

To be considered by the
Metropolitan King County Council on
October 15, 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. 2011-0071

Department of Development and Environmental Services
File No. L08P0004

Nelsen Catterall

Preliminary Plat Application

TABLE OF CONTENTS

	<u>Page No.</u>
Ordinance Concurring with Examiner's Recommendation.....	1
Vicinity Map.....	3
Examiner's Summary of Appeal Issues.....	4
Appeal Statements	
Brookshire Estates Homeowners Association-Issaquah.....	12
Appeal Responses	
Toll WA LP.....	45
Diane Weinstein.....	85
Rainbow Lake Ranch Improvement Association.....	89
Examiner's Report and Decision.....	91
Department of Development and Environmental Services Preliminary Report.....	104
Letter from Patrick J. Schneider on behalf of the Applicant about Inadmissibility of Letter Submitted by Diane Weinstein.....	123
Response from Anne Noris, Clerk of the Council about Inadmissibility of Letter Submitted by Diane Weinstein.....	125



KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

July 31, 2012

Ordinance

Proposed No. 2012-0071.2

Sponsors Gossett

1 AN ORDINANCE concurring with the decision of the
2 hearing examiner to approve, subject to conditions, the
3 preliminary plat of Nelsen Catterall, located east of
4 Issaquah-Pine Lake Road, north of 238th Way Southeast,
5 Postal City Sammamish, department of development and
6 environmental services file no. L08P0004.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. This ordinance does hereby adopt and incorporate herein as its
9 findings and conclusions the findings and conclusions contained in the report and
10 decision of the hearing examiner dated June 13, 2012, to approve subject to conditions,
11 the preliminary plat of Nelsen Catterall, located east of Issaquah-Pine Lake Road, north
12 of 238th Way Southeast, Postal City Sammamish, department of development and
13 environmental services file no. L08P0004, and the council does hereby adopt as its action
14 the decision contained in said report.

15

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

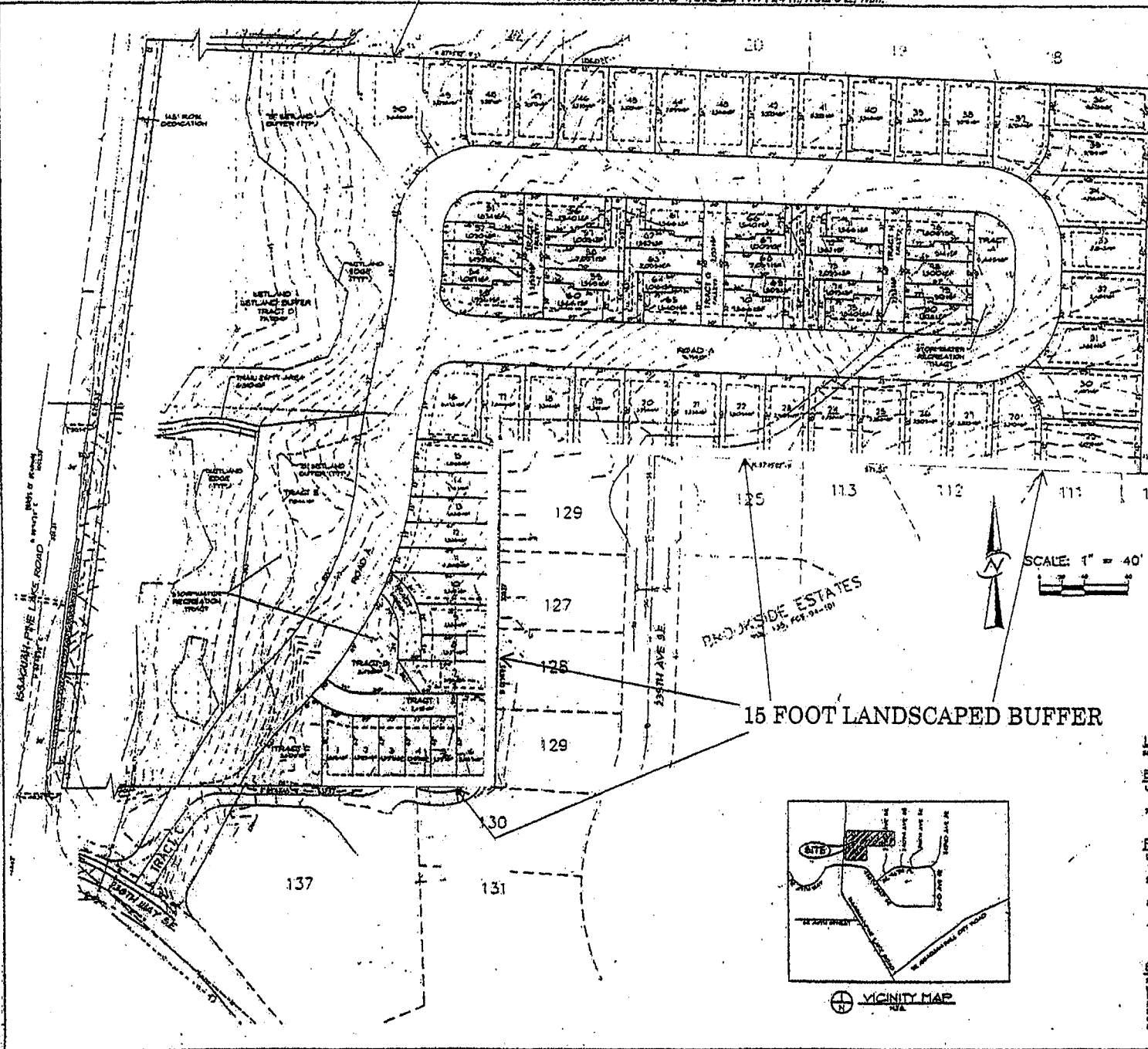
APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Hearing Examiner Report dated June 13, 2012

CONNECTION TO NORTH VIA 238TH PLACE SE

A PORTION OF THE SW 1/4, SEC. 15, TWP. 24 N., RGE. 6 E., W.M.



OWNER/APPLICANT

EVERETT MAR LLC
 1100 NE 20TH PL, SUITE 200
 BELLEVUE, WASHINGTON 98005
 (206) 835-3000
 CONTACT: AARON HOLLANDER

PLANNER/ENGINEER/SURVEYOR

CORE DESIGN INC
 1715 NE 77TH PLACE, SUITE 100
 BELLEVUE, WASHINGTON 98005
 (206) 835-3000
 CONTACT: LARRY HEDGECOCK / PLANNER
 JAMES A. OLSON, P.E. / ENGINEER
 ROBERTA L. BULLY, P.L.A. / SURVEYOR

SITE STATISTICS

SITE AREA	67,125.57 (6.01 ACRES)
PROPOSED USE	DETACHED/ATTACHED - SINGLE FAMILY/DUPLICATIONS
NUMBER OF LOTS	20
AVERAGE LOT SIZE	3,356 SF
EXISTING ZONING	R-4
PROPOSED DENSITY	1.0 DENSITY
PROPOSED DENSITY	500 DENSITY
PUBLIC RIGHT-OF-WAY	75 FT (31')
DEDICATED R.O.W.	60 FT (24')
ACCESS TRAILS	10,245 SF
RECREATION SPACE REQUIRED	3,000 SF
RECREATION SPACE PROVIDED	3,000 SF
PLAY AREA REQUIRED	3,000 SF
PLAY AREA PROVIDED	3,000 SF (TR. 8)
UTILITIES	STREET - 10' INTERIOR - 10' AT 200' MAXIMUM FRONT - 10' OF ADJACENT TO ST GARAGE - 10' AT ALLEYS
SANITARY SOLID PROVIDER	SANITARIUM PLATEAU WATER AND SEWER DISTRICT
WATER SUPPLY	SANITARIUM PLATEAU WATER AND SEWER DISTRICT
SCHOOL DISTRICT	SEASIDE SCHOOL DISTRICT #1
FIRE DEPARTMENT	WANTON FIRE AND RESCUE
TELEPHONE SERVICE	QUALITY
ELECTRICITY PROVIDER	PACIFIC NORTH ENERGY
INDUSTRIAL GAS PROVIDER	WEST COAST ENERGY

DENSITY CALCULATIONS

GROSS AREA OF PROPERTY - DEDICATED R.O.W.	161,257 SF (3.70 ACRES)
NET GROSS AREA	145,012 SF (3.31 ACRES)
NO. OF LOTS	40
NET DENSITY	5.00 DENSITY

TAX PARCEL / SITE ADDRESS

TAX PARCEL: 82400204, 81400204, 81400205, 81400206, 81400207, 81400208, 81400209, 81400210, 81400211, 81400212, 81400213, 81400214, 81400215, 81400216, 81400217, 81400218, 81400219, 81400220, 81400221, 81400222, 81400223, 81400224, 81400225, 81400226, 81400227, 81400228, 81400229, 81400230, 81400231, 81400232, 81400233, 81400234, 81400235, 81400236, 81400237, 81400238, 81400239, 81400240, 81400241, 81400242, 81400243, 81400244, 81400245, 81400246, 81400247, 81400248, 81400249, 81400250, 81400251, 81400252, 81400253, 81400254, 81400255, 81400256, 81400257, 81400258, 81400259, 81400260, 81400261, 81400262, 81400263, 81400264, 81400265, 81400266, 81400267, 81400268, 81400269, 81400270, 81400271, 81400272, 81400273, 81400274, 81400275, 81400276, 81400277, 81400278, 81400279, 81400280, 81400281, 81400282, 81400283, 81400284, 81400285, 81400286, 81400287, 81400288, 81400289, 81400290, 81400291, 81400292, 81400293, 81400294, 81400295, 81400296, 81400297, 81400298, 81400299, 81400300, 81400301, 81400302, 81400303, 81400304, 81400305, 81400306, 81400307, 81400308, 81400309, 81400310, 81400311, 81400312, 81400313, 81400314, 81400315, 81400316, 81400317, 81400318, 81400319, 81400320, 81400321, 81400322, 81400323, 81400324, 81400325, 81400326, 81400327, 81400328, 81400329, 81400330, 81400331, 81400332, 81400333, 81400334, 81400335, 81400336, 81400337, 81400338, 81400339, 81400340, 81400341, 81400342, 81400343, 81400344, 81400345, 81400346, 81400347, 81400348, 81400349, 81400350, 81400351, 81400352, 81400353, 81400354, 81400355, 81400356, 81400357, 81400358, 81400359, 81400360, 81400361, 81400362, 81400363, 81400364, 81400365, 81400366, 81400367, 81400368, 81400369, 81400370, 81400371, 81400372, 81400373, 81400374, 81400375, 81400376, 81400377, 81400378, 81400379, 81400380, 81400381, 81400382, 81400383, 81400384, 81400385, 81400386, 81400387, 81400388, 81400389, 81400390, 81400391, 81400392, 81400393, 81400394, 81400395, 81400396, 81400397, 81400398, 81400399, 81400400, 81400401, 81400402, 81400403, 81400404, 81400405, 81400406, 81400407, 81400408, 81400409, 81400410, 81400411, 81400412, 81400413, 81400414, 81400415, 81400416, 81400417, 81400418, 81400419, 81400420, 81400421, 81400422, 81400423, 81400424, 81400425, 81400426, 81400427, 81400428, 81400429, 81400430, 81400431, 81400432, 81400433, 81400434, 81400435, 81400436, 81400437, 81400438, 81400439, 81400440, 81400441, 81400442, 81400443, 81400444, 81400445, 81400446, 81400447, 81400448, 81400449, 81400450, 81400451, 81400452, 81400453, 81400454, 81400455, 81400456, 81400457, 81400458, 81400459, 81400460, 81400461, 81400462, 81400463, 81400464, 81400465, 81400466, 81400467, 81400468, 81400469, 81400470, 81400471, 81400472, 81400473, 81400474, 81400475, 81400476, 81400477, 81400478, 81400479, 81400480, 81400481, 81400482, 81400483, 81400484, 81400485, 81400486, 81400487, 81400488, 81400489, 81400490, 81400491, 81400492, 81400493, 81400494, 81400495, 81400496, 81400497, 81400498, 81400499, 81400500, 81400501, 81400502, 81400503, 81400504, 81400505, 81400506, 81400507, 81400508, 81400509, 81400510, 81400511, 81400512, 81400513, 81400514, 81400515, 81400516, 81400517, 81400518, 81400519, 81400520, 81400521, 81400522, 81400523, 81400524, 81400525, 81400526, 81400527, 81400528, 81400529, 81400530, 81400531, 81400532, 81400533, 81400534, 81400535, 81400536, 81400537, 81400538, 81400539, 81400540, 81400541, 81400542, 81400543, 81400544, 81400545, 81400546, 81400547, 81400548, 81400549, 81400550, 81400551, 81400552, 81400553, 81400554, 81400555, 81400556, 81400557, 81400558, 81400559, 81400560, 81400561, 81400562, 81400563, 81400564, 81400565, 81400566, 81400567, 81400568, 81400569, 81400570, 81400571, 81400572, 81400573, 81400574, 81400575, 81400576, 81400577, 81400578, 81400579, 81400580, 81400581, 81400582, 81400583, 81400584, 81400585, 81400586, 81400587, 81400588, 81400589, 81400590, 81400591, 81400592, 81400593, 81400594, 81400595, 81400596, 81400597, 81400598, 81400599, 81400600, 81400601, 81400602, 81400603, 81400604, 81400605, 81400606, 81400607, 81400608, 81400609, 81400610, 81400611, 81400612, 81400613, 81400614, 81400615, 81400616, 81400617, 81400618, 81400619, 81400620, 81400621, 81400622, 81400623, 81400624, 81400625, 81400626, 81400627, 81400628, 81400629, 81400630, 81400631, 81400632, 81400633, 81400634, 81400635, 81400636, 81400637, 81400638, 81400639, 81400640, 81400641, 81400642, 81400643, 81400644, 81400645, 81400646, 81400647, 81400648, 81400649, 81400650, 81400651, 81400652, 81400653, 81400654, 81400655, 81400656, 81400657, 81400658, 81400659, 81400660, 81400661, 81400662, 81400663, 81400664, 81400665, 81400666, 81400667, 81400668, 81400669, 81400670, 81400671, 81400672, 81400673, 81400674, 81400675, 81400676, 81400677, 81400678, 81400679, 81400680, 81400681, 81400682, 81400683, 81400684, 81400685, 81400686, 81400687, 81400688, 81400689, 81400690, 81400691, 81400692, 81400693, 81400694, 81400695, 81400696, 81400697, 81400698, 81400699, 81400700, 81400701, 81400702, 81400703, 81400704, 81400705, 81400706, 81400707, 81400708, 81400709, 81400710, 81400711, 81400712, 81400713, 81400714, 81400715, 81400716, 81400717, 81400718, 81400719, 81400720, 81400721, 81400722, 81400723, 81400724, 81400725, 81400726, 81400727, 81400728, 81400729, 81400730, 81400731, 81400732, 81400733, 81400734, 81400735, 81400736, 81400737, 81400738, 81400739, 81400740, 81400741, 81400742, 81400743, 81400744, 81400745, 81400746, 81400747, 81400748, 81400749, 81400750, 81400751, 81400752, 81400753, 81400754, 81400755, 81400756, 81400757, 81400758, 81400759, 81400760, 81400761, 81400762, 81400763, 81400764, 81400765, 81400766, 81400767, 81400768, 81400769, 81400770, 81400771, 81400772, 81400773, 81400774, 81400775, 81400776, 81400777, 81400778, 81400779, 81400780, 81400781, 81400782, 81400783, 81400784, 81400785, 81400786, 81400787, 81400788, 81400789, 81400790, 81400791, 81400792, 81400793, 81400794, 81400795, 81400796, 81400797, 81400798, 81400799, 81400800, 81400801, 81400802, 81400803, 81400804, 81400805, 81400806, 81400807, 81400808, 81400809, 81400810, 81400811, 81400812, 81400813, 81400814, 81400815, 81400816, 81400817, 81400818, 81400819, 81400820, 81400821, 81400822, 81400823, 81400824, 81400825, 81400826, 81400827, 81400828, 81400829, 81400830, 81400831, 81400832, 81400833, 81400834, 81400835, 81400836, 81400837, 81400838, 81400839, 81400840, 81400841, 81400842, 81400843, 81400844, 81400845, 81400846, 81400847, 81400848, 81400849, 81400850, 81400851, 81400852, 81400853, 81400854, 81400855, 81400856, 81400857, 81400858, 81400859, 81400860, 81400861, 81400862, 81400863, 81400864, 81400865, 81400866, 81400867, 81400868, 81400869, 81400870, 81400871, 81400872, 81400873, 81400874, 81400875, 81400876, 81400877, 81400878, 81400879, 81400880, 81400881, 81400882, 81400883, 81400884, 81400885, 81400886, 81400887, 81400888, 81400889, 81400890, 81400891, 81400892, 81400893, 81400894, 81400895, 81400896, 81400897, 81400898, 81400899, 81400900, 81400901, 81400902, 81400903, 81400904, 81400905, 81400906, 81400907, 81400908, 81400909, 81400910, 81400911, 81400912, 81400913, 81400914, 81400915, 81400916, 81400917, 81400918, 81400919, 81400920, 81400921, 81400922, 81400923, 81400924, 81400925, 81400926, 81400927, 81400928, 81400929, 81400930, 81400931, 81400932, 81400933, 81400934, 81400935, 81400936, 81400937, 81400938, 81400939, 81400940, 81400941, 81400942, 81400943, 81400944, 81400945, 81400946, 81400947, 81400948, 81400949, 81400950, 81400951, 81400952, 81400953, 81400954, 81400955, 81400956, 81400957, 81400958, 81400959, 81400960, 81400961, 81400962, 81400963, 81400964, 81400965, 81400966, 81400967, 81400968, 81400969, 81400970, 81400971, 81400972, 81400973, 81400974, 81400975, 81400976, 81400977, 81400978, 81400979, 81400980, 81400981, 81400982, 81400983, 81400984, 81400985, 81400986, 81400987, 81400988, 81400989, 81400990, 81400991, 81400992, 81400993, 81400994, 81400995, 81400996, 81400997, 81400998, 81400999, 81401000, 81401001, 81401002, 81401003, 81401004, 81401005, 81401006, 81401007, 81401008, 81401009, 81401010, 81401011, 81401012, 81401013, 81401014, 81401015, 81401016, 81401017, 81401018, 81401019, 81401020, 81401021, 81401022, 81401023, 81401024, 81401025, 81401026, 81401027, 81401028, 81401029, 81401030, 81401031, 81401032, 81401033, 81401034, 81401035, 81401036, 81401037, 81401038, 81401039, 81401040, 81401041, 81401042, 81401043, 81401044, 81401045, 81401046, 81401047, 81401048, 81401049, 81401050, 81401051, 81401052, 81401053, 81401054, 81401055, 81401056, 81401057, 81401058, 81401059, 81401060, 81401061, 81401062, 81401063, 81401064, 81401065, 81401066, 81401067, 81401068, 81401069, 81401070, 81401071, 81401072, 81401073, 81401074, 81401075, 81401076, 81401077, 81401078, 81401079, 81401080, 81401081, 81401082, 81401083, 81401084, 81401085, 81401086, 81401087, 81401088, 81401089, 81401090, 81401091, 81401092, 81401093, 81401094, 81401095, 81401096, 81401097, 81401098, 81401099, 81401100, 81401101, 81401102, 81401103, 81401104, 81401105, 81401106, 81401107, 81401108, 81401109, 81401110, 81401111, 81401112, 81401113, 81401114, 81401115, 81401116, 81401117, 81401118, 81401119, 81401120, 81401121, 81401122, 81401123, 81401124, 81401125, 81401126, 81401127, 81401128, 81401129, 81401130, 81401131, 81401132, 81401133, 81401134, 81401135, 81401136, 81401137, 81401138, 81401139, 81401140, 81401141, 81401142, 81401143, 81401144, 81401145, 81401146, 81401147, 81401148, 81401149, 81401150, 81401151, 81401152, 81401153, 81401154, 81401155, 81401156, 81401157, 81401158, 81401159, 81401160, 81401161, 81401162, 81401163, 81401164, 81401165, 81401166, 81401167, 81401168, 81401169, 81401170, 81401171, 81401172, 81401173, 81401174, 81401175, 81401176, 81401177, 81401178, 81401179, 81401180, 81401181, 81401182, 81401183, 81401184, 81401185, 81401186, 81401187, 81401188, 81401189, 81401190, 81401191, 81401192, 81401193, 81401194, 81401195, 81401196, 81401197, 81401198, 81401199, 81401200, 81401201, 81401202, 81401203, 81401204, 81401205, 81401206, 81401207, 81401208, 81401209, 81401210, 81401211, 81401212, 81401213, 81401214, 81401215, 81401216, 81401217, 81401218, 81401219, 81401220, 81401221, 81401222, 81401223, 81401224, 81401225, 81401226, 81401227, 81401228, 81401229, 81401230, 81401231, 81401232, 81401233, 81401234, 814012

EXAMINER'S SUMMARY OF APPEAL ARGUMENTS

RE: Department of Development and Environmental Services File No. L08P0004
Proposed Ordinance No. 2012-0071
Nelsen Catterall Plat
Summary submitted October 1, 2012, for October 15, 2012, hearing

1. Examiner: Peter T. Donahue (hearing officer)
David W. Spohr (appeal stage)

2. Parties to the Appeal:

Appellant: Brookshire Estates Homeowners Association-Issaquah
represented by J. Richard Aramburu
Aramburu and Eustis LLP
720 Third Avenue Suite 2112
Seattle, WA 98104

Applicant/
Respondent: Toll WA LP
represented by Patrick J. Schneider and Steven J. Gillespie
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299

Other Respondents: Diane Weinstein
24116 SE 45th Place
Issaquah, WA 98029

Jim Van Tighem, President
Rainbow Lake Ranch Board of Directors
3020 Issaquah-Pine Lake Road No. 303
Sammamish, WA 98075

3. Location: East of Issaquah-Pine Lake Road, north of 238th Way SE

4. Background:

Toll WA LP (Toll)¹ applied to subdivide a 13.72-acre area into 80 lots for single family dwellings and tracts for access, drainage, recreation, and critical areas. The subdivision, Nelsen Catterall ("the Plat"), is zoned R-6 and nestled between Rainbow Lake Ranch to the north and Brookshire Estates to the south and east. All three subdivisions are adjacent to Issaquah-Pine Lake Road on the west – and thus to the City of Sammamish (Sammamish) – but actually lie within Issaquah's Potential Annexation Area (PAA).

¹ The original applicant was apparently Toll's predecessor-in-interest. For ease of reference we will refer to the Applicant throughout as "Toll."

The original application proposed a sole access route, running south directly through Brookshire Estates, and the five-foot setback buffer required by code for R-6 developments. Brookshire Estates Homeowners Association-Issaquah (Brookshire), Rainbow Lake Ranch Improvement Association, and Sammamish among others, expressed concerns related to traffic and setbacks.

In response, Toll purchased an additional tract and revised its application to run the access road south, but along the edge of (not between houses in) Brookshire Estates. In addition, Toll agreed to construct a traffic signal/roundabout² at the existing Brookshire Estates (and proposed Plat) entrance at Issaquah-Pine Lake Road. Finally, Toll agreed to place ten feet of landscape buffer along a portion of the border with Brookshire Estates, along with a six-foot high perimeter fence. After a hearing, the former Examiner issued a report and decision approving the application with the revised access road, a traffic signal/roundabout, and the enhanced buffer. Brookshire timely appealed, Toll responded, as did two others in the community.

The access road analysis here is somewhat complicated by the three similar-sounding road names in play, 239th Avenue SE, 238th Way SE, and 238th Place SE. The 239th Avenue SE route was the one Toll originally proposed, running south between houses in Brookshire Estates and connecting onto 238th Way SE. The route Toll eventually arranged for and DDES approved runs south through Tract C, connecting directly to the same 238th Place SE but no longer bisecting Brookshire Estates. The secondary route Brookshire is pushing for is north through the middle of Rainbow Lake Ranch. To avoid the confusing nomenclature we instead discuss the “original” route (239th Avenue SE), the “approved” route (238th Way SE), and the “northerly” route (238th Place SE).

5. Issues on Appeal:

- A. Should the Applicant be required to install a *secondary access* road, *i.e.*, a northerly route through Rainbow Lake Ranch?
- B. Should the Applicant be required to provide for additional landscaped *buffer* along the border with Brookshire Estates?
- C. Did the Examiner err in concluding he had *no authority* to condition approval of the Plat on providing an additional access road and/or landscape buffering?

6. Arguments:

Appellant Brookshire’s Arguments:

- A. A northerly, *secondary access* route through Rainbow Lake Ranch will provide some relief to Brookshire Estates from Plat-related congestion and connectivity between the three plats. King County Comprehensive Plan (Comp Plan) CP-209

² The initial arrangement was for a traffic signal. Later, this was amended to be traffic signal, with the option, if Sammamish and Toll agreed, of a roundabout. Brookshire has not challenged a roundabout as less protective of its interests than a traffic signal. In fact, its resident engineer testified about the advantages of a roundabout versus a signal. Thus, for ease of reference, we will refer throughout to a “signal/roundabout.”

offers support for “linking” with adjacent developments, and KCC 19A.08.060 lists the Comp Plan as an item against which to review preliminary plats for conformity. Sammamish raised connectivity in 2008, Sammamish’s own comprehensive plan promotes connectivity between neighborhoods, and Sammamish borders the Plat. Building the northerly route would provide some relief to Brookshire Estates, yet would not overly impact Rainbow Lake Ranch because the northerly right-of-way is sufficiently wide, at sixty feet, to allow a suitable access road, and only a quarter of the Plat traffic would cross Rainbow Lake Ranch north.

- B. The Plat is significantly denser than Brookshire Estates, and has less greenscape around each home. CP-212 favors urban separators to provide visual relief from continuous development and visual separation between distinct communities. Sammamish’s comprehensive plan encourages consistent and compatible development patterns and greenscape to transition between intensities of land use and architectural styles. These factors warrant requiring the greater visual separation of a fifteen-foot landscape *buffer* on the Plat areas abutting existing Brookshire Estates homes.
- C. The Examiner “refused to consider” the above two issues, determining that he had *no authority* to require either a secondary access road or additional landscape buffer. He thus “never did reach the merits.” State and county code require preliminary plat review to consider streets and open spaces, and the Examiner may place conditions on a plat necessary to carry out applicable laws and plans. The Examiner implied that the public interest must be reduced to a specific regulation to act on it, and he improperly declined to consider the public interest.

Respondent/Applicant Toll’s Arguments:

- A. Section 2.19 of the 2007 King County Road Standards (Road Standards) requires *secondary access* only for subdivisions over one hundred lots; the Plat will contain only eighty. The State Environmental Policy Act (SEPA) process evaluated traffic impacts and arrived at a traffic signal as the proper mitigation; that SEPA decision was not appealed. References to Sammamish’s policies are irrelevant because there is no interlocal agreement, the Plat is within Issaquah’s PAA, and Sammamish has explicitly agreed that its traffic concerns have been satisfied by the addition of the traffic signal/roundabout. Expert and lay testimony established both that Toll’s voluntarily-installed traffic signal/roundabout will actually decrease Brookshire Estate’s traffic congestion, and that a northerly, secondary access road would actually route more traffic through Brookshire Estates. Brookshire presented no rebuttal evidence on either of these points. Under such circumstances, requiring the road would violate the RCW prohibition against taxes, fees, or charges not reasonably necessary as a direct result of a proposed plat. And the existing road through Rainbow Lake Ranch, at 26 feet wide and without sidewalks or streetlights, is a poor candidate for a Neighborhood Collector, would require damaging the wetlands buffer (or perhaps even wetlands themselves) to construct, and would be contrary to Comp Plan CP-209, which

discourages routing through-traffic on local access streets like the one through Rainbow Lake Ranch.

- B. The Council definitively determined (through code) that R-6 zones (like the Plat) and R-4 zones (like Brookshire Estates) require only a five-foot setback *buffer*. The code sets out exceptions (where greater setbacks are required), but the Plat does not fall into any such exception. Comp Plan language about “urban separators” is inapplicable because “urban separators” pertain only to large-scale linkages, not small-scale design standards, and this area is not on the official urban separator map appended to the Comp Plan. For many of the Plat lots abutting Brookshire Estates, Toll has voluntarily agreed to a ten-foot buffer. A fifteen-foot buffer would eliminate any useful back yards for the pertinent lots, and Brookshire Estates’ lots already have their own twenty-foot native growth buffer. Under these circumstances, requiring excess buffering would violate the RCW’s prohibition against any taxes, fees, or charges not reasonably necessary as a direct result of a proposed plat.
- C. The Examiner spent significant portions of his opinion addressing the access and landscape issues, before determining that the Plat was sufficient. He concluded that he had *no authority* to require secondary access or additional buffering because there were no facts to justify such conditions. He had no basis to require additional conditions to fix problems that do not exist and/or that Toll did not create. The Examiner did reach and correctly decide the merits.

Arguments from Additional Respondents:

In addition to Brookshire’s thirteen-page appeal statement and Toll’s twenty-six page response, the Council received letters from two individuals who testified at the hearing, one in opposition and one in support of the Plat.

