dispersion  
19 to Forested Open Space (FOS), and simply approves FOS as proposed. Decision at p.9,  
20 Condition 7.f. The 1998 Surface Water Design Manual contains eight criteria and conditions  
21 in order to allow dispersion into FOS. Condition No. 3 in the 1998 SWDM is clear in stating  
22 that: "Since flow control and water quality in these rural developments is provided largely by  
23 flow dispersion through duff, undisturbed and native vegetation, *open space areas must be*

1 *located downslope of roadways and building sites.*” Section 5.2.1 at 5-14 (emphasis added).  
2 The Applicant argues that FOS areas *need not be* downslope, and thus the Applicant admits  
3 that the FOS is not exclusively downslope as required by Section 5.2.1. There is simply a  
4 difference between testimony that amounts to, “this is how we do it,” and testimony or  
5 evidence demonstrating *actual compliance* with the County requirements. The Applicant  
6 refers to Appendix C in the SWDM, but nothing in Appendix C changes the obvious  
7 requirement that, to be effective, stormwater dispersion into open space *must actually reach*  
8 *the protected open space*. The Applicant refers to Hagenon’s Exhibit 60 at pages 3-4, but  
9 the issue is not discussed on those pages or any page in that Exhibit—empty rhetoric without  
10 substance.

11 This issue is important because the additional stormwater that is not effectively  
12 controlled will flow down the slope onto the Keller Farm. The Plat should have, but did not  
13 propose actual compliance with the stormwater requirements, and must be denied for that  
14 reason.

15 **F. The Project Does Not Follow the Density Requirements.**

16 The Applicant argued that there is no resulting density transfer, which is disallowed in  
17 RA zones by KCC 21A.12.200(2). This conclusion is incorrect. The Applicant relies upon  
18 Exhibit 36-A, but the math contained within that document improperly includes density from  
19 the A-35 and improperly adds density from the RA-5-P (SO). According to that Exhibit, the  
20 RA-5-P contributes 0.946 units to the total, but that is an improper transfer of density when  
21 KCC 21A.12.070(E) is considered. That provision holds that rounding up is *not allowed* in  
22 the RA zones, so the base density of the RA-5-P is rounded down to zero. Then, the base  
23 density from the RA-10 is also rounded down from 17.442 to 17 units. The Applicant is

1 improperly adding the fractional numbers first and then rounding, rather than rounding first  
2 and adding the units. Ultimately, the Applicant's method improperly gains a lot. The  
3 Examiner's failure to even mention this issue, let alone address it, is another indication of the  
4 serious deficiencies in the Decision.

5 **G. Condition 7.j Should Require the Stormwater Discharge Away from the**  
6 **Keller Farm, and Should Require Maintenance of the Culverts Between**  
7 **the Wetlands.**

8 The Intervenors' provided clear testimony about the harms of directing additional  
9 stormwater toward the Keller Farm. Condition 7.j requires a flow splitter, but the Condition  
10 should be modified to direct most of the stormwater discharge to the north away from the  
11 Keller Farm—into Wetland D and not Wetland A.

12 Also, the Applicant's proposed stormwater plan is based on discharge to the  
13 wetlands, but the wetlands are artificially controlled by the culverts between the wetlands. If  
14 the culverts become blocked, then the stormwater would artificially back up potentially onto  
15 the Keller Farm and block the flow to the north as stated by the Applicant. The proper  
16 functioning of the culverts is an important part of the Applicant's stormwater plan and must  
17 be maintained. Put another way, the premise of the plan is discharge into a natural  
18 watercourse, but that is only partially true and is only effectively true if the flow is maintained  
19 through the culverts.

20 The Examiner again failed to address these issues.

21 **H. The Plat Entry Road is Not Safe.**

22 Approval or disapproval of subdivisions is governed by State law, namely RCW  
23 58.17.110. The courts have clearly interpreted that provision to require a demonstration of  
adequate access:

1 Under RCW 58.17.110, before approving a subdivision a local  
2 government is required to make sure that appropriate provisions  
3 have been made for the public health, safety and general  
4 welfare. It must consider the adequacy of access to and within  
the proposed subdivision, and it is empowered to condition  
approval of the plat upon adequate access.

5 *Miller v. City of Port Angeles*, 38 Wn. App. 904, 909 (1984) (footnote omitted quoting  
6 statute). The County also requires adequate rural roads for cluster subdivisions at KCC  
7 21A.14.040(b)(4).

8 The testimony of Intervenors' witnesses, as demonstrated by the photos and evidence  
9 of corresponding flood events, clearly showed that the entry road will flood multiple times  
10 every year. That evidence was unrebutted by the Applicant or County. It is completely  
11 unsatisfactory and inconsistent with public safety to approve a plat in this circumstance when  
12 the main entry road will flood multiple times per year putting people and property in harm's  
13 way. The provision of alternate access does not resolve the problem. Suburban dwellers are  
14 not familiar with life in the floodway with the inherent dangers testified to by Steve Keller in  
15 particular. The new residents include mothers with small children, teenage drivers, etc. The  
16 court in the *Miller* case agreed that inadequate roads meant roads that "were not adequate to  
17 handle" the new traffic due to existing "hazardous" conditions. The combination of the  
18 prohibition on fill in the floodway and the hazardous condition of the entry road in multiple  
19 floods each year is sufficient to deny the plat on that basis.

20 Frustratingly, the Examiner's Decision does not address this issue, but still makes the  
21 bald conclusion that the plat, including roads, "will serve the public health, safety and  
22 welfare, and the public use and interest" citing RCW 58.17.110. Decision at p.7, Concl. 5.  
23 The Decision is fatally flawed because the safety of the entry road is not discussed.

1  
2 **I. If the Entry Road is Allowed, Then the Surcharge Construction Method  
Should be Rejected or Must Be Strictly Conditioned and Regulated.**

3 The Intervenors' position is that the proposal improperly plans fill within the  
4 floodway. In the alternative, the surcharge method and road plan should be rejected, or at a  
5 minimum, strictly conditioned and regulated. The surcharge construction method involves  
6 dumping massive amounts of fill on a road bed to utilize the weight and cause the road bed to  
7 sink into the soft floodplain soils, and then the excess material—the surcharge—is removed.  
8 DDES and the Applicant did not dispute that leaving the surcharge in place during the flood  
9 season was improper. The Applicant has the burden to demonstrate that this construction  
10 method is feasible and also, according to DDES, that the road can be built without net fill.  
11 The Applicant has failed to demonstrate compliance with those requirements. Yet the  
12 Examiner's Decision refuses to address this critical issue, and instead abdicates responsibility  
13 to address the issue. Decision at p.5, ¶14.

14 The witness Hal Hagenson was ineffective in defending this construction method.  
15 First he testified that the amount of fill needed for the surcharge was 3000 cubic yards, then  
16 he changed his testimony to 14,000 to 15,000 cubic yards, then he changed his testimony  
17 again to 7,000 cubic yards. The geotech report (Ex. 11) and the letter (Ex. 71) mentions that  
18 the surcharge should only take 8-12 weeks, but this is not entirely clear and the uncertainty  
19 was not resolved by Hagenson. The report specifies a thickened road base of two feet, and  
20 states that the five feet of surcharge should result in "primary settlement of 4 to 6 inches will  
21 occur under the pre-load in about 8-12 weeks." Exhibit 11 at 12-13. If the surcharge is  
22 removed at that time, then the road base would be left at a height of 18-20 inches. After  
23 removal, there may still be "secondary consolidation," apparently meaning additional sinking,

1 but the amount and time period is not provided. To avoid problems with additional sinking,  
2 the report recommends to “keep the pre-load in place as long as possible.” The flood season  
3 is September 30 to May 1 (KCC 21A.24.250.E, formerly D), thus there are 150 days or 21+  
4 weeks to bring in and place the road base and the surcharge (pre-load), wait “as long as  
5 possible,” then remove the surcharge, but the detailed time requirements for placement and  
6 removal are unclear. The 7000 cubic yards (5 feet deep) is added on top of the two feet of  
7 road base, which would be another 2800 cubic yards, or 9800 cubic yards total to be placed.  
8 The Applicant has failed to provide the details needed to meet its burden of proof, so the  
9 proposal should be denied. Alternatively, the Council should add conditions requiring a  
10 complete and verifiable action plan that ensures that no net fill is left during the flood season,  
11 including a clear abatement bond to protect the Valley from flood impacts of failing to  
12 remove the surcharge or leaving net fill due to the road base not sinking sufficiently.

### 13 CONCLUSION

14 The County has committed to maintaining the rural character of the Snoqualmie  
15 Valley and that commitment must be implemented in this Project decision. SVPA is  
16 concerned with the potential negative impacts that the project will have on the Valley’s  
17 homes, farms, and livelihoods. The Kellers are uniquely interested as the neighbor  
18 immediately to the east operating a commercial dairy. Flooding within the Snoqualmie River  
19 Valley is never far from the minds of Valley residents, thus any change to the hydrology of  
20 existing conditions can have severe negative repercussions. Thus, on behalf of SVPA and the  
21 Kellers, we request that the County Council reverse the Examiner’s decision and deny the  
22 project applications in order to protect the interests the SVPA, the Kellers, and the residents of  
23 the Snoqualmie Valley.

1 **REQUEST FOR RELIEF**

2 The Decision issued by the Hearing Examiner should be reversed:

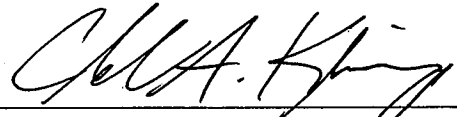
3 A. The County Council should issue a decision DENYING the Preliminary Plat  
4 application.

5 B. In the alternative, the County Council should issue a new decision making the  
6 changes, and adding the conditions requested herein.

7 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of July, 2012.

8 GROEN STEPHENS & KLINGE LLP  
9 Charles A. Klinge  
W. Forrest Fischer

10 By:

11   
12 \_\_\_\_\_  
13 Charles A. Klinge, WSBA #26093  
14 Attorneys for SVPA, et al.

1 **DECLARATION OF SERVICE**

2 I, Linda Hall, declare as follows:

3 I am a citizen of the United States, a resident of the State of Washington, and an  
4 employee of Groen Stephens & Klinge LLP. I am over twenty-one years of age, not a party  
5 to this action, and am competent to be a witness herein.

6 On July 9<sup>th</sup>, 2012, I caused the foregoing document to be served upon the following  
7 persons via the following means:

8 Office of the Hearing Examiner  
King County, Washington  
9 King County Courthouse, Room 1200  
516 Third Avenue  
10 Seattle, Washington 98104

- Hand Delivery /Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- E-Mail: [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)
- Facsimile: \_\_\_\_\_

11 John Tomlinson  
12 c/o Thomas Pors  
Law Office of Thomas M. Pors  
13 1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101

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14 Department of Development  
15 and Environmental Services  
c/o Lanny Henoach, PPM III  
16 Building & Fire Services Division  
900 Oakesdale Avenue SW  
17 Renton, Washington 98057-5212

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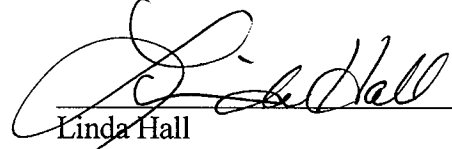
18 Youn-Jung Kim  
Senior Deputy Prosecuting Attorney  
19 King County Prosecuting Attorney's Office  
King County Courthouse, W400  
20 516 Third Avenue  
Seattle, WA 98104

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- Facsimile: \_\_\_\_\_



1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 Executed this 9<sup>th</sup> day of July, 2012, at Bellevue, Washington.

4   
5 \_\_\_\_\_  
6 Linda Hall

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BEFORE THE COUNTY COUNSEL  
FOR KING COUNTY, WASHINGTON

TALL CHIEF COUNTRY CLUB,  
Preliminary Plat Application,

Applicant,

SNOQUALMIE VALLEY PRESERVATION  
ALLIANCE and STEVEN AND JANET  
KELLER,

Appellants-Intervenors.

DDES File Nos. L04P0032 and L07SH003

APPLICANT'S RESPONSE TO  
STATEMENT OF APPEAL AND  
MOTION TO STRIKE APPELLANTS'  
EXHIBIT 2

**I. SUMMARY OF TALL CHIEF PROJECT**

This subdivision application seeks to convert the 18-hole golf course at Tall Chief to an 18-lot subdivision with a 40+ acre community organic farm, the historical use of this land going back to homestead days of the late 1800s. The conversion of the Tall Chief Golf Course represents one of the largest transfers of land back into farming in King County's history, and preserves the historic character of this land along the Snoqualmie River. All 18 hillside home sites are located above the floodplain away from the farming area and scenic highway. They are between two and five acres each and provide over 65% protected forest open space.

This is a small low-density rural residential subdivision that is consistent with the Comprehensive Plan and complies with all County and state regulations. Every reasonable effort

APPLICANT'S RESPONSE TO  
STATEMENT OF APPEAL

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1 was made to minimize impacts on local farmers, including the Appellants-Intervenors, to protect  
2 the environment, and to prevent any increase in the base flood or flood flows of the Snoqualmie  
3 River. This includes changing the stormwater outfall from direct discharge to the River to the  
4 highest level of stormwater detention and flow control (Level 3), which was done after the  
5 Intervenors-Appellants objected to the original design. The developer also responded to every  
6 County request for additional information or suggestion for design changes to comply with  
7 County regulations. The Appellants' suggestion that project delays were intentional or caused  
8 the Project to be "substantially changed" are simply wrong and not supported by substantial  
9 evidence in the record. Although the permitting process was slow, it has resulted in a better  
10 project with fewer impacts and that is not a basis for reversing or modifying the Examiner's  
11 decision.

## 12 II. INTRODUCTION TO APPLICANT'S RESPONSE

13 The Tall Chief Country Club ("Tall Chief") subdivision application was approved by the  
14 Hearing Examiner because the record in this matter, comprising four days of hearing and 72  
15 exhibits, demonstrates that it meets all the County's codes and standards and makes adequate  
16 provision for the public health, safety and welfare. Appellants-Intervenors have opposed this  
17 project from the beginning on every nitpicking and speculative ground they and their lawyers  
18 could conceive of. Their Statement of Appeal contains a highly skewed and one-sided view of  
19 the facts and ignores all the evidence in the record that contradicts their positions. Their appeal  
20 ignores project adjustments to the storm drainage outfall and detention/flow control standard, and  
21 to the emergency access that were made at their suggestion, and they give Tall Chief no credit for  
22 achieving a better project with fewer impacts through the lengthy public hearing process.  
23 Instead, they complain to the County Council about the public process they are using to delay this  
24 very reasonable project. Their appeal also goes beyond Appellants' declared interest in  
25 preventing a worsening of existing flooding conditions in the Valley. It simply seeks to delay  
26 and obstruct their neighbor's right to develop its land in compliance with the County's adopted  
27 land use and environmental laws.

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1 As demonstrated by the record in this matter, Appellants will never be satisfied with this  
2 project or happy with the conditions of approval. The County Council should not accept their  
3 invitation to ignore legislatively-enacted development regulations that permit the Tall Chief  
4 development.

### 5 **III. STATEMENT OF FACTS**

6 1. The Applicant incorporates herein the Findings of Fact as set forth in the  
7 Examiner's June 18, 2012 Report and Decision. Those factual findings are supported by an  
8 extensive record, including four days of hearing and 74 Exhibits. The Examiner gave  
9 considerable latitude during the hearing to the Intervenors-Appellants to make their case in  
10 testimony and exhibits, and no contention was made by the Appellants that they were not given a  
11 fair and adequate opportunity to do so. The Examiner's findings should not be disturbed absent a  
12 clear and convincing demonstration that they are not supported by the record. Appellants'  
13 Statement of Appeal fails to demonstrate that any of the Examiner's findings are unsupported by  
14 the record.

15 2. The Tall Chief plat application was submitted on December 27, 2004. DDES  
16 made a determination that the Tall Chief subdivision application was complete by letter dated  
17 January 25, 2005. *Part of Exhibit 1, DDES file no. L04P0032.* This determination conclusively  
18 establishes the vesting date for the Tall Chief subdivision as of the date of application, December  
19 27, 2004, by virtue of RCW 58.17.033 and K.C.C. 20.20.050, discussed below in Section III.A,  
20 below, notwithstanding Appellants' one-sided recitation of only part of the history of this  
21 application.

22 3. The Tall Chief property is 191.2 acres located along West Snoqualmie River  
23 Road between Fall City and Carnation. A portion of the property is located within the floodplain  
24 of the Snoqualmie River. 183.88 acres of the property are in the RA-10 and RA-5P zones, both  
25 of which allow a density of one lot per 10 acres and clustering of lots. The preliminary plat  
26 approved by the Examiner complies with the allowable zoning of 18 residential lots, clustered on  
27 the hillside above the floodplain. The lots range from 2.4 to 5.45 acres and provide a minimum of

1 65% forested open space on each lot. The plat also includes over 40 acres of open space resource  
2 land that will be designated for farming.

3 **IV. STANDARD OF REVIEW AND BURDEN OF PROOF**

4  
5 **A. Factual Findings.** County Council review of hearing examiner decisions is governed  
6 by RCW 36.70B.050, which permits only one open record hearing (which took place before the  
7 Hearing Examiner) and one closed record appeal. In a closed record appeal, the Council cannot  
8 reverse or modify the Hearing Examiner's decision without establishing that he made a mistake  
9 of law, that there was insufficient evidence in the record to support the decision, or that the  
10 decision was clearly erroneous. *City of University Place v. McGuire*, 144 Wn.2d 640, 647, 30  
11 P.3d 453 (2001). Where, as here, a county legislative body acts only as an appellate body with  
12 its determination based solely on the original record, it is not empowered to substitute its  
13 judgment for that of the examiner, and it must sustain the examiner's findings of fact if they are  
14 supported by substantial evidence. *Maranantha Mining v. Pierce County*, 59 Wn. App. 795, 801,  
15 801 P.2d 985 (1990); see *Messer v. Snohomish Cy. Bd. of Adj.*, 19 Wn. App. 780, 787, 578 P.2d  
16 50 (1978). Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded  
17 person of the truth or correctness of the order." *McGuire*, 144 Wn. App. at 647.

18 Review of a hearing examiner's decision is deferential to the examiner. See, e.g.,  
19 *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999); *Rosema v. Seattle*,  
20 166 Wn. App. 293, 298, 269 P.3d 393 (2012). An appellate court or the council must view the  
21 evidence and the inferences that may reasonably be drawn from the evidence in the light most  
22 favorable to the party who prevailed in the highest forum that exercised fact-finding authority.  
23 *McGuire*, 144 Wn.2d at 652-53; *Rosema*, 166 Wn. App. At 298. In other words, the council must  
24 grant deference to the Examiner's findings and view the evidence in the record in the light most  
25 favorable to the applicant, Tall Chief, because Tall Chief prevailed before the Examiner. This  
26 necessarily entails accepting the Examiner's views regarding the credibility of witnesses. *Id.*;  
27 *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217  
(1992).