Diane Weinstein lives adjacent to the Plat (but not in Brookshire Estates or Rainbow Lake Ranch), and she explicitly stated that she was not part of Brookshire’s appeal. She expressed disagreement with the wetlands report, arguing that it did not adequately protect wildlife, wetlands, and adjacent native growth protection areas. Ms. Weinstein requested a corridor linking the wetlands to the native growth protection area, larger setback *buffers* to allow greater wildlife movement, larger wetland buffers, and restricting pesticide and other chemical use in certain areas.

Jim Van Tighem wrote on behalf of Rainbow Lake Ranch Improvement Association, expressing full support for the current Plat and appreciation for the developer’s efforts. He disagreed that a *secondary access* road was necessary. If a second access road is necessary, the original access point (through Brookshire Estates) is the better alternative because Brookshire Estates’ infrastructure is better suited (than Rainbow Lake Ranch’s road) to support the additional thruway, in terms of road width, lighting, and sidewalks. He declared that Rainbow Lake Ranch would be negatively impacted in a major way by a thruway through their neighborhood.

7. Examiner's Recommendation:

A. Secondary Access:

The Council adopted the Road Standards as “the King County standards for road design and construction.” KCC 14.42.010(A). The applicable road standard for access and circulation only requires a secondary access connection for residential streets serving “more than 100 lots or dwelling units.” Brookshire has not challenged this standard’s application to the Plat. And (unlike the buffer issue below), Brookshire does not point in its brief to facts distinguishing this subdivision from other <100 lot subdivisions in terms of access impacts.

CP-209 discusses completing a neighborhood circulation system to link adjacent developments, but also discourages through traffic on local streets. Brookshire emphasizes the circulation portion of this, while Toll focuses on the avoiding-through-traffic-on-local-streets portion. CP-209 is a general policy and is not sufficiently proscriptive to override a directly-applicable road standard. Sammamish’s plan to “promote connectivity between neighborhoods” is clearer, but reference to Sammamish’s plan and originally-expressed concerns seems to be a red herring. There is not an interlocal agreement, the Plat is actually in Issaquah’s (not Sammamish’s) PAA, and Sammamish has already agreed that Toll’s construction of a traffic signal would “fully mitigate” the Plat’s transportation impacts.

The time to address traffic concerns was during the SEPA process. KCC 20.44.080(C) lists the Road Standards as one of the standards and regulations that “will normally constitute adequate mitigation of the impacts of new development,” but Brookshire could have attempted to show that “specific adverse environmental impacts are not addressed by [the Road Standards] or unusual circumstances exist.” Sammamish did raise such a traffic concern, and the SEPA determination specifically considered traffic and adopted the signal/roundabout as a sufficiently mitigating condition. Brookshire did not timely appeal the SEPA determination.

By agreeing to construct the signal/roundabout, Toll is already mitigating for traffic, with evidence that the mitigation will actually reduce Brookshire Estates’ current traffic congestion and that constructing a northerly route might actually exacerbate Brookshire Estates’ traffic (by bringing to Brookshire Estates more car trips from north of the Plat than the number of trips from the Plat that would divert north and away). Toll is not correct in asserting that Brookshire offered *no* factual basis or expert analysis to contravene Toll’s traffic analysis, but the contrary evidence is thin. Toll’s argument that the County cannot require plat conditions to address harms not created by the Plat is strongest here, where Plat-caused traffic harm has already been addressed (or perhaps even reversed into a benefit) and where the requested remedy would not necessarily reduce Brookshire’s traffic concerns.

Moreover, creating that secondary access road north through Rainbow Lake Ranch (instead of, for example, using the originally-proposed route through the middle of Brookshire Estates as a second route) has significant complications. Brookshire focuses on sixty feet of right-of-way set aside through Rainbow Lake Ranch, but Toll and Mr. Van Tighem point out that the actual roadway is currently only twenty-six feet. The Subdivision Technical Committee concluded that the northerly route lacked sufficient width and horizontal curvature to be a subcollector. KCDOT testified at the hearing that the northerly route raised concerns related to “its geometry of the

ability to construct a subcollector class street,” lack of “pedestrian walkway facilities,” and “impacts to wetland buffers and potentially the wetland itself.” Ms. Weinstein, in her letter to Council, expressed concern that the existing plan already has too great an impact on wetlands; to disturb the area in the vicinity of the Plat wetlands with a road would add to that concern.

B. Additional Landscape/Setback Buffer:

The Council has determined that a five-foot setback is sufficient for lots in the R-6 zone. KCC 21A.12.030(A). Brookshire has not challenged this standard’s application to the Plat. Comp Plan CP-212’s language about urban separators between continuous development and distinct communities is inapplicable to two modest subdivisions in the R-4 and R-6 zones. No urban separators appear anywhere in the vicinity of the Plat on the Comp Plan’s official map. Language from Sammamish’s plan seems to be inapplicable: there is no interlocal agreement, the Plat is actually in Issaquah’s (not Sammamish’s) PAA, and (unlike the traffic issue) Sammamish has expressed no setback concerns.

But unlike the secondary access road issue, Brookshire has, in the context of landscape buffering, pointed in its brief to a circumstance that may distinguish this Plat. To avoid wetlands and wetland buffers in the western portion of the site, Plat development has been concentrated on the eastern side of the property. That is irrelevant to traffic (no matter how clustered, all Plat cars will still use the sole access route), but it does result in higher densities adjacent to Brookshire Estates.

Toll’s argument that the County cannot require plat conditions to address harms not created by the Plat is not as strong here as it is with the secondary access road; replacing vacant land with a multitude of homes obviously has some visual impact. Yet by setting a five-foot rule, the Council has already made the general determination on what setback is sufficient. And Toll has voluntarily doubled the standard five-foot setback for much of the disputed area. So even if Brookshire could show that clustering here is such an unusual circumstance as to warrant a departure from the five-foot buffer standard, it faces the additional hurdle of showing that the current doubling of much of that buffer, plus a perimeter fence, is not adequate mitigation.

C. Examiner “Authority” on both Access and Buffers:

In Finding no. 13, the Examiner concluded his analysis of the *secondary access* route issue with, “The Examiner has no authority to deny the proposal or require a secondary access provision under the applicable standards.” Brookshire has seized on the first part of that sentence to argue that the Examiner believed he had no authority to address the merits of Brookshire’s request and thus did not actually rule on the merits. The latter portion of the sentence, however, begins to provide the fuller context: given the Examiner’s reading of the “applicable standards,” and absent any unusual circumstances the Examiner thought warranted a departure from the normal standards, the Examiner concluded he had no authority to impose an additional condition, no matter how heartfelt the neighbors’ concerns.

That sentence itself did not exist in a vacuum. In Finding no. 10, he summarized nearby residents’ concerns regarding traffic impacts and analyzed Toll’s agreement to provide a traffic signal/roundabout. In Finding no. 11, he evaluated concerns about the approved access route

adding congestion, found that such concerns did not, in his assessment, “rise to the level of a significant drop in Level of Service (LOS) or adverse impact on traffic or pedestrian safety,” and determined that a left turn “refuge” did “not appear warranted” given the low queue lines that should “preclude an inordinate blocking or impeding” of traffic. In Finding no. 12, he analyzed concerns about adverse congestion and safety impacts on the approved route during icy weather, but determined that, although a “valid concern in general, it is one that does not rise to the level of requiring mitigation or any other special conditions of approval.” And in Finding no. 13, he discussed alternative access routes and connectivity, before finding that, in “the final analysis, the proposed design qualifies for approval.” It is not accurate to state that the Examiner did not “reach the merits.” He duly met his duty, in the words of the case law Brookshire cites, to “consider the adequacy of access.” *Miller v. City of Port Angeles*, 38 Wn. App. 904, 909, 691 P.2d 229, 233 (1984).³

As to the *landscape buffer* issue, in Finding no. 18 the Examiner described neighbors’ concerns related to, among other issues, setbacks, and found that these were “matters the Examiner has no authority to address in this subdivision consideration.” The Examiner’s analysis of the merits is not as robust as it was with the access road, but a fair reading of the surrounding text shows that the Examiner did weigh the issue and decide the merits. The Examiner begins Finding no. 18 by discussing the same neighbor argument Brookshire Estates raises in its brief, that the different intensities of land uses (densities, lot sizes) and architectural styles, and the need for visual separation, justify greater setbacks. He characterized the neighbors’ arguments as going to reasonableness and appropriateness, and then noted that he had no authority to address such matters.

But he explained what he meant by his authority comment: “There is no requirement of maintaining similarity to existing lot sizes, architectural style and setbacks, structural values, maintenance of privacy buffering, maintenance upkeep levels, etc. to that of adjacent developments in subdivision review under state and King County land use regulation.” And he later went on to conclude that there was “simply no code provision for requiring additional setbacks, vegetation screening, [or] architectural homogeneity.” Finally, in Finding no. 19 he described Toll’s offer of a perimeter fence and ten-foot rear yard setback for certain abutting lots, and determined that these “voluntarily offered amenities will provide some amelioration of density dissimilarities and shall be honored.”

Brookshire’s allegation that the Examiner did not reach the merits of the *landscape buffer* issue is not so far afield as the similar allegation related to the secondary access road, but it still falls short of the mark.

D. Summary

There are no countervailing facts or policy that would warrant a departure from the hundred-lot rule for single *access*. Traffic concerns were specifically raised and addressed at the SEPA stage,

³ In addition to the text of his opinion, during the hearing the Examiner discussed the relationship of regulations to Comp Plan policies, noted the needed conformity with the Comp Plan, provided that “my take on that is if the policy is implemented fully by the regulations, then one would defer to the regulations,” and then asked for testimony specifically on that interplay as it related to connectivity.

and that decision was not appealed. Toll presents substantial evidence that adding a signal/roundabout will actually reduce overall traffic impacts to Brookshire Estates, that a northerly access route may not lessen (but might actually increase) such traffic, and that constructing such a north route would create environmental and other negative consequences. The Examiner made detailed findings related to access, addressed the merits, and addressed them correctly.

As to the landscape *buffer*, Toll is already providing double the code-required setback for much of the disputed area, plus a perimeter fence, and no policy warrants a further departure. Brookshire has pointed to a salient fact (concentration of development) perhaps differentiating the Plat from the typical subdivision, but in the final analysis that does not seem a sufficiently unusual circumstance, at least not one that is not adequately mitigated by the additional setback and fence Toll offered and the Examiner incorporated. The Examiner did not provide as detailed an analysis or findings on the buffer issue as on access, but nonetheless did weigh the issue and properly decide the merits.

For the foregoing reasons, we recommend no changes to the Examiner's June 13, 2012, Report and Decision.

RECEIVED

2012 JUL -5 PM 1:54

CLERK
KING COUNTY COUNCIL

RECEIVED
JUL 05 2012
KING COUNTY
HEARING EXAMINER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE KING COUNTY COUNCIL

In the Matter of

The Proposed Preliminary Plat of
Nelsen Catterall
DDES File No. L08P0004

STATEMENT OF APPEAL BY
BROOKSHIRE ESTATES
HOMEOWNERS
ASSOCIATION-ISSAQUAH

I. DECISION APPEALED.

Brookshire Estates Homeowners Association - Issaquah (BEHA) has appealed the decision of the King County Hearing Examiner to approve, without access or buffering conditions, the Nelsen Catterall Plat (hereinafter "NC Plat"). A copy of the decision is attached hereto at Attachment A. A copy of the proposed plat is attached as Attachment B. BEHA requests that the Council grant the appeal and either impose certain conditions or remand to the Hearing Examiner for further proceedings.

BEHA is the homeowners association for the Brookshire Estates development which has a common boundary with the proposed NC Plat to the south and east. Brookshire Estates homeowners are adversely affected by the NC Plat because of traffic, aesthetics and differences in densities at the common property line.

1 **II. ISSUES PRESENTED.**

2 2.1 Should the approval of the NC Plat be conditioned on meeting
3 connectivity requirements, in particular by requiring connection of plat roads with
4 a existing stub road to the north?

5 2.2 Should the approval of the NC Plat be conditioned by the provision for
6 a landscaped buffer between the subject high density development and adjacent
7 low density development in Brookside Estates?

8 2.3 Did the King County Hearing Examiner err when he concluded that he
9 had no authority to place conditions on the plat regarding the issues above, i.e.
10 connectivity and landscaping buffering?

11 **III. BACKGROUND FACTS.**

12 This plat proposes 80 single family and townhouse units on a 13.72 acre
13 property. The property is just to the east of the Issaquah-Pine Lake Road,
14 abutting the City of Sammamish on the west. With clustering proposed due to
15 the significant wetlands on the property, the actual lot sizes that would interface
16 with Brookshire Estates average only about 3,100 square feet on the north and
17 2,000 square feet on the west. The sole access proposed for the NC Plat is
18 along 238th Way SE, which is also the main entrance to Brookshire Estates.

19 To the north of the NC Plat is the Plat of Rainbow Lake Ranch, which has
20 a stub out to the NC Plat at its southern boundary. See Decision at page 3,
21 Paragraph 3.

22 During the hearing on the NC Plat, residents of BEHA requested that the
23 stub road in Rainbow Lake be utilized to allow for connectivity with areas to the
24 south. BEHA representatives also requested that the Hearing Examiner provide
25 a landscaped buffer between the lots in Brookshire Estates and the new NC Plat
26 to mitigate the impacts of the new, very intensive land use in the NC Plat.

27 BEHA did not, and does not, request that the NC Plat be denied, nor the number
28

1 of lots be reduced.

2 As to both BEHA's requests, the Hearing Examiner concluded he lacked
3 authority to either require a second access for connectivity or require a buffer
4 between these properties. BEHA appeals the conclusion that the Hearing
5 Examiner lacks authority to consider connectivity or density impacts, as well as
6 the merits of the claims

7 **IV. ARGUMENT AND AUTHORITY.**

8 **4.1 INTRODUCTION.**

9 As noted above, BEHA requested that the Hearing Examiner place
10 conditions on the NC Plat to address connectivity and density issues. However,
11 the Examiner has stated that he has "no authority" to address either issue. See
12 Decision at page 5, Paragraph 13 and page 6, Paragraph 18. Accordingly the
13 Examiner never did reach the merits of BEHA's requests.

14 In its appeal statement, BEHA will first present argument and legal
15 authority that demonstrates that their modest requests concerning connectivity
16 and buffering are reasonable and should be included as conditions for approval
17 of the plat Second, BEHA will show how the Hearing Examiner misconstrued his
18 legal jurisdiction by concluding that he had "no authority" to resolve the issues
19 raised by BEHA.

20 **4.2 THE NC PLAT SHOULD BE CONDITIONED TO PROVIDE**
21 **CONNECTIVITY AND BUFFERING TO ADJACENT**
22 **NEIGHBORHOODS.**

23 The BEHA recognizes that the proposed development is generally
24 consistent with its R-6 zoning designation. However, since the western one-
25 third of the plat is in wetlands, all of the development is concentrated on the
26 eastern side of the property, resulting in densities that exceed those usually
27 found in R-6 developments. Thus there are specific circumstances that apply to
28 this plat which require modest conditions to make the plat compatible with the

1 neighborhood and consistent with established subdivision planning principles.

2 The two conditions that are requested are as follows:

3 **4.3 SECONDARY ACCESS.**

4 The applicant proposes that the sole access to the 80 units in the NC Plat
5 be through "Tract C" in the Brookshire Estates plat. Tract C is indicated as an
6 easement "for benefit of the northerly adjoining property." See attached
7 Attachment B.

8 However, on the north side of the NC Plat is a stub out road from the
9 Rainbow Lake Ranch plat which provides for a road connection at 238th Place
10 SE. It is apparent that this stub out was intended to provide continuous access
11 to the property to the south, now part of the NC Plat. See attached Attachment
12 C showing the annotated proposed plat. The intent to provide access to the
13 property to the south is also indicated by the width of the street right of way at 60
14 feet, well beyond the usual width for a local access street. See Attachment C.

15 The use of 238th Place SE will provide some relief to those in the
16 Brookshire Estates plat because it will prevent all of the 800 trips per day
17 anticipated from this development from entering the main access to Brookshire.
18 Congestion will be evident with multiple left turns into Tract C to enter the NC
19 Plat, especially during the P.M. Peak Hour.

20 In addition, the access to the stub out road will provide connectivity
21 between the Rainbow Lake plat, the NC plat and the Brookshire plat. The need
22 to provide for a circulation system in this area is expressed in the readopted
23 policies of the East Sammamish Community Plan, now found in the King County
24 Comprehensive Plan. CP-209 states:

25 CP-209 New developments should be designed and constructed
26 with an internal road system which includes a Neighborhood
27 Collector linking with existing or planned adjacent developments,
28 creating a complete Neighborhood Collector circulation system and
such linkage should be designed to ensure safety of local streets.

1 Through traffic on local access streets should be discouraged.
2 (T-9)

3 See Attachment D. This policy, applicable to the East Sammamish area,
4 provides for the connection between developments which was specifically
5 anticipated by the layout of the Rainbow Lake Ranch plat and the stub out of
6 238th Place SE.

7 The King County Comprehensive Plan is one of the laws that must be
8 considered in making decisions on preliminary plats:

9 19A.08.060 Review for conformity with other codes, plans and
10 policies. Applications for approvals pursuant to this title shall be
11 reviewed in accordance with the applicable procedures of any
12 combination of this title and K.C.C. chapters 20.20 and 20.24.
13 Furthermore, applications for subdivisions, short subdivisions and
14 binding site plans may be approved, approved with conditions or
15 denied in accordance with the following adopted county and state
16 rules, regulations, plans and policies including, but not limited to:

17 O. King County Comprehensive Plan;
18 P. County wide Planning Policies;

19 (Emphasis supplied.) Consistency with the specific comprehensive plan for this
20 area indicates that the road connection from 238th Place SE would be completed.

21 This issue was raised by the City of Sammamish in its commenting of July
22 10, 2008, on this plat. As the city stated:

23 *2. The City of Sammamish Comprehensive Plan* has specific
24 language regarding goals for road connectivity to improve
25 emergency vehicle access and the transportation network. The
26 City requests that the subject subdivision provide a road connection
27 to 238th Place SE to the north of the plat.

28 Indeed, the Sammamish Comprehensive Plan mirrors the King County
29 Comprehensive Plan for East Sammamish. The Sammamish Comprehensive
30 Plan states at Policy LUG GOAL LUG-15: "*Promote connectivity between
31 neighborhoods.*" Specifically, the comprehensive plan provides:

32 LUG-15.5 Street standards and site planning requirements for new
33 development and redevelopment should ensure that
34 neighborhoods throughout the city will be connected and
35 accessible by all travel modes.

1 As new developments within the Urban Growth Boundary, the NC Plat
2 and its new houses eventually will become part of an adjacent city, as will the
3 Brookshire Estates property. Indeed, the present Sammamish boundary is at
4 Issaquah-Pine Lake Road, which borders the NC Plat to the west. Establishing
5 the connection with 238th Place SE also takes inter-neighborhood traffic off of the
6 heavily traveled Issaquah-Pine Lake Road.

7 Impacts to the northerly neighborhood will be minimal for two reasons.
8 First, as mentioned above, the right-of-way set aside in the plat is 60 feet wide,
9 more than adequate for a low volume neighborhood collector street. Second,
10 work previously done for the NC Plat predicts that only about 25% of the new
11 plat's traffic will go north onto 238th Place SE. Connectivity will also provide
12 neighborhood interaction as well as a secondary route for emergency vehicles.

13 As specified above, the proposed NC Plat should be modified to include a
14 connection to the north to 238th Place SE.

15 **4.4 BUFFERS BETWEEN BROOKSHIRE COMMUNITY AND THE NC**
16 **PLAT.**

17 There are significant density differences between the existing Brookshire
18 Plat and the proposed NC Plat. Along the west side of Brookshire, the lots
19 average about 10,000 square feet, while the comparable NC Plat has lots of
20 about 2,000 square feet in size. See Attachments B and C. Along the north side
21 of Brookshire, the NC Plat lots average a little over 3,000 square feet, but the
22 comparable Brookshire lots average about 10,000 square feet. The R-6 zoning
23 parameters allow 70% lot coverage, townhouse development and have minimum
24 setbacks, a far higher density than neighboring Brookshire Estates.

25 Based on the foregoing the proposed plat should be conditioned to
26 provide a greater visual separation between the higher density NC Plat and
27 Brookshire. Brookshire HOA proposes that a 15 foot landscape buffer be

1 created along the boundaries between the two developments.

2 As with the connectivity issue, the King County Comprehensive Plan that
3 readopts the East Sammamish Community Plat provides guidance for the

4 Examiner:

5 **CP-212** Urban separators should be established to provide visual
6 relief from continuous development, provide important linkages for
7 wildlife habitat, and maintain a visual separation between distinct
8 communities. (P-17)

9 See Attachment D. Establishing a buffer adjacent to the Brookshire Estates
10 property will provide "visual relief" from continuous development and maintain
11 "visuai separation" between these developments.

12 The requirement for buffering is again supported by provisions of the City
13 of Sammamish Comprehensive Plan. The City's Comprehensive Plan
14 specifically calls for assuring compatibility of the new development with existing
15 land use patterns:

16 **GOAL LUG-8: Respect the character, integrity, and unique qualities
17 of existing neighborhoods.**

18 *Residential Neighborhoods*

19 LUG-8.1 Development standards for residential
20 neighborhoods should create a consistent and compatible
21 pattern of development. Development standards should
22 address housing densities, lot dimensions and sizes,
23 building setbacks and height, impervious surface limitations,
24 access, and parking.

25 (Emphasis supplied.) Similarly, the Sammamish Comprehensive Plan specifically
26 provides for the use of "greenscape" or landscaping to buffer contrasting uses:

27 **GOAL LUG-11: Promote the use of greenscape as an important physical
28 and visual element of site development.**

LUG-11.1 New development shall incorporate "greenscape"
as an integral part of site design.

LUG-11.2 Landscaping shall be used to provide:

- a. Buffers between mixed use sites and adjacent parcels,
- b. Buffers along street frontages,
- c. Design unity to the three designated community centers and areas of the City,
- d. Shade and soften parking lots and other unsightly uses,
- e. Transition between different intensities of land uses,

1 f. Transition between contrasting architectural styles;
2 (Emphasis supplied.)

3 In the present case, landscaping should be used to provide for the
4 transition both from differing intensities of land uses and from what will likely be
5 contrasting architectural styles between Brookshire and the NC Plat. As to
6 intensity, the actual density of lots in the NC Plat will be from 3 to 5 times greater
7 than Brookshire Estates at the margins between the two. The King County R-6
8 zone will allow greater lot coverage and smaller setbacks than are found in the
9 existing Brookshire Estates community, which will make structures on the NC
10 Plat appear more dense and bulky.

11 As stated, there are likely to be contrasting architectural styles as well.
12 The Brookshire plat was developed in the mid-1980s and reflects single family
13 homes with significant greenspace around each home. The Brookshire plat also
14 incorporated a Native Growth Protection Easement along its boundaries. In
15 contrast, the NC Plat development will be dominated by structures with minimum
16 setbacks; it is also possible that the development will include zero lot line
17 structures.

18 To provide the kind of transition called for in the comprehensive plan,
19 Brookshire requests that a minimum of 15 feet of King County Type II
20 landscaping (as defined in KCC 21A.16.040) be provided on the boundaries
21 between the existing Brookshire homes and the new NC Plat. See Attachment A
22 hereto. This buffer will provide the kind of transition called for under sound
23 planning principles and the policies of the adjacent land use jurisdiction, the City
24 of Sammamish.

25 **4.5 THE HEARING EXAMINER ERRED IN CONCLUDING THAT HE**
26 **HAD "NO AUTHORITY" TO ADDRESS CONNECTIVITY AND**
27 **BUFFERING ISSUES.**

28 As set forth above, BEHA requested that the Hearing Examiner place

1 conditions on the NC Plat which would provide connectivity through connection
2 with 238th Place SE to the north and by placing a modest buffer between the
3 existing Brookshire Estates neighborhood and the proposed high-density NC
4 Plat. However, the Hearing Examiner refused to consider connectivity issues by
5 stating:

6 single access point is expressly permitted by the applicable county
7 road standards. The Examiner has no authority to deny the
8 proposal or require a secondary access provision under the
9 applicable standards.

10 Decision page 5, Paragraph 13 (emphasis supplied). The legal basis on which
11 the Examiner concludes he has "no authority" is set forth in Footnote 1 on the
12 same page. Relying on the same legal analysis, the Hearing Examiner also
13 concluded he had "no authority" to address the issue of conditions relating to the
14 transition between the new NC Plat and the Brookshire neighborhood.

15 Concern is stated about feared incompatibility of architectural style
16 and residential occupants, as well adverse effect on residential
17 privacy, quality of life and property values, and generally an
18 "unreasonable" and "inappropriate" land use density transition.
19 These are matters the Examiner has no authority to address in this
20 subdivision consideration.

21 Decision page 5-6, Paragraph 18 (emphasis supplied). The Hearing Examiner's
22 conclusions that he has "no authority" to act on these important subjects are
23 inconsistent with the role of the Examiner within established statutory and local
24 King County laws. Under long settled Washington law, the Hearing Examiner is
25 to take account of broad authority in his review of preliminary plats. This law is
26 discussed below.

27 Washington law requires that any review of a preliminary plat application
28 consider whether "adequate provision" is made for multiple factors regarding
whether the public use and interest is served, as follows:

58.17.110. Approval or disapproval of subdivision and
dedication--Factors to be considered--Conditions for
approval--Finding--Release from damages

1 (1) The city, town, or county legislative body shall inquire into the
2 public use and interest proposed to be served by the establishment
3 of the subdivision and dedication. It shall determine: (a) If
4 appropriate provisions are made for, but not limited to, the public
5 health, safety, and general welfare, for open spaces, drainage
6 ways, streets or roads, alleys, other public ways, transit stops,
7 potable water supplies, sanitary wastes, parks and recreation,
8 playgrounds, schools and schoolgrounds, and shall consider all
9 other relevant facts, including sidewalks and other planning
10 features that assure safe walking conditions for students who only
11 walk to and from school; and (b) whether the public interest will be
12 served by the subdivision and dedication.

13 (Emphasis supplied.) Under the King County Code, the same rules apply:

14 20.24.195 Additional examiner findings - preliminary plats. When
15 the examiner makes a decision regarding an application for a
16 proposed preliminary plat, the decision shall include additional
17 findings as to whether:

18 A. Appropriate provisions are made for the public health,
19 safety, and general welfare and for such open spaces, drainage
20 ways, streets or roads, alleys, other public ways, transit stops,
21 potable water supplies, sanitary wastes, parks and recreation,
22 playgrounds, schools and school grounds and all other relevant
23 facts, including sidewalks and other planning features that assure
24 safe walking conditions for students who only walk to and from
25 school; and

26 B. The public use and interest will be served by the platting
27 of such subdivision and dedication. (Ord. 12196 § 38, 1996: Ord.
28 9544 § 16, 1990).

Under KCC 20.24.072, "Type 3 decisions by the examiner, appealable to the
council", Subsection B states:

B. The examiner's decision may be to grant or deny the
application, or the examiner may grant the application with such
conditions, modifications and restrictions as the examiner finds
necessary to carry out applicable state laws and regulations,
including chapter 43.21C RCW, and the regulations, policies,
objectives and goals of the comprehensive plan, the community
plan, subarea or neighborhood plans, the zoning code, the
subdivision code and other official laws, policies and objectives of
King County. In case of any conflict between the King County
Comprehensive Plan and a community, subarea or neighborhood
plan, the Comprehensive Plan shall govern. (Ord. 12196 § 25,
1996)

(Emphasis supplied.)

Under both state and King County rules, the Hearing Examiner must
engage in a broad review of the public interest, including consideration of streets

1 and open space. Specifically, the Hearing Examiner must also consider whether
2 the plat meets the goals of the comprehensive plan. Washington caselaw
3 similarly requires a broad consideration of public interest issues in making
4 preliminary plat decisions, including access considerations:

5 Under RCW 58.17.110, before approving a subdivision a local
6 government is required to make sure that appropriate provisions
7 have been made for the public health, safety and general welfare. It
8 must consider the adequacy of access to and within the proposed
9 subdivision, and it is empowered to condition approval of the plat
10 upon adequate access. *Lechelt v. Seattle, supra*.

11 *Miller v. City of Port Angeles*, 38 Wn.App. 904, 909, 691 P.2d 229, 233
12 (Wash.App., 1984).

13 As may be seen, the conclusions of the Hearing Examiner essentially
14 renounce the responsibility to consider required public interest issues. While the
15 Hearing Examiner may decide that certain matters do not require conditions to
16 assure "adequate provision" is made, that does not mean that the Hearing
17 Examiner can refuse to consider such issues.

18 The Hearing Examiner felt it necessary to provide legal authority to
19 support his conclusions that he had "no authority" to address concerns raised by
20 adjacent owners. The Examiner cited two cases for support of his decision,
21 *Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997)
22 and *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208
23 (1997). Neither of these cases involved plat approval, nor were they even land
24 use cases, so it is unclear why they are cited. The Hearing Examiner goes on to
25 say:

26 The personal preferences and concerns of other property owners
27 and residents in the area also cannot be honored in an arbitrary or
28 capricious manner; only where such concerns or preferences are
addressed by or reflected in applicable regulation and policy may
they be honored, and only in the fashion permitted under due
authority.