1           **B. Legal Conclusions.** As the moving party, the Appellants have the burden of proving  
2 that the Hearing Examiner committed errors based on the record before the Examiner. K.C.C.  
3 20.24.222.D; Examiner's Rules of Procedure, XI.8.a, page 23. The standard of review for  
4 alleged errors of law is de novo after giving due deference to the local jurisdiction's  
5 interpretation of its codes and standards where there is any ambiguity; and the standard for  
6 reviewing the application of law to the facts is the clearly erroneous standard, such that reversal  
7 is only warranted when, after considering the entire record, the council or reviewing court is  
8 firmly convinced the administrative body erred. *Rosema*, 166 Wn. App. at 298. Based on the  
9 extensive record in this matter, the County Council should sustain the Examiner's findings and  
10 conclusions that the Tall Chief Country Club subdivision application complies with all  
11 applicable county codes and regulations, and deny this appeal.

12                                   **V. RESPONSE TO APPELLANTS' ALLEGED ERRORS**

13           **A. Vesting of Application.** The vesting rule for subdivision applications is established  
14 by state statute, which itself codifies the vested rights doctrine for subdivisions. RCW 58.17.033  
15 provides:

16           (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered  
17 under the subdivision or short subdivision ordinance, and zoning or other land use control  
18 ordinances, in effect on the land at the time a fully completed application for preliminary  
plat approval of the subdivision, or short plat approval of the short subdivision, has been  
submitted to the appropriate county, city, or town official.

19           (2) The requirements for a fully completed application shall be defined by local  
20 ordinance.

21           (3) The limitations imposed by this section shall not restrict conditions imposed under  
22 chapter 43.21C RCW. (Emphasis added).

23 King County has a local ordinance defining when applications will be deemed complete for  
24 purposes of project vesting. KCC 20.20.040 defines the elements of a complete application, and  
25 K.C.C. 20.20.050 requires DDES to notify the applicant within 28 days whether the application  
26 is complete or incomplete. K.C.C.20.20.050.D provides:

27  
APPLICANT'S RESPONSE TO  
STATEMENT OF APPEAL

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1 D. The date an application is deemed complete is the date of receipt by the department of  
2 all of the information necessary to make the application complete as provided in this  
3 chapter. The department's issuance of a notice of complete application ... shall cause an  
4 application to be conclusively deemed to be complete and vested as provided in this  
5 chapter. (Emphasis added).

6 Because DDES sent a notice of complete application to the Applicant on January 25, 2005, the  
7 Tall Chief subdivision application is conclusively deemed to be complete and vested as of the  
8 date of application (December 27, 2004) under both state and local law.

9 **B. Allegations Concerning Projects Modifications, Delays and Vesting.** Appellants  
10 contend that modifications to the project and delayed project review actions by DDES should  
11 have resulted in a loss of vesting. To the contrary, project modifications are common during  
12 DDES review of a plat application, often as a result of DDES' review of an application or  
13 requests for additional information.

14 **DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**

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17 **The simple rule is that project modifications do not require a new application or result in a**  
18 **loss of vesting unless they are determined by DDES to be "substantial."**

19 The applicable code section provides:

20 **K.C.C. 20.20.080 Applications – modifications to proposal.**

21 ...

22 **B. If the department determines** the requested modification or revision would result in  
23 a substantial change in a development proposal's review requirements, an applicant  
24 requested revision or modification occurring either before or after issuance of the permit  
25 shall require filing of a new application.

26 **C.** For the purpose of this section, a "substantial change" includes, but is not limited to,  
27 locating buildings closer to the nearest property line, increasing the proposed square  
footage of any buildings or changes that will lead to significant built or natural  
environmental impacts that were not addressed in the original development proposal.  
(Emphasis added.)

1 There is no evidence in the record of a determination by DDES that any modification to  
2 the Tall Chief project was a “substantial change.” Furthermore, there is no evidence in the record  
3 that any such modification met the definition of “substantial change” in K.C.C. 20.20.080.C.<sup>1</sup>

4 The Examiner made an oral ruling on the record during the April 3, 2012 hearing that  
5 “excessive delay” as alleged by Appellants does not automatically terminate an application or  
6 result in loss of application vesting because K.C.C. 20.20.100 is not “self-executing.” It requires  
7 DDES to take action to cancel or deny an application based on failure of an applicant to timely  
8 respond to a request for information, and that did not occur. DDES testified, and the Examiner  
9 agreed, that there was no action taken by DDES to terminate the Tall Chief application based on  
10 delays or project modifications. *April 3, 2012 Testimony of Lanny Henoch; April 3, 2012 oral*  
11 *ruling of Examiner Donahue.* Without such action by DDES, Appellants’ complaints about  
12 minor project modifications and tardy responses to information requests have no legal  
13 significance and cannot result in the loss of vesting for the Tall Chief project.

14 As the Examiner determined at the April 3, 2012 hearing, “cause for” application  
15 termination is not self-operating and the application did not lose its vesting because DDES never  
16 took action to terminate the application and never determined that a project modification was  
17 substantial. Appellants failed to introduce any evidence in the record that DDES ever concluded  
18 there were “substantial changes” to the project; therefore, the Appellants’ loss of vesting  
19 argument is without factual foundation or support and must be rejected. Appellants have raised  
20 this issue only to create the illusion of a problem with the Tall Chief application.

21 **C. Shoreline Permit Vesting Issue.** The Examiner properly rejected the Appellants’  
22 issue regarding a separate vesting date for the shoreline permit in Conclusion 1 of the June 18,  
23 2012 Report and Decision, and specifically rejected Appellants’ claim that K.C.C. 20.20.070.C  
24 applies as an exception to the statutory vesting rule for subdivisions. Appellants’ argument

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25 <sup>1</sup> Appellants’ biased description of the history of this application also ignores telephonic and email communications  
26 between the Applicant and DDES, creating the false impression that that the Applicant ignored County requests for  
27 information. Applicant has not overburdened the record in this matter with each and every communication it had  
with County staff, because it is not necessary to do so. The fact that there was no determination by DDES to  
terminate the application on account of delay is enough. Without such a determination, there is no basis for loss of  
vesting or requirement for filing a new application.



1 ignores controlling state statutes and case law and the long-standing practice of King County.  
2 Once again, the applicable state statute, RCW 58.17.033 provides:

3 (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered  
4 under the subdivision or short subdivision ordinance, and zoning or other land use control  
5 ordinances, in effect on the land at the time a fully completed application for preliminary  
6 plat approval of the subdivision, or short plat approval of the short subdivision, has been  
7 submitted to the appropriate county, city, or town official.

8 Once a completed preliminary plat application has been submitted, it is to be judged  
9 under the laws in effect at the time of submission. *Friends of the Law v. King County*, 123  
10 Wn.2d 518, 529, 869 P.2d 1056 (1994). That would include King County's shoreline  
11 regulations, road construction standards and drainage code, among other land use control  
12 ordinances of the county. The shoreline substantial development permit for this project is only  
13 required for that minimal amount of road grading that will occur within the shoreline jurisdiction,  
14 which extends to the edge of the 100-year floodplain. The shoreline application, L07SH003,  
15 does not stand on its own as a separate activity from the subdivision. It is linked to the  
16 subdivision only by the need to comply with the County road standards for the entry road to the  
17 Tall Chief subdivision. Additional evidence of this link is the SEPA Threshold Determination  
18 (Exhibit 5), which was for both the subdivision and the shoreline permit – one consolidated  
19 action.

20 In *Westside Business Park LLC v. Pierce County*, 100 Wn.App. 599 (2000) the court of  
21 appeals upheld a Pierce County Hearing Examiner decision that a “bare bones” short subdivision  
22 application vested the project to the storm water drainage ordinance in effect when the  
23 application was filed, therefore the applicant did not need to comply with a more restrictive  
24 drainage ordinance adopted at a later date, even though a drainage plan was not submitted with  
25 the short plat application. The key to this vesting decision is that the County was aware of the  
26 use to which the developer intended to put the short platted property, just as King County was  
27 aware of Tall Chief's intended use of the subject property for 18 residential lots when the  
subdivision application was filed on December 27, 2004. The court specifically rejected an  
argument that storm water drainage ordinances are not subject to the vesting rule because they  
are not “zoning or other land use control ordinances.” 100 Wn. App at 606-08.

1 Appellants make their separate vesting argument based on KCC 20.20.070C, which  
2 provides, "Vesting of an application does not vest any subsequently required permits, nor does it  
3 affect the requirements for vesting of subsequent permits or approvals." However, they take this  
4 ordinance out of context and attempt to apply it to the selection of the applicable stormwater  
5 management manual for the entire project, contrary to the vested rights doctrine for subdivisions  
6 as codified at RCW 58.17.033. As determined by the Examiner:

7 The drainage aspects of the Tall Chief development are subordinate to the central  
8 application for subdivision, as is the shoreline permit component. To rule that the  
9 subordinate shoreline permit vesting date should drive the vesting date of the plat  
10 application's secondary aspects merely because of essentially a cross-referencing of  
11 regulations would be tantamount to allowing a backdoor challenge to the plat vesting  
12 date. This the Examiner cannot permit; it does not comport to the essential holdings of  
13 subdivision application vesting in the state." *June 18, 2012 Report and Decision,*  
14 *Conclusion 1, p. 7.*

15 KCC 20.20.070C does not have the effect of altering the vested rights doctrine for  
16 subdivisions. If KCC 20.20.070C were applied in the manner suggested by the Appellants, the  
17 vested rights doctrine for subdivisions would be hollow and ineffective, because platted features  
18 could become unbuildable if the County could alter the code provisions before all later related  
19 permits are applied for. This was recognized in *Noble Manor v. Pierce County*, 133 Wn.2d 269,  
20 943 P.2d 1378, 1384 (1997), when the Court stated, "If all that the Legislature was vesting under  
21 the statute was the right to divide land into smaller parcels with no assurance that the land could  
22 be developed, no protection would be afforded to the landowner."

23 The Appellants' Statement of Appeal ignores the holding in *Noble Manor* and cites it out  
24 of context in order to confuse the County Council. There is no legal support or support in the  
25 record for Appellants' separate vesting argument, which would essentially nullify the statutory  
26 vesting rule for subdivisions. The King County Prosecutor's Office and the Examiner rejected  
27 Appellants' argument that there could be a separate vesting date for the shoreline permit.

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Substantial weight must be given to DDES' interpretation of K.C.C. 20.20.070 because they are the agency charged with administration of the County's development regulations. *Examiner's Rules of Procedure, XI.B.9.d, page 24.* This alone should dispose of the Appellants' argument,

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The Council should reject Appellants' vesting arguments and affirm the decision of the Examiner.

**D. Landfilling in Floodway.** Appellants' interpretation of KCC 25.16.190.D as an absolute prohibition on the placement of fill of any kind in a floodway violates the canons of statutory interpretation by seeking an absurd result that could not have been the intention of the King County Council. A leading case relating to principles of interpretation is *State v. Keller*, 98 Wn.2d 725, 657 P. 2d 1384 (1983). There, the Court stated:

This court's primary objective in interpreting a statute is to ascertain and give effect to the intent of the Legislature. *Janovich v. Herron*, 91 Wn.2d 767, 771, 592 P.2d 1096 (1979). Although courts may not read into a statute that which the Legislature has omitted, we may construe a statute so as to avoid strained or absurd consequences which could result from a literal reading. *See State v. Martin*, 94 Wn.2d 1, 614 P.2d 164 (1980); *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508, 546 P.2d 75 (1976).

It is absurd to think that the King County Council intended an absolute prohibition on the placement of any fill in a floodway (rather than "no-net increase" in fill), because that would have prohibited the County and others from constructing or repairing roads, bridges, underground utilities, or other necessary projects in, around and over rivers and their floodways. These type of projects are essential functions of local government, therefore one cannot presume that the King County Council intended to prohibit them. Judicial notice can be taken of the fact that roads, bridges and utilities are routinely constructed upon, over or under the ground surface of

1 floodways by federal, state and local governments, and that many properties can only be accessed  
2 by crossing a floodway with roads and utilities.<sup>2</sup> Flood control projects are also, of necessity,  
3 constructed within floodways, but the Appellants are not contending that they should also be  
4 prohibited. Therefore, KCC 25.16.190.D must be interpreted in such a way as to avoid the absurd  
5 result of prohibiting all such projects regardless of their mitigation of impacts or avoidance of net  
6 fill that could increase flood conditions. DDES' "no net increase in fill" interpretation complies  
7 with the appropriate standards of statutory construction and avoids an absurd result that an  
8 existing road cannot be improved to make it comply with the County Road Standards, even if  
9 there is no net increase in fill within the floodway. The Examiner appropriately granted  
10 deference to DDES' interpretation at Conclusion No. 2 of the June 16 Report and Decision, and  
11 fashioned an acceptable and sensible shoreline condition no. 19 at page 16 of this decision. This  
12 conclusion and condition should be upheld by the County Council and the appeal should be  
13 rejected.

14 **E. Notice of Right to Farm.** Appellants' goal is to discourage the purchase and sale of  
15 lots at Tall Chief. That is not the purpose of a right to farm notice. The proper purpose is to  
16 provide notice to prospective buyers of a property that it is located near legal farming activity and  
17 that certain statutes provide that such farming activities are not actionable as nuisances. RCW  
18 64.06.022 requires that sellers provide specific written notice of the right to farm laws to buyers,  
19 and the June 18, 2012 Examiner's Report and Decision more than adequately complies with this  
20 requirement and K.C.C. 20.20.100.G by requiring a specific right to farm notice on the face of  
21 the plat. *See Condition No. 20, page 13.* Appellants' are requesting an unprecedented form of  
22 right to farm notice that exceeds the legal and practical requirements. Their appeal on this issue  
23 is tantamount to a legislative request for the County Council to exceed state legal requirements  
24 relating to right to farm notices, without any of the usual legislative process that solicits opinions  
25 from all concerned residents and businesses in the County. Intervenors should petition the state

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26 <sup>2</sup> Each of the Appellants' homes are also accessed by roads constructed in the floodway of the Snoqualmie River,  
27 and their arguments the K.C.C. 25.16.190.D prohibits such roads or their maintenance is hypocritical.

1 legislature or the County Council for legislation rather than using the land use appeals process for  
2 their legislative goals. The notice accepted by the Applicant and incorporated into the conditions  
3 of approval fully complies with the purpose and intent of existing law, and the appeal should be  
4 rejected on this ground.

5 **F. Rural Character.** The Appellants' fear of change to the rural character of the  
6 Snoqualmie Valley if the Tall Chief property is developed for residential use is not a basis for  
7 overturning the Examiner's approval of this project. Appellants have ignored the bedrock  
8 principle of land use law that comprehensive plan policies do not supersede zoning codes, which  
9 control over the ambiguous, general or conflicting terms of a comprehensive plan. *Citizens for*  
10 *Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873-74 (1997)*. "A comprehensive plan  
11 does not directly regulate site-specific land use decisions." *Woods v. Kittitas County, 162 Wn.2d*  
12 *597, 613 (2007)*. The County's zoning code is the ultimate determination by the County Council  
13 regarding protection of rural character, and that determination is to allow one lot per 10 acres and  
14 clustered development. Fundamentally, the King County Comprehensive Plan policies  
15 concerning rural character are implemented in the one lot per 10 acres density limit for this  
16 property, and the County Council already legislatively decided that one lot per 10 acres is  
17 consistent with the rural character of this area and with the concurrent policy of providing for a  
18 variety of low-density housing choices. The Examiner agreed, in Finding No. 12, that the  
19 proposal was in compliance with the development regulations and that there was "no authority  
20 essentially to preempt the allowances of the development regulations by unilaterally determining  
21 that the cited comprehensive plan policies promoting rural character preservation, etc., mandate  
22 something different than what the express (and legally plan-implementing) GMA development  
23 regulations permit." *June 18, 2012 Report and Decision at Finding 12, page 5.*

24 The Examiner was also correct in his characterization of Appellants' rural character  
25 argument as based on fear and personal preference rather than on compliance with development  
26 regulations:

27 One of the legal premises underlying the land use planning and regulatory system in  
Washington State is that decisions on individual applications must be based upon adopted  
ordinances and policies rather than upon the personal preferences or general fears of those

1 who may currently live in the neighborhood of the property under consideration. [citing  
2 *Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P2d 1119 (1997)(other  
3 citations omitted.)] Footnote 1 to Finding No. 12, page 4.

4 Even the King County Comprehensive Plan does not support the Intervenor's argument  
5 that 18 lots clustered on the hill side of this property would be inconsistent with rural character.  
6 DDES's project manager, Lanny Henoch, testified at the April 3 hearing that the Comprehensive  
7 Plan policies (R-101, R-104) support this subdivision application, in particular by providing for  
8 "a variety of low-density housing choices" and by relying on residential density as the single-  
9 most important means of protecting rural character. In other words, one lot per 10 acres is  
10 consistent with rural character. Appellants' reciting to the Treemont decision is inappropriate  
11 because it relies on facts that are outside the record. Treemont was another application for  
12 another property and had a different record entirely.

13 The Tall Chief subdivision exemplifies the Applicant's best effort to avoid or minimize  
14 conflicts with nearby agricultural uses by incorporating farming into the project through the  
15 agricultural resources tracts, creating an agricultural-themed subdivision and its own agricultural  
16 buffer between new houses on the hillside and farms in the valley. The 18 lots are clustered  
17 away from Snoqualmie River Road, outside of the farmable area, and will be screened from the  
18 valley by native growth protection areas on each lot. The conditions of approval also insure that  
19 the Tall Chief subdivision will be consistent with rural character. Condition 16 provides that  
20 Tracts A and R will be identified as a "Working Farm" on the final plat. Condition 20 requires a  
21 note on the final plat indicating that the property is near agricultural lands and that sellers of lots  
22 must provide to buyers a notice of the right to farm act consistent with statutory requirements.  
23 For all these reasons, Appellants have shown no regulatory basis for determining that the Tall  
24 Chief subdivision is inconsistent with rural character or that the Examiner's decision is  
25 erroneous. This ground for appeal is, as the Examiner found, based on the neighbors' personal  
26 preferences and subjective fears, not on the development regulations, and the appeal should be  
27 denied on this ground.

1           **G. Clustering Requirements.** It is ironic that the Appellants, all local farmers, are  
2           contesting that the farming tracts within the Tall Chief proposed preliminary plat fail to meet the  
3           open space requirement for clustering at K.C.C. 21A.14.040.B because the County has not  
4           promulgated a public rule establishing criteria for approval of farm plans. It is illogical for  
5           farmers to oppose farming and in this case the local farmers are hypocritically opposing a  
6           reasonable farming use of their neighbor's land. The fact that a public rule has not been  
7           developed by the County as authorized by KCC 21A.14.040.B.7 is due to the fact that this is  
8           probably the first project in King County to propose a return of land to farming in conjunction  
9           with a residential plat, but this is not grounds for denying approval of the farm tracts or denial of  
10          clustering of the 18 lots. This code provision authorizes the County to establish criteria for the  
11          approval of farm plans, but is not itself a requirement that must be met by an applicant. In the  
12          absence of a public rule establishing criteria for approval, the County and the Examiner can still  
13          approve a farm plan as meeting the general requirements of KCC 21A.14.040.B.7, as occurred in  
14          this case. The Applicant has not failed to meet a criteria here because the alleged criteria does  
15          not even exist.

16           **H. Flow Dispersion – Forested Open Space.** The flow dispersion element of the Tall  
17          Chief drainage plan complies with the 1998 King County Surface Water Design Manual  
18          (SWDM). Some but not all of the 65% forested open space must be located down-gradient of  
19          impervious areas being dispersed, as explained in Hal Hagenson's Rebuttal Testimony, Exhibit  
20          60, pages 3-4. There are specific provisions in Appendix C of the SWDM for dispersion of  
21          storm water, none of which require more than 100 feet of vegetated space. This is the basis for  
22          Mr. Hagenson's testimony that an adequate amount of open space is provided downstream of the  
23          impervious areas of Lots 3 through 12 to accomplish the objective of dispersing stormwater  
24          flows from impervious surfaces on those lots. *April 3, 2012 Rebuttal Testimony of Hal*  
25          *Hagenson, and Exhibit 60, pp. 3-4.*

26           Most importantly for purposes of this appeal, the Examiner's Report and Decision  
27          includes Condition 7 requiring full compliance with the drainage provisions of K.C.C. chapter

1 9.04 and the SWDM during engineering and final review. Condition 7.f specifically addresses  
2 the forested open space flow control exemption and requirements for the final engineering plans.  
3 Ultimately, compliance with these requirements must be demonstrated for final engineering plan  
4 approval prior to recording a final plat, thus Appellants' appeal issue regarding flow dispersal is  
5 premature and fails to account for the final engineering review of the plat.

6 **I. Density Requirements.** The Appellants' argument regarding zoning density was  
7 exhaustively reviewed and rejected at the December 15, 2011 hearing on this application.  
8 DDES' witness, Lanny Henoch, testified at that hearing in response to interrogatories from the  
9 Examiner that the project site supported 18 units even without using the acreage of the portion  
10 zoned A-35; that both the R-10 and RA-5P(SO) portions of the site allowed one unit per 10  
11 acres, and that, in DDES' view, **there is no split zone or density transfer because both the R-  
12 10 and RA-5 zones allowed the same density.** One of the Tall Chief parcels has both RA-10  
13 and RA-5P(SO) zoning, but there is no need for a density transfer from one portion of the parcel  
14 to the other because the density is already the same. Therefore, Appellants' argument about  
15 rounding down under K.C.C. 21A.12.070(E) is wrong and inapplicable to this project. There are  
16 183.88 acres of R-10 and RA-5P(SO) zoned land, resulting in an allowed density of 18.388 units.  
17 There was no rounding up of the density to achieve 18 lots. A number of exhibits including  
18 density calculations were admitted by the Examiner, including Exhibits 36, 36B, 36C, 36D, 44  
19 (zoning map) and 45 (Applicant's Response to Interrogatories to Parties and Submittal of  
20 Exhibits). The Examiner's Report and Decision correctly confirms the opinion of DDES that the  
21 allowable zoning density for this site is 18 lots. *See Finding 1 and Conclusion 4.* Again,  
22 substantial weight must be given to DDES' interpretation because they are the agency charged  
23 with administration of the County's development regulations.

24 **J. Condition 7.j.** Appellants argue for a modification of Condition 7.j to direct most of  
25 the stormwater discharge to the north away from the Keller Farm. This is a nitpicking argument  
26 that ignores the uncontested expert testimony that there are intervening wetlands which naturally  
27 retard stormwater flow between the Tall Chief lots and the Keller Farm. The Kellers testified



1 only of their “fear” that their farm fields could be impacted by the storm water outfall and flow  
2 splitter, whereas the expert testimony rebutted that possibility. The Examiner correctly  
3 concluded, at Finding 13, that “the development’s drainage provisions must still meet the  
4 standards of the SWDM, which include governing release rates. The Examiner finds no factual  
5 justification and no legal authority to require measures above and beyond the express standards  
6 of the detailed applicable SWDM, which again, is promulgated under express authority granted  
7 by the County’s legislative authority and constitutes a GMA development regulation.” *June 18*  
8 *Report and Decision, Finding 13, page 5.* Thus, Appellants are mistaken that the Examiner  
9 failed to address this concern. It is the Appellants who ignore the functioning of the SWDM and  
10 final engineering review to require appropriate release rates that are protective of the Keller  
11 Farm. The appeal should be rejected because it is not based on substantial evidence in the  
12 record, it is premature, and it fails to prove that the Examiner’s decision was erroneous.

13 **K. Safety of Plat Entry Road.** The Statement of Appeal falsely alleges that the  
14 Examiner failed to address the issue of the safety of the plat entry road. Findings 16 through 18  
15 adequately address the issue of safety of the plat entry road and two emergency access roads for  
16 school children. Finding 5 addresses both access and emergency access roads. Finding 2  
17 acknowledges the testimony of DDES and KCDOT regarding the plat (which included the road  
18 variance and safety of the access road). Conditions 5, 6 (per Exhibit 65), and 8 all support the  
19 Examiner’s conclusion that site access for this project complies with the standards of RCW  
20 58.17.110, at Conclusion 5, page 7. Once again, the Appellants expect that their subjective fears  
21 that new residents would not be as careful as they are during flooding conditions should trump  
22 the County’s development regulations and the Examiner’s judgment. This is not the case, and  
23 the Council should reject the appeal on this ground for failure to demonstrate an erroneous  
24 conclusion by the Examiner based on facts in the record.

25 **L. Road Surcharge Construction Method.** This final prong of Appellants’ appeal is  
26 disingenuous and seeks to capitalize on Appellants’ legal counsel’s effort to confuse the record  
27 by asking witnesses to make guesses and approximations on cross-examination. The Examiner

1 saw through this trick and correctly concluded in Finding 14 that “it has been sufficiently shown  
2 that the road improvement can occur in conformity with flood hazard regulations, which will be  
3 implemented in detail in the construction plan and final plat review stages.” *June 18 Report and*  
4 *Decision, Finding 14, page 5.* The purely timing issue that Appellants’ raise here about the  
5 placement and removal of preload fill is a construction management issue and premature for  
6 purposes of appeal of a preliminary plat approval. The Examiner correctly understood this and  
7 stated in the same Finding 14, “that is a matter purely under the administrative authority of  
8 DDES in its engineering and construction plan reviews and construction management  
9 responsibilities, and is not a matter under Examiner’s direct authority here.” The Council should  
10 reject this ground for appeal for that very reason.  
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24 **VII. CONCLUSION**

25 The Appellants demonstrated throughout the hearing in this matter that they will not be  
26 happy with any development on the Tall Chief property. These NIMBY opponents have raised a  
27 smorgasbord of issues that are based on their own subjective fears, a biased and incomplete

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1 description of the facts, and misconceptions of land use law and the application process. Even  
2 project modifications made for their benefit have been treated by Appellants as "substantial  
3 changes" that should result in the loss of vesting, despite very clear law to the contrary and a  
4 record before the Examiner that does not support their contentions.

5 Tall Chief is not an enemy of local farmers. To the contrary, Tall Chief has designed a  
6 small rural farm-friendly subdivision that integrates farming and restores land to its historic  
7 farming use. It has no flooding impact and manages storm water to the highest level required by  
8 the County's stormwater management regulations. There isn't a reasonable use of this land that  
9 is less impactful or more compatible with the surrounding community, which makes this appeal  
so outrageous.

10 Appellants have failed to carry the burden of proving that the Examiner's June 18 Report  
11 and Decision is erroneous in any respect. Granting deference to the Examiner's findings and  
12 viewing the evidence in the record in the light most favorable to the Applicant, Tall Chief, the  
13 Council must uphold the Examiner's Report and Decision and the Applicant respectfully requests  
14 that the Council deny this appeal without remand and proceed to adopt a suitable ordinance as  
15 provided by K.C.C. 20.24.230.

16 RESPECTFULLY SUBMITTED this 31 day of July, 2012.

17  
18 LAW OFFICE OF THOMAS M. PORS

19 

20 Thomas M. Pors, WSBA # 17718  
21 Attorney for Applicant, John Tomlinson for  
22 Tall Chief Country Club

23 WILLIAMS & KASTNER

24 /S/ Alan L. Wallace

25 Alan L. Wallace, WSBA # 18205  
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27 Tall Chief Country Club

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2 **DELETED FOR MATERIALS NOT AUTHORIZED BY KCC 20.24.222**

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6 **CERTIFICATE OF SERVICE**

7 I certify that on this 31<sup>st</sup> day of July, 2012, I caused a true and correct copy of the  
8 foregoing Applicant's Response to Statement of Appeal to be served, via email and United States  
9 mail, first class postage prepaid, upon the following:

10 Charles A. Klinge  
11 W. Forrest Fischer  
12 Groen Stephens & Klinge LLP  
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18 900 Oakedale Anvenue SW  
19 Renton, WA 98057

20 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is  
21 true and correct.

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27  


Thomas M. Pors  
Seattle, Washington

APPLICANT'S RESPONSE TO  
STATEMENT OF APPEAL

Law Office of Thomas M. Pors  
1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101  
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June 18, 2012

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**  
King County Courthouse, Room 1200  
516 Third Avenue  
Seattle, Washington 98104  
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**REPORT AND DECISION**

**SUBJECT:** Department of Development and Environmental Services File Nos. **L04P0032 and L07SH003**  
Proposed Ordinance No. **2011-0404**

**TALL CHIEF COUNTRY CLUB**  
Preliminary Plat Application  
Shoreline Management Substantial Development Permit

**Location:** West side of W Snoqualmie River Road SE and the Snoqualmie River, north of 19th Way SE, between Redmond and Fall City

**Applicant:** John Tomlinson  
*represented by Thomas Pors*  
1700 Seventh Avenue Suite 2100  
Seattle, WA 98101  
Telephone: (206) 357-8570  
Email: [tompors@comcast.net](mailto:tompors@comcast.net)

**Intervenors:** Steve and Janet Keller and  
Snoqualmie Valley Preservation Alliance  
*represented by Charles Klinge*  
Groen Stephens & Klinge  
11100 NE Eighth Street Suite 750  
Bellevue, WA 98004  
Telephone: (425) 453-6206  
Email: [klinge@gsklegal.pro](mailto:klinge@gsklegal.pro)

**King County:** Department of Development and Environmental Services (DDES)  
*represented by Lanny Henoch*  
900 Oakesdale Avenue SW  
Renton, WA 98057  
Telephone: (206) 296-6632  
Email: [lanny.henoch@kingcounty.gov](mailto:lanny.henoch@kingcounty.gov)

**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:

Approve, with conditions

Department's Final Recommendation:

Approve, with revised conditions

Examiner's Decision:

Approve, with further revised conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:

November 29, 2011

Hearing Continued to:

December 15, 2011 and January 4, 2012

Hearing Continued on call:

January 4, 2012

Hearing Reconvened:

April 3, 2012

Hearing Administratively Continued:

April 3, 2012

Hearing Record Closed:

May 5, 2012

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, CONCLUSIONS AND DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:****1. General Information:**

Developer:

John Tomlinson  
1738 Bellevue Way NE  
Bellevue WA 98004

Agent:

De-En Lang  
Lang Associates  
10658 Riviera Place  
Seattle WA 98125

STR:

5-24-07

Location:

1313 West Snoqualmie River Road. The site is located on the west side of West Snoqualmie River Road and the Snoqualmie River, north of 19th Way

Zoning:

RA-5, RA-10, A-35

Acreage:

191.2 acres

Number of Lots:

18

Density:

Approximately 1 unit per 10 acres

Lot Size:

Approximately 2.4 to 5.45 acres in size

Proposed Use:

Single Family Detached Dwellings

Sewage Disposal:

Individual on-site septic

Water Supply:

Ames Lake Water Association

Fire District:

King County Fire District No. 27

School District:

Snoqualmie Valley District No. 410

Plat Submittal:

December 27, 2004

Plat Application Completeness Date:

December 27, 2004

Shoreline Application Submittal:

May 8, 2007

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject 191.2 acre property lies within the floodplain and side slopes of the Snoqualmie River Valley east of Redmond and northwest of Fall City, at 1313 W Snoqualmie River Road SE on the west side (partly the site of the current Tall Chief Country Club). West Snoqualmie River Road SE in such location is just west of the Snoqualmie River's normal channel (closer at the northern end of the property's frontage on W Snoqualmie River Road). It is roughly an anvil-shaped parcel, with the northeasterly half, approximately, within the Snoqualmie River floodplain (and partially within the floodway) and the westerly half (longer segment in the north-south dimension) lying on the generally moderately to gradually easterly descending slopes on the west side slopes of the valley. Some slope areas have steep portions. A stretch of five discrete Class wetlands lie in the westerly portion of the onsite floodplain abutting the topographic break; a Class 3 stream also courses onsite. The sideslopes are moderately wooded with successive growth of native overstory and groundcover; the eastern, floodplain portion is developed as a mostly grassy golf course with stands of mature trees. No critical areas other than the aforementioned steep slope and wetland areas lie onsite or within close proximity, except for the Snoqualmie River corridor on the east side of W Snoqualmie River Road. The surrounding area in the floodplain is mostly developed in agricultural use including pasture and crop tillage as well as vegetable farming, with standard farm ensemble residences and outbuildings typical of agriculture. The sideslopes in the area, to the west of the discrete Snoqualmie River Valley, are developed with some areas of semi-rural/large-lot suburban single-family residential subdivisions, larger acreage homesites and vacant wooded tracts.
4. The natural site drainage is into Snoqualmie River basin; the natural southerly subbasin of the site drains easterly to an offsite wetland within that basin rather than into the Patterson Creek drainage as earlier thought.
5. Applicant John Tomlinson proposes subdivision of the property with a cluster of 18 detached single-family residential lots and separate tracts for critical area preservation and buffering and drainage facilities, etc. Additionally, tracts in the east portion that are in the floodplain but not in the wetland critical areas are proposed to be made available for agricultural usage (though no longer in separate lot-owner holdings as previously proposed). Access to the proposed lots is intended to be provided by a primary access road (aka SE 10th Street) running due west from W Snoqualmie River Road, utilizing the current Tall Chief Country Club access drive, which after its straight segment into the site would curve southerly to climb the side slopes and run fairly due south, with numerous curves, to first provide a road stub for future road extension so the south (and a turnaround) and then curves westerly and then north to terminate in a cul-de-sac in the area of Lots 15 through 18 in the southwestern portion of the site. A second road access for emergency purposes only (including as an alternative route for resident school pedestrians during flooding conditions in the valley; see below) would be provided, extending into the property from the west and connecting to existing residential roadways upslope and to the west. Easement provisions for use of the offsite connections to the secondary access road have been executed.
6. The proposed residential density would be approximately one dwelling unit per 10 acres. The lot sizes range from approximately 2.4 to 5.5 acres. As noted, the proposal utilizes the clustering provisions established in county code (KCC 21A.14.040). Review of the proposed lot sizes and density results demonstrates that the proposal conforms to the density prescriptions of the zoning code (as articulated in detail in a tentative finding by the Examiner at hearing, which oral articulation is incorporated herein by reference).



7. Water service would be provided to the homesites by the Ames Lake Water Association (but not to standard fireflow levels). Residential sanitation would be by the individual onsite septic systems.
8. The development drainage system for the proposed subdivision must conform to the 1998 edition of the King County Surface Water Design Manual (SWDM). Initially, the Applicant had intended to direct most site development drainage directly to the Snoqualmie River, but has changed the design approach so that development drainage is now proposed to be primarily conveyed in collection systems to drainage detention and water quality facilities in the northwest portion of the site (above the floodplain) and then released at flows conforming to certain standards (level 3 flow control (voluntarily offered) and basic water quality treatment in this case).
9. A formal drainage adjustment has been granted by DDES under file L12V002, subject to a number of conditions, to permit diversion of the natural southerly subbasin of the site (which drains easterly to an offsite wetland) to be diverted to be conveyed to the proposed detention pond. Such adjustment is issued under.
10. A road standards variance has been granted by the King County Department of Transportation (KCDOT) under file L04V0109 for cul-de-sac length and emergency turnarounds. The road variance decision also notes the acceptability of the emergency connection to the west, subject to DDES approval. The emergency access connection will be a road in private ownership, which the variance also approves. The variance decision denied a requested reduction of roadside obstacle setback requirements in order to preserve existing mature Lombardi poplars on the entrance road west from W Snoqualmie River Road SE.
11. Great concern has been expressed by neighboring and nearby property owners and residents, including Intervenor Steve and Janet Keller and the Snoqualmie Valley Preservation Alliance, about the proposed development not adequately maintaining rural character by its clustering and density. They assert that rural character as characterized by the comprehensive plan in its policy declarations mandates lesser density of development, and also opine their concern about urban migrants to upscale rural homesites who possess value systems and perspectives different than existing residents and not befitting the agricultural and pastoral rural area. The Examiner notes the property's zoning, with some RA-5 zoning and the majority at RA-10, both Rural Area zones, and a small portion zoned A-35, an agricultural zone, and observes that the county's zoning treatment of the property is on the whole relatively high and medium density for the rural area and concludes that from a land use regulatory standpoint rural character concerns, including the policy articulations in the comprehensive plan, must be presumed to have been consciously implemented by the legislative authority in the enactment of development regulations (which under the growth management act (GMA) are presumed to implement the comprehensive plan).
12. The fact of the existing zoning implementation of the comprehensive plan, in the face of the plan's articulations of support for maintaining rural character, agricultural uses and pastoral landscape, etc., with RA-5 and RA-10 zoning of the majority of the property, combined with the zoning code's allowance of clustered subdivision development such as is proposed here, leave the Examiner with no regulatory justification to deny the application or impose a reduced density based on such concerns about maintaining rural character, as meritorious as they may be in general. Taken as a whole,<sup>1</sup> the county's comprehensive plan and development regulations have

<sup>1</sup> Perhaps in a legislative balancing of interests, though that is not for the Examiner to determine and is not evident in the record, and certainly cannot be considered under Washington law as a perhaps-Solomonic operating guide to the Examiner in adjudicating the substantive merits of the proposal and the opposition to it. One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or general fears of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119]

resulted in the express allowance here of a rural cluster subdivision of the density proposed. The site design in general achieves the meritorious assignment of development to the least environmentally and contextually sensitive portions of the site, which is one of the fundamental tenets of allowing and indeed promoting cluster development in certain areas, with the development proposed for the less sensitive and wooded side slopes, generally as far away from offsite agricultural uses as reasonably possible, and leaving the floodplain and critical areas undisturbed and preserved and buffered. Though the clustering may present a slightly more visually apparent density on the developed portions of the site than would be the case if the property were developed under a standard minimum lot size of five acres (not withstanding the critical area and floodplain/floodway development regulations which may be brought to bear in such instance), the lots are still fairly generous in size and, at a minimum of 2.4 acres, will maintain a sufficiently non-urban clustering appearance. In the final analysis, the Examiner finds the proposal to be in compliance with the development regulations and finds no authority essentially to preempt the allowances of the development regulations by unilaterally determining that the cited comprehensive plan policies promoting rural character preservation, etc., mandate something different than what the express (and legally plan-implementing) GMA development regulations permit.