The apparent position of the Hearing Examiner is that each of the individual

1 elements of public interest found in state law and King County local regulations
2 must somehow be reduced to a specific regulation. Nothing in state law requires
3 such action.

4 It is disturbing that the Hearing Examiner's comments seem demeaning
5 to those local residents that appear at public hearings. The Examiner speaks of
6 "personal preferences" of other property owners as a demeaning
7 characterization, when in fact, as described above, it is a well established policy
8 in King County regulations and comprehensive planning to address concerns
9 regarding connectivity and landscape buffering.

10 A broader concern exists here. State law and the King County Code
11 require public hearings before a preliminary plat can be approved. The function
12 of the Hearing Examiner is to act for the Council in reviewing and acting on
13 concerns raised during such hearings. The Hearing Examiner's decision for the
14 NC Plat seems to say that you can attend such hearings, but you are wasting
15 your breath when it comes to issues that are not been reduced to a precise
16 regulation. BEHA suggests that the Examiner's decision here, and his refusal to
17 consider public interest aspects, is not only contrary to legal requirements, but
18 also to the function of the Hearing Examiner as the representative of the Council.

19 **V. CONCLUSION AND REQUESTED RELIEF.**

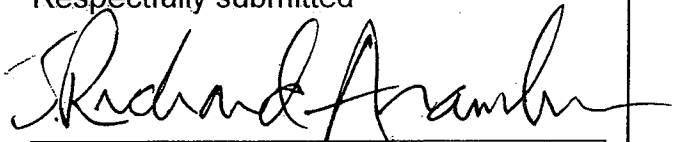
20 The Hearing Examiner's conclusion that he has "no authority" to consider
21 the reasonable and legally appropriate conditions requested on the NC Plat is
22 serious error. County and state rules and regulations require that the Hearing
23 Examiner inquire into the broad public interest and respond to sincere and
24 legitimate concerns raised by local residents. The Council should conclude that
25 the Hearing Examiner failed to exercise the authority conferred on him by the
26 Council in deciding he had "no authority" to consider connectivity and buffering
27 issues.

28

1 An available alternative for the Council would be to remand to the
2 Hearing Examiner with directions to properly exercise his authority. However, in
3 this instance, the Council should step forward and place conditions on the plat as
4 requested by BEHA. In particular, the Council should condition the plat to
5 require a connection between the NC Plat and 238th Place SE to the north. In
6 addition, the Council should require that a 15 foot buffer of type II landscaping be
7 established on the NC Plat at all boundaries with the Brookshire Estates
8 development. Both conditions are shown on Attachment C. These modest
9 conditions, neither of which affect the overall development or number of lots, are
10 consistent with subdivision planning principles and the comprehensive plan.

11 DATED this 5th day of July, 2012.

12 Respectfully submitted

13 

14 J. Richard Aramburu, WSBA #466
15 Attorney for Brookshire Estates
16 Homeowners Association-Issaquah

17
18 **CERTIFICATION / DECLARATION OF SERVICE**

19 I am an employee in the law offices of Aramburu &
20 Eustis, LLP, over eighteen years of age and competent
21 to be a witness herein. On this day, I filed the original and two
22 copies of the document to which this certificate is affixed via
23 hand delivery to the King County Council. Copies were provided
24 electronically to the hearing examiner's office, with multiple copies
25 of the color exhibit provided for council distribution.

26 I certify under penalty of perjury of the laws of the
27 State of Washington that the foregoing is true and correct.

28 DATED July 5, 2012, at Seattle, Washington,

By Carol Cohoe



Law Offices of Aramburu & Eustis, LLP

June 13, 2012

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse, Room 1200
516 3rd Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L08P0004**
Proposed Ordinance No. **2012-0071**

NELSEN CATTERALL
Preliminary Plat Application

Location: East of Issaquah-Pine Lake Road, north of 238th Way SE, unincorporated
Sammamish/Issaquah area

Appellant: Toll WA LP
represented by Aaron Hollingbery
9720 NE 120th Place Suite 100
Kirkland, WA 98034
Telephone: (425) 825-1955
Email: ahollingbery@camwest.com

King County: Department of Development and Environmental Services (DDES)
represented by Kimberly Claussen
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Email: kimberly.claussen@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:	March 29, 2012
Hearing Continued Administratively	March 29, 2012
Hearing Record Closed:	April 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 office of the King County Hearing Examiner.

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

FINDINGS:

1. General Information:

Owner/Developer: Toll WA LP
Attn. Aaron Hollingbery
9720 NE 120th Place, Suite 100
Kirkland WA 98034
425-825-1955

Engineer: Core Design
14711 NE 29th Place, Suite 101
Bellevue WA 98007
425-885-7877

STR: 15-24-06

Location: The site is located on the north side of 238th Way SE, east of Issaquah-Pine Lake Road

Tax Parcels 1524069036, 1524069043, 1524069048, 1150001390

Zoning: R-6
Acreage: 13.72 acres
Number of Lots: 80
Density: Approximately 5.8 units per acre
Lot Size: Approximately 1,000 square feet (townhouse) to 5,685 square feet in size; average lot size is approximately 2,394 square feet

Proposed Use: Single family detached dwellings & attached townhomes
Sewage Disposal: Sammamish Plateau Water & Sewer District
Water Supply: Sammamish Plateau Water & Sewer District
Fire District: Eastside Fire and Rescue
School District: Issaquah School District No. 411
Application Completeness Date: June 13, 2008

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 property lies on the Sammamish Plateau, directly abutting the corporate limits of the City of Sammamish. (The property's west side fronts Issaquah-Pine Lake Road, which lies within the City limits). The City of Issaquah lies in very close proximity as well, to the south and further to the west. The property is roughly a blocky-L in shape and 13.72 acres in area. Its

public road frontage, other than the frontage of the entire west side on Issaquah-Pine Lake Road, consists of a 60-foot wide stub terminus (existing "Tract C") on the north side of 238th Way SE. The subject segment of 238th Way SE runs easterly from Issaquah-Pine Lake Road and connects to it at a four-way intersection. Additional road right-of-way abutment is formed on the south side of the easterly leg of the L by the present stub terminus of 239th Avenue SE, which is constructed as a cul-de-sac in the adjacent single family residential subdivision *Brookshire Estates*. Another stub road abutment is formed by the southerly terminus of a north-south road within the *Rainbow Lake Ranch*, a single family residential subdivision abutting to the north, terminating on the property's north side.

4. The property generally slopes westerly on a gradual basis, with wetland depressions in the westerly side abutting Issaquah-Pine Lake Road. The wetlands constitute code-defined critical areas. The total defined wetland area onsite is approximately 3.2 acres. No other critical areas, such as qualifying wildlife habitat or migration corridors, are identified onsite or in very close proximity to the property. Vegetation is primarily pasture grass and cultivated landscaping for residential structures and outbuildings.
5. The site is located within the Laughing Jacobs Creek sub-basin of the Lake Sammamish drainage basin. The site terrain forms two sub-basins on the property, with the larger westerly sub-basin flowing to the onsite wetland areas and their outlet, then discharging along the northern property line to other wetland areas within the *Rainbow Lake Ranch* property abutting to the north and then flowing further northerly to Rainbow Lake, under Issaquah-Pine Lake Road and ultimately to Lake Sammamish approximately one mile downstream. The easterly sub-basin drains to the east to a conveyance system located in Southeast 45th Place, then to an existing pond and a downstream confluence with the Rainbow Lake sub-basin. No significant downstream drainage problems are identified, only correctible maintenance issues and beaver "rambunctiousness."
6. Applicant Toll WA LP proposes subdivision of the property into 80 lots for a mix of 35 detached single family dwellings and 45 attached townhomes, types of residential development permissible under the property's R-6 zoning, along with wetland preservation and buffering tracts, recreation tracts, drainage tracts and private access tracts serving some of the detached single family residential lots and the townhome area in the center of the northerly portion of the site. Access to the lots would be provided by road improvement within and along an extension of the aforementioned Tract C stub from 238th Way SE in the southwest portion of the site, running north-northeasterly into the site interior and then forming an extended loop within the northerly portion of the site. (A road variance has been granted with conditions under file L11V0008 to address utilization of a sag vertical curve segment of the access road route. The sag, or "dip," will be illuminated. A condition herein requires adherence to the conditions attached to the variance.) No other road connections would be made, either to the south to connect with the existing road stub in *Brookshire Estates*, to the north to connect with the existing road stub in *Rainbow Lake Ranch*, or to the west to connect directly to Issaquah-Pine Lake Road. The proposed density is approximately 5.8 units per acre, with lot sizes averaging 2,394 square feet and ranging from 1,000 square feet for townhouse development to as much as 5,685 square feet for detached single family dwellings.
7. Public water service and sanitary sewer service are available to the development by the Sammamish Plateau Water and Sewer District.
8. The proposed surface water drainage system for the development will utilize collection and infiltration gallery facilities (and detention vaults depending on soil perc tests; the site's glacial outwash soils are generally pervious). The proposed drainage plan conforms on a preliminary

basis to the requirements of the 2005 King County Surface Water Design Manual (SWDM), which imposes Conservation flow control and Sensitive Lake water quality standards. The final drainage plan and onsite developed drainage facilities are required to conform to the SWDM and its applicable standards.

9. Combined facility tracts for stormwater facilities and recreation facilities will be placed in the far eastern portion of the northern part of the property and in the southwestern portion straddling the main entry roadway. Active recreation facilities are proposed to be developed in some of such areas. A pedestrian trail running from the interior road system westerly to the Issaquah-Pine Lake Road frontage within Tracts D and E is also proposed. The proposed recreation site and facilities would be sufficiently accessible and convenient to development residents.
10. Concerns regarding the traffic impacts of the proposed development have been expressed by a number of nearby residents and property owners. Mitigation for the development's traffic impacts at the intersection of 238th Way SE and Issaquah-Pine Lake Road mitigation has been imposed by the Mitigated Determination of Nonsignificance (MDNS) issued under DDES's responsible official authority under the State Environmental Policy Act (SEPA). The mitigation measure, reached by voluntary agreement between the Applicant and the City of Sammamish, requires installation of an interim traffic control signal (or a roundabout intersection as an alternative if determined by the City to be acceptable) at the intersection, along with pedestrian crosswalks and intersection warning signals due to sight distance impairment posed by horizontal curvature on the northbound approach (on the south leg of Issaquah-Pine Lake Road). The MDNS was not appealed. (There was some disputation at hearing as to whether the signal meets MUTCD traffic control warrants; that warrant determination is a matter under City jurisdiction. The evidence in the record is that the City is in acceptance of the signal improvement. The person raising such issue noted being dropped from development notice rolls, but did not expressly claim defective notice of the MDNS or claim a right to appeal it.)
11. Concerns about adding congestion to 238th Way SE do not rise to the level of a significant drop in Level of Service (LOS) or adverse impact on traffic or pedestrian safety on such road segment. In that light, concern expressed about the need for an eastbound left-turn refuge along the 238th Way SE segment at its proposed intersection with the plat entry road ("Tract C") does not appear warranted; the oncoming traffic is at such a low predicted level that during 95% of left turn activity there will be only one car queuing to turn left; that very low incidence will preclude inordinate blocking or impeding of through eastbound traffic at that location.
12. The next issue raised as a concern is the grade of the east leg of 238th Way SE at the Issaquah-Pine Lake Road intersection, which is stated to become difficult for traction during icy conditions. The grade, combined with a tendency for nearby residents to drive to such location during inclement weather to pick up their children alighting from school buses to take them home, raises concern about adverse congestion and safety impacts during inclement weather. Though a valid concern in general, it is one that does not rise to the level of requiring mitigation or any other special conditions of approval. Inclement weather poses its own special safety parameters, and drivers must exercise due care and prudence in operating motor vehicles and not cause undue congestion. In any case, it has not shown that such phenomenon will be significantly caused or aggravated by the proposed development, which is the test of approval in this instance.
13. The proposed road access design has drawn criticism from many perspectives, not all unanimous. Several alternative access routes are stated by various neighbors and adjacent property interests as more advantageous or disadvantageous, as is the notion of providing connectivity, or

interlinking, of the area roadway layout by providing a secondary access route in addition to the single route proposed. In the final analysis, the proposed design qualifies for approval. A single access point is expressly permitted by the applicable county road standards. The Examiner has no authority to deny the proposal or require a secondary access provision under the applicable standards.¹

14. On-street parking congestion is speculatively claimed to be a potential problem, but is not shown persuasively to be of any chronic excess needing to be addressed; county zoning regulations requiring substantial off-street parking per dwelling unit must be observed in structural development.
15. It was argued that since the property abuts the Sammamish city limits and will likely be annexed to the City, it should be developed to city standards. Absent a pertinent interlocal agreement to such effect, there is no legal authority to impose City of Sammamish road or other standards on development in the unincorporated area. (Although abutting the City of Sammamish, the property is evidently formally within the very nearby City of Issaquah's assigned future annexation area.)
16. Aside from the intersection mitigation imposed by the MDNS noted above, additional traffic impact mitigation is provided by the standard reviews under Title 14 KCC and imposition of Mitigation Payment System (MPS) fees in the recommended conditions.
17. Safe walking conditions for school pedestrians would be provided by the construction of the internal roadway system and its walkway system to 238th Way SE and then existing walkways to the Issaquah-Pine Lake Road intersection. As noted previously, an additional pedestrian trail connecting to Issaquah-Pine Lake Road is proposed to be provided through the preserved wetland/open space area in the western portion of the site (Tracts D and E). That proposal is problematic, however, as the frontage of the property on Issaquah-Pine Lake Road is not improved with pedestrian facilities providing safe walking conditions for schoolchildren at the present time. Accordingly, if such route is to be used by development pedestrians as their school walkway route to their assigned bus stop, the bus stop (serving all grade levels) must be located directly at the intersection of the trail with Issaquah-Pine Lake Road so that safe walking conditions are sufficiently assured. Otherwise, until such time as safe walking conditions are provided on Issaquah-Pine Lake Road to a pertinent nearby school bus stop(s) (serving all grade levels), such a trail installation would tend to comprise an attractive nuisance by drawing schoolchildren to unsafe walking areas and shall be disallowed. The Examiner shall impose pertinent condition language to address the issue properly.
18. The proposed development density of the subdivision and the architectural style of anticipated structures on the proposed lots are of concern to neighboring residents and property owners, whose residences are on significantly larger lots with greater setbacks than are proposed and required under the code for the R-6 zone applied to the property. Concern is stated about feared incompatibility of architectural style and residential occupants, as well adverse effect on residential privacy, quality of life and property values, and generally an "unreasonable" and

¹ 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)] The personal preferences and concerns of other property owners and residents in the area also cannot be honored in an arbitrary or capricious manner; only where such concerns or preferences are addressed by or reflected in applicable regulation and policy may they be honored, and only in the fashion permitted under due authority.

“inappropriate” land use density transition. These are matters the Examiner has no authority to address in this subdivision consideration. There is no requirement of maintaining similarity to existing lot sizes, architectural style and setbacks, structural values, maintenance of privacy buffering, maintenance upkeep levels, etc., to that of adjacent developments in subdivision review under state and King County land use regulation. As noted in footnote 1, the Examiner must honor the existing zoning and development regulations as they exist (legally, at the time a complete application was filed [RCW 58.17.330]; there is no disputation in the record regarding the application vesting and which code versions pertain), not as persons feel they ought to be. Remedies to disliked land use allowances or regulations are available in the legislative forum or by seeking timely review by the Growth Management Hearing Board and/or the courts; such dissatisfaction cannot be addressed here. There is simply no code provision for requiring additional setbacks, vegetation screening, architectural homogeneity, lot size augmentation, etc., in order to make the proposed development more compatible, in the eyes of some, with adjacent properties and their residential development.

19. Nevertheless, the Applicant has offered a six-foot high wood perimeter fence on the property contacts with adjacent residential development, as well as agreeing to a ten-foot rear yard setback for Lots 1-15, which are smaller detached single family residential lots in the southwestern portion of the site, abutting existing homesites in the adjacent *Brookshire Estates* development. These voluntarily offered amenities will provide some amelioration of density dissimilarities and shall be honored by implementation in the conditions of approval below.
20. Construction period damage and congestion, of concern to some neighbors, is a matter under the administrative authority of county executive departments and will be addressed during construction plan review and permitting.
21. There is no authority in this case for the Examiner to require a Phase 2 environmental assessment of the property as has been suggested by a hearing participant.

CONCLUSIONS:

1. 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 R-6 zone.
2. 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.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on December 28, 2010, 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 *Nelsen Catterall* subdivision, as revised and received December 28, 2010, is approved subject to the following conditions of 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 R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is greater, 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 discrepancies 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. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRD&CS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location, water main and fire flow standards of Chapter 17.08 KCC. Prior to submission of engineering plans, the applicant shall do one of the following:
 - A. Provide a recorded restriction on the development of all homes in the plat, in language approved by the King County Fire Marshal, to require sprinklers; or
 - B. Obtain the approval of the King County Fire Marshal to remove the sprinkler requirement from the subdivision by providing a minimum 20-foot wide fire lane with minimum 28-foot wide curb to curb internal roads with parking restricted to one side. Provide "No Parking – Fire Lane" signs and/or other markings approved by the Fire Marshal pursuant to KCC 17.04.420, provided signage dimensions and material specifications shall comply with the Manual on Uniform Traffic Control Devices (MUTCD). The homeowners association shall be responsible for monitoring and inspecting parking compliance and signage on a regular basis. DDES shall review and approve the relevant homeowner association covenants, conditions and restrictions language. A note referencing this requirement shall be recorded on the final plat.

Appropriate provisions shall be made for maintenance of the fire lane signage, sign reflectivity and/or other markings by the homeowner's association, subject to approval and monitoring by the Fire Marshal pursuant to KCC 17.04.420. A 3-foot wide private easement for installation and maintenance of the "No Parking – Fire Lane" signs shall be provided pursuant to condition 9.f below. Failure to privately maintain the signage and enforce parking restrictions may result in code enforcement action in accordance with King County Code Titles 17 and 21 or similar provisions for successor agencies.

6. The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Sensitive Lake Water Quality Menu in the 2005 King County Surface Water Design Manual (KCSWDM). Note that stormwater infiltration is proposed for most of this site.
7. To implement the required Best Management Practices (BMP's) for treatment of stormwater, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
8. The 100-year floodplain for any onsite streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the 2005 KCSWDM.
9. The following road improvements are required to be constructed according to 2007 King County Road Design and Construction Standards (KCRD&CS). All roads are to be within public right-of-way:
 - a. Road "A" entry road shall be improved to the urban subcollector street standard, 28-foot paved, with vertical curb.
 - b. Road "A" loop road shall be improved to the urban subaccess street standard. Per the requirements of KCRD&CS Section 2.09.A.4, the Road shall be 28-foot paved width with vertical curb, gutter and sidewalks.
 - c. Tracts F, G and H shall be improved as Alley Tracts according to Section 2.09 of the KCRD&CS.
 - d. Tracts I and J shall be improved as Private Access Tracts per Section 2.09 of the KCRD&CS. These tracts shall be owned and maintained by the Lot owners served.
 - e. Lots 29 and 30 plus Lots 35 and 36 shall be served by Joint Use Driveways per Section 3.01 of the KCRD&DS.
 - f. Note: Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2007 King County Road Standards. A 36-foot wide (curb-to-curb) roadway is required to allow for parking without any restrictions.

Permitted alternatives to roadways wider than required under the KCRD&CS would include either

- (i) the conveyance of a minimum 3-foot wide private easement abutting the public right-of-way for the private installation and HOA maintenance and enforcement of "No Parking Fire Lane" signs, and the installation of these signs, or, (ii) installation of a fire suppression system meeting the requirements of the Fire Marshal in each unit/structure.

A note referencing the selected alternative, as appropriate, shall be placed upon the final plat map – and the easement shown if alternative (i) is selected.

- g. Right-of-way for a public road within Tract C shall be provided with the engineering plans, per KCRDS & CS Section 1.05F. The internal roads shall also be public roads.
 - h. Variance L11V0008 was approved by KCDOT on July 28, 2011. The Applicant shall comply with any/all conditions associated with the Variance approval.
 - i. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRD&CS 1.12.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. 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.
12. 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.
13. The proposed subdivision shall comply with the Critical Areas code as outlined in KCC 21A.24. Permanent survey markings and signs, as specified in KCC 21A.24.160, shall also be addressed prior to final approval. Temporary marking of critical areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are complete.
14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant:
- a. The Critical Areas shown on the site plan dated December 28, 2010 have been verified and approved by King County DDES staff.
 - b. The Category III wetland shall have a 75 foot buffer as measured from the wetland edge. The Category IV wetlands shall have a 50 foot buffer as measured from the wetland edge. These buffers are proposed for buffer averaging.

- c. The conceptual buffer averaging/mitigation as shown on the plan, meets county code. A final buffer averaging/mitigation plan with planting shall need to be submitted during engineering review.
- d. The wetlands and buffers shall be placed in Critical Area Tracts (CAT) for long term protection. Fencing (split rail or equivalent) of the CAT is required.
- e. A 15-foot building set back line (BSBL) is required from the edge of the CAT and shown on all affected lots. The BSBL does not apply to paved roads, driveways and structural and non-structural fill.
- f. The final mitigation plan shall include 3 years of monitoring and a financial guarantee to assure long term implementation and success.
- g. Prior to construction activities the CAT boundaries shall be clearly marked with both bright orange construction and erosion control fencing. The fencing shall remain in place until all construction activities are complete.
- h. The engineering plans shall be submitted and reviewed by Critical Areas staff.
- i. The following note shall be shown on the final engineering plan and recorded plat:

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

Dedication of a critical area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/critical 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 critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical 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/critical area and buffer. The vegetation within the tract/critical 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/critical 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 critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

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

15. 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 recreation tract and critical area tract(s).
16. The following has been established by the MDNS issued under SEPA authority as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A minimum ten-foot rear yard structural setback shall be observed on Lots 1-15. Such minimum setback requirement shall be graphically depicted and identified on the final plat map.
19. A six-foot high solid wood fence shall be installed on the property perimeters on the rear yards of Lots 1-15 and 17-50.
20. Until such time as safe school pedestrian walking conditions are present along the property's frontage on Issaquah-Pine Lake Road (and further to the nearest school bus stop(s) serving resident schoolchildren of all grade levels served by standard school bus service if not all are located on such frontage), as certified in writing by the County or successor agency with land use jurisdiction over the subject property, the proposed pedestrian trail within Tracts D and E shall be constructed to connect with Issaquah-Pine Lake Road only if a school bus stop serving resident schoolchildren of all grade levels served by standard school bus service is located directly at the trail intersection with Issaquah-Pine Lake Road.

If such direct school bus location is not provided, the trail route shall be redesigned and physically constructed in such a manner as not to invite passage to Issaquah-Pine Lake Road from the residential lots herein. Also, if the school bus location is changed from such direct location without the above safe walking conditions provisions having been made on the property's frontage on Issaquah-Pine Lake Road (and further to the nearest school bus stop(s) serving resident schoolchildren of all grade levels served by standard school bus service if not all are located on such frontage), the trail shall be physically rerouted and modified by the homeowners association to present the same disinclination characteristic noted above. Thereafter,

the trail may only be further rerouted to form a connection with Issaquah-Pine Lake Road if certified safe walking conditions to assigned school bus stop(s) have been installed. Such requirements of physical reconfiguration and the trail being maintained in such configuration as stated herein shall be made a covenant of the subject subdivision and its homeowners association, with full right of enforcement granted expressly to King County and any successor agency with land use jurisdiction over the subject property.

ORDERED June 13, 2012.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before June 27, 2012*. If a notice of appeal is filed, the original and 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 5, 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 Office of the Clerk of the Council, Room 1039, 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. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event 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.

MINUTES OF THE MARCH 29, 2012, PUBLIC HEARING ON DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08P0004.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen, Bruce Whittaker, Nick Gillen and Kristen Langley for the Department; Aaron Hollingbery for the Applicants; Chris Forster, James A. Olsen, Richard Lheureux, Michael Foss, Erin Ehlinger, Emmanuel Tangas, Don Haide, Shirley Murphy, Diane Weinstein, Todd Miller, Yvonne Tichelaar, Catherine Brooker, Cliff Axelson, Jim Van Tigham, Chris Sfanos, John Dimtroff, Jenny Bedell and Marsha Martin.

The following Exhibits were offered and entered into the record:

- Exhibit no. 1 Department of Development and Environmental Services staff report to the Hearing Examiner for file no. L08P0004.
- Exhibit no. 2 Department of Development and Environmental Services preliminary report dated March 29, 2012
- Exhibit no. 3 Application submitted May 23, 2008 with a completeness date of June 13, 2008
- Exhibit no. 4 Environmental checklist (revised) received February 2, 2012
- Exhibit no. 5 Mitigated Declaration of Non-significance (MDNS) dated February 7, 2012
- Exhibit no. 6 Affidavit of Posting indicating June 24, 2008 as date of posting and July 8, 2008 as the date the affidavit was received by the Department of Development and Environmental Services
- Exhibit no. 7 Revised plat map received December 28, 2010
- Exhibit no. 8 Assessors maps SW 15-24-06; SE 15-24-06
- Exhibit no. 9 Level 1 drainage analysis by AHBL received May 2008
- Exhibit no. 10 Revised Level 1 drainage study by CORE Design dated May 2010
- Exhibit no. 11 Revised Conceptual drainage plan by CORE Design dated December 2010
- Exhibit no. 12 Downstream analysis by CORE Design dated November 1, 2011
- Exhibit no. 13 Wetland and conceptual mitigation plan by Gary Shultz dated December 23, 2010
- Exhibit no. 14 Wildlife habitat assessment by Sewall Wetland Consulting, Inc. dated November 23, 2011
- Exhibit no. 15 Associated Earth Sciences geotech report December 2004
- Exhibit no. 16 Associated Earth Sciences geotech report May 2008 (a. Infiltration, b. Infiltration system)
- Exhibit no. 17 Associated Earth Sciences, Inc. geotech report dated August 2008
- Exhibit no. 18 Traffic study by Transportation Engineering North West December 23, 2010
- Exhibit no. 19 KCRS variance L11V0008
- Exhibit no. 20 Title report Trace C-2012
- Exhibit no. 21 Density calculation worksheet 2008
- Exhibit no. 22 City of Sammamish e-mail dated January 1, 2012
- Exhibit no. 23 Transportation Concurrency Certificate (2007)
- Exhibit no. 24 Agreement with the City of Sammamish & CamWest dated April 1, 2009
- Exhibit no. 25 Document submitted by CamWest
- Exhibit no. 26 Amended Plat of Brookshire Estates
- Exhibit no. 27 Email with attached letter to Kimberly Claussen from Rainbow Lake Ranch Improvement Associated dated March 27, 2012
- Exhibit no. 28 Notes from the Brookshire Estates Homeowner's Association meeting dated September 23, 2009
- Exhibit no. 29 Document submitted by Brookshire Estates Homeowner's Association
- Exhibit no. 30 Letter to the Hearing Examiner from Erin Ehlinger; Resume of Erin Ehlinger; Excerpt from The Issaquah Press on Klahanie's urban wildlife sanctuary
- Exhibit no. 31 Sight Distance Study completed by Cam West

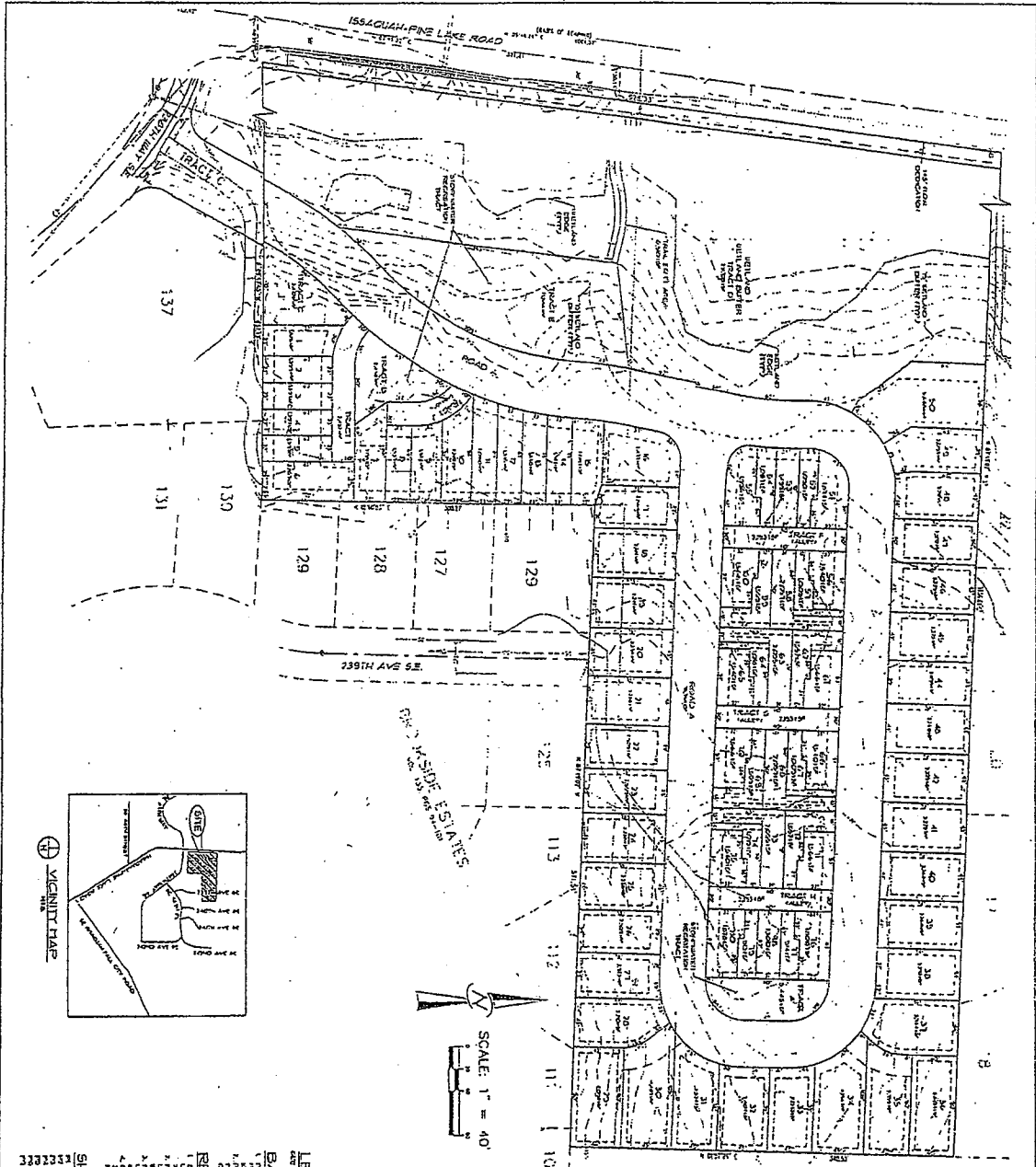
The following Exhibit was offered and entered into the record on April 2, 2012:

- Exhibit no. 32 Letter from Peter K. Peterson to the Hearing Examiner dated April 2, 2012

The following Exhibit was offered and entered into the record on April 5, 2012:

- Exhibit no. 33 Response to the Peter K. Peterson letter from Aaron Hollingbery dated April 5, 2012

A PORTION OF THE SW 1/4 SEC. 15, TWP. 24 N., R0E. 6 E., W. 11.