13. Intervenor Keller, whose property abuts the site in the southeastern portion, have expressed concern about the proposal for the downslope portions of the abutting and nearby lots (Lots 5-12) to have their development drainage infiltrate into the soil, which raises fears that such drainage infiltration will cause adverse drainage impacts (greater inundation and/or of more duration, of concern for tillage viability) on their property. The Examiner notes that in many areas there are intervening wetlands (which naturally retard discharge) between the lots and Intervenor's adjacent active ag fields, and, more critically, that the development's drainage provisions must still meet the standards of the SWDM, which include governing release rates. The Examiner finds no factual justification and no legal authority to require measures above and beyond the express standards of the detailed applicable SWDM, which, again, is promulgated under express authority granted by the County's legislative authority and constitutes a GMA development regulation.
14. Much has been made in this proceeding about whether the access road can be rebuilt to meet county standards in a manner which does not raise it above its current elevation in the floodplain (required so as not to impede floodwaters nor cause a rise in the base flood elevation). The Applicant has gone into great detail in technical submittals and provision of evidence and testimony at hearing to demonstrate that such rebuilding can be accomplished under the standards of not impeding floodwaters and not raising the base flood elevation to a satisfactory degree. At the preliminary plat review stage, which as provided by state law is essentially an "approximate drawing" level of review (preliminary and conceptual but with sufficient facts presented to make the "appropriate provisions" determinations mandated by RCW 58.17.110), it has been sufficiently shown that the road improvement can occur in conformity with flood hazard regulations, which will be implemented in detail in the construction plan and final plat review stages. The facts presented in hearing indicate that there may be some construction management and timing issues so as to ensure that such work occurs in a seasonally appropriate timeframe;

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(1997); *Indian Trail Prop. Ass'n v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The evaluation of the application must therefore be based upon officially adopted laws and ordinances, plans and policies as well as legally accepted principles. And a subdivision proposal need only meet the minimum standards which apply; alternative design cannot be forced arbitrarily. The legislative wisdom of state and county lawmakers must be respected "as is" in deciding land use applications, since policy decisions are the province of the legislative authority. [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997)] A quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

that is a matter purely under the administrative authority of DDES in its engineering and construction plan reviews and construction management responsibilities, and is not a matter under the Examiner's direct authority here.

15. The development was reviewed under the standard traffic impact reviews set forth in Title 14 KCC. No intersection improvements or imposition of Mitigation Payment System (MPS) fees are required. (The development will generate less traffic than was projected for the existing golf course development, and thus presents no net traffic increase and thus no *nexus* of adverse traffic impacts.)
16. School pedestrian safety has been expressed as a concern, which is a valid one in the instant case. The normal bus stop for the prospective resident schoolchildren will be on the plat entry road somewhat interior of the intersection with W Snoqualmie River Road (relocated westerly to enhance driver visibility of flooding conditions on the access road). W Snoqualmie River Road in the subject location is relatively high in elevation compared to the remainder of the floodplain in the immediate area, and the interior access road dips significantly lower so it will experience inundation sooner than W Snoqualmie River Road will at the subject location.
17. The safety concern is that schoolchildren may be dropped off at a flood-safe bus stop but then may encounter an inundated pedestrian route to gain access to their homesites in the westerly portion of the site. This issue has been suitably resolved by the relocation of the bus stop westerly to enhance bus driver visibility of access road flooding conditions and provision of the secondary emergency access route noted previously, extended westerly to connect with other private road access routes in the uplands and by the interior relocation of the bus stop to enhance driver visibility of access road inundation. Permission for utilization of such emergency secondary access route has been obtained by the Applicant.
18. It will be incumbent on the Snoqualmie Valley School District to manage its bus transportation, similarly to the manner in which it already manages bus transportation during inclement weather such as periods of snow and ice and other flooding situations, to decide when to trigger usage of the emergency secondary access route for resident school pedestrians rather than dropping them off at the standard location. The Examiner will require as a condition of approval that prior to final plat approval, the school district acknowledge in writing the availability of the secondary emergency access pedestrian route to be utilized during periods when the main subdivision access road is forecast to be or is experiencing flood inundation.
19. An additional issue of concern to neighboring and nearby agricultural operators is that the prospective lot owners be given legal notice of a "right to farm," notice that agricultural activities occur in the subject area, essentially forestalling validity of complaints about agricultural operations and secondary effects such as odors, slow moving farm machinery and animals on roadways, agricultural operations noise, etc. The notice is required by code provisions and shall be required to be placed on the face of the plat, the recordation of the plat and subsequent notice on title will give effective legal notice to prospective purchasers and future owners of the proposed residential lots.
20. The Applicant has received county approval of the required farm management plan for the proposed open space farm tracts in the eastern portion of the cluster development site.
21. Under the Shoreline Management Act and the County's implementing Shoreline Management Master Program, the shoreline environment designation of the property is Conservancy. A Shoreline Management Substantial Development Permit is required for the access road reconstruction and construction of certain drainage facilities, due to their location in the Snoqualmie River floodplain, and is an application component of this proceeding. The proposal has been analyzed by DDES for conformity with the shoreline master program and the Shoreline

Management Act (SMA) and county implementing regulations, which analysis is incorporated herein by reference. The proposal conforms to the criteria for approval of the requested substantial development permit.

#### CONCLUSIONS:

1. Disputation by Intervenor of the vesting of the application, principally whereby they argue that the version of the SWDM that should pertain is that in effect at the time of the later-realized-necessary 2007 application for the shoreline permit rather than the SWDM version pertaining at the time the plat application was complete, is not persuasive. The drainage aspects of the development are subordinate to the central application for subdivision, as is the shoreline permit component. To rule that the subordinate shoreline permit vesting date should drive the vesting date of the plat application's secondary aspects merely because of essentially a cross-referencing of regulations would be tantamount to allowing a backdoor challenge to the plat vesting date. This the Examiner cannot permit; it does not comport to the essential holdings of subdivision application vesting in the state. Except for directly discrete aspects of the shoreline regulations, all of the land use controls appurtenant to and secondarily involved in review of the subdivision proposal are those in effect on December 27, 2004.
2. The Examiner accords deference to DDES's interpretation of the fill-restricting shoreline regulations as limiting fill to no net fill increase. The interpretation by the professional administrative staff charged with administering the county land use codes, not shown to be clearly in error, is deserving of deference. [*Mall, Inc. v. City of Seattle*, 108 Wash.2d 369, 385, 739 P.2d 668 (1987)]
3. The cluster subdivision requirement of perimeter vegetation buffering is shown to be able to be met, within the floodplain area or by use of code-established allowances of alternative measures. The final outcome of the examinations of options in such regard and ultimate compliance with code requirements is a matter to be addressed post-preliminary plat approval and decided administratively by DDES in construction plan review prior to final plat approval, as provided in recommended condition language.
4. The proposed subdivision, 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 RA-5, RA-10 and A-35 zoning applied to the pertinent portions of the site.
5. If approved subject to the conditions below, the proposed subdivision 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.
6. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
7. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on April 3, 2012, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

**DECISION:**

The preliminary plat of the *Tall Chief* subdivision, as revised dated March 7, 2012 and received by DDES March 9, 2012, and the companion Shoreline Management Substantial Development Permit are approved subject to the following conditions of approval:

**Preliminary Plat Approval Conditions**

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. 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.
3. The plat shall comply with the base density requirements of the RA-5, RA-10 and A-35 zone classifications. All lots shall meet the minimum dimensional requirements of the RA-10 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. 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.

4. The applicant must obtain final approval from the King County Health Department, prior to recording.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. Preliminary Plat Condition 6 as stated in Exhibit 65 of the record regarding fire protection measures.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES 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 # \_\_\_\_\_ on file with DDES and/or the Department of Transportation. 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 or dispersion systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

- d. Storm water facilities shall be designed using the KCRTS Level 3 flow control standard. Water quality facilities shall also be provided using the basic water quality protection menu. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County.
  - e. A drainage adjustment regarding conveyance of stormwater to one facility was approved on March 6, 2012 (File L12V0012). The conditions of approval for the adjustment shall be addressed on the final engineering plans including the requirements for on-site bypass of storm water as referenced in condition 2 of the adjustment decision. The design criteria for bypass of stormwater is described on pages 1-36 and 3-52 in the drainage manual.
  - f. For that portion of the subject plat where stormwater dispersion is proposed, the plat includes designs for using the Forested Open Space (FOS) flow control exemption as outlined in the drainage manual for Core Requirement No. 3. The final engineering plans shall show all applicable requirements including the 65% forested open space boundaries and flow control BMP's for dispersion of storm water. If portions of the site proposed for FOS were previously cleared land areas, a mitigation plan shall be submitted to restore the vegetation and soils to meet the criteria for FOS. The final plat shall also show the area of FOS on the affected lots.
  - g. As required by Special Requirement No. 2 in the drainage manual, the 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat. Compensatory storage is required for any proposed fill or decrease of natural floodplain storage. (Also see Conditions 18-20 below in the related Shoreline Management Substantial Development Permit.)
  - h. A hydraulic project approval permit may be required from the Washington State Department of Fish and Wildlife for the proposed site improvements adjacent to streams and/or wetlands. Any required permits shall be submitted to King County prior to engineering plan approval.
  - i. The final engineering plans shall include designs to address dewatering of groundwater for site development as discussed in the geotechnical reports prepared for the project. A geotechnical report shall be submitted with the engineering plans to address soil conditions, grading, and conveyance of groundwater.
  - j. Preliminary Plat Condition 7.j as stated in Exhibit 65.
  - k. Preliminary Plat Condition 7.k as stated in Exhibit 65.
8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
- a. During preliminary review the applicant submitted road variance applications regarding the length of cul-de-sac and other design requirements for the roadways (See File Nos. L04V0109 and L09V0043). The final road improvements shall comply with the conditions of approval for the variance decision.

- b. The onsite cul-de-sac street labeled as SE 10<sup>th</sup> Street/ 304<sup>th</sup> Ave SE shall be improved as a rural subaccess street except as otherwise approved by the King County road variance process. The roadway serving Lots 13-18 shall be improved to rural minor access standards. As allowed by the road variance decision, the onsite roadway shall be private. The final plat shall include provisions for ownership and maintenance of the private road.
  - c. To provide emergency access for the subdivision, the existing gravel road shown on the preliminary plat map within easement #6094030 (Tract E on the preliminary plat) shall be improved to meet King County road standards except as allowed by the variance decision referenced above. The onsite portion of the emergency access shall include a 20 foot wide paved roadway. The offsite portions shall also be improved 20 feet wide with gravel surfacing and improvements for horizontal curvature on the campground property. An emergency access easement has been obtained by the applicant to make the offsite improvements and allow future use of the roadway. Tract E shall be owned and maintained by the homeowners association or other private entity as allowed by King County. Signage shall be placed at the intersection of Tract E with 304<sup>th</sup> Avenue SE in the subject plat, identifying Tract E as an emergency access.
  - d. The final engineering plans shall demonstrate compliance with standards for entering sight distance at the project entrance with West Snoqualmie River Road.
  - e. A 4-foot gravel shoulder is required for the plat frontage along West Snoqualmie River Road. The existing shoulder can be restored where feasible to provide the required shoulder width. The final engineering plans shall show the location of any existing shoulders and determine what areas require new improvements to achieve the four foot shoulder width. (Also see Condition 22 below.)
  - f. Preliminary Plat Condition 8.f as stated in Exhibit 65.
  - g. Preliminary Plat Condition 8.g as stated in Exhibit 65.
  - h. Preliminary Plat Condition 8.h as stated in Exhibit 65.
  - i. Preliminary Plat Condition 8.i as stated in Exhibit 65.
  - j. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
  10. (Deleted)
  11. Lots within this subdivision are subject to King County Code 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.

12. Preliminary plat review has identified the following specific critical area regulatory requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

- a. The Class II wetlands shall have a 50-foot buffer as shown on the preliminary plat map dated March 7, 2012 (received March 9, 2012).
- b. All wetland sensitive areas and their buffers shall be placed in Sensitive Area Tracts for long term protection.
- c. Signage shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.
- d. A 15-foot building set back line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.
- e. Sensitive Area Tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.
- f. Road crossings of wetlands and buffers maybe allowed per KC 21A.24.330. Construction techniques such as retaining walls maybe required at wetland crossings to limit wetland impacts. A final mitigation plan shall be required during engineering review. (Also see Condition 21 below in the Shoreline Management Substantial Development Permit approval.)
- g. The outer 25 feet of buffer on the eastern side of the wetlands may be used for farming activities as defined in the farm management plan. Fencing shall be installed along the wetland buffer/Critical Area Tract boundaries and the inner wetland buffer areas shall be planted with native vegetation.
- h. Wetland hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how wetland hydrology will be maintained after the site is developed.
- i. The engineering plans shall be routed to Critical Areas Staff for review of compliance to the above conditions.

#### Geotechnical

- j. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer from these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by a DDES geologist, prior to engineering plan approval. Added condition language from Condition 12.j of Exhibit 65 is incorporated herein by reference.
- k. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in K.C.C. 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in K.C.C. 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.



- I. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the open space and sensitive area tracts, and to assure implementation of the farm management plan if the resource tracts are conveyed to the residents of the subdivision.
14. Notes specific to the approved Farm Management Plan (March 2009) shall be placed on the final plat. The notes shall indicate what may be allowed, restrictions, etc., subject to DDES review and approval.
15. Preliminary Plat Condition 15 as stated in Exhibit 65.
16. Preliminary Plat Condition 16 as stated in Exhibit 65.
17. Preliminary Plat Condition 17 as stated in Exhibit 65.
18. Preliminary Plat Condition 18 as stated in Exhibit 65.
19. Preliminary Plat Condition 19 as stated in Exhibit 65.
20. The following notice shall be shown clearly on the face of the final recorded plat, and shall appear in large, bold type, separated from other notes on the final plat.

## NOTICE ON TITLE

THIS NOTICE APPLIES TO ALL LOTS AND TRACTS WITHIN THIS SUBDIVISION

AND TO ALL FUTURE PURCHASERS AND SELLERS

The lots and tracts of this subdivision are located in close proximity to farms and King County designated agricultural lands. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington Right to Farm Act. Commercial farming activities may occur that are not compatible with residential development for certain periods of limited duration.

Agricultural activities conducted on farmland, if consistent with good agricultural practices established prior to surrounding nonagricultural activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. Sellers of property within this subdivision are obligated to provide written notice to buyers consistent with RCW 64.06.022.

21. Preliminary Plat Condition 21 as stated in Exhibit 65.
22. Preliminary Plat Condition 22 as stated in Exhibit 65.
23. As part of the submittal of the engineering plans for the subject plat, the applicant shall submit a landscape plan to address the following requirements from Ordinance 15032, Sec. 19. The landscape plan shall be reviewed and approved by DDES prior to final engineering plan approval. DDES may require the posting of a bond to assure installation and the survival of required plantings for a 2-year period.

Except as provided below, a fifty-foot Type II landscaping screen, as defined in KCC 21A.16.040, shall be provided along the frontage of W. Snoqualmie River Rd. The planting materials shall consist of species that are native to the Puget Sound region. Preservation of existing healthy vegetation is encouraged and may be used to augment new plantings to meet the requirements of this section.

The width of the required Type II landscape screen and the number of new plantings installed may be reduced, pursuant to the provisions of KCC 21A.16.100. The placement of plantings at the intersection of SE 10<sup>th</sup> St./W. Snoqualmie River Rd. may be modified to comply with the sight distance requirements of the King County Road Standards.

If the applicant demonstrates, to the satisfaction of DDES staff, that it is not practical to provide the above-noted landscaping along W. Snoqualmie River Rd. and meet the applicable County floodplain regulations in effect on December 27, 2004, the required landscaping may be placed elsewhere on the site at a location which will partially obscure the views of the residences of the

subject plat from W Snoqualmie River Road. In order to provide the Type II landscape screen along W Snoqualmie River Road the applicant may be required to revise the lot layout or eliminate one or more lots from the plat to provide sufficient floodplain compensating storage.

24. Prior to final plat approval, the Snoqualmie Valley School District shall have acknowledged in writing the availability of the secondary emergency access vehicle and pedestrian route to be utilized during periods when the main subdivision access road is forecast to be or is experiencing inundation during flood events.

#### Shoreline Management Substantial Development Permit Conditions


1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. **TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090).** The following requirements shall apply to all permits.
  - a. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as a part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as a part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
  - b. Where neither local government nor the Department of Ecology include specific provisions establishing time limits on a permit as a part of action on the permit, the following time limits shall apply:
    - i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
    - ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

- iii. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval: It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
  - iv. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, that an alternative compliance limit may be specified in the permit.
  - v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under Condition 4.b.ii above: *Provided*, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
  - vi. Local government shall notify the Department of Ecology in writing of any change to the effective date of a permit as authorized above, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this condition shall require a new permit application.
5. Construction shall occur in conformance to the revised project plans and information received by King County on March 9, 2012.
  6. Any subsequent changes to the approved plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
  7. If required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish & Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.
  8. If required, an U.S. Army Corps of Engineers Permit "Corps Permit" shall be obtained from the U.S. Army Corps of Engineers prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit. In any event, erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
  9. Issuance of this Shoreline Management Substantial Development Permit does not grant the right to trespass upon private property.
  10. Prior to work, the applicant shall obtain final approval of the engineering plans for the pending plat of Tall Chief (L04P0032) and shall abide by any conditions set forth therein. Conditions of the plat approval shall be considered conditions of this Shoreline Permit.
  11. The applicant shall control erosion of disturbed areas by implementing Best Management Practices. The applicant's erosion and sedimentation control plan shall include the following as

warranted: installation of silt dams or catchments between work areas and all sensitive areas; the use of mulch and hydroseeding; planting of disturbed areas with native vegetation; and any measures determined to be appropriate. Appropriateness of fencing and location shall be approved and verified by a King County representative prior to commencement of any clearing, grading, or construction activities.

12. Conduct refueling activities within a designated refueling area at a distance of not less than 200 feet away from the Snoqualmie River and associated wetland areas. Additionally, drip pans shall be fitted with absorbent pads and placed under all equipment being fueled. All equipment, if kept on site overnight, shall be parked at least 200 feet away from the river and associated wetland areas.
13. Daily inspection shall be provided by an erosion control specialist to ensure the adequacy and maintenance needs of all erosion and sedimentation control measures. Copies of the reports shall be submitted to the King County DDES. If the erosion control specialist determines there is an erosion or sedimentation problem, King County DDES shall be notified immediately and immediate corrective measures shall be implemented.
14. All manmade debris from the project within the construction zone shall be removed and disposed of at a location licensed for such disposal.
15. A copy of the County-approved project engineering plans shall be kept on-site at all times during construction.
16. (Deleted)
17. (Deleted)
18. Shoreline Condition 18 as stated in Exhibit 65.
19. As part of the development of the subject plat, no permanent fill may be placed within the floodway, which would result in a reduction of the flood storage capacity of the floodway. All applicable King County regulations regarding improvements in the floodplain shall be met.
20. Shoreline Condition 20 as stated in Exhibit 65.
21. Shoreline Condition 21 as stated in Exhibit 65.

DATED June 18, 2012.

  
\_\_\_\_\_  
Peter T. Donahue  
King County Hearing Examiner

## NOTICE OF RIGHT TO APPEAL

### Subdivision Preliminary Plat Decision

In order to appeal the preliminary plat decision of the Hearing Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250 (check payable to King County Office of Finance) on or before *July 2, 2012*. If a notice of appeal is filed, the original two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before *July 9, 2012*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30) p.m. on the date due. 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.

If a written notice of appeal and filing fee are not filed within 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the decision of the Hearing Examiner contained herein shall be the final decision of King County without the need for further action by the Council.

### Shoreline Management Substantial Development Permit Decision

The Shoreline Management Substantial Development Permit decision may be appealed to the State Shorelines Hearings Board. Requests for review are governed by RCW 90.58.180 and Chapter 461-08 WAC. More detailed information on appeal procedures may be obtained from the Shorelines Hearings Board at (360) 664-9160 or at <http://www.eho.wa.gov/>. Petitions for review by the Shorelines Hearings Board must be received by the Board within 21 days of the "date of filing," with copies served to the Attorney General's Office and Washington State Department of Ecology within seven days of the Board's receipt of the petition. The "date of filing" is the date the local decision on the permit is received by the Department of Ecology.