OWNER/APPLICANT
 CAMWEST DEVELOPMENT, INC.
 1100 10th St. SW
 Seattle, WA 98104

PLANNER/ENGINEER/SURVEYOR
 CORE DESIGN
 1100 10th St. SW
 Seattle, WA 98104

SITE STATISTICS
 TOTAL AREA: 10.00 ACRES
 TOTAL LOT AREA: 10.00 ACRES
 TOTAL LOT AREA: 10.00 ACRES

LEGAL DESCRIPTION
 A PORTION OF THE SW 1/4 SEC. 15, TWP. 24 N., R0E. 6 E., W. 11.

NOTES
 1. THIS PLAN IS A PRELIMINARY PLAT AND IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF CORE DESIGN.
 2. THE PLAT IS SUBJECT TO ALL RECORDS, RECORDS OF ROAD DEPARTMENTS, AND RECORDS OF THE CITY OF SEATTLE.
 3. THE PLAT IS SUBJECT TO ALL RECORDS, RECORDS OF ROAD DEPARTMENTS, AND RECORDS OF THE CITY OF SEATTLE.

REFERENCES
 1. SEATTLE CITY CHARTER
 2. SEATTLE CITY CODE
 3. SEATTLE CITY ORDINANCES
 4. SEATTLE CITY RESOLUTIONS

LEGEND
 LOT AREA
 LOT AREA
 LOT AREA

BASIS OF BEARINGS
 1. PLAT OF DISPOSITION OF LAND IS ACCORDING TO THE 1983 NATIONAL GRID SYSTEM.
 2. PLAT OF DISPOSITION OF LAND IS ACCORDING TO THE 1983 NATIONAL GRID SYSTEM.

LEGAL DESCRIPTION
 A PORTION OF THE SW 1/4 SEC. 15, TWP. 24 N., R0E. 6 E., W. 11.

NOTES
 1. THIS PLAN IS A PRELIMINARY PLAT AND IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF CORE DESIGN.
 2. THE PLAT IS SUBJECT TO ALL RECORDS, RECORDS OF ROAD DEPARTMENTS, AND RECORDS OF THE CITY OF SEATTLE.
 3. THE PLAT IS SUBJECT TO ALL RECORDS, RECORDS OF ROAD DEPARTMENTS, AND RECORDS OF THE CITY OF SEATTLE.

REFERENCES
 1. SEATTLE CITY CHARTER
 2. SEATTLE CITY CODE
 3. SEATTLE CITY ORDINANCES
 4. SEATTLE CITY RESOLUTIONS

LEGEND
 LOT AREA
 LOT AREA
 LOT AREA

SHEET INDEX

NO.	DATE	BY
1	11/17/2010	JAMES A. GOSWAMI
2	11/17/2010	JAMES A. GOSWAMI
3	11/17/2010	JAMES A. GOSWAMI
4	11/17/2010	JAMES A. GOSWAMI
5	11/17/2010	JAMES A. GOSWAMI
6	11/17/2010	JAMES A. GOSWAMI
7	11/17/2010	JAMES A. GOSWAMI

PRELIMINARY PLAT NELSEN/CATTERALL CAMWEST DEVELOPMENT, INC. 1100 10th St. SW Seattle, WA 98104	 CORE DESIGN ENGINEERING • PLANNING • SURVEYING	
---	--	--

LO8 P0004

Attachment 1

CHAPTER 10

COMMUNITY PLANS

Though typically separate from the King County Comprehensive Plan, some community plan policies have been incorporated into the comprehensive plan. These policies apply to specific geographic areas of King County. The original community plan policy number appears in parentheses at the end of each policy.

Between 1973 and 1994 King County prepared community plans for 12 subareas of unincorporated King County. The first generation of community plans, substantially completed by 1984, were used to implement the county's 1964 Comprehensive Plan, and consisted of detailed land use policies, area zoning, and lists of capital projects (primarily roads and parks) for each planning area. The second generation of community plans, from 1985 to 1994, implemented many concepts of the 1985 King County Comprehensive Plan (for example low-density zoning for rural areas, resource lands and environmentally sensitive areas, higher urban residential densities, and development guidelines for major urban activity centers such as Kenmore) that were carried over to the 1994 King County Comprehensive Plan.

Under King County's pre-Growth Management Act (GMA) planning system, if a community plan conflicted with the comprehensive plan, the community plan governed. Under the GMA, the comprehensive plan prevails over "subarea" plans (RCW 36.70A.080(2)). The 1994 King County Comprehensive Plan spelled out the relationship between the comprehensive plan and community plans and directed the county to review community plans and repeal or revise them to eliminate conflicts. The county has reviewed the community plans adopted between 1973 and 1994 and determined that, while most community plans' policies are redundant (or in a few cases in conflict with the 1994 Comprehensive Plan); some are area-specific or issue-specific and should be readopted as part of the comprehensive plan.

Although the community plans (except for the Vashon Town Plan, West Hill, and White Center – see Section XIII) are no longer in effect as separately adopted plans, in many cases the published plan documents contain valuable historical information about King County's communities and other information that provides background for the policies listed below and for the portions of the local pre-GMA area zoning that remain in effect.

The following section contains those community plan policies that are readopted as part of the King County comprehensive plan, and community plan policies that have been amended through subarea plans. This section also contains policies that have been adopted subsequent to community plans, but are specific to individual community planning areas. This chapter is reviewed during each 4-year cycle update and policies that directly pertain to areas no longer under King County jurisdiction because of annexation or incorporation are deleted.

II. East Sammamish

The East Sammamish Community Plan was adopted in December 1992. The East Sammamish Community Plan Update became effective in June 1993. Most of the planning area was designated for urban development, but important rural areas included Happy Valley, Grand Ridge and the eastern edge of the Sammamish Plateau. For the most part, the 1994 King County Comprehensive Plan reaffirmed the land use designations of the East Sammamish Community Plan Update. The major changes from the community plan occasioned by the 1994 Comprehensive Plan were replacement of the "urban reserve" approach to growth phasing with the service and finance strategy outlined in the 1994 Comprehensive Plan and designation of a portion of Grand Ridge for urban growth. Most of the readopted policies address drainage, transportation and road design.

- CP-201** For all new development, increased standards for retention/detention, water quality facilities, and monitoring shall be considered, adopted and implemented as appropriate within the areas identified in surface water management basin planning and reconnaissance study areas. (NE-1)
- CP-202** As new roads are built and existing roads widened, special consideration shall be taken to create or retain the aesthetic character of the area through the use of vegetated buffers that utilize native vegetation. (NE-3)
- CP-203** Control mechanisms equal to or more effective than those adopted by Ordinance 9365 limiting or removing phosphorus and other non-point source pollutants from water bodies should be established and implemented as special requirements in area-specific basins plans to provide added protection to streams, lakes, wetlands. The Lake Sammamish Water Quality Management Project Report and, upon their adoption, the Issaquah Creek and East Lake Sammamish Basin and Non-point Source Control Plan, the Pine Lake Management Plan and the Beaver Lake Management Plan recommendations should be implemented to protect water bodies from non-point source pollution. (NE-7)
- CP-204** Development shall protect wildlife through site design and landscaping. New development within or adjacent to the wildlife habitat network should incorporate design techniques that protect and enhance wildlife habitat values. (NE-10)

- CP-205** All golf course proposals shall be carefully evaluated for their impacts on surface and groundwater quality, sensitive areas, and fish and wildlife resources and habitat. (NE-11)
- CP-206** Water used for irrigating golf courses should come from nonpotable water sources wherever possible. Use of natural surface water sources, such as streams, should be avoided due to impacts on fish and other wildlife habitat. A water conservation plan shall be submitted with golf course applications which should address measures such as the use of drought-tolerant plant species. (NE-12)
- CP-207** The Patterson Creek Basin currently provides highly-productive aquatic habitat. Urban development within this basin should be conditioned to protect this resource by minimizing site disturbance, impervious surfaces and disturbances of wetlands and streams. (No Community Plan Policy Number)
- CP-208** The Northwest Pipeline office and maintenance shop is an existing use and is recognized by this plan as providing a needed service to the area. This 6.5 acre site may redevelop for pipeline utility and/or school bus base uses exclusive of major maintenance functions that are compatible with the surrounding rural development and agricultural uses. Redesignation of additional properties in the immediate vicinity of Northwest Pipeline for manufacturing park uses or other urban uses shall not be permitted. (CI-13)

CP-209 New developments should be designed and constructed with an internal road system which includes a Neighborhood Collector linking with existing or planned adjacent developments, creating a complete Neighborhood Collector circulation system and such linkage should be designed to ensure safety of local streets. Through traffic on local access streets should be discouraged. (T-9)

CP-210 Metropolitan King County Government should establish park-and-ride facilities in the East Sammamish Community Planning area. Park-and-ride facilities should be built along 228th Avenue and/or adjacent to I-90 and SR-202. The park-and-ride lots should be sited adjacent to and connect with existing or proposed community or neighborhood centers or within the employment center located around the intersection of E. Lake Sammamish Parkway and SE 56th Street. Establishment of a

site near, but to the north of, I-90 should be high priority response to current and anticipated I-90 access problems. (T-13)

CP-211 Consistent with the King County Open Space Plan, the county shall encourage establishment of an open space system in East Sammamish and give priority to protecting recreational, cultural and natural and sensitive areas such as shorelines, aquifer recharge areas, wildlife habitat, historic properties, archaeological sites, scenic vistas and community separators or greenbelts. The county may require lot clustering within or adjacent to open space areas; linkages between open spaces and may provide density bonuses or incentives to developers who preserve significant open space or establish trails beyond usually applied mitigation. (P-11)

CP-212 Urban separators should be established to provide visual relief from continuous development, provide important linkages for wildlife habitat, and maintain a visual separation between distinct communities. (P-17)

CP-213 There are areas within the urban separators that are especially suitable for trail connections for recreational use by present and anticipated population. King County should develop a trail and/or parks system utilizing the preserved open space within the urban separators. (P-18)

CP-214 When the development of properties occurs in the East Sammamish planning area, public access or easements should be required to complete the development of a local trail system for those areas where existing trails have historically been used by the public, or where the King County Open Space Plan identifies proposed trail alignment for regional and local trails. The Parks Division shall review the application during the development review process. (P-23)

RECEIVED

JUL 25 PM 4:25

CLERK
KING COUNTY COUNCIL

RECEIVED
2012 JUL 25 PM 4:26
CLERK
KING COUNTY COUNCIL

BEFORE THE KING COUNTY COUNCIL

In the Matter of

The Proposed Preliminary Plat of Nelsen
Catterall

DDES File No. L08P0004

RESPONSE OF APPLICANT, TOLL WA LP

I. SUMMARY OF FACTS AND ARGUMENT

The appeal filed by the Brookshire Estates Homeowners Association-Issaquah ("Brookshire HOA") does not accurately reflect the either facts presented at the hearing or applicable law, and the appeal should be rejected.

Factual Background

The Nelsen Catterall plat is an 80-lot subdivision located in the R-6 zone in unincorporated King County within the City of Issaquah planned annexation area. The plat will be developed with market-rate, single-family homes on lots that meet all lot size and density requirements of the R-6 zone.

The wetlands and buffers in the western portion of the Nelsen Catterall property prevent direct access from the plat's homes to Issaquah-Pine Lake Road, so Toll had three access options: (1) 239th Ave SE, a cul-de-sac within Brookshire Estates to the south; (2) 238th Place SE, a cul-de-sac within the Rainbow Lake Ranch to the north; and (3) the route Toll ultimately chose, Brookshire Tract C, a tract reserved by the Brookshire developer for access to future development on the Nelsen Catterall property. See Attachment A (illustrative aerial

RESPONSE OF APPLICANT, TOLL WA LP - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 photograph).¹ Because Toll did not own Tract C when it filed the original preliminary plat
2 application on May 23, 2008, it proposed access from the south through the cul-de-sac in
3 Brookshire Estates. This access was the most feasible and safe due to significant grade issues to
4 the north, impacts to the wetland buffers and potentially the wetlands from a northern route, and
5 because the road system within Rainbow Lake Ranch lacks sidewalks and street lights, while the
6 Brookshire road to the south (239th Ave. SE) has both sidewalks and streetlights.

7 Toll met with the Brookshire HOA and the Rainbow Lake board on numerous occasions
8 to explain the plat and to respond to questions. Based on feedback from these meetings, Toll
9 sought to minimize impacts to both neighborhoods to the maximum extent feasible by
10 purchasing, at significant expense and delay, Tract C, which the Hearing Examiner approved for
11 access. Thus families living in the new Nelsen Catterall plat will access their homes through this
12 Tract C which crosses the undeveloped portion of Brookshire and minimizes impacts to
13 Brookshire residents.

14 Undisputed expert testimony at the hearing established that Tract C access will send the
15 least amount of traffic through Brookshire. The evidence shows that a second connection to the
16 north to Rainbow Lake Ranch would route *more* traffic through Brookshire than the current sole
17 Tract C access point for two reasons: (1) 80% of traffic in this area travels south² and (2) the
18 applicant voluntarily agreed to install a traffic signal (or potentially a roundabout) and related
19 improvements at the Brookshire entrance at Issaquah-Pine Lake Road, a currently deficient
20 intersection with sight distance issues. This will significantly improve traffic operations on both
21 Issaquah-Pine Lake Road and the main access road into Brookshire (238th Way SE). Testimony
22 established that it is very difficult for Rainbow Lake Ranch residents travelling to the south to
23 make a left turn to Issaquah-Pine Lake Road at SE 44th and those residents would use a

24 ¹ Attachment A is the substantial equivalent of a photo included in Toll's PowerPoint presentation to the Hearing
25 Examiner, in the record at Ex. 25. The outlines and labels in Attachment A were added by counsel for illustrative
26 purposes and are not intended to precisely represent locations.

² See Ex. 18, Revised Transportation Impact Study (December 23, 2010) at 12-13 & Fig. 4. This Study was
reviewed and approved by King County Staff.

RESPONSE OF APPLICANT, TOLL WA LP - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 connection through Nelsen Catterall to access Issaquah Pine Lake via the improved intersection
2 at the Brookshire entrance, thus directing more traffic through Brookshire than would the sole
3 access through Tract C recommended by King County staff and approved by the Hearing
4 Examiner.

5 Furthermore, while a second access is not needed or desirable, testimony at the hearing
6 established that if a second access were needed, it should be located to the south through the
7 originally proposed access point at 239th Ave. SE, in the Brookshire Estates subdivision, not to
8 the north through Rainbow Lake.

9 With respect to buffers, the Nelsen Catterall plat meets all County requirements for the
10 R-6 zone, including density, setback, and landscaping requirements. In order to address
11 Brookshire concerns to the maximum extent feasible, Toll voluntarily agreed to increase
12 setbacks on lots with attached homes that abut the Brookshire development as well as construct a
13 six foot fence as a further buffer to Brookshire. The lots that abut the Nelsen Catterall
14 development also are buffered by the abutting Native Growth Protection Easement area that
15 abuts the Nelsen Catterall property.

16 **Summary of Legal Arguments**

17 Brookshire acknowledges that the approved access road for the Nelsen Catterall
18 subdivision complies with the "100-lot" rule of the King County Road Standards³ which requires
19 only one access for the Nelsen Catterall plat. Brookshire has not and cannot cite a factual or
20 legal basis to require a second access point, and as noted above in the summary of the facts, a
21 second access to the north would not only fail to mitigate traffic impacts, it would exacerbate
22 them. Expert and lay testimony established that traffic would increase in the Brookshire
23 subdivision because traffic from the north would cut through Brookshire to access Issaquah-Pine
24 Lake Road at the new signal Toll will construct at the Brookshire entrance intersection.

25
26 ³ Selected portions of the King County Road Standards are included as Attachment B.

1 Traffic impacts of the plat were evaluated as part of the SEPA process. The MDNS
2 included only one condition, which is the Applicant's voluntary agreement to construct the
3 traffic signal at the Brookshire/Issaquah-Pine Lake Road intersection. Brookshire filed no SEPA
4 appeal.

5 Brookshire's appeal misleads the Council about the position of the City of Sammamish
6 by quoting from a now-outdated letter the City submitted years ago, before access was proposed
7 through Tract C. After the letter was submitted, the Applicant met with the City to address the
8 City's concerns about impacts to roads located within the City. The City agreed in writing that a
9 traffic signal at the Brookshire entrance road intersection with Issaquah-Pine Lake Road (which
10 is located within the City) would mitigate all of the City's traffic concerns. This agreement was
11 the basis for the SEPA condition for the signal.

12 Brookshire's legal arguments relating to connectivity are inherently flawed because they
13 depend primarily on a King County Comprehensive Plan policy that specifically *discourages*
14 directing through-traffic onto local access roads. The road Brookshire wants the Nelsen Catterall
15 Plat to connect to within the Rainbow Lake subdivision is a local access road that Brookshire
16 erroneously identifies as a Neighborhood Collector. Brookshire's legal argument also relies
17 upon the City of Sammamish Comprehensive Plan, which is legally irrelevant because the
18 subject property is within Issaquah's planned annexation area.⁴

19 Brookshire's arguments regarding buffering are similarly unsupported by facts or law.
20 Brookshire does not dispute that the Nelsen Catterall subdivision complies with the density
21 limits of the R-6 zone and with all applicable setback and landscaping requirements.
22 Nevertheless, Brookshire wants a buffer of 15 feet of type II landscape, which necessarily would
23 eliminate any useful backyard for the Nelsen Catterall homeowners. Brookshire admits that its
24 own lots already are protected by a 20-foot Native Growth Protection Easement buffer.⁵ Toll has

25 ⁴ See Attachment C, June 2011 Interim Potential Annexation Areas – Countywide Planning Policies.

26 ⁵ Illustrated in Attachment A by the purple line.

1 exceeded code requirements by voluntarily providing 10-foot rear yard setbacks on lots with
2 attached single family homes abutting Brookshire, as well as constructing a 6-foot fence on all
3 lots abutting Brookshire.

4 Brookshire misleadingly cites a Comprehensive Plan policy regarding Urban Separators
5 as support to impose 15-foot buffers. An "Urban Separator" is an urban area where properties
6 are designated low-density (1 du/ac), intended to buffer rural areas from more intense urban
7 development. It has no application to the Brookshire or the Nelsen Catterall subdivision, both of
8 which are designated as "Urban Residential 4-12 du/ac."

9 Finally, Brookshire mischaracterizes the Examiner's statement of his own authority. His
10 statements reflect the record that was before him in this case. He stated that he had no authority
11 to require a second access and a 15-foot landscaped buffer because, as his unchallenged Findings
12 make clear, there were no facts to support the requested exercise of authority. The Examiner
13 properly concluded that he could not condition a plat simply to assuage community concerns,
14 without authority in the law or factual support in the record. He spent significant portions of his
15 opinion addressing the very "problems" Brookshire alleges before concluding that Nelsen
16 Catterall subdivision made appropriate provision for roads, open space, and all other aspects of
17 the public health, safety, and welfare. Nothing in the record supports the imposition of
18 additional conditions, and the law prohibits the County from imposing the requested conditions
19 because they would require the applicant to fix "problems" that the applicant did not create and
20 that do not, in fact, exist. The Council should affirm the Examiner's reasoned opinion.

21 II. TOLL'S RESPONSE TO APPELLANT'S STATEMENT OF ISSUES

22 1. The approved subdivision not only complies with all connectivity requirements, it
23 will substantially *improve* upon existing traffic operations. Imposition of a requirement to
24 provide a second access to the north would violate the King County Code, would not mitigate
25 any project impacts, would exceed the authority of the Hearing Examiner, and would violate
26 RCW 82.02.020.

RESPONSE OF APPLICANT, TOLL WA LP - 5

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 traveled way is 26 feet wide, with no sidewalks.¹⁰ The intersection of SE 44th and Issaquah-Pine
2 Lake Road is controlled by a stop sign.

3 Brookshire access to Issaquah-Pine Lake Road is via 238th Way SE, also controlled by a
4 stop sign. The approved access to the Nelsen Catterall subdivision is along a local subcollector
5 proposed to be constructed on Brookshire Tract C that will intersect with 238th Way west of
6 Brookshire's homes.¹¹ The traffic study distributes all Nelsen Catterall subdivision traffic west
7 to Issaquah-Pine Lake Road, and none east past Brookshire homes.¹² Traffic distribution is
8 based upon actual studies and approved by King County staff.

9 The original Nelsen Catterall plat application was filed before Toll acquired Brookshire
10 Tract C. The plat proposed access via the stub at 239th Place in Brookshire.¹³ At that time, Toll
11 had thoroughly analyzed all potential access points based up numerous factors, including
12 wetland impacts, geography, and safety. Access to the west directly to Issaquah Pine Lake was
13 not feasible due to wetland impacts. Access to the north via 238th Place in Rainbow Lake Ranch
14 would also impact wetland buffers and potentially wetlands, and would present significant grade
15 issues due to the location of the Rainbow Lake Ranch and the ability to meet King County Road
16 Standards while avoiding wetland impacts.¹⁴ Safety was another significant concern because of
17 the rural type of road within Rainbow Lake Ranch – a 26-foot wide traveled way with no
18 sidewalks or street lights.

19
20
21 ¹⁰ Ex. 27.

22 ¹¹ See Ex. 2 at ¶ I.4.d, O.9.a. The approximate location of Tract C is indicated in blue on Attachment A.

23 ¹² Ex. 18 at 15 Fig. 6.

24 ¹³ See testimony of Aaron Hollingbery, Tape 1 at 40:15 (“Additionally, this option is not feasible due to
25 constructability issues associated with grade changes at this location and impacts to wetland buffers and how they
26 interrelate with the road standards. And additionally, safety and inadequate road conditions make this a difficult
place to make access. The road there is narrow, paved to 26’ wide . . . , there are no sidewalks, and it does not
currently meet King County road standards.”); see also Appellants’ Attachment C (marked-up plat showing location
of requested access, through two lots in the northwest corner of the plat).

¹⁴ Because a connection to the north would serve more than 100 homes (80 in Nelsen Catterall and 30 in Rainbow
Lake Ranch), the King County Road Standards would require it to be constructed as a Neighborhood Collector,
rather than a Subcollector. See KCRS § 2.03.

RESPONSE OF APPLICANT, TOLL WA LP - 7

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 The Brookshire stub road at 239th SE was determined to be the only viable access point
2 from both a constructability and safety standpoint. It posed no impacts to wetlands. There were
3 no grade issues, and the paved portion of the road is 28 feet wide, with both sidewalks and street
4 lights.¹⁵

5 **B. Toll Meet With Neighbors to Address Concerns**

6 Subsequent to submitting the preliminary plat, Toll meet with the boards of both
7 neighborhoods on several occasions.¹⁶ Brookshire recommended that Toll explore the use of
8 Tract C, which the applicant for the Brookshire Plat reserved to serve future development to the
9 north, in addition to a northerly connection to 238th Pl.¹⁷ Based upon concerns expressed at
10 those meetings, as well as written comments, Toll explored the possibility of acquiring Tract C
11 and eventually did so. The acquisition was expensive and caused a significant delay in the
12 project due to title issues related to Tract C.¹⁸ However, Toll believed that use of the Tract C
13 access point would have the least impact on both neighbors. The plat was redesigned and
14 resubmitted.

15 **C. Access to the Arterial is Currently Difficult from Both Rainbow Lake Ranch and**
16 **Brookshire Estates**

17 Issaquah-Pine Lake Road is a heavily traveled north-south Principal Arterial connecting
18 the cities of Issaquah and Sammamish, as well as providing connection between Sammamish and
19 Interstate 90 to the south.¹⁹ During the peak hours, 80% of residential traffic in the

20
21 ¹⁵ See Forster Testimony, Tape 1 at 1:08:47-1:09:19 (“We also looked at 239th Avenue SE, and if a second
22 connection was required, which it’s not, but if it was required, 239th actually is a roadway that would provide a
more desirable second connection due to its roadway width, which is 28 feet wide, sidewalks on both sides, it’s fully
improved versus the Rainbow Lake road, which doesn’t have sidewalks and is narrow.”).

23 ¹⁶ Hollingbery Testimony at 37:00-37:20.

24 ¹⁷ Ex. 29, Tab 1, Aug. 12, 2008 letter from Brookshire to County, at 2.

25 ¹⁸ See Hollingbery testimony, Tape 1 at 44:15 (“This did not come without cost to CamWest. First off, we had
26 significant project delay. It took us approximately 2 years to negotiate and complete purchase of Tract C.
Additionally, there was a purchase price for tract C, it wasn’t free. There are additional construction costs we will
incur. There was a second stormwater detention vault that was required, and we’re also going to need to extend
grading and road construction through Tract C.”).

¹⁹ See Ex. 18 at 3 Fig. 1.

1 neighborhood of the Nelsen Catterall subdivision (including both Brookshire and Rainbow Lake)
2 travels to or from the south on Issaquah-Pine Lake Road, while 20% travels to or from the
3 north.²⁰ The large volume of traffic on Issaquah-Pine Lake Road (in excess of 1100 trips²¹
4 during the AM peak), coupled with a curve located just south of 238th Way (the Brookshire
5 access road) currently make left turns from Brookshire onto Issaquah-Pine Lake Road
6 southbound very difficult.²² Under *current* conditions at the AM peak hour, the intersection
7 experiences much higher volume than its capacity, with the level of service (“LOS”) for these
8 left turns at F, with average predicted wait times exceeding the model’s capacity to estimate.²³
9 The traffic model predicts that eastbound drivers wishing to head south on Issaquah-Pine Lake
10 Road either turn right (north) on Issaquah-Pine Lake Road and U-turn to head south, or they
11 head deeper into the neighborhoods on local access roads to reach a signalized intersection.²⁴

12 **D. City of Sammamish Traffic Concerns Fully Addressed by New Stoplight**

13 Shortly after submittal of the plat (which had access via the Brookshire stub road at
14 239th), on July 10, 2008, the City of Sammamish submitted public comment suggesting the
15 creation of a second access point to the Nelsen Catterall subdivision.²⁵ Toll and its transportation
16 engineer subsequently met with City representatives on several occasions to discuss how best to
17 address project impacts in the City of Sammamish – essentially, on Issaquah-Pine Lake Road.
18 The City plans to widen Issaquah-Pine Lake Road, but those improvements are not funded.
19 Based upon these discussions, the City decided instead that installation of a traffic signal at the
20 intersection of Issaquah-Pine Lake Road and 238th Way would address sight-distance and
21

22 ²⁰ Ex. 18 at 12-13 & Fig. 4. During the AM peak, 80% of neighborhood traffic is outbound traveling south, while
23 during the PM peak, 80% of neighborhood traffic is inbound, returning from the south.

24 ²¹ Ex. 18 at App’x A.

25 ²² Ex. 18 at 14 Fig. 5.

26 ²³ Ex. 18 at App’x C, p. 4 (“[The] average vehicle delay for the westbound left-turn at the stop sign is beyond the
calculable limits of our analysis software (theoretically estimated at over 11 minutes per vehicle).”).