MINUTES OF THE NOVEMBER 29, 2011, DECEMBER 15, 2011, JANUARY 4, 2012, AND APRIL 3, 2012 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NOS. L04P0032 AND L07SH003.

Mr. Peter T. Donahue was the Hearing Examiner in this matter. Participating in the proceeding were Kimberly Claussen, Pete Dye, Lanny Henoch, Mark Ossewaarde and John Shively for the Department; De-En Lang, Thomas Pors and Hal Hagenson for the Applicant; Steve Keller and Charles Klinge for the Intervenors, and Eric Haakenson, Cindy Parks, Bob Angrisano, Patrick Leen and Joe Monahan.

The following exhibits were offered and entered into the record on November 29, 2011:

Exhibit no. 1	DDES file no. L04P0032
Exhibit no. 2	Preliminary Report, dated November 29, 2011
Exhibit no. 3	Application for Land Use Permits received December 27, 2004
Exhibit no. 3B	Application for Shoreline permit received May 8, 2007
Exhibit no. 4	State Environmental Policy Act (SEPA) received December 23, 2003
Exhibit no. 4B	State Environmental Policy Act (SEPA) checklist for the Shoreline permit received May 8, 2007
Exhibit no. 5	SEPA Determination of Non-Significance issued September 29, 2011

- Exhibit no. 6 Affidavit of posting noting posting date of October 25, 2011
- Exhibit no. 7 Revised preliminary plat map received May 25, 2011
- Exhibit no. 8 Assessor maps NW 5-24-07, 8-24-7
- Exhibit no. 9 Amended and Restated Easement Agreement recorded October 6, 2009
- Exhibit no. 9B Second Amended and Restated Easement Agreement recorded June 21, 2010
- Exhibit no. 10 Farm Management Plan submitted May 4, 2009
- Exhibit no. 11 Report of Geotechnical Investigation received December 27, 2004
- Exhibit no. 12 Addendum to Geotechnical report received May 4, 2009
- Exhibit no. 13 Wetland and Wildlife Study received December 27, 2004
- Exhibit no. 14 Conceptual Wetland Mitigation Plan received May 4, 2003
- Exhibit no. 15 Revised Conceptual Wetland Mitigation Plan received October 6, 2009
- Exhibit no. 16 Revised Conceptual Wetland Mitigation Plan received January 4, 2011
- Exhibit no. 17 Preliminary Technical Information Report and Downstream Analysis received May 25, 2011
- Exhibit no. 18 Updates to the DDES staff report: new condition for the plat application and deletion of condition 17 for the shoreline application
- Exhibit no. 19 Road Variance L09V0043 issued May 20, 2011
- Exhibit no. 19A Road Variance L04V0109 letter to De-En Lang from Paulette Norman dated August 5, 2008
- Exhibit no. 20 King County Surface Water Design Manual (1998) Adjustment L07V0057
- Exhibit no. 21 King County Certificate of Water Availability received January 4, 2011
- Exhibit no. 22 Letter from King County Fire Protection District No. 27 received January 28, 2010
- Exhibit no. 23 Letter from the Snoqualmie Tribe, dated October 17, 2011, regarding salmon activity in the Snoqualmie River
- Exhibit no. 24 Email from Robert Seana dated October 17, 2011, regarding site posting and area notice of the SEPA determination and Notice of Hearing
- Exhibit no. 25 Letter from Intervenors' representative stating their concerns to DDES dated November 22, 2011
- Exhibit no. 26 Declaration of Eric Haakenson in Support of Plaintiff's Motion for Summary Judgment executed August 5, 2010
- Exhibit no. 27 Keller plat map
- Exhibit no. 28 Keller diagram of runoff and soil
- Exhibit no. 29 Zoning Map of the subject and surrounding properties as extracted on May 15, 2005
- Exhibit no. 30 Email from Greg Bishop of Seattle-King County Public Health regarding preliminary approvals for the subject application, sent November 29, 2011
- Exhibit no. 31 Duplicate of Exh. no. 42
- Exhibit no. 32 Harold Hagenson's November 28, 2011, response to Edward McCarthy's November 22, 2011 expert report
- Exhibit no. 33 Lower Snoqualmie and Skykomish Rivers Work Map dated January 24, 2006
- Exhibit no. 34 2006 draft FEMA map of subject property

The following exhibits were offered and entered into the record on December 15, 2011:

- Exhibit no. 35 *not entered into record*
- Exhibit no. 36 Email from De-En Lang to Lanny Henoch sent December 7, 2011, relaying subdivision density dimension calculations
- Exhibit no. 36B Subdivision Density and Dimension Calculations Worksheet for the RA-10 zoned property dated April 27, 2009
- Exhibit no. 36C Subdivision Density and Dimension Calculations Worksheet for the RA-5-P dated April 27, 2009

- Exhibit no. 36D Subdivision Density and Dimension Calculations Worksheet for the A-35 zoned property dated April 27, 2009
- Exhibit no. 37 Downstream Analysis originally prepared December 23, 2004, revised March 22, 2007
- Exhibit no. 38 Certificate of Transportation Concurrency dated December 16, 2005
- Exhibit no. 39 Hagenson Consultants letter to DDES regarding King County Fire District #27's letter dated January 21, 2010
- Exhibit no. 40 Email from Don Gauthier to Hal Hagenson sent December 12, 2011 regarding the applicable FEMA flood maps
- Exhibit no. 41 King County's Fire-resistant Landscape Plants for the Puget Sound Basin
- Exhibit no. 42 Request for Subdivision Pre-Application Review to Public Health, Environmental Health Division
- Exhibit no. 43 Letter from Paul McCombs, Master GIS Analyst and DDES GIS Program Manager, explaining county zoning maps, dated December 12, 2011
- Exhibit no. 44 Zoning Map of the subject and surrounding properties as extracted and formatted by Paul McCombs on December 12, 2011
- Exhibit no. 45 Applicant's Response to Interrogatories to Parties and Submittal of Exhibits
- Exhibit no. 46 Preliminary plat (Alt B) map dated September 28, 2009

The following exhibits were offered and entered into the record on January 4, 2012:

- Exhibit no. 47 Document 'Keeping the Rural Vision' prepared by the Department of Community, Trade and Economic Development dated June 1999
- Exhibit no. 48 Excerpt from the GMA
- Exhibit no. 49 Excerpt from King County Roads site on Historic and Scenic Corridors
- Exhibit no. 50 Topographic map of property from Google earth
- Exhibit no. 51 Expert report for hearing by Engineer Edward J. McCarthy
- Exhibit no. 52A-D Photographs of property
- Exhibit no. 53 Letter to Hagenson Consulting LLC from Chief Chris J. Connor of King County Fire Protection District No. 27 dated January 3, 2012

The following exhibits were offered and entered into the record on April 3, 2012:

- Exhibit no. 54 Revised plat drawing, Sheet 1 of 1
- Exhibit no. 55 Revised plat drawing, Sheet C2-ALTC
- Exhibit no. 56 Revised plat drawing, Sheet C4-A
- Exhibit no. 57 Letter from DDES to the Applicant and Engineer on issuance of the new Surface Water Design Manual Adjustment for file no. L12V0002
- Exhibit no. 58 Wetland Hydrologic Analysis completed by Goldsmith Land Development Services dated March 2012
- Exhibit no. 59 Letter to the Hearing Examiner from Thomas M. Pors dated March 27, 2012
- Exhibit no. 60 Letter with copy of Expert Rebuttal Testimony of Harold Hagenson from Thomas Pors to the Hearing Examiner dated March 30, 2012
- Exhibit no. 61 Letter to Peter Dye from Ed McCarthy dated February 29, 2012
- Exhibit no. 62 Aerial photo of Jubilee Farms
- Exhibit no. 63 Natural Resource Conservation Service Soil Survey
- Exhibit no. 64 Soil Map of Tall Chief property
- Exhibit no. 65 Staff Revised-Conditions
- Exhibit no. 66 Letter to Lanny Henoeh from James M. Garhart dated March 14, 2012
- Exhibit no. 67 Agreement to Grant Emergency Access Easement with Aldarra Ridge Homeowners Association
- Exhibit no. 68 Letter from John C. Cochenour, President of Patterson Creek Preserve, LLC and Aldarra Ridge Homeowners Association dated March 28, 2012



- Exhibit no. 69 Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated December 29, 2011
- Exhibit no. 70 Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated December 14, 2011
- Exhibit no. 71 Letter to James Zogg from C. J. Shin of Soil & Environmental Engineers, Inc. dated January 12, 2012
- Exhibit no. 72 Excerpt from Ordinance 15032
- Exhibit no. 73 Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated March 26, 2012 on School Bus Emergency Routes
- Exhibit no. 74 School Bus Emergency Travel Route

PTD/vsm



# King County

DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES  
Building and Fire Services Division  
KING COUNTY, WASHINGTON

REVISED PRELIMINARY REPORT TO THE HEARING EXAMINER  
November 29, 2011- PUBLIC HEARING AT 9:30 A.M. (Rescheduled)  
DDES Hearing Room  
1000 Oakesdale Avenue Southwest  
Renton, WA 98055-1219  
Phone: (206) 296-6600

PROPOSED PLAT OF Tall Chief Country Club & Shoreline FILE NO: L04P0032 &  
Substantial Development Permit L07SH003  
PROPOSED ORDINANCE NO: 2011-0404

**A. SUMMARY OF PROPOSED ACTION:**

This is a request for a subdivision of 191.2 acres into 18 lots for detached single-family dwellings and tracts for drainage, critical areas/wetlands, resource/open space tract for future farming and farm housing. The proposed density is 1 dwelling unit per 10 acres. The lot sizes range from approximately 2.4 acres to 5.45 acres in size. See Attachment 1 for a copy of the proposed layout.

**B. GENERAL INFORMATION:**

Developer: John Tomlinson  
1738 Bellevue Way NE  
Bellevue WA 98004

Agent: De-En Lang  
Lang Associates  
10658 Riviera Place  
Seattle WA 98125

STR: 5-24-07

Location: 1313 West Snoquaimie River Road. The site is located on the west side of West Snoquaimie River Road and the Snoquaimie River, north of 19<sup>th</sup> Way.

Zoning: RA-5, RA-10, A-35  
Acreage: 191.2 acres  
Number of Lots: 18  
Density: Approximately 1 unit per 10 acres  
Lot Size: Approximately 2.4 to 5.45 acres in size  
Proposed Use: Single Family Detached Dwellings  
Sewage Disposal: Individual on-site septic  
Water Supply: Ames Lake Water Association  
Fire District: King County Fire District No. 27  
School District: Snoquaimie Valley District #410  
Plat Submittal: December 27, 2004  
Shoreline Submittal: May 8, 2007

C. **HISTORY/BACKGROUND:**

The Subdivision Technical Committee (STC) of King County has conducted an on-site examination of the subject property. The STC has discussed the proposed development with the applicant to clarify technical details of the application, and to determine the compatibility of this project with applicable King County plans, codes, and other official documents regulating this development.

As a result of preliminary discussions, and the applicant's desire to include provisions for future farming, the applicant presented the Technical Committee with a revised plat on May 25, 2011.

D. **THRESHOLD DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE:**

Pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, the responsible official of the Land Use Services Division (LUSD) issued a threshold determination of non-significance (DNS) for the proposed development on September 29, 2011. This determination was based on the review of the environmental checklist and other pertinent documents, resulting in the conclusion that the proposal would not cause probable significant adverse impacts on the environment. Therefore, an Environmental Impact Statement (EIS) was not required prior to proceeding with the review process.

Agencies, affected Native American tribes and the public were offered the opportunity to comment on or appeal the determination for 14 days. At the time this report was mailed, the DNS was not appealed by any party, including the applicant.

E. **AGENCIES CONTACTED:**

1. King County Department of Natural Resources and Parks: The comments from this division have been incorporated into this report.
2. King County Fire Protection Engineer: Fire protection engineering preliminary approval has been granted.
3. Snoqualmie Valley School District: The comments from this district have been incorporated into this report.
4. Ames Lake Water Association: The comments from this district have been incorporated into this report.
5. Washington State Department of Ecology: No response.
6. Washington State Department of Fish and Wildlife: No response.
7. Washington State Department of Natural Resources: No response
8. Washington State Department of Transportation: No response
9. METRO: No response.

F. **NATURAL ENVIRONMENT:**

1. Topography: In general, the site slopes in an easterly direction. Slopes range from approximately 3 percent to 40 percent and greater.
2. Soils: Three surface soils are found on this site per King County Soil Survey, 1973.

AgC – Alderwood gravelly, sandy loam; 6-15% slopes. Runoff is slow to medium and the hazard of erosion is moderate. This soil has a moderate limitation for foundations, due to a seasonally high water table and slope. It has a severe limitation for septic tank filter fields due to very slow permeability in the substratum.

AgD – Alderwood gravelly, sandy loam; 15-30% slopes. Runoff is medium and the erosion hazard is severe. This soil has a severe limitation for foundations due to slope, and a moderate slippage potential. It has severe limitations for septic tank filter fields due to very slow permeability in the substratum.

AkF – Alderwood and Kitsap soils; 25-70% slopes. Runoff is rapid and the erosion hazard is very severe. This soil type has a severe limitation for foundations and septic tank filter fields due to slopes and high slippage potential.

3. Wetland/streams: According to the King County Sensitive Areas Folio, there are 2 mapped wetlands on-site, and the Snoqualmie River is located across West Snoqualmie River Road. The applicant provided a wetland study for the site, which identified 5 Class 2 wetlands and a Class 3 stream located on-site. These features will be placed in sensitive area tracts along with the associated 50 foot buffers.
4. Vegetation: This western portion of the site is moderately wooded with a second and third-growth mixture of coniferous and broad-leaved trees native to the Pacific Northwest, second-story vegetation, and groundcover consists of Northwest native species including salal, sword fern, berry vines, and grasses. The eastern portion of the site is developed as golf course.
5. Wildlife: Small birds and animals undoubtedly inhabit this site; however, their population and species are limited due to nearby development. Larger species may visit this site on occasion. No threatened or endangered species are known to exist on or near the property. A Red-tailed hawk nest was identified in the southeastern portion of the site, just off-site. A 325 foot buffer has been provided from the nest and will be included in the sensitive areas tract (shown as Tract N).
6. Geotechnical: The Sensitive Areas Folio identifies the western area of the site as landslide, erosion and seismic hazard areas. A band of steep slopes traverse the western portion of the site. These slopes will be placed in separate sensitive area tracts and building setbacks provided from the tracts.

**G. NEIGHBORHOOD CHARACTERISTICS:**

The property lies in east-northeast King County, northwest of Fall City. The properties surrounding the site are developed with single-family homes and/or pasture/agriculture uses on parcels ranging from approximately 1 acre (west) to over twenty acres in size. The site itself is currently developed as a golf course and contains several associated outbuildings. These existing structures are proposed to be utilized for farm housing and storage.

**H. SUBDIVISION DESIGN FEATURES:**

1. Lot Pattern and Density: The proposed lot and street layout is in conformance with King County Code 21A. The applicant has utilized the provisions of KCC 21A.14.040 and clustered the proposed lots in the western portion of the site. Per the applicant's calculations, the density allowed in the RA-5 P zone is 4.49 units (44.91 acres), 13.9 units in the RA-10 zone (139.02 acres) and .21 unit in the A-35 zone (7.27 acres), for a total of 18 units.

The following site specific P-suffix or Special district overlay (SDO) applies to this site -

**21A.38.240 Special district overlay - floodplain density.**

A. The purpose of the floodplain density special district overlay is to provide a means to designate areas that cannot accommodate additional density due to severe flooding problems. This district overlay limits development in critical areas to reduce potential future flooding on proposals on RA-5 zoned parcels located within a floodplain density special district overlay:

1. Density is limited to one home per ten acres for any property that is located within a critical area; and
2. All development shall be clustered outside of the identified critical areas, unless the entire parcel is a mapped critical area. (Ord. 15606 § 27, 2006; Ord. 12823 § 19, 1997).

The applicant has clustered the proposed lots outside of critical areas, and the overall density of the site is approximately one unit per 10.62 acres.

Farm Plan: Per King County Code 21A.14.040 (7) The open space tract may be utilized or created as a resource tract for farm or forestry use. The applicant has provided and received approval of a Farm Management Plan for the open space area (Tracts A & R) adjacent to W. Snoqualmie River Road. The applicant proposes seven future farm fields within the Tract, and outside the wetlands and

associated buffers. Future grading permits and shoreline permits/exemptions may be necessary for future road construction associated with the farm use.

2. Internal Circulation/Road Design: The Tall Chief subdivision proposes a long cul-de-sac extending from the West Snoqualmie River Road at the current entrance to the golf course. Due to the length of cul-de-sac and frequent flooding which blocks vehicular access within the site, a road variance application was reviewed by the King County Department of Transportation. The variance evaluated the cul-de-sac design and also the road requirements for emergency access using the existing dirt road which extends westerly through the adjacent campground property.

As shown in Attachment 2, the road variance decision allowed the long cul-de-sac as a private street with a requirement to provide access rights to the southerly property owner. The existing dirt road extending through the campground property will be improved to allow adequate use by residents during flood conditions. The onsite portion of the emergency road is shown on the plat map as Tract E and will be widened and paved 20 feet in width. Offsite portions of the emergency road will have improvements for horizontal curvature to assure adequate access by potential emergency response vehicles. The applicant has secured an easement for using the emergency road and making the required offsite road improvements.

Minimal road improvements are required along the frontage of the plat on West Snoqualmie Valley road. Existing shoulders along the frontage will be restored and in areas where shoulders are absent, a new four feet gravel shoulder will be provided. Vehicular trips from the new subdivision are moderate when compared to the existing use as a golf course and further widening of the frontage road is not required.

3. Roadway Section: The internal roads will be constructed to rural standards in accordance with the 1993 King County Road Standards and the approved variance to the King County Road Standards (See Attachment 2).
4. Drainage: The existing site slopes generally to the west into the Patterson Creek and Snoqualmie River basins. To control storm water, the drainage from roadways and roof tops will be collected and conveyed to large detention ponds shown on the preliminary plat map as Tracts P and Q. The drainage facility will detain storm water and also provide water quality treatment prior to release into the onsite wetlands. The applicant's original proposal included conveyance of all storm water with direct discharge to the Snoqualmie River; however, the drainage design has been revised and a detention pond is now proposed within the site.

During preliminary review, the applicant submitted an application for drainage adjustment to allow one primary drainage facility rather than constructing multiple facilities for different sub basins within the project. As shown in Attachment 3, the adjustment was approved by King County in August 2008. Most of the storm water for the project will be conveyed to the proposed detention ponds; however, the southern portion of the site includes large lot areas which will allow dispersion of roof drainage into natural vegetation rather than collecting runoff into a facility. Forested open space will be recorded within each lot area to assure the long term viability for dispersion of storm water.

The drainage facilities for the project will be designed and constructed in accordance with the 1998 King County drainage manual which includes the Level 2 flow control standard and provisions for basic water quality treatment. After development of the subdivision, King County will own and perform future maintenance of the onsite drainage ponds.