²⁴ *Id.*

²⁵ Ex. 28, behind tab labeled “Connectivity”.

1 operational impacts at this intersection and fully mitigate all impacts on the City's road system.²⁶
2 On April 1, 2009, the City and Toll signed an agreement to that effect, and DDES made
3 compliance with that agreement a condition of the MDNS.²⁷ In the agreement, the City
4 acknowledged that the traffic signal described in the agreement would "fully mitigate this
5 project's transportation impacts in the City of Sammamish."²⁸

6 **E. Traffic Study Demonstrates the Positive Impact of the Plat, as Mitigated**

7 The traffic study, updated in December of 2010, shows that even with the additional
8 traffic from the Nelsen Catterall plat,²⁹ installation of the traffic signal at the intersection of
9 Issaquah-Pine Lake Road and 238th Way will vastly improve the performance of the
10 intersection, reducing the LOS for eastbound left-turn movements from an off-the-charts F to a
11 more tolerable D.³⁰ In other words, intersection performance for southbound Brookshire traffic
12 will *improve* with the installation of the signal and the construction of the Nelsen Catterall
13 subdivision over current conditions.

14 The traffic study also shows that operations at the intersection of 238th Way and the
15 Nelsen Catterall subdivision access point through Tract C, with all studied movements operating
16 at LOS A.³¹ According to the study, 95% of the eastbound left-turn movements from 238th Way
17 (vehicles returning home, into the Nelsen Catterall subdivision, from points south on Issaquah-
18 Pine Lake Road) will involve less than nine seconds of delay and a queue of one or fewer cars.³²

19
20 ²⁶ See Ex. 24.

21 ²⁷ Ex. 5.

22 ²⁸ Ex. 24 at 2 ("The results of the capacity analysis show that a new traffic signal at this intersection would
23 significantly improve intersection LOS . . . and fully mitigate this project's transportation impacts in the City of
24 Sammamish.") (letter acknowledged by Sammamish City Engineer). Later, after the County issued the MDNS but
25 prior to the hearing, the City concluded that a roundabout might better serve its needs. Toll voluntarily agreed to the
26 change.

²⁹ The Nelsen Catterall plat will not add a significant amount of traffic to the system. The traffic study predicts only
49 outbound trips during the AM peak hour and 48 inbound trips during the PM peak hour—less than one car per
minute on average. Ex. 18 at 11 Table 5.

³⁰ Ex. 18 at 17, Table 7.

³¹ *Id.* at 22 & Table 9.

³² *Id.*

1 In other words, there will be no backups on 238th Way relating to cars turning left from 238th
2 Way into Tract C

3 **F. Neighborhoods Participate in the Hearing**

4 Rainbow Lake submitted written comment to DDES supporting the application and
5 praising Toll for addressing its concerns.³³ By contrast, Brookshire has persisted in its request
6 for a second access point to the north through Rainbow Lake.³⁴ Brookshire never offered any
7 expert analysis or opinion controverting the conclusions of Toll's traffic engineers that a second
8 access located through Rainbow Lake Ranch would actually increase traffic in the Brookshire
9 development.³⁵

10 Brookshire also expressed concern to DDES that traffic bound for the Nelsen Catterall
11 subdivision would cause backups while waiting to turn left onto the new access road.³⁶ As
12 discussed above, however, the traffic analysis showed that Brookshire's concerns are
13 unfounded.³⁷ Brookshire offered no traffic studies or engineering opinion to support its
14 concerns.

15 Brookshire provided no expert testimony or traffic studies at the preliminary plat hearing
16 to support lay comments that a second access would reduce traffic.³⁸ Although Erin Bard
17 Ehlinger, P.E., a traffic engineer and resident of Brookshire, provided written and oral testimony,
18 she offered no facts or opinion that contradicted the traffic analysis presented in support of the
19 subdivision and the access point through Tract C.³⁹ Her testimony centered primarily upon the
20 benefits of a roundabout versus a traffic signal at the Issaquah-Pine Lake Road/Brookshire

21 ³³ Ex. 27.

22 ³⁴ Ex. 29 at 2.

23 ³⁵ See, e.g., Forster Testimony, Tape 1 at 1:07:44 (comparing 238th Place SE with 238th Way SE and concluding
that the latter – the route eventually selected – better served the plat while producing the fewest impacts to the
neighbors).

24 ³⁶ Ex. 29 at 2 (“Congestion will be evident with multiple left turns into Tract C to enter the Nelsen Catterall plat,
especially during the P.M. Peak Hour.”).

25 ³⁷ Ex. 18 at 22 Table 9.

26 ³⁸ Ex. 29.

³⁹ See Ex. 30.

1 access road intersection and questions relating to adequacy of on-street parking within the
2 Nelsen Catterall Plat. After reviewing the record and engaging in an extensive discussion of
3 traffic issues with County staff,⁴⁰ the Hearing Examiner concurred with Toll's transportation
4 engineer, and the County staff's recommendation that the processed access through Tract C
5 complied with the K.C.C.⁴¹ and made "adequate provision" for roads.⁴²

6 At the hearing, Brookshire expressed concern about the differences in the density
7 between the R-6 Nelsen Catterall subdivision and the R-4 Brookshire development. The
8 Brookshire plat includes a 20-foot Native Growth Protection Easement on its boundaries with
9 what is now the Nelsen Catterall subdivision, and Brookshire asked that the Examiner impose a
10 similar 20-foot NPGE easement on the rear yards of the Nelsen Catterall plat. Brookshire also
11 requested a condition requiring larger setbacks and landscaping in the Nelsen Catterall
12 subdivision lots adjacent to Brookshire homes.

13 Because the King County Code imposes no landscaping or buffering requirements in the
14 R-6 or R-4 zones, and because nothing in the record established a need for additional buffering,
15 the Examiner rejected Brookshire's request. However, Toll voluntarily offered to provide 10-
16 foot setbacks for lots 1-15, all of which border Brookshire. See Finding 19. Toll also offered to
17 construct a six-foot high, solid wood fence between Nelsen Catterall properties and
18 Brookshire—the rear yards of lots 1-15 and 17-50. *Id.* The Examiner made these voluntary
19 concessions conditions of plat approval. Conditions 18-19.

20 IV. LEGAL AUTHORITY AND ARGUMENT

21 The facts in the record support the Examiner's decision, not the Brookshire appeal. The
22 traffic report demonstrates that the traffic impacts of the Nelsen Catterall plat will be positive,
23 that is, construction of the Nelsen Catterall subdivision will improve existing traffic conditions.

24 _____
25 ⁴⁰ See Testimony of Kris Langley at Tape 4 (portion of transcript included as Attachment D herein), addressing the
Hearing Examiner's questions regarding County authority to require second access.

26 ⁴¹ Finding 13.

⁴² Conclusion 2.

1 Conversely, complying with Brookshire's requested condition would exacerbate the very traffic
2 impacts Brookshire complains of. Not even Erin Bard Ehlinger, a Brookshire resident and a
3 transportation engineer, disputed these conclusions from the analysis of traffic impacts. In
4 addition to the lack of factual dispute (that is, a lack of a dispute supported by facts in the
5 record), Brookshire's legal analysis depends on its incorrect characterizations of Comprehensive
6 Plan provisions, inappropriate reliance on the irrelevant comprehensive plan of the City of
7 Sammamish, and misleading statements about comments submitted by the City of Sammamish.
8 Brookshire makes these arguments to support a request that the Council require additional access
9 through *another* subdivision, Rainbow Lake Ranch, that does not want such additional access
10 due to the concerns it expressed in a written submittal and in testimony presented at the
11 preliminary plat hearing.

12 In addition, the record demonstrates that the Brookshire subdivision is already
13 appropriately buffered from any impacts, even de minimis impacts, created by the Nelsen
14 Catterall subdivision. Toll voluntarily offered to provide 10-foot setbacks on Lots 1-15 and 6-
15 foot fences on all lots abutting Brookshire, though neither is required by County regulations.
16 Coupled with the 20-foot NGPE located adjacent to the Nelsen Catterall lots on the abutting
17 Brookshire lots, a large buffer will separate Nelsen Catterall plat homes from Brookshire yards.
18 Brookshire has identified no facts in the record demonstrating that this buffering, which exceeds
19 Code requirements, is inadequate, just as it has identified no regulations that would justify even
20 more landscaping. Brookshire's requests, based only by community displeasure, cannot legally
21 form the basis to impose additional conditions on the plat.

22 **A. The Hearing Examiner Properly Approved the Plat with a Single Access Route**

23 The Hearing Examiner properly applied the law regarding access to subdivisions. The
24 record demonstrates that a single access route makes "appropriate provision" for roads. Indeed,
25 the voluntary conditioning for the project goes beyond what is required by law and improves
26 existing traffic conditions. The proposed access sends no trips through the occupied portion of

1 Brookshire and, coupled with the traffic signal installed as part of the plat, traffic operations for
2 Brookshire residents will be better than current conditions at the Issaquah-Pine Lake Road
3 intersection. A second access to the north would send more traffic through Brookshire, would
4 pose safety issues for Rainbow Lake Ranch residents, and would impact wetland buffers and
5 potentially wetlands, contrary to King County requirements of avoidance of such impacts if other
6 alternatives are available. Given these undisputed facts, the Examiner had no authority to vary
7 from the controlling regulation requiring only one access route for a development with fewer
8 than 100 homes.⁴³ But even if the K.C.C. did allow the Examiner to require a second access
9 point, connecting the Nelsen Catterall plat to Rainbow Lake would actually increase, rather than
10 decrease, the very traffic impacts Brookshire complains of. Additionally the County
11 Comprehensive Plan policy sections cited by Brookshire do not give the Examiner or the Council
12 discretion to impose this requirement and, in fact, independently preclude the very relief
13 Brookshire seeks. The Examiner analyzed all this and reached the legally correct conclusion.
14 For these reasons, discussed in more detail below, Brookshire's appeal lacks merit and should be
15 rejected.

16 **1. The Single Connection Makes "Appropriate Provision" for Streets and**
17 **Roads as Required by State and Local Law**

18 The record and the Examiner's unchallenged findings based upon the record demonstrate
19 that traffic issues were thoroughly analyzed and that a single access route provides ample access
20 to and from the Nelsen Catterall subdivision. *See* Exhibit 18 (Traffic Impact Study of Nelsen
21 Catterall Preliminary Plat - December 23, 2010). State law is clear that the County cannot
22 require plat conditions to address harms not created by the plat. *See, e.g.,* RCW 82.02.020

23 ⁴³ Under the County's SEPA overview regulations that apply to development within the UGA, if a given set of
24 impacts are already addressed by application of County's code, the County may only impose additional conditions
25 where "unusual circumstances" exist. *See* K.C.C. 20.44.080.C. Brookshire did not appeal the SEPA threshold
26 determination, did not establish at the hearing that any unusual circumstances exist, and does not state an appeal
under the County's substantive SEPA authority. Testimony of Kris Langley made clear that County Staff found no
legal basis to require a second access to the Nelsen Catterall plat. *See, e.g.,* Attachment D. Under the County's
SEPA overview regulation, compliance with adopted codes adequately mitigates environmental impacts as a matter
of law and Brookshire has waived its ability to argue otherwise.

1 (prohibiting local governments from exacting payment from developers, in cash or in kind, to
2 ameliorate harms not caused by the development); *Isla Verde Intern. Holdings, Inc. v. City of*
3 *Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002). (strictly interpreting RCW 82.02.020 and its
4 exceptions, and invalidating set-aside requirement); *Citizens' Alliance for Property Rights v.*
5 *Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008) (strictly construing an exception to RCW
6 82.02.020 that allows dedications to ameliorate plat impacts); *see also Luxembourg Group, Inc.*
7 *v. Snohomish County*, 76 Wn. App. 502, 505-06, 887 P.2d 446 (1995) (because plat did not
8 create need for a new roadway, condition requiring dedication constituted a taking); *Burton v.*
9 *Clark County*, 91 Wn. App. 505, 521, 958 P.2d 343 (1998) (citing *Luxembourg* and requiring the
10 government to "show that the development for which a permit is sought will create or exacerbate
11 the identified public problem."). County staffer Kris Langley testified that staff concluded that
12 requiring a second access on the facts in this record would constitute a taking.⁴⁴

13 The Nelsen Catterall plat will mitigate all transportation impacts and will correct pre-
14 existing deficiencies by providing a traffic signal or roundabout at a deficient intersection. The
15 requested second connection going through Rainbow Lake Ranch would not address any impact
16 created by the Nelsen Catterall Plat and in fact would increase traffic impacts within the
17 Brookshire neighborhood as well as creating impacts to Rainbow Lake Ranch. Furthermore,
18 Brookshire presented no expert testimony or traffic analysis to rebut Toll's transportation
19 engineer's testimony and the findings in the project traffic study that contrary to Brookshire's
20 assertions regarding backups on the Brookshire access roads due to left turns into the Tract C
21 access to Nelsen Catterall, this intersection **will operate at LOS A** for all movements during
22 both the AM and PM peaks, with delays of less than 9 seconds and queues not exceeding 25'
23 (one vehicle) 95% of the time. Ex. 18 at 22 Table 9. By definition, traffic at times other than the
24 peak will be even lighter.

25
26 ⁴⁴ See transcript of testimony, Attachment D.

1 The Washington State subdivision statute requires that subdivisions make “appropriate
2 provision” for roads. RCW 58.17.110. The King County Code is in accord. K.C.C. 20.24.195.A.
3 The uncontroverted record for this preliminary plat demonstrates that the Nelsen Catterall
4 subdivision fully satisfies this requirement. Brookshire argues that the Examiner failed to
5 analyze this question or make appropriate findings, but to the contrary, the Examiner’s
6 discussion of access spanned eight paragraphs—nearly half of the Examiner’s findings—and
7 addressed vehicular and pedestrian movement, as well as parking. Findings 10-17. Based on
8 these findings, the Examiner concluded that “the proposed subdivision will make appropriate
9 provisions” for roads. Conclusion 2. Brookshire has not offered any evidence or argument that
10 the access proposed for the Nelsen Catterall subdivision is anything other than “appropriate.”

11 **2. Connecting the Nelsen Catterall Subdivision to Rainbow Lake Ranch Would**
12 **Actually Increase Traffic Counts on 238th Way (the Brookshire Access)**

13 Opening a northerly connection to 238th Place would send Rainbow Lake Ranch traffic
14 to the newly signalized intersection of 238th Way and Issaquah-Pine Lake Road. Brookshire
15 posits that connecting Nelsen Catterall to Rainbow Lake Ranch would remove the northbound
16 Nelsen Catterall traffic from the Brookshire entrance, but this argument fails to recognize that
17 the connection would also open the Brookshire entrance to southbound traffic leaving Rainbow
18 Lake. The traffic study trip distribution (approved by County staff and based upon traffic
19 counts) shows that only 20% of the outbound trips from area homes go north on Issaquah-Pine
20 Lake Road and the vast majority – 80% – go south. Ex. 18 at 12-13 & Fig. 4. Thus, while
21 adding a connection may remove up to 20% of the outbound Nelsen Catterall vehicles from the
22 intersection, it would add up to 80% of the outbound Rainbow Lake vehicles in both the peak
23 hours and daily trips as well.

24 A second access point to the north would increase, not decrease, traffic impacts in
25 Brookshire. The additional access proposed by Brookshire, even if it were otherwise lawful,
26 would exacerbate the very problem Brookshire seeks to eliminate.

1 **3. The Comprehensive Plan Policy Cited by Brookshire Discourages Through**
2 **Traffic on Local Access Roads**

3 The Comprehensive Plan policy Brookshire cites, CP-209, does not support connecting
4 the Nelsen Catterall subdivision to Rainbow Lake Ranch via 238th Place. The purpose of CP-
5 209 is to allow for the creation of a system of Neighborhood Collectors while stating that
6 “[t]hrough traffic on local access streets should be discouraged.” Appeal at 5:1 (quoting CP-
7 209). Brookshire’s express justification for requiring two access points is to reroute through
8 trips north through Rainbow Lake Ranch, Appeal at 4:16-17,⁴⁵ but 238th Place is not built to
9 Neighborhood Collector specifications. Rather, its 26-foot roadway width, coupled with the
10 number of homes served (less than 50) and the complete lack of restriction on driveway access,
11 indicate that 238th Place is a Subaccess road. See KCRS § 2.03(B). Thus, Brookshire’s request
12 to route through traffic onto 238th Place would direct through trips onto a local access street, in
13 opposition to the very policy Brookshire cites.

14 King County Road Standards provide that “Neighborhood Collectors” are the most
15 intense type of local road. See § 2.03.D.1. They are intended to collect traffic from multiple
16 neighborhoods and deliver it to arterials. *Id.* The design speed for Neighborhood Collectors is 35
17 MPH, and driveway access is restricted. § 2.03(B) (chart listing features of various road types).
18 They are intended to serve more than 100 homes. *Id.* Their typical roadway width is 32 feet. *Id.*
19 As discussed above, the road going through the heart of Rainbow Lake Ranch, 238th Place, does
20 not meet these specifications. A dozen Rainbow Lake Ranch homes front 238th Place, which
21 has only 26 feet of roadway width and no sidewalks or street lights. Ex. 27.

22 In contrast to 238th Place (in Rainbow Lake Ranch), 238th Way perfectly serves the
23 Neighborhood Collector function where the Nelsen Catterall subdivision ties into it.⁴⁶ It has 70

24 _____
25 ⁴⁵ Arguing for an additional access road to “prevent all of the 800 trips per day anticipated from this development
from entering the main access to Brookshire.”

26 ⁴⁶ SE 44th, at the north end of Rainbow Lake, could also serve a Neighborhood Collector function, but there is no
need to (and no way to get there from Nelsen Catterall).

1 feet of right-of-way—more than the 56 feet prescribed by the KCRS—and 40 feet of traveled
2 way.⁴⁷ No houses front 238th Way between the proposed connection and the Issaquah-Pine
3 Lake Road, so the Nelsen Catterall subdivision creates no direct impacts to Brookshire houses
4 (no Nelsen Catterall subdivision traffic will head east on 238th Way). It has the capacity to
5 accommodate vehicles from both developments, especially once a traffic signal at Issaquah-Pine
6 Lake Road is installed.

7 Brookshire offered no other relevant code or plan provision that would give the Hearing
8 Examiner the authority, let alone the obligation, to impose a condition requiring a second access
9 point. Because the Comprehensive Plan provision relied upon by Brookshire actually
10 discourages the very relief Brookshire requests, the Council must deny Brookshire's appeal.

11 **4. Brookshire Misleadingly Cites an Early City of Sammamish Comment Letter**
12 **and Erroneously Cites the City of Sammamish Comprehensive Plan**

13 In its Appeal Statement, as it did in the hearing, Brookshire quotes a City of Sammamish
14 July 2008 comment letter to support its argument that the City would prefer access through
15 Rainbow Lake. Appeal at 5:16-21. Brookshire neglects to mention that on April 1, 2009, the
16 City of Sammamish signed an agreement stating that the traffic signal at the intersection of
17 Issaquah-Pine Lake Road and 238th Way would "fully mitigate this project's transportation
18 impacts." Subsequent to that agreement, in December 2010, the traffic impact study was
19 updated to reflect current conditions. The updated traffic study demonstrates conclusively that
20 any factual support for the concerns raised in the earlier City comment letter evaporates with the
21 installation of a traffic signal. Thus, insofar as the City of Sammamish's opinion of the Nelsen
22 Catterall subdivision is even relevant, the City's 2008 letter is no longer operative.

23 Brookshire also cites to the City of Sammamish Comprehensive Plan as support for its
24 argument. What they fail to say is that the Nelsen Catterall subdivision (as well as Brookshire) is
25 outside both the Sammamish city limits and its potential annexation area and its comprehensive

26 ⁴⁷ Ex. 29 Tab B; Forster Testimony at Tape 1 at 1:07:44 – 1:08:47 (comparing 238th Place with 238th Way).

1 plan is therefore not relevant to this matter. Brookshire's multiple citations to it, and argument
2 based upon it, provide no legal support or authority and must be disregarded.⁴⁸ As the Hearing
3 Examiner noted, where a development is within the County's unincorporated area and not the
4 subject of an interlocal agreement, there is no legal authority under which the County could
5 impose conditions to ensure compliance with an adjacent city's comprehensive plan. While
6 Brookshire correctly argues that a city may someday annex the Nelsen Catterall subdivision
7 property, that city will almost certainly be the City of Issaquah because the Nelsen Catterall
8 subdivision (along with Brookshire⁴⁹) is already within Issaquah's annexation area, as the
9 Examiner acknowledged at Finding 15.⁵⁰ If any city's comprehensive plan were relevant, it
10 would be Issaquah's, which contains no language encouraging new developments to provide
11 direct motor vehicle connections to existing neighborhoods. While the County may consider the
12 City of Sammamish's comments just as it does any citizen's the County cannot impose plat
13 conditions in reliance on city comprehensive planning documents.

14 **5. The Hearing Examiner had no Authority to Require Additional Connections**
15 **for the Nelsen Catterall Plat**

16 he Examiner properly declined to require multiple access points on this record. It is
17 undisputed that the King County Road Standards do not require more than one access road for
18 subdivisions unless they contain more than 100 homes absent exceptional circumstances such as
19 a life-safety issue.⁵¹ The Nelsen Catterall Subdivision contains 80. Brookshire offered no
20 testimony or evidence that would support the conclusion that the single access point was not
21

22 ⁴⁸ The Council should disregard the following section of Brookshire's Appeal Statement: Page 5, line 19 ("2. The
23 Sammamish Comprehensive Plan") through line 27 ("all travel modes").

24 ⁴⁹ Indeed, Brookshire's own full name—"Brookshire Estates Homeowners Association-Issaquah"—acknowledges
25 its proximity to Issaquah.

26 ⁵⁰ Compare City of Issaquah Map of Potential Annexation Areas (depicting Nelsen Catterall Plat within the
Klahanie PAA) with City of Sammamish Comprehensive Land Use Plan (Nelsen Catterall Plat outside of any PAA)

⁵¹ King County Road Standards § 2.19; accord testimony of Kris Langley (transcript at Attachment D) (providing
staff interpretation that secondary access for fewer than 100 units can only be required under exceptional
circumstances).

RESPONSE OF APPLICANT, TOLL WA LP - 19

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 adequate to serve the Nelsen Catterall subdivision.⁵² The County cannot impose conditions on a
2 project simply to appease project opponents. *Cf. Maranatha Mining, Inc. v. Pierce County*, 59
3 Wn. App. 795, 804, 801 P.2d 985 (1990) (“The only opposing evidence was generalized
4 complaints from displeased citizens. Community displeasure cannot be the basis of a permit
5 denial.”). The County similarly cannot condition plat approval on mitigation of harms not
6 created by the plat, and the facts presented at the hearing demonstrate conclusively that the plat
7 does not create a need for secondary access. On this record, imposition of a condition for second
8 access would clearly violate RCW 82.02.020. In the face of overwhelming evidence supporting
9 the appropriateness of the single connection, the Examiner had no legal authority to vary from
10 the Road Standards to require a second access point.

11 **B. There is no Factual or Legal Justification for Requiring Additional Setbacks and**
12 **Landscaping**

13 The Hearing Examiner properly concluded that the Nelsen Catterall Subdivision
14 complied with all applicable development standards of the R-6 zone, a zone that requires no
15 landscaping or buffering to a neighboring R-4 zone. Brookshire concedes that the densities
16 proposed for the Nelsen Catterall Subdivision comply with the zoning code and does not request
17 a reduction in lot yield. Appeal at 2:27-3:1.⁵³ Rather, Brookshire argues that the Nelsen
18 Catterall homes bordering Brookshire lots should be prohibited from coming within 15 feet of
19 the lot line—property currently buffered by a 20-foot Native Growth Protection Easement, *id.* at
20 8:13-14. While the R-6 zone requires only a 5-foot setback, K.C.C. § 21A.12.030.A, Toll
21 offered to provide ten-foot rear yard setbacks in lots 1-15 (the attached housing) and six-foot
22 fences along all lots abutting Brookshire, an offer the Examiner made conditions of plat

23 ⁵² The neighbors offered conclusory statements such as “Congestion will be evident with multiple left turns into
24 Tract C to enter the NC Plat, especially during the PM Peak Hour.” Ex. 29 at 2. This statement was definitively
contradicted by the traffic study at Ex. 18 at 22 & Table 9, yet Appellants still make it here, *see* Appeal at 4:18-19.

25 ⁵³ Although Brookshire does not believe it requests a reduction in yield, its requested relief would cost significant
26 development capacity in the Nelsen Catterall plat. The request to connect to 238th Place would directly eliminate 1-
2 building sites, and the request for 15-foot landscaped setbacks would reduce yield on most, if not all, of the 15 lots
affected.

RESPONSE OF APPLICANT, TOLL WA LP - 20

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 approval. Finding 19; Conditions 18-19. Given these setbacks, the 20 feet of native growth
2 protection area on the Brookshire lots, and a six-foot-tall fence, there is more than adequate
3 separation between the Nelsen Catterall homes and the yards of Brookshire homes.⁵⁴ Brookshire
4 has not explained how this is insufficient to provide a buffer between subdivisions where, per the
5 County Code, only a five-foot setback is required, or how an additional 5 feet will address these
6 insufficiencies.

7 In fact, nothing in the record supports the conclusion that Brookshire is not adequately
8 buffered from the alleged “impacts” of R-6 densities on an R-4 zone, especially where the
9 K.C.C. specifies a 5-foot setback.⁵⁵ Brookshire participated in the hearing and had the
10 opportunity to place evidence in the record, yet nothing depicts the harm Brookshire alleges. No
11 experts opined that Brookshire homes will suffer impacts (aesthetic or otherwise) that would be
12 ameliorated by more landscaping. The record only demonstrates that Brookshire yards will be
13 buffered by 30 feet of NGPE and setbacks, as well as six-foot fencing, when the Code does not
14 require any buffers in this situation.

15 There are no valid legal grounds on which the Examiner could have imposed additional
16 setback and landscaping requirements on the Nelsen Catterall plat. The K.C.C. includes
17 additional setback requirements to buffer low-intensity development from more-intense
18 development. For example, according to the table at K.C.C. 21A.12.030.A, the base interior
19 setback for R-12 and above is 5 feet, but where townhouse development in those zones abuts
20 property in the R-1 through R-8 zones, the setback is 20 feet. K.C.C. 21A.12.030.10.b. There is
21 no such adjustment for development – townhome or otherwise – in the R-6 zone. K.C.C.
22 21A.12.030.A. Similarly, the K.C.C. does require landscaping buffers for, say, commercial and
23 industrial uses, K.C.C. 20A.16.050, but it does not require any in the R-6 or R-4 zones.

24 ⁵⁴ Brookshire’s homes are even farther away. See Ex. 25 slide 4 (overhead photograph of Nelsen Catterall Plat also
25 depicting Brookshire homes).

26 ⁵⁵ Brookshire essentially argues that the R-6 zoning and its attendant development standards are not appropriate for
the Nelsen Catterall plat, which is an argument to be made to the Council in its legislative capacity or to the Growth
Management Hearings Board. It is not proper argument on a plat approval process.

1 While citing no provisions from the County's landscaping code, Ch. 20A.16 K.C.C., or
2 development standards code, Ch. 20A.12 K.C.C., Brookshire erroneously asserts that the
3 following passage from the Comprehensive Plan provides the Council with authority to impose
4 additional setbacks and landscaping requirements on the Nelsen Catterall plat:

5 Urban separators should be established to provide visual relief from continuous
6 development, provide important linkages for wildlife habitat, and maintain a
visual separation between distinct communities.

7 Appeal at 7:5-7 (quoting CP-212). In making its argument, Brookshire improperly focuses on
8 the phrases "visual relief" and "visual separation." However, these are not the operative phrases
9 in the passage. Rather, the key phrase is "urban separators," which does not refer to anything so
10 small as an additional 5-foot setback or additional landscaping.

11 "Urban separator" is a King County Comprehensive Plan designation, similar to
12 "Mining," "Community Business," or "Urban Residential 4-12 du/ac." It refers to areas of low-
13 intensity, yet nonetheless urban, development, not to exceed one dwelling unit per acre, that
14 provide large-scale linkages between open spaces and parks inside and out of the UGA. The
15 Urban Communities Element of the Comprehensive Plan describes them as follows:

16 Different from the Rural Area and Resource Lands, [urban separators] are low-
17 density areas within the Urban Growth Area that create open space corridors,
18 provide a visual contrast to continuous development and reinforce the unique
identities of communities.

19 Comp. Plan at 2-30.

20 All land with an urban separator designation is mapped on the Land Use 2008 Map,
21 appended to the Comprehensive Plan. Reference to that map confirms that the Nelsen Catterall
22 Subdivision is not mapped as an Urban separator. Rather, unsurprisingly, it is mapped as "Urban
23 Residential 4-12 du/ac." Nothing in the Comprehensive Plan supports Brookshire's
24 conceptualization of "urban separators" as a set of small-scale design standards such as an
25 additional five-foot setback or landscaping requirement. The phrase "urban separator" cannot
26

1 carry the weight Brookshire places on it, and it does not provide even a policy basis, let alone
2 code authority, for the County to impose whatever setbacks neighbors request.

3 Brookshire again inappropriately relies upon City of Sammamish comprehensive plan
4 policies to justify its request for additional buffering. For all the reasons discussed above, the
5 City's comprehensive plan is irrelevant to this hearing and citations to it, as well as argument
6 based upon it, should be disregarded.⁵⁶

7 The Council, in its legislative capacity, has already evaluated the need to require
8 landscaping and concluded that none is required in the R-6 zone or the R-4 zone. The Council
9 cannot, in its quasi-judicial capacity, vary from adopted code, particularly in light of a record that
10 demonstrates that more landscaping and buffering will be present than the law requires.
11 Brookshire residents may be unhappy that they will no longer have undeveloped property next to
12 their neighborhood, but this is not a basis to impose a buffering and landscaping condition that
13 would deprive the Nelsen Catterall residents of a useable back yard.

14 **C. The Hearing Examiner Properly Recognized That He Lacked Authority To Require**
15 **Conditions Not Justified By The Factual Record Before Him**

16 Brookshire mischaracterizes the Examiner's statements regarding his authority as abstract
17 statements of law, but the remarks were made in the context of the record created in this case:
18 The record contains no facts to support the exercise of the authority that Brookshire now asks the
19 Council to exercise.

20 For example, the Examiner's analysis of vehicular traffic consumed four paragraphs,
21 Findings 10-13. In these paragraphs, the Examiner analyzed the concerns raised by the
22 neighbors and explained either how the Nelsen Catterall subdivision addressed them or how the
23 concerns were not valid. When the neighbors complained that the project would impact the
24

25 ⁵⁶ The Council should disregard page 7, line 10 ("The requirement for buffering") through page 8, line 5
26 ("Brookshire and the NC Plat"). In addition, insofar as it seeks to apply the Sammamish Comprehensive Plan, the
Council should disregard the argument contained in page 8, line 5 ("As to intensity") through line 17 ("zero lot line
structures").

1 intersection of 238th Way and Issaquah-Pine Lake Road, the Examiner noted that compliance
2 with the MDNS (installing a traffic signal or circle) would fully mitigate any impact.⁵⁷ Finding
3 10. The Examiner also explained how the neighbors' concerns regarding congestion on 238th
4 Way were overstated given that 95% of left-turn movements on 238th Way into the Nelsen
5 Catterall Subdivision would involve queues of one car or less. Finding 11. After his thorough
6 discussion of traffic issues, the Examiner noted that the King County Road Standards require
7 only a single access route and correctly stated that he had no authority to require a second one.

8 As discussed above, the County cannot require a developer to address a harm the
9 developer did not cause, RCW 82.02.020, and Brookshire has not demonstrated that the Nelsen
10 Catterall plat causes any harm that would be ameliorated by a second connection to the north or
11 an additional five feet of setback and landscaping. In addition, neither the Examiner nor any
12 other permitting authority can vary adopted standards or requirements simply to satisfy the
13 demands of vocal project opponents. *Cf. Maranatha Mining, Inc.*, 59 Wn. App. at 804 (finding
14 arbitrary and capricious the council's decision to deny permit application based on nothing other
15 than community displeasure, remanding with instructions to issue permit); *accord Kenart &*
16 *Associates v. Skagit County*, 37 Wn. App. 295, 303, 680 P.2d 439, 444 (1984) (expressing
17 concern that a planning commission denied approval as a result of community displeasure).
18 Here, the K.C.C. contains clear prescriptions for both access and landscaping design standards.
19 In the absence of a record establishing a factual need, and in the absence of appropriate legal
20 authority to vary from these duly enacted regulations, the Examiner had no discretion to
21 disregard them.

22 As befits his office, the Examiner evaluated the Nelsen Catterall subdivision under the
23 legally applicable codes and concluded that it satisfied all requirements. As the Examiner
24 plainly stated, quasi-judicial officers must apply legislative policies as they appear, not as project
25

26 ⁵⁷ Indeed, the record shows that as mitigated, the intersection will perform better with the project (and its traffic)
than it does now. Ex. 18 at 17 Table 7.

RESPONSE OF APPLICANT, TOLL WA LP - 24

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 opponents might prefer them to appear. Report and Decision at 5 n.1.⁵⁸ Similarly, the Council
2 sitting in its quasi-judicial capacity cannot vary from its prior legislative decisions. The
3 Examiner's decision properly observed the limit on the County's authority to require conditions
4 not justified by the facts and the law, and his decision is supported by years, even decades, of
5 land use case law. See, e.g., *Luxembourg Group, Inc. v. Snohomish County*, 76 Wn. App. 502,
6 505-06, 887 P.2d 446 (1995) (need for access to neighboring landlocked parcel not created by
7 development; plat condition so requiring ruled a taking); *Unlimited v. Kitsap County*, 50 Wn.
8 App. 723, 728, 750 P.2d 651 (1988) (need to widen right-of-way next to plat not created by plat
9 and constituted a taking).

10 Brookshire does not dispute that the plat complies with all the development standards
11 imposed by the R-6 zone, including setback and landscaping requirements. Brookshire does not
12 dispute that the King County Road Standards require only a single access road, and does not
13 point to any evidence that demonstrates that a single access road does not make "adequate
14 provision" for roads. Instead, Brookshire faults the Examiner for declining to go beyond these
15 concededly applicable requirements to require a second access point, extra setbacks, and
16 additional landscaping. While Brookshire may ignore the unlawful costs associated with such
17 requirements – which, according to Brookshire's own Exhibit D, would include the loss of at
18 least two building sites, in addition to whatever development capacity would be lost on the lots
19 that would be subject to Brookshire's setbacks and landscaping – the County cannot.

20 V. CONCLUSION

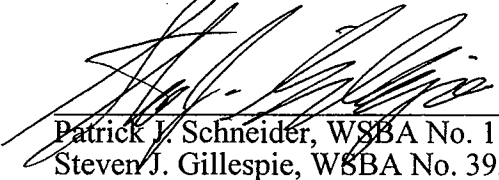
21 The Hearing Examiner properly approved the Nelsen Catterall subdivision. Nothing in
22 the record supports Brookshire's request that the Council impose additional conditions that are
23
24

25 ⁵⁸ Brookshire chides the Examiner for citing decisions outside of the land use context, but the decisions relied upon
26 by the Examiner properly support the propositions for which the Examiner cited them—that a quasi-judicial officer
cannot vary from the policy choices of the legislative authority and cannot question the wisdom or necessity of a
regulation.

1 not needed to mitigate the impacts of the subdivision. Toll respectfully requests that the Council
2 affirm the Hearing Examiner.

3 DATED this 25th day of July, 2012.

4 FOSTER PEPPER PLLC

5 
6 _____
7 Patrick J. Schneider, WSBA No. 11957
8 Steven J. Gillespie, WSBA No. 39538
9 1111 Third Avenue, Suite 3400
10 Seattle, Washington 98101-3299
11 Telephone: (206) 447-4400
12 Facsimile: (206) 447-9700
13 E-mail: gills@foster.com

14 Attorneys for Applicant

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF SERVICE**

2 I, Helen M. Stubbert, certify that on the 25th day of July, I caused to be served, by
3 messenger, on the following party, a copy of the foregoing Response of Applicant, Toll WA LP:

4 J. Richard Aramburu
5 Aramburu & Eustis LLP
6 720 Third Ave., Ste. 2112
7 Seattle WA 98104-1860

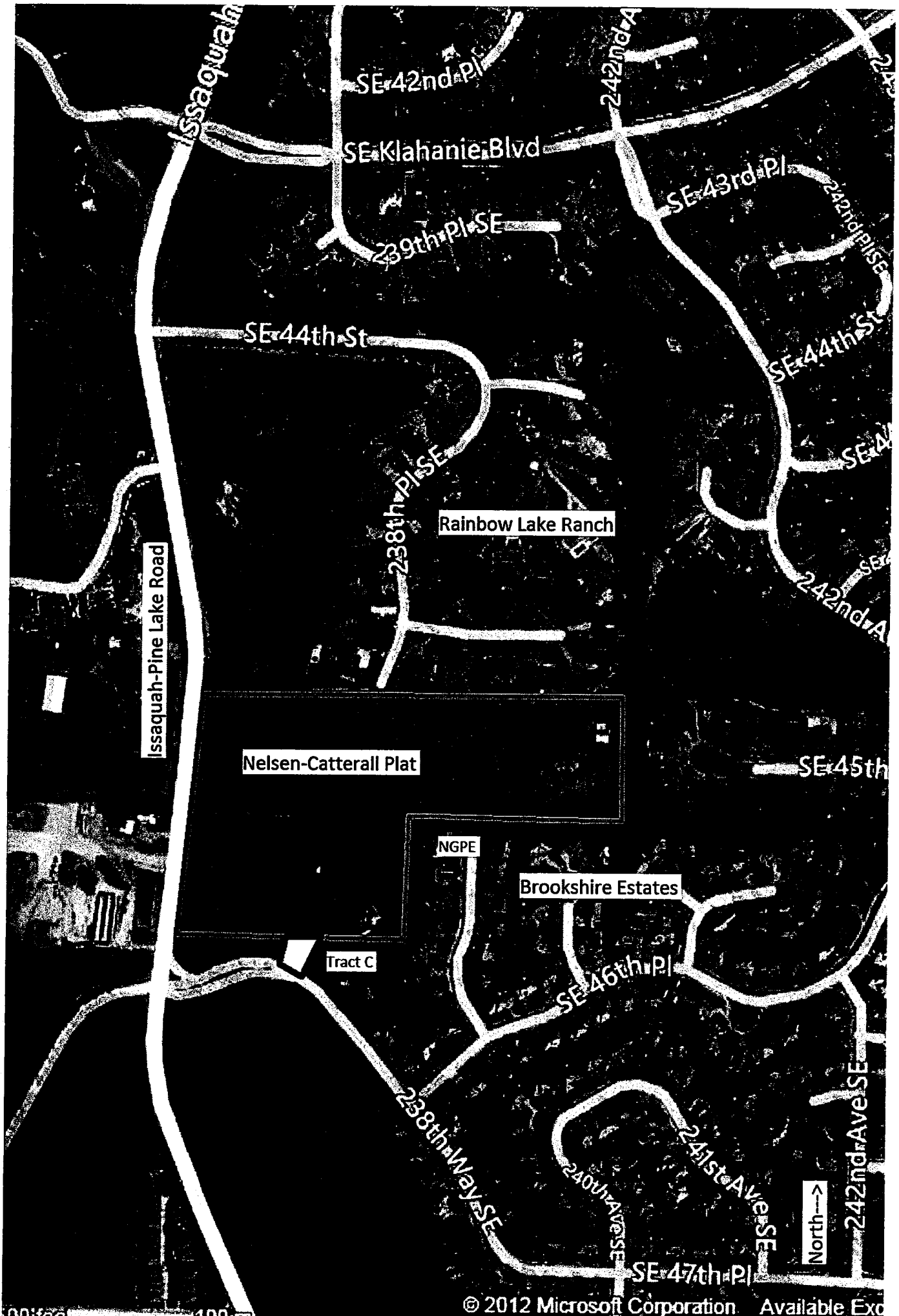
8 DATED this 25th day of July, 2012.

9 
10 Helen M. Stubbert, Legal Assistant

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
RESPONSE OF APPLICANT, TOLL WA LP - 27

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

ATTACHMENT A



Issaquah-Pine Lake Road

Rainbow Lake Ranch

Nelsen-Catterall Plat

NGPE

Brookshire Estates

Tract C

North →

ATTACHMENT B

2007
ROAD DESIGN AND
CONSTRUCTION STANDARDS



King County

Department of Transportation
Road Services Division

Paulette M. Norman, P.E.
County Road Engineer

Harold S. Taniguchi, Department Director
Linda Dougherty, Division Director

Alternate Formats Available
206-296-6520 TTY Relay 711





King County Executive
Ron Sims

King County Council
Bob Ferguson, District 1
Larry Gossett, District 2
Kathy Lambert, District 3
Larry Phillips, District 4
Julia Patterson, District 5
Jane Hague, District 6
Pete von Reichbauer, District 7
Dow Constantine, District 8
Regan Dunn, District 9

For more information
Please call **King County Road Services Division** at 206-296-6520
Or visit our Web site at kingcounty.gov/roads

printed on recycled paper



2.03 Urban Roadways

A. Urban Principal Arterial

Urban principal arterials provide for movement across and between large subareas of an urban region and serves predominantly “through traffic.” They carry the highest traffic volume and serve major centers of activity and are fed by other arterials and local access streets. Principals are expected to provide a high degree of mobility; therefore, access to abutting properties is very restricted.

B. Urban Minor Arterial

Urban minor arterials interconnect with and augment the principal arterial system. They provide intra-community continuity connecting community centers and facilities. A minor arterial may also serve “through traffic”. Access is partially restricted.

C. Urban Collector Arterial

Urban collector arterials typically are intra-community roadways connecting residential neighborhoods with community centers and facilities. They accumulate traffic from local roadways and distribute that traffic to roadways that are higher in the hierarchy of classification. Access is partially restricted.

D. Urban Local Roadways

There are several roadway classifications for urban local roadways. They are listed below:

1. Neighborhood Collectors

Neighborhood collector streets are the highest in the local roadway classification hierarchy. They connect two or more neighborhoods and typically connect to arterials or other neighborhood collectors. Direct driveway connections to neighborhood collectors are restricted.

2. Subcollectors

Subcollector streets are the second highest in the local roadway classification hierarchy. Subcollectors provide circulation within neighborhoods and typically connect to neighborhood collectors. Although they typically allow direct driveway access there are some project related exceptions.

3. Subaccess

Subaccess streets are permanent cul-de-sacs or short loop streets that connect to subcollectors. Subaccess streets are not supportive of through traffic. They provide direct driveway connections.

4. Minor Access

A minor access street is a permanent cul-de-sac or short loop street with low traffic volumes that provides circulation and access to off-street parking within a residential development boundary. Like subaccess streets, a minor access street allows direct driveway connections.

E. Urban Commercial Access Streets

There are several roadway classifications for urban commercial access streets. Typically "curb" type road improvements are provided along these streets unless otherwise approved by the County Road Engineer or the Development Engineer. The classifications are listed below:

1. Attached-Dwelling Access

Attached-dwelling access streets typically serve town houses, condominiums, apartments, and other multiple-dwelling developments.

2. Business Access

Business access streets typically serve very dense multiple-dwelling developments, office buildings, and other professional service buildings.

3. Industrial Access

Industrial access streets typically serve manufacturing, processing, storing and handling activities. These roadways generally route industrial vehicles from the arterial system to and within industrial districts.

4. Commercial Minor Access

Commercial minor access streets provide circulation and access to parking and loading sites within multiple-dwelling, business, and industrial developments.

2.03(B) Urban Local Access Roadways - (Curb Roadway Section)

Classification	Neighborhood Collectors	Subcollectors	Subaccess	Minor Access
Access	Restricted, Lots front on local access street where feasible.	As needed with some restrictions. ¹	Subaccess streets are not supportive of through traffic. Generally permanent cul-de-sacs or short loop ² streets that connect to subcollectors.	Permanent cul-de-sacs or short loops with low traffic volumes that provide circulation and access to off-street parking within residential development limits.
Public or Private	Public Streets	Public Streets	Public Streets	Public or Private (See Section 2.06)
Serving Potential Number of Lots or Dwelling Units	Over 100 ³	100 Maximum ⁴	50 Maximum	16 Maximum
Design Speed ⁵	35 mph	30 mph	Low Speed Curve (See Section 2.10)	Low Speed Curve (See Section 2.10)
Max Superelevation	See Section 2.04B	See Section 2.04B	See Section 2.04B	See Section 2.04B
Horizontal Curvature	See Table 2.2	See Table 2.2	Low Speed Curve (See Section 2.10)	Low Speed Curve (See Section 2.10)
Maximum Grade ⁶	11%	12%	12%	12%
Minimum Stopping Sight Distance	See Table 2.2	See Table 2.2	150 feet	150feet
Minimum Entering Sight Distance	See Table 2.2	-	-	-
Typical Traveled Way	22 feet ⁷	22 feet	22 feet	22 feet
Typical Roadway Width	32 feet ⁷	28 feet	24 feet	22 feet
Minimum Right-of-Way Width	56 feet	48 feet	40 feet ⁸	40 feet ⁸
Minimum Half Street Width	20 feet	20 feet	20 feet	20 feet
Minimum One Way Paved Width	20 feet	20 feet	20 feet	20 feet
Minimum Sidewalk Width	See Section 3.02	See Section 3.02	See Section 3.02	See Section 3.02
Curb Type	Vertical	Vertical/Rolled	Vertical/Rolled	Vertical/Rolled

¹ See Section 2.20 for urban exceptions. Also, when Section 2.20 applies the curbing shall be vertical.

² See Section 2.15 for one-way loops.

³ See Section 2.20 for residential access connection requirements.

⁴ See Section 2.20 for urban exception criteria.

⁵ Design speed is a basis for determining geometric elements and does not imply posted or legally permissible speed.

⁶ Maximum grade may be exceeded for short distances. See Section 2.11.

⁷ Neighborhood collectors intersecting with arterials shall be 36 feet wide for the first 150 feet. See Section 4.05 for tapers.

⁸ The right-of-way width may be reduced to minimum roadway width plus storm drainage, sidewalk, and one-foot beyond road improvements including sidewalks, provided that the curbing is vertical, the minimum clear zone requirements are met, and all potential serving utilities are accommodated within

acquisition of right-of-way. The design engineer must document there is sufficient right-of-way to include cuts and fills and necessary clear zone.

- B. Right-of-Way Reduction: The right-of-way width may be reduced to minimum roadway width, plus storm drainage, sidewalk, one-foot behind sidewalk, provided that potential serving utilities are accommodated within permanent public easements. The reduced right-of-way, plus easement, at a minimum shall allow for construction and maintenance of the sidewalks, one-foot behind sidewalk, planting strips, drainage facilities, and sign placement. Additionally, they shall allow for sidewalk widening around mailbox locations.

2.19 Access and Circulation Requirements

No residential street shall serve more than 100 lots or dwelling units unless the street is connected in at least two locations with another street that functions at a level consistent with Sections 2.02 or 2.03. Additionally, every effort shall be made to provide a second access through the building permit process.

- A. The second access requirement may be satisfied through use of connecting a new street to an existing street in an adjacent neighborhood if:
 - 1. No other practical alternative exists, or
 - 2. Existing street was previously stubbed indicating intent for future access, or
 - 3. An easement has been recorded specifically for said purpose.
- B. The second access requirement may cause the construction of an off-site road connecting the development to a suitable serving street.
- C. These provisions are not intended to preclude the state statute on land locking.
- D. This section does not preclude a non-residential project from gaining access through a residential development. Traffic impacts for such projects will be analyzed during the environmental and permitting process.

2.20 Exception for Maximum Dwelling Units on Urban Subcollectors

Proposed subcollectors serving new urban area developments with an average density of seven to eight dwelling units per acre and that meet the access requirements of Section 2.19 may serve up to 250 dwelling units, if approved by the Development Engineer. In this situation, the curbing shall be vertical. Prior to approval, the applicant must submit a traffic circulation study demonstrating a balanced traffic flow of less than 1500 vehicles per day past any access point. Street trees shall be mandatory along subcollectors serving higher densities of seven to eight dwelling units per acre and shall be in conformance with Section 5.03.

ATTACHMENT C

ATTACHMENT D

Transcription of Testimony from 3/29/2012 Hearing

EXAMINER

Okay. I have no questions for you. Ms. Claussen, back to the comprehensive plan policies, and I certainly understand your basic assertion of the relationship of development regulations to plan policies, and that's essentially how the GMA intends things to work, but the County's got a little bit of a wrinkle in its code where it says that in subdivision viewing in Title 20, Chapter 20.24 where in addition to the all the regulations, conformity with the Comprehensive Plan is an issue. Now, my take on that is if the policy is implemented fully by the regulations, then one would defer to the regulations. There were a couple of policies that were cited by people who have testified today. And did you have any response with those, in particular regarding connectivity. Perhaps not for you, or for Ms. Langley, regarding connectivity. Let's see if I can get the exact cites here. I think Mr. Foss, if I recall correctly, cited Comprehensive Plan Policy 209. Oh, and then his other things were the City Plan, but if there was any comment on his recitation of Plan Policy 209, I'd welcome it.

LANGLEY

I can't see _____, Mr. Examiner. This is Chris Langley once again. With respect to the Comp Plan Policy, I think, deal with the issue, or discuss the issue with respect to how connectivity issues have historically been addressed by County staff with plots. As the Examiner is well aware, this issue comes up quite often with subdivision proposals, especially with infill development. The County's position has been that unless there is some other regulatory basis to require second connections, the Comp, it falls under the heading of a potential taking of the property to require stubs that serve both connect end of stubs. For example, that if we have a hundred lot rule issue, where we had, to pick a number, 101 lots on this proposed dead end roadway system. You know, then we would have a basis to require a secondary connection to an existing stub. I would note that two stubs to this property, three if you include Tract C, were provided. And one was 238th Place through the River Lake Ranch subdivision. One was provided through 239th. Both were evaluated during the review of the project to see if it made sense to go ahead and do that, but without a basis for example, on having more than 100 lots on a dead end, there was no basis, in our mind, to go ahead and require that to be, either of those two to be done. Never mind the issue associated with 238th Place and its geometry of the ability to construct a subcollector class street to deal with to tie into that. The issue of impacts to wetland buffers and potentially enter into the wetland itself. Never mind the issue of the pedestrian walkway facilities along 238th Place SE in that Rainbow Lake Ranch. Those were all things we took a look at. We evaluated. We evaluated the consequence of doing it, and the bottom line was, when you get down to it, there was no basis to sit there and press the matter, even with this Comp Plan Policy, because that regulation didn't give us the basis to sit there and say because of the Comp Plan Policy but without that regulation, we're not gonna be able to require it. And that was our position.

Diane Weinstein
24116 SE 45th Place
Issaquah WA 98029

RECEIVED
2012 JUL 24 PM 12:14
CLERK
KING COUNTY COUNCIL

July 22, 2012

Clerk of the Council's Office, Room W1200
King County Courthouse
516 Third Avenue
Seattle, WA 98104

Re: DDES File No. LO8P0004 – Nelsen Catterall Plat/ Brookshire Estates HOA Appeal

Dear King County Council:

I have lived in Klahanie next to Gander Pond, which is northeast of the proposed Nelsen Catterall development, for the past twenty five years. I am also a member of the Natural Areas Association of Klahanie and the Eastside Audubon Society.

As a resident of Klahanie, I am not a member of the Brookshire Estates Homeowners Association nor a part of their appeal. However, I agree with their appeal and am writing in support of it, especially the adding of a fifteen foot buffer along the Brookshire boundary. This buffer should also be required along the development's boundaries with Klahanie and Rainbow Lake Ranch and be planted with native growth to support the abundant wildlife that lives in this area.

Along with many others, I submitted extensive written and oral comments and spent the entire day at the hearing. I was extremely disappointed with the whole hearing process. It was very discouraging at the end of the hearing when the King County Project Manager recommended approval of the project as proposed without modification since all codes and regulations had been met. Subsequently, it was even more discouraging to have the Hearing Examiner then approve the project without modifications. The process was a complete waste of everyone's time. If we had been told upfront that we would have to prove that a code or regulation was not being met, many of us would have never even bothered to participate.

I believe that my concerns were not given serious consideration; therefore, I am bringing them to the attention of the King County Council. My concerns are focused on the proposed development's negative impacts on wildlife, adjacent wetlands and adjacent native growth protection areas in Klahanie, as well as in Brookshire and Rainbow Lake Ranch.

The Wetland Determination & Conceptual Mitigation report was incomplete. A number of questions and sections were skipped and the ratings are too low for Wetlands 'A', 'B', and 'C'. If the various questions and sections did not apply, it should have been indicated as such.

The Nelsen Catterall Plat as a whole was not thoroughly or adequately evaluated as to its impact on wildlife within the property and the surrounding areas. South of the property is Brookshire's pond and wetlands. North of the property is Rainbow Lake Ranch's lake and wetlands and Klahanie's Sutter Pond. Northeast of the property is Klahanie's Gander Pond and wetlands which then connects via the gas pipeline trail to Yellow Lake and the North Fork of the Issaquah Creek.

Gander Pond, which is in close proximity to the proposed development, connects with other natural areas within and outside of Klahanie. Gander Pond started as a natural pond that was expanded by Lowe Enterprises when Klahanie was built to be used for the retention and detention of water. Lowe Enterprises also intended it to be used for wildlife and retained the services of biologists to help with the selection of plants around the pond for the benefit of wildlife. There is a ¼ mile path the circles the pond for passive recreation and wildlife viewing.

Klahanie has over 300 acres of open space, the majority of which consists of native growth protection areas. Klahanie's open spaces have been certified as an Urban Wildlife Sanctuary by the Humane Society of the United States.

All of these areas are rich in wildlife, yet the ratings given on the Wetlands Rating Form are extremely low concerning questions on the wetlands ability to provide habitat for many species; corridors and connections to other habitats; and the property's closeness to other priority habitats.

As for example the Wetlands Rating Forms for Wetlands 'A', 'B', and 'C' show a rating of zero for question "H 2.3 Near or adjacent to other priority habitats listed by WDFW". Several species on the Washington State Priority Habitats and Species List for King County have been observed and recorded in the surrounding areas. These species include Bald Eagle, Great Blue Heron, Wood Duck, Bufflehead, Hooded Merganser, Band-tailed Pigeon, Vaux's Swift, and Pileated Woodpecker. In addition, Wood Ducks and sometimes Hooded Mergansers nest next to Gander Pond.

The Nelson Catterall property, especially along the adjacent native growth protection areas in Klahanie and Brookshire, are used extensively as a wildlife corridor. The proposed design completely blocks off the passage of wildlife from Wetlands 'A', 'B, and 'C' to Klahanie and the Gander Pond area.

The Natural Areas Association of Klahanie keeps lists of the wildlife seen in Klahanie. The bird list includes 115 species of birds. The mammal list contains 20 species including Mule Deer, Red Fox, Coyote, Cougar, Bob Cat, Black Bear, Flying Squirrel, Douglas Squirrel, Townsend Chipmunk, Beaver, River Otter, Longtail Weasel, Little Brown Bat, and Big Brown Bat. Amphibians and reptiles include various species of salamanders, frogs, and turtles.

Other data supporting the variety and abundance of wildlife in the area has been documented by the Eastside Audubon Society (EAS). In 2007, EAS conducted a 12 month wildlife survey (mostly birds) in the Gander Pond and Yellow Lake areas. The survey for Gander Pond involved spending approximately 1 hour a month walking around the greater pond area, observing, and recording the

wildlife seen. A total of 51 species were observed including 1261 individual birds. In 2008, EAS also conducted a second 12-month survey in the Queenslake Bog area of Klahanie.

From years 2007 and on, EAS has included Klahanie and Rainbow Lake in their annual Christmas Bird Count. In addition, a homeowner next to Gander Pond has participated in the Cornell Lab of Ornithology Project Feeder Watch program since 1999. This is a winter bird survey where members help scientists track broad scale movement of winter bird populations and long term trends in bird distribution and abundance.

Detail data from all of the above surveys was included with my written comments on the proposed development. However, in the Preliminary Report to the Hearing Examiner, under section F 5 Wildlife, it states "Small birds and animals undoubtedly inhabit this site, however, their population and species are limited due to nearby development." The phrase "small birds and animals undoubtedly inhabit this site", says to me that they do not know what wildlife exists in this area, they never looked, and they don't care.

The report goes on to say "Larger species may visit this site on occasion. No threatened or endangered species are known to exist on or near the property." The property may not be perfect wildlife habitat. However, it does support an abundant and diverse variety of wildlife species and provides a corridor for wildlife passing to and through Klahanie and the surrounding natural areas. Although the current situation may not be ideal, it does support wildlife and allows them to continue to exist.

However, in the Hearing Examiner's Report and Decision, there is no mention of wildlife or wildlife habitat except for restrictions governing the critical area tracts around the wetlands. These wetlands definitely need to be protected. Nonetheless, fragmented ponds, wetlands, and natural areas may work to some degree for birds who can fly in and out, but certainly not for other animals who need safe ground passage.