5. Shoreline Substantial Development Permit: The applicant has proposed a shoreline permit for the construction of the access road (SE 10<sup>th</sup> St) and the construction of a drainage facility within shoreline jurisdiction on the site. Note, the existing entrance road from W. Snoqualmie River Road will be modified and improved to comply with the King County Road Standards and approved variance. This is the only feasible access to the site. The shoreline jurisdiction, Conservancy, is associated with the Snoqualmie River located off-site, less than 60 feet east.
  - a. The criteria for authorizing SSDP's as set forth in KCC 25.04.010 are incorporated into the findings by this reference. The Shoreline Management

Substantial Development Permit (SSDP) is being sought to construct the project described above.

- b. The proposed project will be constructed and installed in the floodplain, as depicted in the proposed site plans.
- c. The purpose of the SSDP request is to obtain consistency with the Shoreline Management Act of 1971 (RCW 90.58) and the King County Shoreline Management Master Program (KCSMP).
- d. The proposed utility development is permitted pursuant to the KCSMP, specifically KCC 25.16.030 'General Requirements', KCC 25.16.160 'Utilities', and KCC 25.16.190, 'Excavation, Dredging and Filling'. The preceding code citations are incorporated into this report by reference. Conditions can be imposed that will meet the spirit and intent of the code citations enumerated above.
- e. No public use of the shoreline has been, or will be, provided at the subject property.
- f. The King County Shoreline Master Program (KCSMP) "Utilities Shoreline Use Activities" section (pg. 31-33) contains policies relevant to the applicant's proposed drainage retention/detention system. These policies state:

"Few, if any, utility systems could be installed completely without coming under the jurisdiction of this Master Program. The focus of the policies in this section is on how these utility facilities within the wetland area can be planned, designed, constructed, maintained and rehabilitated to be consistent with the intent of the Shoreline Management Act of 1971."

"The types of utilities covered are communications... water....storm sewers....." (This would include drainage systems).

The following General Policies identified by the KCSMP are potentially relevant to the applicant's proposed drainage system and outfall:

- King County should be consulted prior to or at the time of application for construction of regional utility facilities to be located in or along shorelines or wetlands. (KCSMP Policy #4)

RESPONSE: *The applicant has been in consultation with King County DDES thru the required King County pre-application process and the plat design conceptual planning phase. The project incorporates suggestions from the earlier pre-application and design meetings.*

- Utility corridors crossing shorelines of the state should be encouraged to consolidate and concentrate or share rights-of-way where:
  - a. Public access (including view) would be improved.
  - b. Concentration or sharing would not hinder the ability of the utility systems to be installed, operated or maintained safely.
  - c. Water quality would be as good as or better than if separate corridors were present. (KCSMP Policy #5)

RESPONSE: *The proposed drainage facility system will be located at the western edge/portion of the floodplain. Refer to Section H.4. for further discussion of the drainage proposal.*

- Public access consistent with public safety and security should be encouraged where rights-of-way for regional utility facilities cross shorelines of the state. (KCSMP Policy #6)

RESPONSE: *The Public or private recreational use around the Snoqualmie River will not be impacted by the proposal, because plat construction activities will not take place within the river, nor disrupt any recreational access points.*

- New utility facilities should be located so as to require neither extensive shoreline protection or to restrict water flow, circulation or navigation. (KCSMP Policy #7)

RESPONSE: *New shoreline protection will not be required as a result of the project. Shoreline protection will not be necessary in the future to protect the proposed drainage system.*

- Utility facilities and rights-of-way should be selected to preserve the natural landscape and minimize conflicts with present and planned uses of the land on which they are located. (KCSMP Policy #8)

RESPONSE: *No impacts to the river native vegetation buffer is expected. The project will need to include a plan for retention, restoration, and enhancements of disturbed area and buffers.*

- New utility routes should be designed to minimize detrimental visual impact from the water and adjacent uplands. (KCSMP Policy #9)

RESPONSE: *No visual impacts are anticipated due to the 'at grade' construction of the proposed road, in approximately the same location as the existing access, drainage system and vegetative enhancements. Retention of specimen trees shall be emphasized*

- g. KC DDES did not receive any comment letters during the 30-day comment period required for the Shoreline Substantial Development Permit.

**I. TRANSPORTATION PLANS:**

1. Transportation Plans: The subject subdivision is not in conflict with the King County Transportation Plan, nor with the non-motorized and trail plans.
2. Subdivision Access: The site will gain primary access from West Snoqualmie River Road, which adjoins the east boundary. Another emergency access will be provided through the adjacent campground to the west/northwest.
3. Traffic Generation: It is expected that approximately 180 vehicle trips per day will be generated with full development of the proposed subdivision. This calculation includes service vehicles (i.e., mail delivery, garbage pick-up, school bus) which may currently serve this neighborhood, as well as work trips, shopping, etc.
4. Adequacy of Arterial Roads: This proposal has been reviewed under the criteria in King County Code 14.70, Transportation Concurrency Management; 14.80, Intersection Standards; and King County Code 14.75; Mitigation Payment System.

a. King County Code 14.70 – Transportation Concurrency Management: The proposal was exempted from a Transportation Certificate of Concurrency (November 4, 2003 letter), as the golf course is being replaced by single family residences. Per King County Code 14.70.280, Section A9, "any development that will have no transportation impact and that will not change traffic volumes and flow patterns in the afternoon peak travel period is exempt from Transportation Concurrency."

b. King County Code 14:80 – Intersection Standards: Primary access to the proposed subdivision is provided by a connection to West Snoqualmie River road.

The internal roads will function as private streets and be constructed in accordance with the King County Road Standards and the approved variance (see Attachment 2).

c. King County Code 14.75 – Mitigation Payment System: King County Code 14.75, Mitigation Payment System (MPS), requires the payment of a traffic impact mitigation fee (MPS fee) and an administration fee for each single-family residential lot or unit created. MPS fees are determined by the zone in which the site is located. This site is in Zone 142 per the MPS/Quartersection list. MPS fees may be paid at the time of final plat recording, or deferred until

building permits are issued. The amount of the fee will be determined by the applicable fee ordinance at the time the fee is collected.

**J. PUBLIC SERVICES:**

1. Schools: This proposal has been reviewed under RCW 58.17.110 and King County Code 21A.28 (School Adequacy).
  - a. School Facilities: The subject subdivision will be served by Fall City Elementary, Chief Kanin Junior and Mt Si Senior High School, all located within the Snoqualmie Valley School District.
  - b. School Impact Fees: King County Code 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 K.C.C. 21A.43 will be a condition of subdivision approval. Currently, school mitigation fees for single family residences in the Snoqualmie Valley School District is \$8,504. per lot.
  - c. School Access: The District has indicated that the future students from this subdivision will be bussed to the schools. It is anticipated that a bus stop will be located at the entrance to the plat along W. Snoqualmie River Road at SE 10<sup>th</sup> Street.
2. Parks and Recreation Space: The nearest public parks are located east, within Fall City and greater than one mile from the site. K.C.C. 21A.14 does not require subdivisions in the RA zone classification to provide on-site recreation space or pay a fee to the Parks Division for establishment and maintenance of neighborhood parks.
3. Fire Protection: The Certificate of Water Availability from the Ames Lake Water Association indicates that water is not presently available to the site in sufficient quantity to satisfy King County Fire Flow Standards. Prior to final recording of the plat, the water service facilities must be reviewed and approved per King County Fire Flow Standards.

The subdivision is exempt from the Fire Flow Standards if all lots are greater than 35,000 square feet in area, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres (per K.C.C. 17.08.030). However, if fire hydrants are provided the installation of hydrants and water mains must be under permit from King County Fire Engineering.

Prior to final recording of the plat, the water service facilities must be reviewed and approved per King County Fire Flow Standards.

**K. UTILITIES**

1. Sewage Disposal: The applicant proposes to serve the subject subdivision by means of a individual on-site septic systems.
2. Water Supply: The applicant proposes to serve the subject subdivision with a public water supply and distribution system managed by Ames Lake Water Association. A Certificate of Water Availability, dated December 9, 2004 and update November 22, 2010, indicates this district's ability to serve the proposed development. However, the water association is not able to provide adequate fire flow, therefore, sprinklers may be required in future residences, subject to DDES Fire Marshall review.

**L. COMPREHENSIVE AND COMMUNITY PLAN:**

1. Comprehensive Plan: This plan is governed by the 1994 King County Comprehensive plan which designates this area as Rural. The proposed subdivision is not in conflict with the policies of the Comprehensive Plan.



2. Community Plans: The subject subdivision is located in the Snoqualmie Community Planning Area. The subject subdivision is not in conflict with the goals, guidelines, and policies of the Snoqualmie Community Plan.

**M. STATUTES/CODES:**

If approved with the recommended conditions in this report, the proposed development will comply with the requirements of the County and State Platting Codes and Statutes, and the lots in the proposed subdivision will comply with the minimum dimensional requirements of the zone district.

**N. CONCLUSIONS:**

The subject subdivision will comply with the goals and objectives of the King County Comprehensive Plan and will comply with the requirements of the Subdivision and Zoning Codes and other official land use controls of King County, based on the conditions for final plat approval.

**O. RECOMMENDATIONS:**

SHORELINE RECOMMENDATION: Approve subject to conditions (see below).

PRELIMINARY PLAT RECOMMENDATION: It is recommended that the subject subdivision, revised and received May 25, 2011, be granted preliminary approval subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. 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.
3. The plat shall comply with the base density and minimum density requirements of the RA-5, RA-10 and A-35 zone classifications. All lots shall meet the minimum dimensional requirements of the zone classification or shall be 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 the Department of Development and Environment Services.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. 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.

4. The applicant must obtain final approval from the King County Health Department, prior to recording.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code. Sprinklers may be required for future residences, subject to King County Fire Protection engineer review and approval.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.

b. Current standard plan notes and ESC notes, as established by DDES 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 #\_\_\_\_\_ on file with DDES and/or the Department of Transportation. 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 or dispersion systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

d. Storm water facilities shall be designed using the KCRTS level 2 flow control standard. Water quality facilities shall also be provided using the basic water quality protection menu. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County unless portions of the drainage tract are used for recreation space in accordance with KCC 21A.14.180.

e. A drainage adjustment regarding conveyance of storm water to one facility was approved in August 2008 (File L07V0057). The conditions of approval for the adjustment shall be addressed on the final engineering plans including the requirements for on-site bypass of storm water as referenced in condition 2 for the adjustment decision. The design criteria for bypass of storm water is described on pages 1-36 and 3-52 in the drainage manual.

f. For the southern portion of the site within the Patterson Creek drainage basin, the subdivision includes designs for using the Forested Open Space (FOS) flow control exemption as outlined in the drainage manual for Core Requirement No. 3. The final engineering plans shall show all applicable requirements including the 65% forested open space boundaries and flow control BMP's for dispersion of storm water. If portions of the site proposed for FOS were previously cleared land areas, a mitigation plan shall be submitted to restore the vegetation and soils to meet the criteria for FOS.

g. As required by Special Requirement No. 2 in the drainage manual, the 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat. Compensatory storage is required for any proposed fill or decrease of natural floodplain storage.

h. A permit from the Washington State Fisheries Department may be required for the proposed site improvements adjacent to streams and/or wetlands. Any required permits shall be submitted to King County prior to engineering plan approval.

i. The final engineering plans shall include designs to address dewatering of groundwater for site development as discussed in the geotechnical reports prepared for the project. A geotechnical report shall be submitted with the engineering plans to address soil conditions, grading, and conveyance of groundwater.

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:

a. During preliminary review the applicant submitted road variance applications regarding the length of cul-de-sac and other design requirements for the roadways (See File No. L04V0109 and L09V0043). The final road improvements shall comply with the conditions of approval for the variance decision.

b. The onsite cul-de-sac labeled as SE 10<sup>th</sup> Street/ 304<sup>th</sup> Ave SE shall be improved as a rural subaccess street except as otherwise approved by the King County road variance process. The roadway serving lots 13-18 shall be improved to rural minor access standards. As allowed by the road variance decision, the onsite roadway shall be private and access rights will be provided to the southerly property owner.

The final plat shall include provisions for ownership and maintenance of the private road.

c. To provide emergency access for the subdivision, the existing gravel road shown on the preliminary plat map within easement #6094030 shall be improved to meet King County road standards except as allowed by the variance decision referenced above. The onsite portion of the emergency access shall include a 20 foot wide paved roadway. The offsite portions shall also be improved 20 feet wide with gravel surfacing and improvements for horizontal curvature on the campground property. An emergency access easement has been obtained by the applicant to make the offsite improvements and allow future use of the roadway. Tract E for emergency access shall be owned and maintained by the homeowners association or other private entity as allowed by King County.

d. The final engineering plans shall demonstrate compliance with standards for entering sight distance at the project entrance with West Snoqualmie River Road.

e. A 4-foot gravel shoulder is required for the plat frontage along West Snoqualmie River Road. The existing shoulder can be restored where feasible to provide the required shoulder width. The final engineering plans shall show the location of any existing shoulders and determine what areas require new improvements to achieve the four foot shoulder width.

f. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.

9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Lots within this subdivision are subject to King County Code 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.
12. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.
  - a. The Class II wetlands shall have a 50-foot buffer as shown on the preliminary plat map dated May 25, 2011.
  - b. All sensitive areas and their buffers shall be placed in Sensitive Area Tracts for long term protection.
  - c. Signage shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.
  - d. A 15-foot building set back line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.
  - e. Sensitive area tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.

- f. Road crossings of wetlands and buffers maybe allowed per KC 21A.24.330. Construction techniques such as retaining walls maybe required at wetland crossings to limit wetland impacts. A final mitigation plan shall be required during engineering review.
- g. The outer 25 feet of buffer on the eastern side of the wetlands may be used for farming activities as defined in the farm management plan. Fencing shall be installed along the wetland tract boundaries and the remaining buffer areas shall be planted with native vegetation.
- h. Wetland hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how wetland hydrology will be maintained after the site is developed.
- i. The engineering plans shall be routed to Critical Areas Staff for review of compliance to the above conditions.

**Geotechnical**

- j. Determine the top, toe, and slides of 40% slopes by field survey. Provide a 50-foot buffer for these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by a DDES geologist, prior to engineering plan approval.
- k. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in K.C.C. 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in K.C.C. 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
- l. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

- 13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the open space and/or sensitive area tract(s).
- 14. Notes specific to the approved Farm Management Plan (March 2009) shall be placed on the final plat. The notes shall indicate what may be allowed, restrictions, etc., subject to DDES review and approval.

## RECOMMENDATIONS – Shoreline Substantial Development Permit

APPROVE Shoreline Management Substantial Development Permit No. L07SH003 subject to the following conditions:

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090). The following requirements shall apply to all permits.
  - a. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as a part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as a part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
  - b. Where neither local government nor the department include specific provisions establishing time limits on a permit as a part of action on the permit, the following time limits shall apply:
    - i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
    - ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
    - iii. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
    - iv. When permit approval is based on conditions, such conditions shall

be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, that an alternative compliance limit may be specified in the permit.

- v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
  - vi. Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.
5. Construction shall occur in conformance to the revised project plans and information received by King County on May 25, 2011.
  6. Any subsequent changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
  7. If required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish & Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.
  8. If required, an U.S. Army Corps of Engineers Permit "Corps Permit" shall be obtained from the U.S. Army Corps of Engineers prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit. In any event, erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
  9. Issuance of this Shoreline Management Substantial Development Permit does not grant the right to trespass upon private property.
  10. Prior to work, the applicant shall obtain final approval for the pending plat of Tall Chief (L04P0032) and abide by any conditions set forth therein. Conditions of said plat approval shall be considered conditions of this Shoreline Permit.
  11. The applicant shall control erosion of disturbed areas by implementing Best Management Practices. The applicant's erosion and sedimentation control plan shall include the following as warranted: installation of silt dams or catchments between work areas and all sensitive areas; the use of mulch and hydroseeding; planting or disturbed areas with native vegetation; and any measures determined to be appropriate. Appropriateness of fencing and location shall be approved and verified by a King County representative prior to commencement of any clearing, grading, or construction activities.
  12. Conduct refueling activities within a designated refueling area at a distance of not less than 200 feet away from the lake and any designated wetland areas. Additionally, drip pans shall be fitted with absorbent pads and placed under all equipment being fueled. All equipment, if kept on site overnight, shall be parked at least 200 feet away from the lake and any designated wetland areas.
  13. Daily inspection shall be provided by an erosion control specialist to ensure the adequacy and maintenance needs of all erosion and sedimentation control measures. Copies of the reports shall be submitted to the King County DDES. If the erosion control specialist determines there is an erosion or sedimentation problem, King County DDES shall be notified immediately and immediate corrective measures shall be implemented.

14. All manmade debris from the project within the construction zone shall be removed and disposed of at a location licensed for such disposal.
15. A copy of the approved shoreline plans shall be kept on-site at all times during construction.
16. Within 30 days after completion of the subject R/D drainage system work, at least six (6) photographs of the completed drainage corridor taken from different directions shall be provided to DDES – Shorelines.
17. Thru the final plat approval process, and prior to any clearing and grading, within "Tract A", a retention, restoration, and vegetative enhancement plan shall be provided for said tract to King County for their approval. Said plan shall clearly identify specimen trees that are proposed for retention and those which are to be removed, together with an explanation as to the necessity for such removal.
18. Pursuant to KCC 25. 16.190 (A), a King County Clearing and Grading (C/G) permit shall be obtained prior to work. Said C/G permit shall implement the conditions of this SSDP. Additional conditions of the C/G permit shall be considered conditions of this SSDP.

**NOTE:** The decision of the King County Hearing Examiner may be appealed to the State Shoreline Hearings Board. Information on appeal procedures may be obtained from the Shoreline Hearings Board at (360) 459-6327 or the Washington State Department of Ecology Shoreline Appeals Coordinator at (360) 407-6528. Requests for review by the Hearings Board must be received by the Shoreline Hearings Board within twenty-one (21) days of the "date of filing." The "date of filing" is the date the local decision on the permit is received by the Department of Ecology.

**Q. OTHER CONSIDERATIONS:**

1. The subdivision shall conform to K.C.C. 16.82 relating to grading on private property.
2. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
3. 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 (NPDES) Permit from WSDOE.
  - c. Water Quality Modification Permit from WSDOE.
  - d. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.