The King County Comprehensive Plan that readopts the East Sammamish Community Plat provides the following guidance:

- CP-204** **Development shall protect wildlife through site design and landscaping. New development within or adjacent to the wildlife habitat network should incorporate design techniques that protect and enhance wildlife habitat values. (NE-10)**

- CP-211** **Consistent with the King County Open Space Plan, the county shall encourage establishment of an open space system in East Sammamish and give priority to protecting recreational, cultural and natural and sensitive areas such as shorelines, aquifer recharge areas, wildlife habitat, historic properties, archaeological sites, scenic vistas and community separators or greenbelts. The county may require lot**

clustering within or adjacent to open space areas; linkages between open spaces and may provide density bonuses or incentives to developers who preserve significant open space or establish trails beyond usually applied mitigation. (P-11)

CP-212 Urban separators should be established to provide visual relief from continuous development, provide important linkages for wildlife habitat, and maintain a visual separation between distinct communities. (P-17)

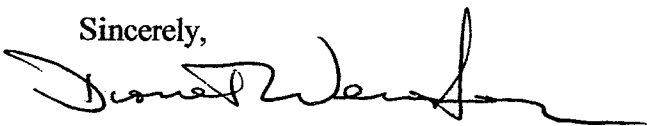
In conclusion, I am requesting that the following actions be taken concerning the Nelsen Catterall project:

1. Provide a corridor linking the wetlands on the Nelsen Catterall property to the native growth protection areas in Brookshire and Klahanie, so that wildlife can continue to move through to Gander Pond and Klahanie.
2. Increase the setback from Klahanie to allow space for wildlife to move through the area. Enhance this area with additional plantings of native plants and trees. Keep the elevation of the plat and any retaining walls such that it will not block the passage of wildlife or damage Klahanie's native growth areas.
3. Increase the setback from Brookshire and Rainbow Lake Ranch to allow space for wildlife to move through those areas. Keep the trees along the border with Brookshire and enhance the area with additional plantings of native plants and trees for wildlife. Keep the elevation of the plat and any retaining walls such that it will not block the passage of wildlife.
4. Enlarge and enhance buffers along the three wetlands with native plants and trees to filter oil and other pollutants.
5. Restrict the use of pesticides, herbicides, and other chemicals in the areas next to the wetlands and other buffers for the benefit of people and wildlife.

I do not believe that proper consideration has been given to these issues. I also do not believe that I am asking for a lot, just a little space along the property boundaries with native cover for wildlife to pass through. We need to be good neighbors and learn to live with wildlife. Please preserve our diminishing natural areas and give wildlife the space and protection they need in order to survive and flourish.

Thank you for your consideration.

Sincerely,



Diane Weinstein

RAINBOW LAKE RANCH IMPROVEMENT ASSOCIATION

3020 Issaquah-Pine Lake Road, #303
Sammamish, Washington 98075

RECEIVED

2012 JUL 25 PM 12:05

CLERK
KING COUNTY COUNCIL

July 24, 2012

Clerk of the Council's Office, Room W1200
King County Courthouse
516 Third Avenue
Seattle, WA 98104

Re: Nelsen Catterall Plan- L08P0004 (Notice of Appeal)

Dear Clerk of the Court-

Rainbow Lake Ranch was developed back in the late 80's by the Santa Family, who lived on the property until they decided to sub-divide the property, selling lots to small builders creating the community of 30 homes that is here today. The community is nestled between Klahanie which is to the north and east, the Nelsen Catterall property and Brookshire development, both to the south. Rainbow Lake Ranch has only one access point to the west, onto Issaquah-Pine Lake Road. Our main entrance is 1/10th of a mile from the Klahanie entrance to the north and 3/10th's of a mile from the Brookshire entrance to the south.

We have met a couple of times with CamWest representatives, the Nelsen Catterall developer, over the past 5 years and have seen several proposals for the project. The current plan for approval is fully supported by our community. Early on there were two potential access points discussed, one through our neighborhood and another through the Brookshire development at 239th Ave SE. Given the smaller size of the proposed new community, we believe that one access is more than sufficient and well within the current King County building code. CamWest listened to both developments' concerns and went the extra mile to acquire property and establish the proposed access to the plat noted in their plan for the County's final approval, so as to eliminate any direct traffic impacts on individual homes. We do not feel there is a need for a 2nd access point into Rainbow Lake Ranch or into Brookshire at 239th Ave. SE. However, should the County determine a 2nd access point is needed above and beyond what the current zoning code calls for, then we firmly believe the 239th Ave. SE access point is the best alternative given that Brookshire's current infrastructure is far more suited to support the additional thruway (road width, lighting & sidewalks are all present and within code) and it is in the direction of the majority of drivers wanting to reach schools, shopping and Interstate 90.

During our discussions, CamWest was responsive to our safety and traffic concerns. First and foremost, studies conclusively indicate that most traffic, when exiting from communities along Issaquah-Pine Lake Road, travel to the south, which for us is a left turn. Secondly, a thruway would substantially impact our neighborhood for the following reasons:

- Our development has narrow roads (26 feet in width) with no sidewalks and no streetlights. At the proposed Nelsen Catterall entry onto Brookshire's entry road, the roadway is 42 feet wide with a landscaped center median from the Nelson Catterall entry to Issaquah-Pine Lake Road. Brookshire has sidewalks, streetlights and wider roads throughout its development.
- From the Nelson Catterall property line through Rainbow Lake Ranch, the increased traffic from Nelson Catterall and Brookshire residents will directly affect over half of our homeowners on the 4/10th's of a mile trek (from the Nelson Catterall property line) to get to Pine Lake Road with drive-by traffic flow 24 hours/day. Without sidewalks and streetlights, this traffic flow creates a huge safety issue for our community. This would be a concern for our children and seniors in addition to all of us when walking the neighborhood day or night.
- Rainbow Lake Ranch does not have a traffic light at its entrance, potentially creating large backups at peak drive times if a thruway is created. Like both Brookshire and Klahanie, the majority of traffic flow from our development requires a left turn heading to the south. There is a traffic light at the Klahanie entrance and

RAINBOW LAKE RANCH IMPROVEMENT ASSOCIATION

3020 Issaquah-Pine Lake Road, #303
Sammamish, Washington 98075

Nelsen Catterall Plan- L08P004 (Notice of Appeal), Page 2

there is one proposed by CamWest at the Brookshire entrance which is badly needed for safety reasons at the Brookshire entrance due to a blind curve to the south on Issaquah-Pine Lake Road. Currently, many Brookshire homeowners, for safety reasons, have and use two alternative access points linking to the Klahanie community. Klahanie has two traffic light outlets, one at Issaquah-Pine Lake Road and the other at Issaquah-Fall City Road. The proposed Nelsen Catterall entry access with Brookshire's entry road is less than 1/10th of a mile from Issaquah-Pine Lake Road and there aren't any Brookshire homeowner's directly impacted with drive-by traffic. In contrast, the nearly half-mile drive through Rainbow Lake Ranch from Brookshire will not provide any greater traffic flow efficiency especially since Brookshire and future Nelson Catterall residents will have multiple access points, including a vastly improved Brookshire entrance with traffic light mitigation. The proposed revision to the Brookshire entrance will be a welcome improvement to mitigate the blind curve and safety hazard that exists at the Issaquah-Pine Lake Road/Brookshire entrance intersection.

In conclusion, we greatly appreciated CamWest's cooperation with addressing our concerns. There will be other border landscape-related issues we'll need to discuss as we will be directly impacted during the construction phase. We have established a good relationship with a highly reputable builder. They've listened and fully agree that our neighborhood would be negatively impacted in a major way by the increased traffic at potentially higher speeds should a thruway be created, and without any new traffic efficiency benefit. Without sidewalks and streetlights, the change would create a huge safety hazard primarily to those walking or riding bikes through our neighborhood. Therefore, we fully support the Nelsen Catterall Plan approved by the King County Hearing Examiner and we would urge the County Council to confirm this approval knowing that it is the best proposal for all neighboring communities for safe and efficient traffic flow accessing Issaquah-Pine Lake Road.

Respectfully Yours,



Jim Van Tighem
President

Cc: Rainbow Lake Ranch Board of Directors

June 13, 2012

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse, Room 1200
516 3rd Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L08P0004**
Proposed Ordinance No. **2012-0071**

NELSEN CATTERALL
Preliminary Plat Application

Location: East of Issaquah-Pine Lake Road, north of 238th Way SE, unincorporated
Sammamish/Issaquah area

Appellant: Toll WA LP
represented by **Aaron Hollingbery**
9720 NE 120th Place Suite 100
Kirkland, WA 98034
Telephone: (425) 825-1955
Email: ahollingbery@camwest.com

King County: Department of Development and Environmental Services (DDES)
represented by **Kimberly Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Email: kimberly.claussen@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:	March 29, 2012
Hearing Continued Administratively	March 29, 2012
Hearing Record Closed:	April 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 office of the King County Hearing Examiner.

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

FINDINGS:

1. General Information:

Owner/Developer: Toll WA LP
Attn. Aaron Hollingbery
9720 NE 120th Place, Suite 100
Kirkland WA 98034
425-825-1955

Engineer: Core Design
14711 NE 29th Place, Suite 101
Bellevue WA 98007
425-885-7877

STR: 15-24-06

Location: The site is located on the north side of 238th Way SE, east of Issaquah-Pine Lake Road

Tax Parcels 1524069036, 1524069043, 1524069048, 1150001390

Zoning: R-6
Acreage: 13.72 acres
Number of Lots: 80
Density: Approximately 5.8 units per acre
Lot Size: Approximately 1,000 square feet (townhouse) to 5,685 square feet in size; average lot size is approximately 2,394 square feet

Proposed Use: Single family detached dwellings & attached townhomes
Sewage Disposal: Sammamish Plateau Water & Sewer District
Water Supply: Sammamish Plateau Water & Sewer District
Fire District: Eastside Fire and Rescue
School District: Issaquah School District No. 411
Application Completeness Date: June 13, 2008

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 property lies on the Sammamish Plateau, directly abutting the corporate limits of the City of Sammamish. (The property's west side fronts Issaquah-Pine Lake Road, which lies within the City limits). The City of Issaquah lies in very close proximity as well, to the south and further to the west. The property is roughly a blocky-L in shape and 13.72 acres in area. Its

public road frontage, other than the frontage of the entire west side on Issaquah-Pine Lake Road, consists of a 60-foot wide stub terminus (existing "Tract C") on the north side of 238th Way SE. The subject segment of 238th Way SE runs easterly from Issaquah-Pine Lake Road and connects to it at a four-way intersection. Additional road right-of-way abutment is formed on the south side of the easterly leg of the L by the present stub terminus of 239th Avenue SE, which is constructed as a cul-de-sac in the adjacent single family residential subdivision *Brookshire Estates*. Another stub road abutment is formed by the southerly terminus of a north-south road within the *Rainbow Lake Ranch*, a single family residential subdivision abutting to the north, terminating on the property's north side.

4. The property generally slopes westerly on a gradual basis, with wetland depressions in the westerly side abutting Issaquah-Pine Lake Road. The wetlands constitute code-defined critical areas. The total defined wetland area onsite is approximately 3.2 acres. No other critical areas, such as qualifying wildlife habitat or migration corridors, are identified onsite or in very close proximity to the property. Vegetation is primarily pasture grass and cultivated landscaping for residential structures and outbuildings.
5. The site is located within the Laughing Jacobs Creek sub-basin of the Lake Sammamish drainage basin. The site terrain forms two sub-basins on the property, with the larger westerly sub-basin flowing to the onsite wetland areas and their outlet, then discharging along the northern property line to other wetland areas within the *Rainbow Lake Ranch* property abutting to the north and then flowing further northerly to Rainbow Lake, under Issaquah-Pine Lake Road and ultimately to Lake Sammamish approximately one mile downstream. The easterly sub-basin drains to the east to a conveyance system located in Southeast 45th Place, then to an existing pond and a downstream confluence with the Rainbow Lake sub-basin. No significant downstream drainage problems are identified, only correctible maintenance issues and beaver "rambunctiousness."
6. Applicant Toll WA LP proposes subdivision of the property into 80 lots for a mix of 35 detached single family dwellings and 45 attached townhomes, types of residential development permissible under the property's R-6 zoning, along with wetland preservation and buffering tracts, recreation tracts, drainage tracts and private access tracts serving some of the detached single family residential lots and the townhome area in the center of the northerly portion of the site. Access to the lots would be provided by road improvement within and along an extension of the aforementioned Tract C stub from 238th Way SE in the southwesterly portion of the site, running north-northeasterly into the site interior and then forming an extended loop within the northerly portion of the site. (A road variance has been granted with conditions under file L11V0008 to address utilization of a sag vertical curve segment of the access road route. The sag, or "dip," will be illuminated. A condition herein requires adherence to the conditions attached to the variance.) No other road connections would be made, either to the south to connect with the existing road stub in *Brookshire Estates*, to the north to connect with the existing road stub in *Rainbow Lake Ranch*, or to the west to connect directly to Issaquah-Pine Lake Road. The proposed density is approximately 5.8 units per acre, with lot sizes averaging 2,394 square feet and ranging from 1,000 square feet for townhouse development to as much as 5,685 square feet for detached single family dwellings.
7. Public water service and sanitary sewer service are available to the development by the Sammamish Plateau Water and Sewer District.
8. The proposed surface water drainage system for the development will utilize collection and infiltration gallery facilities (and detention vaults depending on soil perc tests; the site's glacial outwash soils are generally pervious). The proposed drainage plan conforms on a preliminary

basis to the requirements of the 2005 King County Surface Water Design Manual (SWDM), which imposes Conservation flow control and Sensitive Lake water quality standards. The final drainage plan and onsite developed drainage facilities are required to conform to the SWDM and its applicable standards.

9. Combined facility tracts for stormwater facilities and recreation facilities will be placed in the far eastern portion of the northern part of the property and in the southwestern portion straddling the main entry roadway. Active recreation facilities are proposed to be developed in some of such areas. A pedestrian trail running from the interior road system westerly to the Issaquah-Pine Lake Road frontage within Tracts D and E is also proposed. The proposed recreation site and facilities would be sufficiently accessible and convenient to development residents.
10. Concerns regarding the traffic impacts of the proposed development have been expressed by a number of nearby residents and property owners. Mitigation for the development's traffic impacts at the intersection of 238th Way SE and Issaquah-Pine Lake Road mitigation has been imposed by the Mitigated Determination of Nonsignificance (MDNS) issued under DDES's responsible official authority under the State Environmental Policy Act (SEPA). The mitigation measure, reached by voluntary agreement between the Applicant and the City of Sammamish, requires installation of an interim traffic control signal (or a roundabout intersection as an alternative if determined by the City to be acceptable) at the intersection, along with pedestrian crosswalks and intersection warning signals due to sight distance impairment posed by horizontal curvature on the northbound approach (on the south leg of Issaquah-Pine Lake Road). The MDNS was not appealed. (There was some disputation at hearing as to whether the signal meets MUTCD traffic control warrants; that warrant determination is a matter under City jurisdiction. The evidence in the record is that the City is in acceptance of the signal improvement. The person raising such issue noted being dropped from development notice rolls, but did not expressly claim defective notice of the MDNS or claim a right to appeal it.)
11. Concerns about adding congestion to 238th Way SE do not rise to the level of a significant drop in Level of Service (LOS) or adverse impact on traffic or pedestrian safety on such road segment. In that light, concern expressed about the need for an eastbound left-turn refuge along the 238th Way SE segment at its proposed intersection with the plat entry road ("Tract C") does not appear warranted; the oncoming traffic is at such a low predicted level that during 95% of left turn activity there will be only one car queuing to turn left; that very low incidence will preclude inordinate blocking or impeding of through eastbound traffic at that location.
12. The next issue raised as a concern is the grade of the east leg of 238th Way SE at the Issaquah-Pine Lake Road intersection, which is stated to become difficult for traction during icy conditions. The grade, combined with a tendency for nearby residents to drive to such location during inclement weather to pick up their children alighting from school buses to take them home, raises concern about adverse congestion and safety impacts during inclement weather. Though a valid concern in general, it is one that does not rise to the level of requiring mitigation or any other special conditions of approval. Inclement weather poses its own special safety parameters, and drivers must exercise due care and prudence in operating motor vehicles and not cause undue congestion. In any case, it has not shown that such phenomenon will be significantly caused or aggravated by the proposed development, which is the test of approval in this instance.
13. The proposed road access design has drawn criticism from many perspectives, not all unanimous. Several alternative access routes are stated by various neighbors and adjacent property interests as more advantageous or disadvantageous, as is the notion of providing connectivity, or

interlinking, of the area roadway layout by providing a secondary access route in addition to the single route proposed. In the final analysis, the proposed design qualifies for approval. A single access point is expressly permitted by the applicable county road standards. The Examiner has no authority to deny the proposal or require a secondary access provision under the applicable standards.¹

14. On-street parking congestion is speculatively claimed to be a potential problem, but is not shown persuasively to be of any chronic excess needing to be addressed; county zoning regulations requiring substantial off-street parking per dwelling unit must be observed in structural development.
15. It was argued that since the property abuts the Sammamish city limits and will likely be annexed to the City, it should be developed to city standards. Absent a pertinent interlocal agreement to such effect, there is no legal authority to impose City of Sammamish road or other standards on development in the unincorporated area. (Although abutting the City of Sammamish, the property is evidently formally within the very nearby City of Issaquah's assigned future annexation area.)
16. Aside from the intersection mitigation imposed by the MDNS noted above, additional traffic impact mitigation is provided by the standard reviews under Title 14 KCC and imposition of Mitigation Payment System (MPS) fees in the recommended conditions.
17. Safe walking conditions for school pedestrians would be provided by the construction of the internal roadway system and its walkway system to 238th Way SE and then existing walkways to the Issaquah-Pine Lake Road intersection. As noted previously, an additional pedestrian trail connecting to Issaquah-Pine Lake Road is proposed to be provided through the preserved wetland/open space area in the western portion of the site (Tracts D and E). That proposal is problematic, however, as the frontage of the property on Issaquah-Pine Lake Road is not improved with pedestrian facilities providing safe walking conditions for schoolchildren at the present time. Accordingly, if such route is to be used by development pedestrians as their school walkway route to their assigned bus stop, the bus stop (serving all grade levels) must be located directly at the intersection of the trail with Issaquah-Pine Lake Road so that safe walking conditions are sufficiently assured. Otherwise, until such time as safe walking conditions are provided on Issaquah-Pine Lake Road to a pertinent nearby school bus stop(s) (serving all grade levels), such a trail installation would tend to comprise an attractive nuisance by drawing schoolchildren to unsafe walking areas and shall be disallowed. The Examiner shall impose pertinent condition language to address the issue properly.
18. The proposed development density of the subdivision and the architectural style of anticipated structures on the proposed lots are of concern to neighboring residents and property owners, whose residences are on significantly larger lots with greater setbacks than are proposed and required under the code for the R-6 zone applied to the property. Concern is stated about feared incompatibility of architectural style and residential occupants, as well adverse effect on residential privacy, quality of life and property values, and generally an "unreasonable" and

¹ 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)] The personal preferences and concerns of other property owners and residents in the area also cannot be honored in an arbitrary or capricious manner; only where such concerns or preferences are addressed by or reflected in applicable regulation and policy may they be honored, and only in the fashion permitted under due authority.

“inappropriate” land use density transition. These are matters the Examiner has no authority to address in this subdivision consideration. There is no requirement of maintaining similarity to existing lot sizes, architectural style and setbacks, structural values, maintenance of privacy buffering, maintenance upkeep levels, etc., to that of adjacent developments in subdivision review under state and King County land use regulation. As noted in footnote 1, the Examiner must honor the existing zoning and development regulations as they exist (legally, at the time a complete application was filed [RCW 58.17.330]; there is no disputation in the record regarding the application vesting and which code versions pertain), not as persons feel they ought to be. Remedies to disliked land use allowances or regulations are available in the legislative forum or by seeking timely review by the Growth Management Hearing Board and/or the courts; such dissatisfaction cannot be addressed here. There is simply no code provision for requiring additional setbacks, vegetation screening, architectural homogeneity, lot size augmentation, etc., in order to make the proposed development more compatible, in the eyes of some, with adjacent properties and their residential development.

19. Nevertheless, the Applicant has offered a six-foot high wood perimeter fence on the property contacts with adjacent residential development, as well as agreeing to a ten-foot rear yard setback for Lots 1-15, which are smaller detached single family residential lots in the southwestern portion of the site, abutting existing homesites in the adjacent *Brookshire Estates* development. These voluntarily offered amenities will provide some amelioration of density dissimilarities and shall be honored by implementation in the conditions of approval below.
20. Construction period damage and congestion, of concern to some neighbors, is a matter under the administrative authority of county executive departments and will be addressed during construction plan review and permitting.
21. There is no authority in this case for the Examiner to require a Phase 2 environmental assessment of the property as has been suggested by a hearing participant.

CONCLUSIONS:

1. 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 R-6 zone.
2. 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.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on December 28, 2010, 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 *Nelsen Catterall* subdivision, as revised and received December 28, 2010, is approved subject to the following conditions of 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 R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is greater, 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 discrepancies 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. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRD&CS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location, water main and fire flow standards of Chapter 17.08 KCC. Prior to submission of engineering plans, the applicant shall do one of the following:
 - A. Provide a recorded restriction on the development of all homes in the plat, in language approved by the King County Fire Marshal, to require sprinklers; or
 - B. Obtain the approval of the King County Fire Marshal to remove the sprinkler requirement from the subdivision by providing a minimum 20-foot wide fire lane with minimum 28-foot wide curb to curb internal roads with parking restricted to one side. Provide "No Parking – Fire Lane" signs and/or other markings approved by the Fire Marshal pursuant to KCC 17.04.420, provided signage dimensions and material specifications shall comply with the Manual on Uniform Traffic Control Devices (MUTCD). The homeowners association shall be responsible for monitoring and inspecting parking compliance and signage on a regular basis. DDES shall review and approve the relevant homeowner association covenants, conditions and restrictions language. A note referencing this requirement shall be recorded on the final plat.

Appropriate provisions shall be made for maintenance of the fire lane signage, sign reflectivity and/or other markings by the homeowner's association, subject to approval and monitoring by the Fire Marshal pursuant to KCC 17.04.420. A 3-foot wide private easement for installation and maintenance of the "No Parking – Fire Lane" signs shall be provided pursuant to condition 9.f below. Failure to privately maintain the signage and enforce parking restrictions may result in code enforcement action in accordance with King County Code Titles 17 and 21 or similar provisions for successor agencies.

6. The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Sensitive Lake Water Quality Menu in the 2005 King County Surface Water Design Manual (KCSWDM). Note that stormwater infiltration is proposed for most of this site.
7. To implement the required Best Management Practices (BMP's) for treatment of stormwater, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
8. The 100-year floodplain for any onsite streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the 2005 KCSWDM.
9. The following road improvements are required to be constructed according to 2007 King County Road Design and Construction Standards (KCRD&CS). All roads are to be within public right-of-way:
 - a. Road "A" entry road shall be improved to the urban subcollector street standard, 28-foot paved, with vertical curb.
 - b. Road "A" loop road shall be improved to the urban subaccess street standard. Per the requirements of KCRD&CS Section 2.09.A.4, the Road shall be 28-foot paved width with vertical curb, gutter and sidewalks.
 - c. Tracts F, G and H shall be improved as Alley Tracts according to Section 2.09 of the KCRD&CS.
 - d. Tracts I and J shall be improved as Private Access Tracts per Section 2.09 of the KCRD&CS. These tracts shall be owned and maintained by the Lot owners served.
 - e. Lots 29 and 30 plus Lots 35 and 36 shall be served by Joint Use Driveways per Section 3.01 of the KCRD&DS.
 - f. Note: Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2007 King County Road Standards. A 36-foot wide (curb-to-curb) roadway is required to allow for parking without any restrictions.

Permitted alternatives to roadways wider than required under the KCRD&CS would include either

- (i) the conveyance of a minimum 3-foot wide private easement abutting the public right-of-way for the private installation and HOA maintenance and enforcement of "No Parking Fire Lane" signs, and the installation of these signs, or, (ii) installation of a fire suppression system meeting the requirements of the Fire Marshal in each unit/structure.

A note referencing the selected alternative, as appropriate, shall be placed upon the final plat map – and the easement shown if alternative (i) is selected.

- g. Right-of-way for a public road within Tract C shall be provided with the engineering plans, per KCRDS & CS Section 1.05F. The internal roads shall also be public roads.
 - h. Variance L11V0008 was approved by KCDOT on July 28, 2011. The Applicant shall comply with any/all conditions associated with the Variance approval.
 - i. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRD&CS 1.12.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 11. 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.
 12. 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.
 13. The proposed subdivision shall comply with the Critical Areas code as outlined in KCC 21A.24. Permanent survey markings and signs, as specified in KCC 21A.24.160, shall also be addressed prior to final approval. Temporary marking of critical areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are complete.
 14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant:
 - a. The Critical Areas shown on the site plan dated December 28, 2010 have been verified and approved by King County DDES staff.
 - b. The Category III wetland shall have a 75 foot buffer as measured from the wetland edge. The Category IV wetlands shall have a 50 foot buffer as measured from the wetland edge. These buffers are proposed for buffer averaging.

- c. The conceptual buffer averaging/mitigation as shown on the plan, meets county code. A final buffer averaging/mitigation plan with planting shall need to be submitted during engineering review.
- d. The wetlands and buffers shall be placed in Critical Area Tracts (CAT) for long term protection. Fencing (split rail or equivalent) of the CAT is required.
- e. A 15-foot building set back line (BSBL) is required from the edge of the CAT and shown on all affected lots. The BSBL does not apply to paved roads, driveways and structural and non-structural fill.
- f. The final mitigation plan shall include 3 years of monitoring and a financial guarantee to assure long term implementation and success.
- g. Prior to construction activities the CAT boundaries shall be clearly marked with both bright orange construction and erosion control fencing. The fencing shall remain in place until all construction activities are complete.
- h. The engineering plans shall be submitted and reviewed by Critical Areas staff.
- i. The following note shall be shown on the final engineering plan and recorded plat:

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

Dedication of a critical area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/critical 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 critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical 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/critical area and buffer. The vegetation within the tract/critical 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/critical 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 critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

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

15. 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 recreation tract and critical area tract(s).
16. The following has been established by the MDNS issued under SEPA authority as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A minimum ten-foot rear yard structural setback shall be observed on Lots 1-15. Such minimum setback requirement shall be graphically depicted and identified on the final plat map.
19. A six-foot high solid wood fence shall be installed on the property perimeters on the rear yards of Lots 1-15 and 17-50.
20. Until such time as safe school pedestrian walking conditions are present along the property's frontage on Issaquah-Pine Lake Road (and further to the nearest school bus stop(s) serving resident schoolchildren of all grade levels served by standard school bus service if not all are located on such frontage), as certified in writing by the County or successor agency with land use jurisdiction over the subject property, the proposed pedestrian trail within Tracts D and E shall be constructed to connect with Issaquah-Pine Lake Road only if a school bus stop serving resident schoolchildren of all grade levels served by standard school bus service is located directly at the trail intersection with Issaquah-Pine Lake Road.

If such direct school bus location is not provided, the trail route shall be redesigned and physically constructed in such a manner as not to invite passage to Issaquah-Pine Lake Road from the residential lots herein. Also, if the school bus location is changed from such direct location without the above safe walking conditions provisions having been made on the property's frontage on Issaquah-Pine Lake Road (and further to the nearest school bus stop(s) serving resident schoolchildren of all grade levels served by standard school bus service if not all are located on such frontage), the trail shall be physically rerouted and modified by the homeowners association to present the same disinclination characteristic noted above. Thereafter,

the trail may only be further rerouted to form a connection with Issaquah-Pine Lake Road if certified safe walking conditions to assigned school bus stop(s) have been installed. Such requirements of physical reconfiguration and the trail being maintained in such configuration as stated herein shall be made a covenant of the subject subdivision and its homeowners association, with full right of enforcement granted expressly to King County and any successor agency with land use jurisdiction over the subject property.

ORDERED June 13, 2012.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before June 27, 2012*. If a notice of appeal is filed, the original and 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 5, 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 Office of the Clerk of the Council, Room 1039, 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. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event 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.

MINUTES OF THE MARCH 29, 2012, PUBLIC HEARING ON DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08P0004.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen, Bruce Whittaker, Nick Gillen and Kristen Langley for the Department; Aaron Hollingbery for the Applicants; Chris Forster, James A. Olsen, Richard Lheureux, Michael Foss, Erin Ehlinger, Emmanuel Tangas, Don Haide, Shirley Murphy, Diane Weinstein, Todd Miller, Yvonne Tichelaar, Catherine Brooker, Cliff Axelson, Jim Van Tigham, Chris Sfanos, John Dimtroff, Jenny Bedell and Marsha Martin.