**TRANSMITTED TO PARTIES LISTED HEREAFTER:**

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PCS BFS D MS: OAK-DE-0100

DUNNE, WILLIAM & ABBY  
1534 W. SNOQUALMIE RIVER RD SE FALL CITY, WA 98024

DYE PETE SR ENGR  
ERS LUSD MS: OAK-DE-0100

FISCHER FOREST W/GROEN STEVENS & KLING  
11100 NE 8<sup>TH</sup> ST SUITE 750 BELLEVUE WA 98004

GILLEN NICK ENV SCIENTIST  
CAS LUSD MS: OAK-DE-0100

GOLL SHIRLEY ASII  
PCS BFS D MS: OAK-DE-0100

HENDERSON, GUS & SHIRLEY  
1530 W SNOQUALMIE RD SE FALL CITY, WA 98024

JOHNSON MOLLY SUPERVISING DEV ENGR  
ERS LUIS MS: OAK-DE-0100

KC FIRE DISTRICT # 27  
P.O. BOX 609 FALL CITY WA 98024-0609

KC HEALTH DEPARTMENT  
EASTGATE OFFICE MS: EGT-PH-0100

KC HEARING EXAMINER'S OFFICE  
ATTN: GINGER/VONETTA MS: KCC-CC-1200

KELLER JANET & STEVE  
P.O. BOX 1377 FALL CITY WA 98024

LANG ASSOCIATES  
10658 RIVIERA PL NE SEATTLE WA 98125

LANGLEY KRIS SR ENGR TRAFFIC REV  
ERS LUSD MS: OAK-DE-0100

LEWIS JARROD SUPERVISOR  
PCS BFS D MS: OAK-DE-0100

MONAHAN, JOE E.  
29292 SE 8<sup>TH</sup> FALL CITY, WA 98024

OFFICE OF THE ATTY GENERAL TEMPLE OF JUSTICE ECOLOGY DIV  
P.O. BOX 40117 OLYMPIA WA 98504-0117

PARKS CINDY  
2727 303<sup>RD</sup> AVE SE FALL CITY WA 98024

PORS THOMAS LAW OFFICE OF THOMAS M PORS  
1700 SEVENTH AVE, SUITE 2100 SEATTLE WA 98101

SHORELANDS & ENVIRONMENTAL ASSISTANCE PROGRAM  
DOE NW REGIONAL OFFICE 3190 160TH AVE SE BELLEVUE WA 98008-5452

SIENNA, BOB  
623 W SNOQUALMIE RIVER RD SE CARNATION WA 98014

SNOQUALMIE TRIBE  
P.O. BOX 969 SNOQUALMIE WA 98065



TALL CHIEF GOLF INC.  
1313 W SNOQUALMIER RIVER RD SE FALL CITY, WA 98024

TOMLINSON, JOHN TALL CHIEF GOLF INC. C/O MR. JIM ZOGG  
1738 BELLEVUE WAY NE BELLEVUE, WA 98004

WHEELER DOUGLAS LANE POWELL PC  
1420 FIFTH AVENUE SUITE 4100 SEATTLE WA 98101-2238

WHITING KELLY ENGR IV  
KC DOT ROAD SERVICES DIVISION MS: KSC - TR - 0231

WRIGHT, CHARLIE  
29825 SE 15TH PLACE FALL CITY, WA 98024

YASMOOTHR THAM ASII  
LUIS LUSD MS: OAK-DE-0100

ZOGG, JIM  
1738 BELLEVUE WAY NE BELLEVUE, WA 98004





**King County**

**Road Services Division**  
Department of Transportation  
KSC-TR-0313  
201 South Jackson Street  
Seattle, WA 98104-3856  
206-296-6590 Fax 206-296-0566  
TTY Relay: 711  
www.kingcounty.gov/roads

May 20, 2011

Hal Hagenson, P.E.  
6484 - 48th Avenue SW  
Seattle, WA 98136

RE: Road Variance L09V0043 - Tall Chief Plat - Related File L04P0032

Dear Mr. Hagenson:

Thank you for your application for variances from the 1993 King County Road Standards (KCRS). You requested variances from Sections 2.03, 5.11, and Drawing Number J-006 concerning the shoulder width on the frontage road West Snoqualmie River Road Southeast, modifications to rural road cross-sections for the access road, and an emergency connection to the west. The modifications are for one directional cross slope and to allow the rural roads with reduced pedestrian walkways. A prior variance allowed the long cul-de-sac length of the access road that starts at West Snoqualmie River Road Southeast and stubs to the south property line of the plat. That variance, L04V0109, is still valid.

This plat will replace the existing Tall Chief Golf Course located on the west side of West Snoqualmie River Road Southeast, a rural collector arterial. The plat frontage on West Snoqualmie River Road Southeast has a 4-foot paved shoulder on all but the northerly 700 feet and the southerly 200 feet. The applicant proposes to leave the 1,600-foot paved shoulder and restore the 4-foot gravel shoulder on the last 900 feet. Tom Minichillo, archeologist for the King County Department of Transportation, confirmed that the proposal would be consistent with the goals of the West Snoqualmie River Road Heritage Corridor. The KCRS allow for a 4-foot shoulder on a low volume collector arterial if the traffic count is under 400 ADT. The applicant provided traffic counts ranging from 185 to 299 ADT. Consultation with the Department of Development and Environmental Services (DDES) confirmed that the applicant is required to provide a 4-foot shoulder along the frontage. No variance is necessary for the 4-foot shoulder design, and DDES will be determining whether to restore or pave existing gravel shoulders.

The emergency connection to the west is proposed as a 20-foot-wide paved road. The DDES is requiring that the emergency access road design meet the KCRS for a minor access street. This emergency access road will be gated and used when access on West Snoqualmie River

3

ATTACHMENT 2  
1 OF 3

Road Southeast is inundated with floodwater. No shoulders or gravel walkways are proposed, and the road will be used only in emergencies or when the County frontage road is flooded.

The applicant proposed a 5-foot pedestrian gravel path on only one side of the rural subaccess street into the site. This proposed private access road is of considerable length at over 6,000 feet, and the 18 rural lots are spread out along the corridor. Much of the single proposed walkway will be along the east, where residential homes abut the road. Sensitive areas tracts extend along most of the west side of the road. Minimum pedestrian volumes are projected, and the single pedestrian path should be acceptable. The road is proposed with one directional slope (no crown) to facilitate water quality, with flows directed across a filter strip. The private road will serve 19 lots with the potential for 24 lots if the road is extended through to the south in the future.

I approve the following variances to implement the proposed access and emergency access road designs:

1. The emergency access road with the proposed 20-foot paved cross section without shoulder is acceptable. A variance is also approved to reduce roadside obstacles, the rockeries, to 2 feet from extruded curb and to allow a non-crowned one directional road section. The sag curve at the bottom intersection approach must be illuminated to meet minimum nighttime stopping sight distance.
2. The on-site subaccess road is approved as private, with one directional cross slope and a gravel walking path on one side only. The applicant will be providing road access rights to the southerly property owner to allow for future road extension and connection for a loop road. The proposed shoulder and ditch sections on the first one-third-mile of the entry road must fully meet the KCRS for shoulders.

A condition of variance approval is to relocate the utility pole near station seven on West Snoqualmie River Road Southeast so that the pole meets roadside obstacle setback standards. In addition, the project is conditioned to restore the paved shoulder to 4 feet where the pole had been located.

This decision applies only to KCRS identified in the variance request. All other design requirements in the KCRS and other regulations, such as surface water management and zoning, must still be satisfied for a land use permit application. The applicant retains the rights and privileges afforded by King County Code and adopted Public Rules pertaining to road variance processing (KCC 14.42, PUT 10-2). This variance decision is valid for one year from date of letter unless an associated land use permit is pending or submitted within the one-year period. In these cases, the variance decision is valid for the duration of the permit processing.

ATTACHMENT 2  
2 OF 3

Hal Hagenson, P.E.  
May 20, 2011  
Page 3

A copy of staff's analysis, findings, and conclusions is enclosed. If you have any questions, please call Craig Comfort, P.E., Senior Road Variance Engineer, Traffic Engineering Section, at 206-263-6109.

Sincerely,

*Matthew Nolan for*

Paulette Norman, P.E.  
Interim Division Director  
County Road Engineer

Enclosure

cc: Molly Johnson, P.E., Development Engineer, Land Use Services Division (LUSD),  
Department of Development and Environmental Services (DPDES)  
Pete Dye, P.E., Senior Engineer, Engineering Review Section, LUSD, DDES  
Matthew Nolan, P.E., County Traffic Engineer, Traffic Engineering Section (TES),  
Road Services Division (RSD), Department of Transportation (DOT)  
Fatin Kara, P.E., Supervising Engineer, TES, RSD, DOT  
Kris Langley, Senior Engineer, TES, RSD, DOT  
Craig Comfort, P.E., Senior Road Variance Engineer, TES, RSD, DOT

ATTACHMENT	<u>2</u>
<u>3</u>	OF <u>3</u>



**King County**

**Department of Development  
and Environmental Services**  
900 Oakesdale Avenue Southwest  
Renton, WA 98057-5212  
206-296-6600 TTY 206-296-7217  
[www.kingcounty.gov](http://www.kingcounty.gov)

August 14, 2008

De-En Lang  
Lang Associates Inc.  
10658 Riviera Place NE  
Seattle, WA 98125

Hal Hagenson, P.E.  
Hagenson Consultants, LLC  
6484 48<sup>th</sup> Ave SW  
Seattle, WA 98136

RE: Tall Chief Subdivision 1998 KCSWDM Adjustment Request (File No. L07V0057)

Dear Applicant and Engineer:

The Land Use Services Division, Engineering Review Section, has completed review of the adjustment request for the Tall Chief subdivision. You are requesting approval for an adjustment from the 1998 King County Surface Water Design Manual (KCSWDM) Core Requirement No. 1, Section 1.2.1, Discharge at the Natural Location. Our review of the information and a site visit provides the following findings:

1. The proposed subdivision is located near the intersection of Snoqualmie River Road SE and Tall Chief Road. The 18 lots, 191.20 acres, proposed short plat subdivision is filed under Land Use Services Division (LUSD) file number L04P0032.
2. The Tall Chief subdivision is located in the Snoqualmie River and Patterson Creek sub-basins of the Snoqualmie River Basin. The site is subject to the Level II flow control and the Basic water quality requirements of the 1998 KCSWDM.
3. The property is located partially on the valley floor and along its western hill side. The hillside is heavily wooded and contains areas of steep slopes. Very little off-site flow appears to enter the property. The property is split into 2 basins. The northerly 75% of the project lies in the Snoqualmie River sub-basin. The southerly 25% of the project lies in the Patterson Creek sub-basin. Both basins are located in Landslide Hazard Drainage Areas and contain slopes exceeding 40%. The Snoqualmie River sub-basin drainage is intercepted into a series of channels and wetland ponds lying at the base of the hillside. Drainage from this channel is conveyed northerly to its natural discharge point near the northeast portion of the project boundary and eventually toward the offsite "Green" slough and the Snoqualmie River. The Patterson Creek sub-basin storm water run-off flows through several steep ravines located near the east property boundary to the slough

ATTACHMENT	<u>3</u>
<u>1</u>	OF <u>5</u>

on the valley floor. The slough is thought to flow towards Patterson Creek, some 600 to 800 feet east of the SE property corner. Patterson Creek then joins the Snoqualmie River within 1,000 feet northeast of this point.

4. The proposal is to divert 17.6 acres of the Patterson Creek subbasin to the Snoqualmie River subbasin to the north, directly discharging to the Snoqualmie River in a piped storm water system. The direct discharge conveyance system would collect drainage from the proposed Tall Chief and Aldera Ridge Roads.
5. The Snoqualmie River subbasin portion of the project qualifies for the Direct Discharge Exemption #6 for Flow Control per KCSWDM Section 1.2.3.
6. The Patterson Creek subbasin portion of the project qualifies for the Forested Open Space Exemption for Rural Residential Projects #5 for Flow Control per KCSWDM Section 1.2.3.
7. The Patterson Creek subbasin portion of the project qualifies for the Forested Open Space Exemption for Rural Residential Projects #3 for Water Quality per KCSWDM Section 1.2.8.
8. 2006 Draft FEMA Flood Insurance Rate Map updates indicate the Snoqualmie River and Patterson Creek 100-year floodplains are concurrent at a point upstream from where the project drainage discharges from the site.
9. No decorative ponds or shallow wells have been identified that would be affected by the proposed diversion.
10. The Level One Drainage Analysis identified no restrictions or problems associated with the proposed discharge location.
11. A consolidation of facilities for the proposed subdivision will be more economical in long term maintenance.

Based on these findings, we hereby approve this adjustment to allow the diversion of runoff to an on-site facility (draining to the Snoqualmie River) with the following conditions:

1. The release rates for the detention facility will be based on the land naturally draining from the site in all directions.
2. The volume for the detention facility will be based on all flows directed to the facility at full development under current zoning. The allowed release rate will be reduced by any undetained flows that would bypass the proposed subdivision drainage facilities. The detention volume shall be sized using the Level 2 flow control standard in the 1998 KCSWDM. A 10 to 20 percent volumetric factor of safety must be applied to all storm

events requiring detention. The design Technical Information Report shall state the factor of safety selected and the basis of that determination.

3. Water quality facilities must be sized based on the entire proposed subdivision draining to the facilities including any required frontage improvements.
4. The onsite or offsite drainage facilities must be located in a public right-of-way, recreation space tract with easement or storm drainage tract dedicated to King County.
5. Conveyance (from the R/D facility) in a closed pipe system must be in accordance with Core Requirement #4.
6. Additional storm drainage requirements identified by SEPA or the plat hearing review will apply to this project. The applicant retains all rights and privileges afforded in Section 1.4.

If you have any further questions regarding the SWDM variance or the design requirements, please contact Claire Jonson at 206-296-6641.

Sincerely,

*Claire Jonson, P.E.*  
for  
Raymond E. Florent, P.L.S.  
Acting Supervisor, Engineering Review Section  
Land Use Services Division

*Mark J. Bergam*  
Mark Bergam, P.E.  
Site Engineering and Planning Supervisor  
Building Services Division

cc: Curt Crawford, P.E., Managing Engineer, Local Drainage Services, KCDNR  
Pete Dye, P.E., Engineer III, Engineering Review Section, LUSD  
Trishah Bull, Project/Program Manager III, Current Planning Section, LUSD  
Claire Jonson, P.E., Engineer III, Engineering Review Section, LUSD

ATTACHMENT 3  
3 OF 5





King County  
 Department of Development and Environmental Services  
 900 Oakesdale Avenue Southwest  
 Renton, Washington 98055-1219  
 206-296-6600 TTY 206-296-7217

Web Date: 11/18/2005

**SURFACE WATER DESIGN MANUAL  
 REQUIREMENTS / STANDARDS  
 ADJUSTMENT REQUEST**

For alternate formats, call 206-296-6600.

Project Name: Tail Chief Plat	DDES Project File No: L04P0032 DDES Engineer/Planner Name: <b>LOTV0057</b> Pete Dye
Project Address: 1313 W. Snoqualmie River Road	Design Engineer: Hal Hagenson, P.E. Phone: 206-935-6168
Applicant/Agent: De-Ea Lang Lang Associates Phone: 206-360-8880	Signature of Design Engineer: <i>Hal Hagenson</i> Date: 6/20/07
Signature of Applicant/Agent: <i>[Signature]</i> Date: 6-21-07	Engineering Firm Name: Hagenson Consultants, LLC
Address: 10858 Rivers Place NE Seattle, WA 98125	Address: 6434 48th Ave SW City, State, ZIP: Seattle, WA 98136

**INSTRUCTIONS TO APPLICANT/DESIGN ENGINEER:**  
 Please be sure to include all materials (Level One Downstream Analysis, Certification of Applicant Status, sketches, photos, and maps) that may assist in complete review and consideration of this adjustment request. Failure to provide all pertinent information may result in delayed processing and denial of request. Please submit two complete copies of this request, application form, and applicable fee to the Department of Development and Environmental Services, 900 Oakesdale Ave. SW, Renton, WA 98055-1219. For more information, contact Mark Bergam, P.E., at 206-296-7270.  
 \*\*Applicant/Agent is the individual financially responsible for all fees

**REFER TO CHAPTER 1, SECTION 1.4 OF THE SURFACE WATER DESIGN MANUAL FOR ADJUSTMENTS**

**DESCRIPTION OF ADJUSTMENT REQUEST:**  Standard  Complex  Experimental  Blanket  Pre-application  
 Adjustment requested to allow the diversion of a portion of the Patterson Creek sub-basin of the property to be direct discharged to the Snoqualmie River.

**APPLICABLE VERSION KCSWDM:**  1990 (11/795)  1998 (9/98)  2005 (1/05)  
 (Note: the term "variance" replaced by "adjustment")

**APPLICABLE SECTION(S) OF STANDARDS:**  
 KCSWDM 1.2.1 Discharge at the Natural Location

**JUSTIFICATION PER KCSWDM SECTION 1.4.2:**  See attachments listed below.  
 (See Attached Exhibit A)

**RECEIVED**  
 JUN 26 2007  
 K.C. D.D.E.S.

**AUTHORIZATION SIGNATURES:**

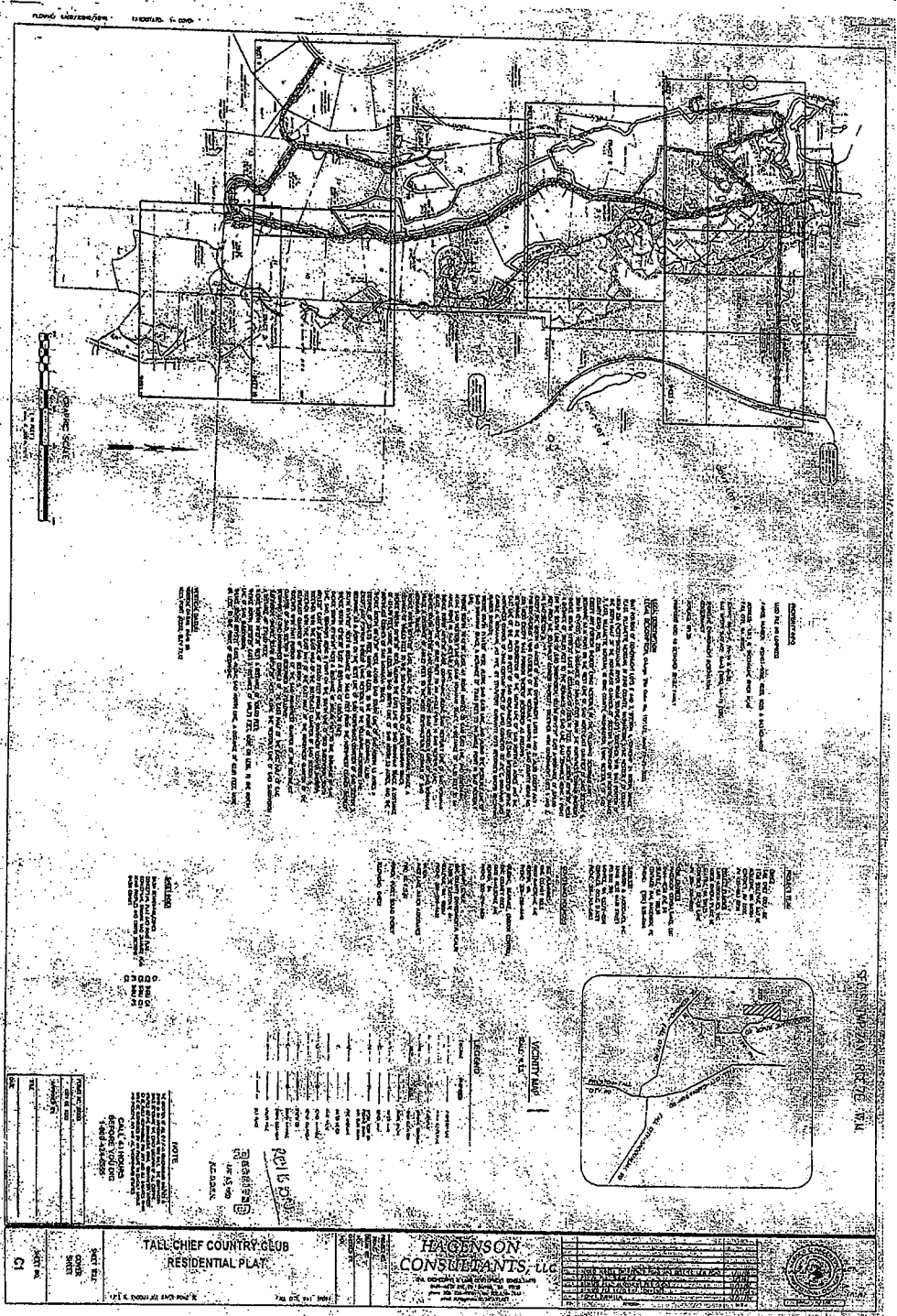
**DETERMINATION:**  Approval  Conditional Approval (see below)  Denial  
 DNRPAVLRD Approval Signed: \_\_\_\_\_ Date: \_\_\_\_\_ (Experimental & Blanket only)  
 DDDES Staff Recommendation Signed: *Clare Jones* Date: *8.14.08*  
 Conditions of Approval:  
 See attached memo dated: *8.14.08*

**DDDES DIRECTOR / DESIGNER:**

DDDES, LUSD, Engineering Review Supervisor  
 Signed: *Clare Jones* Date: *8.14.08*  
 DDDES, BSD, Site Engineering & Planning Supervisor  
 Signed: *Mark J. Bergam* Date: *8.14.08*

Check out the DDDES Web site at [www.metrokc.gov/ddes](http://www.metrokc.gov/ddes)  
 SurWaterDesManReqStdsAdjReqFORM11227-05 k:\info-surwa-adj\p.d 11/18/2005 Page 1 of 1

ATTACHMENT 3  
4 OF 5



ATTACHMENT 5  
5 OF 5



REVISED CONDITIONS

3/30/12

O. RECOMMENDATIONS:

SHORELINE RECOMMENDATION: Approve subject to conditions (see below).

PRELIMINARY PLAT RECOMMENDATION: It is recommended that the subject subdivision, revised and received March 9, 2012, be granted preliminary approval subject to the following conditions of final approval:

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1. Compliance with all platting provisions of Title 19A of the King County Code.
2. 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.
3. The plat shall comply with the base density requirements of the RA-10 and A-35 zone classifications. All lots shall meet the minimum dimensional requirements of the RA-10 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

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Any plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. 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.

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4. The applicant must obtain final approval from the King County Health Department, prior to recording.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant has agreed to address the concerns of King County Fire Protection District No. 27, as expressed in correspondence dated 1/21/10 and 1/3/12 from the District, and dated 12/14/11 and 12/29/11 from the applicant's engineer, Hagenson Consultants. Therefore, the following conditions shall be met:

- a. All new buildings constructed in the subject plat which require a building permit shall contain a fire protection sprinkler system. The sprinkler system shall comply with

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Exhibit No. 65  
Item No. L04 P0032  
Received 1-3-12  
King County Hearing Examiner 112

the King County Fire Code requirements, with the exception of compliance with the fire flow standards. The requirement to install a sprinkler system shall not apply to agricultural related buildings constructed in Tracts A and R, unless otherwise required by County or State regulations.

- b. Only non-combustible roof systems shall be used on all new buildings constructed in the subject plat, including outbuildings.
- c. To address concerns related to forest fires, a minimum 30-foot-wide defensible space shall be provided around all new buildings constructed in the subject plat. Plantings in the defensible space shall be limited to those specific plant varieties listed in the brochure entitled "Fire Resistant Landscape Plants for the Puget Sound Basin." For any trees not listed in the brochure whose trunk is located outside of the 30-foot-wide defensible space, these trees shall be cleared of limbs that extend into the defensible space up to a height of 10 feet from the ground surface. Note, the above-noted brochure shall both be referenced on the final recorded plat of Tall Chief, and recorded therewith.
- d. Driveways on each of the lots in the subject plat shall have a minimum width of 12 feet and shall not exceed a 15% grade. The driveways shall meet the surfacing and radius requirements of the King County Fire Code. For those driveways which exceed 150 feet in length, measured along the centerline of the driveway from the centerline of the public road serving the lot to the building being served, shall provide a fire truck turnaround (hammer-head). The turnaround shall meet the requirements of KCC 17.04.400 or Figure 2-011 of the 2007 King County Road Design and Construction Standards.
- e. An emergency access connection shall be provided from SE 23<sup>rd</sup> St. in the subject plat through the adjacent plat of Aldarra Ridge, via SE 23<sup>rd</sup> Place in Aldarra Ridge (aka Tract E of Aldarra Ridge). Prior to engineering plan approval for the subject plat, the applicant shall provide a copy of a recorded easement which allows for emergency access for both vehicles and pedestrians from the subject plat through Aldarra Ridge, as well as access by emergency vehicles. The availability of emergency pedestrian access for school children from Tall Chief and access by emergency vehicles shall not be predicated on whether the northerly emergency access referred to in Condition 8c below is traversable. (See Condition 8f below for required improvements to SE 23<sup>rd</sup> Place.)

- f. A minimum of two fire hydrants shall be provided within the subject plat, if their installation is permitted by the Ames Lake Water Association. The location of the hydrants shall be determined by King County Fire District No. 27. (Note, the hydrants are not required to comply with the King County fire flow standards.
- g. The northern corner of proposed Lot 13 shall be revised, if necessary, to meet the radius requirements of the King County Fire Code, KCC Title 17, and shall be reviewed and approved by the King County Fire Marshal.
- h. Notes shall be placed on the final plat and engineering plans which implement Conditions 6a – d above.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.

b. Current standard plan notes and ESC notes, as established by DDES 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 # \_\_\_\_\_ on file with DDES and/or the Department of Transportation. 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 or dispersion systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

d. Storm water facilities shall be designed using the KCRTS level <sup>3</sup>/<sub>flow</sub> control standard. Water quality facilities shall also be provided using the basic water quality protection menu. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County.

**Deleted:** unless portions of the drainage tract are used for recreation space in accordance with KCC 21A.14.180

e. A drainage adjustment regarding conveyance of storm water to one facility was approved on March 6, 2012 (File L12V0012). The conditions of approval for the adjustment shall be addressed on the final engineering plans including the requirements for on-site bypass of storm water as referenced in Condition 2 of the adjustment decision. The design criteria for bypass of storm water is described on pages 1-36 and 3-52 in the drainage manual.

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f. For that portion of the subject plat where stormwater dispersion is proposed, the plat includes designs for using the Forested Open Space (FOS) flow control exemption as outlined in the drainage manual for Core Requirement No. 3. The final engineering plans shall show all applicable requirements including the 65% forested open space boundaries and flow control BMP's for dispersion of storm water. If portions of the site proposed for FOS were previously cleared land areas, a mitigation plan shall be submitted to restore the vegetation and soils to meet the criteria for FOS. The final plat shall also show the area of Forested Open Space on the affected lots.

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g. As required by Special Requirement No. 2 in the drainage manual, the 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat. Compensatory storage is required for any proposed fill or decrease of natural floodplain storage. (Also see Conditions 18 – 20 below in the related Shoreline Substantial Development Permit.)

h. A permit from the Washington State Department of Fish and Wildlife may be required for the proposed site improvements adjacent to streams and/or wetlands. Any required permits shall be submitted to King County prior to engineering plan approval.

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i. The final engineering plans shall include designs to address dewatering of groundwater for site development as discussed in the geotechnical reports prepared for the project. A geotechnical report shall be submitted with the engineering plans to address soil conditions, grading, and conveyance of groundwater.

j. The final drainage plan for the detention pond located within Tract P shall include designs for a flow splitter with discharge of surface water to wetlands D and A.

k. The submittal of final engineering plans for site development shall include an application for flood hazard certification for any proposed fill within the 100 year floodplain. Policies and procedures for the application are available from DDES. (Also see Conditions 18 - 20 below in the related Shoreline Substantial Development Permit.)

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:

a. During preliminary review the applicant submitted road variance applications regarding the length of cul-de-sac and other design requirements for the roadways (See File Nos. L04V0109 and L09V0043). The final road improvements shall comply with the conditions of approval for the variance decisions.

b. The onsite cul-de-sac street labeled as SE 10<sup>th</sup> Street/304<sup>th</sup> Ave SE shall be improved as a rural subaccess street except as otherwise approved by the King County road variance process. The roadway serving lots 13-18 shall be improved to rural minor access street standards. As allowed by the road variance decision, the onsite roadway shall be private. The final plat shall include provisions for ownership and maintenance of the private road.

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c. To provide emergency access for the subdivision, the existing gravel road shown on the preliminary plat map within easement #6094030 (labeled Tract E on the subject plat) shall be improved to meet the King County road standards, except as allowed by the variance decisions referenced above. The onsite portion of the emergency access shall include a 20 foot wide paved roadway. The offsite portions shall also be improved 20 feet wide with gravel surfacing and improvements for horizontal curvature on the campground property. An emergency access easement has been obtained by the applicant to make the offsite improvements and allow future use of the roadway. Tract E shall be owned and maintained by the homeowners association or other private entity as allowed by King County. Signage shall be placed at the intersection of Tract E with 304<sup>th</sup> Ave. SE in the subject plat, identifying Tract E as an emergency access.

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d. The final engineering plans shall demonstrate compliance with the standards for entering sight distance at the project entrance with West Snoqualmie River Road.

e. A 4-foot gravel shoulder is required for the plat frontage along West Snoqualmie River Road. The existing shoulder can be restored where feasible to provide the required shoulder width. The final engineering plans shall show the location of any existing shoulders and determine what areas require new improvements to achieve the four foot shoulder width. (Also see Condition 22 below.)

f. The SE 23<sup>rd</sup> Place emergency connection (see Condition 6e above) shall be improved as a rural sub-access road, consistent with the King County Road Standards, and shall include a shoulder design for school pedestrian access in accordance with KCRS 3.09. The road design, including the vertical curvature of the road, shall be reviewed and approved by the King County Fire Marshal. Signage shall be placed within the subject plat at the entrance to SE 23<sup>rd</sup> Place, identifying SE 23<sup>rd</sup> Place as an emergency access. This access shall be gated with a lockbox access.

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g. As specified in KCRS 3.01C.3, a joint use driveway tract shall be provided for access to lots 17 and 18. The tract shall be improved as a private joint use driveway serving a maximum of two lots. The serving lots shall have undivided ownership of the tract and be responsible for its maintenance. As specified in the standards, the driveway improvements shall include an 18 foot wide surface and a minimum tract width of 20 feet or 30 feet if a ditch is required.

h. The final engineering plans for the project shall address design requirements for road construction within the floodplain which may contain soft and compressible soils. A geotechnical report prepared by S&EE, Inc., recommends compaction for road construction using a surcharge preload of fill material for a time period of 8 to 12 weeks. The engineering plans shall contain notes and recommendations to remove the surcharge fill material prior to the flood season (September 30 to May 1).

i. The preliminary plat map shows an area at the south terminus of 304<sup>th</sup> Ave SE for additional right-of-way dedication. During the final plat process, the area shown as right-of-way shall be revised to a private tract and/or private easement, with access rights granted to the southerly property owners (Tax Lots 082407-9062 and 082407-9001) as required by King County Road Variance L09V0043.

j. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.

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9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.

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11. Lots within this subdivision are subject to King County Code 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.

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12. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

a. The Class II wetlands shall have a 50-foot buffer as shown on the preliminary plat map received March 9, 2012.

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b. All wetland sensitive areas and their buffers shall be placed in Sensitive Area Tracts for long term protection.

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- c. Signage shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.
- d. A 15-foot building set back line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.
- e. Sensitive Area Tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.
- f. Road crossings of wetlands and buffers maybe allowed per KCC 21A.24.330. Construction techniques such as retaining walls maybe required at wetland crossings to limit wetland impacts. A final mitigation plan shall be required during engineering review. (Also see Condition 21 below from the related Shoreline Substantial Development Permit.)
- g. The outer 25 feet of buffer on the eastern side of the wetlands may be used for farming activities as defined in the farm management plan. Fencing shall be installed along the wetland buffer/Critical Area Tract boundaries, and the inner wetland buffer areas shall be planted with native vegetation.
- h. Wetland hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how wetland hydrology will be maintained after the site is developed.
- i. The engineering plans shall be routed to DDES Critical Areas Staff for review of compliance to the above conditions.

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**Geotechnical**

- j. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer from these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by a DDES geologist, prior to engineering plan approval. Per KCC 21A.24.310F, steep slope areas which have less than 20 feet of vertical relief may be exempted from the requirements of KCC 21A.24.310, subject to the review and DDES approval of a satisfactory soils report concluding there will be no adverse impact. All remaining steep slope areas one acre or greater in size shall be placed in a Sensitive Area Tract.
- k. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in K.C.C. 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in K.C.C. 21A.24.220

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concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.

- I. The following note shall be shown on the final engineering plan and recorded plat:

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RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the open space and sensitive area tracts, and to assure implementation of the farm management plan if the resource tracts are conveyed to the residents of the subdivision.

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14. Notes specific to the approved Farm Management Plan (March 2009) shall be placed on the final plat. The notes shall indicate what may be allowed, restrictions, etc., subject to DDES review and approval.

15. To implement the applicant's proposal, all lots in the subject plat shall have a minimum of 65% open space. The area of open space shall be delineated on the final plat and engineering plans. Open space may

include landscaped areas, except as required by the King County Surface Water Design Manual (see Condition 7f above).

16. Pursuant to Ordinance 15032, Sec. 19, Tracts A and R shall be identified as a "Working Farm" on the final plat.
17. Prior to final plat recording, the applicant shall indicate in writing whether it is the applicant's intent for Tracts A and/or R to be owned by the residents of the subject plat. If so, the final plat shall indicate Tracts A and/or R shall be owned in undivided interest by the plat lot owners, pursuant to Ordinance 15032, Sec. 19, and a homeowners' association shall be established prior to plat recording to assure implementation of the approved farm management plan.
18. Pursuant to Ordinance 15032, Sec. 19, prior to plat recording, the applicant shall file a notice on title that informs future lot owners of the subject plat that Tracts A and R are designated as a "working farm," which must be managed in accordance with the County approved farm management plan.
19. Pursuant to KCC 21A.24.240, the final plat shall include the following verbiage:

*"Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions."*
20. A note shall be placed on the final plat which indicates that the subject property is near designated agricultural lands on which a variety of commercial/farming activities occur that may not be compatible with residential development for certain periods of time.
21. A red-tailed hawk's nest has been identified adjacent to the south end of the site. Per the applicant's proposed site plan, Tract N shall include a native growth restriction on the final plat map. In addition, a 650-foot seasonal restriction on construction activities requiring a building permit, as shown on the applicant's site plan, shall appear on the final plat map. No construction requiring a building permit shall occur between March 1<sup>st</sup> through July 31<sup>st</sup>, unless it can be shown that either the nest has been abandoned or is not in use during a particular nesting season. A note to this effect shall appear on the final plat map.
22. W. Snoqualmie River Rd. SE has been designated as a "Heritage Corridor" by the King County Road Services – Historic and Scenic Corridors Project. With regard to required shoulder widening to achieve a 4-foot-wide shoulder along the subject property frontage (Condition 8e above), the applicant shall retain existing trees along the frontage to the extent practical.

23. As part of the submittal of the engineering plans for the subject plat, the applicant shall submit a landscape plan to address the following requirements from Ordinance 15032, Sec. 19. The landscape plan shall be reviewed and approved by DDES prior to final engineering plan approval. DDES may require the posting of a bond to assure installation and the survival of required plantings for a 2-year period.

A fifty-foot Type II landscaping screen, as defined in KCC 21A.16.040, shall be provided along the frontage of W. Snoqualmie River Rd. The planting materials shall consist of species that are native to the Puget Sound region. Preservation of existing healthy vegetation is encouraged and may be used to augment new plantings to meet the requirements of this section.

#### **RECOMMENDATIONS – Shoreline Substantial Development Permit**

APPROVE Shoreline Management Substantial Development Permit No. L07SH003 subject to the following conditions:

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. **TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090).** The following requirements shall apply to all permits.
  - a. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as a part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as a part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.

b. Where neither local government nor the Department of Ecology include specific provisions establishing time limits on a permit as a part of action on the permit, the following time limits shall apply:

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- i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
- ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
- iii. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
- iv. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, that an alternative compliance limit may be specified in the permit.
- v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under Condition 4bii above: *Provided*, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

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- vi. Local government shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized above, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this condition shall require a new permit application.
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- 5. Construction shall occur in conformance to the revised project plans received by King County on March 9, 2012.
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- 6. Any subsequent changes to the approved plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
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- 7. If required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish & Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.
- 8. If required, an U.S. Army Corps of Engineers Permit "Corps Permit" shall be obtained from the U.S. Army Corps of Engineers prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit. In any event, erosion controls and Best Management Practices (BMP's) shall be implemented and maintained to prevent uncontrolled discharge of water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
- 9. Issuance of this Shoreline Management Substantial Development Permit does not grant the right to trespass upon private property.
- 10. Prior to work, the applicant shall obtain final approval of the engineering plans for the pending plat of Tall Chief (L04P0032), and shall abide by any conditions set forth therein. Conditions of the plat approval shall be considered conditions of this Shoreline Permit.
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- 11. The applicant shall control erosion of disturbed areas by implementing Best Management Practices. The applicant's erosion and sedimentation control plan shall include the following as warranted: installation of silt dams or catchments between work areas and all sensitive areas; the use of mulch and hydroseeding; planting of disturbed areas with native vegetation; and any measures determined to be appropriate. Appropriateness of fencing and location shall be approved and verified by a King County representative prior to commencement of any clearing, grading, or construction activities.
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- 12. Conduct refueling activities within a designated refueling area at a distance of not less than 200 feet away from the Snoqualmie River and
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associated wetland areas. Additionally, drip pans shall be fitted with absorbent pads and placed under all equipment being fueled. All equipment, if kept on site overnight, shall be parked at least 200 feet away from the river and associated wetland areas.

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13. Daily inspection shall be provided by an erosion control specialist to ensure the adequacy and maintenance needs of all erosion and sedimentation control measures. Copies of the reports shall be submitted to the King County DDES. If the erosion control specialist determines there is an erosion or sedimentation problem, King County DDES shall be notified immediately and immediate corrective measures shall be implemented.

14. All manmade debris from the project within the construction zone shall be removed and disposed of at a location licensed for such disposal.

15. A copy of the County approved project engineering plans shall be kept on-site at all times during construction.

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18. The area of Shorelines jurisdiction shall be clearly identified on the subdivision final engineering plans. Pursuant to KCC 25.16.190 (A), any fill or excavation work which will occur within the area of Shorelines jurisdiction shall comply with KCC 16.82.100 (as approved by King County Ordinance 15053, adopted in 2004).

**Deleted:** Within 30 days after completion of the subject R/D drainage system work, at least six (6) photographs of the completed drainage corridor taken from different directions shall be provided to DDES - Shorelines.

**Deleted:** Thru the final plat approval process, and prior to any clearing and grading, within "Tract A", a retention, restoration, and vegetative enhancement plan shall be provided for said tract to King County for their approval. Said plan shall clearly identify specimen trees that are proposed for retention and those which are to be removed, together with an explanation as to the necessity for such removal

19. No permanent fill may be placed within the floodway, per KCC 25.16.190D.

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20. Pursuant to KCC 25.16.190, any fill or excavation proposed within the area of Shorelines jurisdiction shall only be permitted if the applicant provides technical information which demonstrates water circulation, aquatic life and water quality will not be substantially impaired.

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21. Per KCC 25.24.140C, no excavation of wetlands is permitted.

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