The following Exhibits were offered and entered into the record:

- Exhibit no. 1 Department of Development and Environmental Services staff report to the Hearing Examiner for file no. L08P0004.
- Exhibit no. 2 Department of Development and Environmental Services preliminary report dated March 29, 2012
- Exhibit no. 3 Application submitted May 23, 2008 with a completeness date of June 13, 2008
- Exhibit no. 4 Environmental checklist (revised) received February 2, 2012
- Exhibit no. 5 Mitigated Declaration of Non-significance (MDNS) dated February 7, 2012
- Exhibit no. 6 Affidavit of Posting indicating June 24, 2008 as date of posting and July 8, 2008 as the date the affidavit was received by the Department of Development and Environmental Services
- Exhibit no. 7 Revised plat map received December 28, 2010
- Exhibit no. 8 Assessors maps SW 15-24-06; SE 15-24-06
- Exhibit no. 9 Level 1 drainage analysis by AHBL received May 2008
- Exhibit no. 10 Revised Level 1 drainage study by CORE Design dated May 2010
- Exhibit no. 11 Revised Conceptual drainage plan by CORE Design dated December 2010
- Exhibit no. 12 Downstream analysis by CORE Design dated November 1, 2011
- Exhibit no. 13 Wetland and conceptual mitigation plan by Gary Shultz dated December 23, 2010
- Exhibit no. 14 Wildlife habitat assessment by Sewall Wetland Consulting, Inc. dated November 23, 2011
- Exhibit no. 15 Associated Earth Sciences geotech report December 2004
- Exhibit no. 16 Associated Earth Sciences geotech report May 2008 (a. Infiltration, b. Infiltration system)
- Exhibit no. 17 Associated Earth Sciences, Inc. geotech report dated August 2008
- Exhibit no. 18 Traffic study by Transportation Engineering North West December 23, 2010
- Exhibit no. 19 KCRS variance L11V0008
- Exhibit no. 20 Title report Trace C-2012
- Exhibit no. 21 Density calculation worksheet 2008
- Exhibit no. 22 City of Sammamish e-mail dated January 1, 2012
- Exhibit no. 23 Transportation Concurrency Certificate (2007)
- Exhibit no. 24 Agreement with the City of Sammamish & CamWest dated April 1, 2009
- Exhibit no. 25 Document submitted by CamWest
- Exhibit no. 26 Amended Plat of Brookshire Estates
- Exhibit no. 27 Email with attached letter to Kimberly Claussen from Rainbow Lake Ranch Improvement Associated dated March 27, 2012
- Exhibit no. 28 Notes from the Brookshire Estates Homeowner's Association meeting dated September 23, 2009
- Exhibit no. 29 Document submitted by Brookshire Estates Homeowner's Association
- Exhibit no. 30 Letter to the Hearing Examiner from Erin Ehlinger; Resume of Erin Ehlinger; Excerpt from The Issaquah Press on Klahanie's urban wildlife sanctuary
- Exhibit no. 31 Sight Distance Study completed by Cam West

The following Exhibit was offered and entered into the record on April 2, 2012:

- Exhibit no. 32 Letter from Peter K. Peterson to the Hearing Examiner dated April 2, 2012

The following Exhibit was offered and entered into the record on April 5, 2012:

- Exhibit no. 33 Response to the Peter K. Peterson letter from Aaron Hollingbery dated April 5, 2012



King County

DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES
BUILDING & FIRE SERVICES DIVISION
KING COUNTY, WASHINGTON

PRELIMINARY REPORT TO THE HEARING EXAMINER
March 29, 2012 – PUBLIC HEARING AT 9:30 A.M.
DDES Hearing Room
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219
Phone: (206) 296-6600

PROPOSED PLAT OF NELSON-CATTERALL

FILE NO: L08P0004

PROPOSED ORDINANCE NO: 2012-0071

A. SUMMARY OF PROPOSED ACTION:

This is a request to subdivide 13.72 acres, zoned R-6 into 80 lots for single-family detached dwellings and tracts for access, drainage recreation and critical areas/wetlands. The lot sizes range from approximately 1,000 to 5,685 square feet. See Attachment 1 for a copy of the proposed site plan.

B. GENERAL INFORMATION:

Owner/Developer: Toll WA LP
Attn. Aaron Hollingbery
9720 NE 120th Pl, Suite 100
Kirkland WA 98034
425-825-1955

Engineer: Core Design
14711 NE 29th Pl, Suite 101
Bellevue WA 98007
425-885-7877

STR: 15-24-06

Location: The site is located on the north side of 238th Way SE, east of Issaquah Pine Lake Road

Tax Parcels 1524069036, 1524069043, 1524069048, 1150001390

Zoning: R6
 Acreage: 13.72 acres
 Number of Lots: 80
 Density: Approximately 5.8 units per acre
 Lot Size: Approximately 1,000 (townhouse) to 5,685 square feet in size, average lot size is approximately 2,394 square feet

Proposed Use: Single Family Detached Dwellings & attached townhomes
 Sewage Disposal: Sammamish Plateau Water & Sewer District
 Water Supply: Sammamish Plateau Water & Sewer District
 Fire District: Eastside Fire and Rescue
 School District: Issaquah School District #411
 Complete Application Date: May 23, 2008 (date filed) June 13, 2008 (complete)

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. The applicant submitted a revision December 28, 2010, which relocated the access for the proposal to Tract C from 238th Way SE.

D. THRESHOLD DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE:

Pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, the responsible official of DDES issued a mitigated threshold determination of non-significance (MDNS) for the proposed development on February 7, 2012. 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 provided the following measures are complied with:

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

Agencies, affected Native American tribes and the public were offered the opportunity to comment on or appeal the determination for 21 days. The MDNS 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: The comments from the Fire protection engineer have been incorporated into this report.
3. Issaquah School District: The comments from this district have been incorporated into this report.
4. Washington State Department of Ecology: No response.
5. Washington State Department of Fish and Wildlife: No response.
6. Washington State Department of Natural Resources: No Response
7. Washington State Department of Transportation: No response.
8. METRO: No response.
9. City of Sammamish: The comments from the City have been incorporated into this report.

F. NATURAL ENVIRONMENT:

1. Topography: The area to be developed with lots generally slopes to the west, with slopes approximately 5 percent. The critical areas/wetlands and associated buffer(s) will be placed in a separate tract (shown as Tract D).
2. Soils: The soil types for this site were not identified in the 1973 King County Soil Survey.
3. Wetland/streams: The applicant submitted a wetland report by Gary Shulz (December 2010)). This study identified 3 wetlands in the western portion of the site. Wetland A (3.12 acres) extends north onto a portion of the Rainbow Lake Ranch development; Wetland B is approximately 2,216 square feet and Wetland C is approximately 2,031 square feet. Wetland A is considered a category III wetland and requires a 75 ft. buffer, wetlands B and C are considered category IV wetlands and require 50 ft. buffers. The critical areas will be placed in separate critical area tract, along with the associated buffer (shown as Tract B). A trail will be extended through Tract B to Issaquah Pine Lake Road from the recreation space tract within the proposed plat. The ecologist for DDES reviewed the study and evaluated the site, provided recommendations/conditions in section O of this report. The site lies within the Lake Sammamish drainage basin.

Geotechnical: The applicant submitted geotechnical studies by Associated Earth Sciences (December 2004, May 2008, August 2008), which evaluated geohazards, infiltration potential, subsurface/groundwater on the site.

4. Vegetation: This site is primarily covered in pasture grasses. The site was previously cleared for residences, outbuildings and pasture areas.
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.

G. NEIGHBORHOOD CHARACTERISTICS:

The property lies in a suburban area of east King County on the Sammamish Plateau, adjoining the boundaries of the City of Sammamish (Issaquah Pine Lake Rd to the west). The properties surrounding the site are developed with single-family dwellings on larger lots (Brookshire Estates to the east, Rainbow Lake Ranch to the north). The site itself is occupied by single family dwellings and outbuildings, which will be removed with this development.

H. SUBDIVISION DESIGN FEATURES:

1. Lot Pattern and Density: The proposed lot and street layout will be in conformance with King County Code 21A. (zoning) and the 2007 King County Road and Construction Standards. Per KCC 21A.12.070, the allowable dwelling units for this proposal is 82 units, based upon the calculations provided by the applicant.
2. Internal Circulation: The lots will be served from an internal public road which extends northerly (Tract C) from 238th Way SE, south of the site.
3. Roadway Section: The road design will be improved to urban standards in accordance with the 2007 King County Road and Construction Standards (KCRD&CS).
4. Drainage: The Nelson Catterall Site lies within the Laughing Jacobs Creek Subbasin of the Lake Sammamish Drainage Basin. The site is subject to the Conservation Flow Control and Sensitive Lake Water Quality Requirements in the 2005 King County Surface Water Design Manual.

The existing site includes two drainage subbasins. The larger westerly subbasin sheet flows to the wetland along the western portion of the site. The wetland discharges at the low point on the western portion of the north property line into the Rainbow Lake Wetland. Existing flows continue north to Rainbow Lake. The downstream path continues under Issaquah-Pine Lake Road, eventually outfalling to Lake Sammamish approximately 1 mile downstream.

The easterly subbasin drains to the east of the site. Runoff sheet flows to a conveyance system located in SE 45th Place, then continues to an existing pond. The flow from the pond turns westerly and combines with the westerly subbasin in Rainbow Lake.

The applicant submitted a preliminary grading and utility plan, showing a combination of largely infiltration facilities and a small underground stormwater detention vault. These facilities are to be constructed according to the 2005 King County Surface Water Design Manual.

I. TRANSPORTATION PLANS:

1. **Transportation Plans:** The King County Transportation Plan indicates that Issaquah Pine Lake Road is an arterial within the City of Sammamish. The subject subdivision is not in conflict with this plan, nor with the Regional Trails Plan or Non-motorized Transportation plan.

Subdivision Access/Neighborhood Circulation: The site will access from 238th Way SE to the south via Tract C.

3. **Traffic Generation:** It is expected that approximately 800 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 zone this site is located in, passes concurrency. The transportation improvements or strategies will be in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six (6) years, according to RCW 36.70A.070(6).
 - b. **King County Code 14.80 – Intersection Standards:** The traffic generated by this subdivision falls below the threshold requiring mitigation on King County roads, however, an adverse impact was identified within the City of Sammamish. The City required the applicant to comply with a Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

The applicant submitted a revised traffic impact study by Transportation Engineering NorthWest dated December 2010. This study evaluated trip generation, volumes, level-of-service, signal mitigation, access, etc. The only requirement demonstrated in this study was the need for a signal within the City of Sammamish and payment of the road mitigation fees to King County. In addition, the applicant applied for and received a variance to the KCRDCS (L11V0008) to allow a shorter than minimum stopping sight distance for Road A, within Tract C, provided illumination of the sag curve(s) is installed.

- 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 408 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.

- d. **Secondary Access:** The initial subdivision submittal proposed access via 239th Ave SE, with a loop street configuration. No secondary access was proposed or is currently proposed. The King County Dept. of Transportation determined that in the absence of another requirement from the King County Road Design and Construction Standards (i.e. length of cul-de-sac criteria, 100 lot rule or unmitigable level-of-service at a serving intersection) no secondary connection would be required. In addition, the Subdivision Technical Committee (STC) evaluated a potential road extension to the north to 238th Place SE. The STC concluded that the geometric design (width and horizontal curvature) for a subcollector street was not feasible and that a secondary connection to 238th Place was not supported by a need. A secondary connection to Issaquah-Pine Lake Road, along the western frontage of the subdivision proposal was also considered, but concluded it was not realistic given the resultant substandard spacing of intersections e.g. between intersections of a plat street, 238th Way SE and the private access road to the Boulder Creek Apartment project at the 4400 block of Issaquah-Pine Lake Road. Subsequently, the applicant proposed a reconfiguration to the proposed plat which provided access directly to 238th Way SE through an existing tract (Tract C) and proposes to improve this new street to meet the requirements of an urban subcollector.

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 Sunny Hills Elementary, Pacific Cascade Middle School and Issaquah Senior High School, all located within the Issaquah 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 is a condition of subdivision approval.
 - c. **School Access:** The District has indicated that the future students from this subdivision will be bussed to the elementary, middle and senior high schools. It is anticipated that a bus stop may be located along Issaquah Pine Lake Road. A walkway will be provided from the internal road to Issaquah Pine Lake Road via an improved trail.
2. **Parks and Recreation Space:** The nearest public park is Klahanie Park and East Plateau Trail, located east of the site. Recreation space is required for urban plats per King County Code 21A.

K.C.C. 21A.14 requires subdivisions in the UR and R zone classifications to either provide on-site recreation space or pay a fee to the Parks Division for establishment and maintenance of neighborhood parks. At this time, the applicant is proposing Tracts A, B, C, E and the trail portion of Tract D for recreation space. K.C.C. 21A.14.190 requires subdivisions to provide tot/children play areas within the recreation space on site. A detailed improvement plan for the recreation tract with equipment, landscaping, surfacing, etc. is required for submittal, review and approval by DDES prior to engineering plan approval.

3. Fire Protection: The Certificate of Water Availability from Sammamish Plateau Water & Sewer District indicates that water is 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 future residences will require sprinklers, unless otherwise approved by the King County Fire Marshall.

K. UTILITIES

1. Sewage Disposal: The applicant proposes to serve the subject subdivision by means of public sewers managed by the Sammamish Plateau Water & Sewer District. A Certificate of Sewer Availability, dated May 20, 2008, indicates this district's ability to serve the proposed development.
2. Water Supply: The applicant proposes to serve the subject subdivision with a water supply and distribution system managed by Sammamish Plateau Water & Sewer District. A Certificate of Water Availability, dated May 20, 2008, indicates this district's ability to serve the proposed development.

L. COMPREHENSIVE AND COMMUNITY PLAN:

1. Comprehensive Plan: This plan is governed by the 2008 King County Comprehensive plan which designates this area as Urban. The proposed subdivision is not in conflict with the policies of the Comprehensive Plan.
2. Community Plans: The subject subdivision is located in the East Sammamish Community Planning area. The subject subdivision is not in conflict with the goals, guidelines, and policies of the 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:

It is recommended that the subject subdivision, revised and received December 28, 2010, 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 R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 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. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRD&CS).
5. 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.

Prior to submission of engineering plans, the applicant shall do one of the following:

- A. Provide a recorded restriction on the development of all homes in the plat, in language approved by the King County Fire Marshal, to require sprinklers; or
- B. Obtain the approval of the King County Fire Marshal to remove the sprinkler requirement from the subdivision by providing a minimum 20-foot wide fire lane with minimum 28-foot wide curb to curb internal roads with parking restricted to one side. Provide "No Parking – Fire Lane" signs and/or other markings approved by the Fire Marshal pursuant to KCC 17.04.420, provided signage dimensions and material specifications shall comply with the Manual on Uniform Traffic Control Devices (MUTCD). The homeowners association shall be responsible for monitoring and inspecting parking compliance and signage on a regular basis. DDES shall review and approve the relevant homeowner association covenants, conditions and restrictions language. A note referencing this requirement shall be recorded on the final plat.

Appropriate provisions shall be made for maintenance of the fire lane signage, sign reflectivity and/or other markings by the homeowner's association, subject to approval and monitoring by the Fire Marshal pursuant to KCC 17.04.420. A 3-foot wide private easement for installation and maintenance of the "No Parking – Fire Lane" signs shall be provided pursuant to condition 9.f below. Failure to privately maintain the signage and enforce parking restrictions may result in code enforcement action in accordance with King County Code Titles 17 and 21 or similar provisions for successor agencies.

6. The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Sensitive Lake Water Quality Menu in the 2005 King County Surface Water Design Manual (KCSWDM). Note that stormwater infiltration is proposed for most of this site.
7. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
8. The 100-year floodplain for any onsite streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the 2005 KCSWDM.
9. The following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRD&CS). All roads are to be within public right-of-way:
 - a. Road "A" entry road shall be improved to the urban subcollector street standard, 28-foot paved, with vertical curb.
 - b. Road "A" loop road shall be improved to the urban subaccess street standard. Per the requirements of KCRD&CS Section 2.09.A.4, the Road shall be 28-foot paved width with vertical curb, gutter and sidewalks.
 - c. Tracts F, G and H shall be improved as Alley Tracts according to Section 2.09 of the KCRD&CS.
 - d. Tracts I and J shall be improved as Private Access Tracts per Section 2.09 of the KCRD&CS. These tracts shall be owned and maintained by the Lot owners served.
 - e. Lots 29 and 30 plus Lots 35 and 36 shall be served by Joint Use Driveways per Section 3.01 of the KCRD&DS.
 - f. Note: Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2007 King

County Road Standards. A 36-foot wide (curb-to-curb) roadway is required to allow for parking without any restrictions.

Permitted alternatives to roadways wider than required under the KCRD&CS would include either

(a) the conveyance of a minimum 3-foot wide private easement abutting the public right-of-way for the private installation and HOA maintenance and enforcement of "No Parking Fire Lane" signs, and the installation of these signs, or, (b) installation of a fire suppression system meeting the requirements of the Fire Marshal in each unit/structure.

A note referencing the selected alternative, as appropriate, shall be placed upon the final plat map – and the easement shown if alternative (a) is selected.

g. Right-of-way for a public road within Tract C shall be provided with the engineering plans, per KCRDS & CS Section 1.05F. The internal roads shall also be public roads.

h. Variance L11V0008 was approved by KCDOT on July 28, 2011. The Applicant shall comply with any/all conditions associated with the Variance approval.

i. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRD&CS 1.12.

10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. 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.
12. 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.
13. The proposed subdivision shall comply with the Critical Areas code as outlined in KCC 21A.24. Permanent survey markings and signs, as specified in KCC 21A.24.160, shall also be addressed prior to final approval. Temporary marking of critical areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are complete.

14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant:
- a. The Critical Areas shown on the site plan dated December 28, 2010 have been verified and approved by King County DDES staff.
 - b. The Category III wetland shall have a 75 foot buffer as measured from the wetland edge. The Category IV wetlands shall have a 50 foot buffer as measured from the wetland edge. These buffers are proposed for buffer averaging.
 - c. The conceptual buffer averaging/mitigation as shown on the plan, meets county code. A final buffer averaging/mitigation plan with planting shall need to be submitted during engineering review.
 - d. The wetlands and buffers shall be placed in Critical Area Tracts (CAT) for long term protection. Fencing (split rail or equivalent) of the CAT is required.
 - e. A 15-foot building set back line (BSBL) is required from the edge of the CAT and shown on all affected lots. The BSBL does not apply to paved roads, driveways and structural and non-structural fill.
 - f. The final mitigation plan shall include 3 years of monitoring and a financial guarantee to assure long term implementation and success.
 - g. Prior to construction activities the CAT boundaries shall be clearly marked with both bright orange construction and erosion control fencing. The fencing shall remain in place until all construction activities are complete.
 - h. The engineering plans shall be submitted and reviewed by Critical Areas Staff.
 - i. The following note shall be shown on the final engineering plan and recorded plat:

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

Dedication of a critical area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/critical 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 critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical 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/critical area and buffer. The vegetation within the tract/critical 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/critical 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 critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

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

15. 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 recreation tract and critical area tract(s).
16. The following has been established by SEPA as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

P. 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.

Q. TRANSMITTED TO PARTIES LISTED HEREAFTER:

HEARING EXAMAMINER

ADKINS MARK

24021 SE 46TH PL ISSAQUAH WA 98029

ADKISSON STEVEN & JOANNE

4685 238TH WAY SE ISSAQUAH WA 98029

AHBL

2215 NORTH 30TH ST SUITE 300 TACOMA WA 98043

ALBERT THERESIA

4663 242ND AVE SE ISSAQUAH WA 98029

ANDERSON MATT & MICHELLE

4610 241ST AVE SE ISSAQUAH WA 98029

AXELSON CLIFF

4636 240TH AVE SE ISSAQUAH WA 98029

BALBIANI DANIEL

4643 239TH AVE SE ISSAQUAH WA 98029

BARBER RJ

P.O. BOX 2714 ISSAQUAH WA 98027

BERTELSEN VIGGO JR

23825 SE 46TH PL ISSAQUAH WA 98029-7571

BEUSCH BURT & BECKI

4703 240TH AVE SE ISSAQUAH WA 98029

BLANCHARD DAVID

4630 239TH AVE SE ISSAQUAH WA 98029

BLUMENTHAL RYAN

4623 240TH AVE SE ISSAQUAH WA 98029

BOWSHER KATHY
4422 238TH PL SE ISSAQUAH WA 98029

BREITENBUECHER ROBERT & BETTY
4620 240TH AVE SE ISSAQUAH WA 98029

BROOKER CATHERINE
2617 239TH AVE SE ISSQUAH WA 98029

BROOKSHIRE ESTATES HOMEOWNERS ASSOC.
P.O. BOX 404 ISSAQUAH WA 98027-0404

CALHOUN STEVE ASLA W/PACE ENGRS. INC.
11255 KIRKLAND WAY STE 300 KIRKLAND WA 98033

CAMWEST
9720 NE 120TH PL STE 100 KIRKLAND WA 98034

CARLSON JOANNE ASII
ERS LUSD MS: OAK-DE-0100

CHANEY LYNETTE
4655 242ND AVE SE ISSAQUAH WA 98029

CHARUAT PHOOMWONG
24010 SE 47TH PL ISSAQUAH WA 98029

CHOI JOE G
24118 SE 46TH PL ISSAQUAH WA 98029

CITY OF SAMMAMISH
801 228TH AVE SE SAMMAMISH WA 98075

CLARK GLENN
24000 SE 47TH ST ISSAQUAH WA 98029

CLAUSSEN KIM PPMIII
PCS BFSB MS: OAK-DE-0100

COAR WILHELMINA
24128 SE 46TH PL ISSAQUAH WA 98029

COLE WILLIAM E.
4635 240TH AVE SE ISSAQUAH WA 98029

COMFORT CRAIG TRAFFIC ENGR
KC DOT RD SERV DIV MS: KSC-TR-0222

CORDES TOM
24103 SE 45TH PL ISSAQUAH WA 98029

DAVERE PORTER W
4624 239TH AVE SE ISSAQUAH WA 98029-7562

DECAMP KENNETH
4718 241ST AVE SE ISSAQUAH WA 98029

DEKOW
4625 239TH AVE SE ISSAQUAH WA 98029

DENNY ERIK & LORENA
4719 241ST AVE SE ISSAQUAH WA 98029

DEVUN ESMOND
23839 SE 47TH PL ISSAQUAH WA 98029

DIMTROFF JOHN P & KAREN E
24011 SE 46TH PL ISSAQUAH WA 98029

DOUGHERTY MICHAEL & JESSICA
24131 SE 46TH PL ISSAQUAH WA 98029

DUBREUIL DEANNA
24117 SE 46TH PL ISSAQUAH WA 98029

EICHELSDOERFER ROBERT SR ENGR
KC DOT RD SERV DIV MS: KSC-TR-0222

EINFALT SHARI & MICHAEL
24115 SE 45TH PL ISSAQUAH WA 98029

FOSS MICHAEL
23826 SE 47TH PL ISSAQUAH WA 98029

FREEDDEL DAVID
4659 238TH WAY SE ISSAQUAH WA 98029

FRIESEN MATTHEW
23008 SE 48TH ST SAMMAMISH, WA 98075

FRISCHKORN JOHN & JENNIFER
4689 238TH WAY SE ISSAQUAH WA 98029

FUREY DAVID & CHERYL
24016 SE 47TH ST ISSAQUAH WA 98029

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

GOLL SHIRLEY ASII
PCS BFSO MS: OAK-DE-0100

GRIFFITH ROWLAND J
23923 SE 46TH PL ISSAQUAH WA 98029

HAMILTON ERIN & BILLY
4640 239TH AVE SE ISSAQUAH WA 98029

HARRIS DOUGLAS & HEATHER
2411 SE 46TH PL ISSAQUAH WA 98029

HOEHL JOHN R
4738 241ST AVE SE ISSAQUAH WA 98029

HOLLINGSBERRY AARON W/CAMWEST
9720 NE 120TH PL STE 100 KIRKLAND WA 98034

INNES JASON & KARI
4709 241ST AVE SE ISSAQUAH WA 98029

ISSAQUAH PINE LK RD INVESTORS
9720 NE 120TH PL SUITE 100 KIRKLAND WA 98034

JENSEN OSCAR W
23924 SE 46TH PL ISSAQUAH WA 98029

JIANG LINGOU
421 240TH AVE SE ISSAQUAH WA 98029

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

JONES, ED
23915 SE 46TH PLACE ISSAQUAH, WA 98029

KANDALA STINIVAS
4741 241ST AVE SE ISSAQUAH WA 98029

KARIN FATIN SUPERVISING ENGR
KC DOT RD SERV DIV MS: KSC-TR-0222

KILLION GARY L
4616 239TH AVE SE ISSAQUAH WA 98029

KIRCHOFF HEIDI
4438 238TH PL SE ISSAQUAH WA 98029

KLEIN ADAM & ANABELLE
24022 SE 46TH PL ISSAQUAH WA 98029

KLEINKOPF KEVIN
4712 241ST AVE SE ISSAQUAH WA 98029

KLOMP MARGARET & TERRY
24001 SE 46TH PL ISSAQUAH WA 98029

KNIGHT GEORGE J
23836 SE 47TH PL ISSAQUAH WA 98029

KRATOCHVIL JOEL & KRISTI
24126 SE 47TH CT ISSAQUAH WA 98029

LABRUE LINDA & TERRY
4727 241ST AVE SE ISSAQUAH WA 98029

LANGLEY KRIS TRAFFIC ENGR
KC DOT RD SERV DIV MS: KSC-TR-0222

LEE TIM
2032 248TH PL SE SAMMAMISH WA 98075

LEVIN DAHLIA & JEREMY
24120 SE 47TH PLACE ISSAQUAH WA 98029

LEWIS JARROD SUPERVISOR
PCS BFSO MS: OAK-DE-0100

LHEUREUX RICHARD
4652 238TH WAY SE ISSAQUAH WA 98029

LUND JAMES
4644 240TH AVE SE ISSAQUAH WA 98029

LUSTIG JILL & MITCH
4631 242ND AVE SE ISSAQUAH WA 98029

MALONEY LAURA & MIKE
4706 241ST AVE SE ISSAQUAH WA 98029

MARKIEWICZ WALTER & IRENE
24014 SE 46TH PL ISSAQUAH WA 98029

MCCLAIN LYNN
4630 240TH AVE SE ISSAQUAH WA 98029

MERDINYAN DAVE & TINA
4631 239TH AVE SE ISSAQUAH WA 98029

MILLER MARIN & ALENE
4635 241ST AVE SE ISSAQUAH WA 98029

MILLER TODD
24030 SE 47TH ST ISSAQUAH WA 98029

MONTAGUE SINDY
4511 238TH PL SE ISSAQUAH WA 98029

MOSCHETTO JUDY
24108 SE 46TH PL ISSAQUAH WA 98029

MURPHY JOHN
4632 241ST AVE SE ISSAQUAH WA 98029

NELSON HARRY & VICKIE
24121 SE 46TH PL ISSAQUAH WA 98029

O'NEILL STEVE & ELLEN
4634 238TH WAY SE ISSAQUAH WA 98029

PARSONS DAVID
23823 SE 47TH PL ISSAQUAH WA 98029

PETERSON MR & MRS PETER K
23815 SE 47TH PL ISSAQUAH WA 98029

RAAB MIKE & THERESA
24138 SE 46TH PL ISSAQUAH WA 98029

RANDOLPH JAMES & THERESA
4664 238TH WAY SE ISSAQUAH WA 98029

RATH ERIC
4603 241ST AVE SE ISSAQUAH WA 98029-7555

REED SCOTT
24125 SE 46TH PL ISSAQUAH WA 98029

ROBERTS BRETT & SUZANNE
24118 SE 47TH CT ISSAQUAH WA 98029

ROY OLIVER
23907 SE 46TH PL ISSAQUAH WA 98029

RUFFNER
4608 239TH AVE SE ISSAQUAH WA 98029

SEATTLE KC HEALTH DEPT EASTGATE OFFICE
14350 SE EASTGATE WAY BELLEVUE WA 98007

SHAW JOHN
4639 233RD AVE SE SAMMAMISH WA 98075

SKAAR
4601 239TH AVE SE ISSAQUAH WA 98027

SKARRDAL GLEN G
24111 SE 47TH PL ISSAQUAH WA 98029

STAMM JOHN & ELAINE
24103 SE 46TH PL ISSAQUAH WA 98029

STECK JAMES & DAPHNE
4667 238TH WAY SE ISSAQUAH WA 98029

STEERE KEVIN
24102 SE 45TH PL ISSAQUAH WA 98029-7524

STEPHENSON JANE
4625 241ST AVE SE ISSAQUAH WA 98029

STRAUB JEAN CO-EXECUTOR ESTATE OF JOSEPH WNYBERG
P.O. BOX 1845 ISSAQUAH WA 98027

SULLIVAN BRIAN & KORINA
4629 240TH AVE SE ISSAQUAH WA 98029
TANGAS STACEY & EMMANUEL
24131 SE 47TH CT ISSAQUAH WA 98029

TENACE MARIAN & JEFF
24008 SE 47TH ST ISSAQUAH WA 98029

THOMPSON JANET R
4624 240TH AVE SE ISSAQUAH WA 98029

TICHELAAR Y.
4757 241ST AVE SE ISSAQUAH WA 98029

TOWN JOHN
24025 SE 47TH PL ISSAQUAH WA 98029

VU HAU V & NGUYEN LE HANG T
4672 238TH WAY SE ISSAQUAH WA 98029

WALTERS KAREN FISHERIES DIVISION MUCKLESHOOT INDIAN TRIBE
39015 172ND AVE SE AUBURN WA 98092

WEINSTEIN DIANE
24116 SE 45TH PL ISSAQUAH WA 98029

WHITTAKER BRUCE SR ENGR
ERS LUSD MS: OAK-DE-0100

WILSON BONNIE
4721 242ND AVE SE ISSAQUAH WA 98029

WOLOSZYN JOHN A
23908 SE 46TH PL ISSAQUAH WA 98029

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

ZHU, ZHONGWEI
24122 SE 47TH CT ISSAQUAH WA 98029

ZINTEL STAN & BEVERLY
24103 SE 47TH PL ISSAQUAH WA 98029

ZURCHER MARGARET L
24017 SE 47TH ST ISSAQUAH WA 98028



FOSTER PEPPER PLLC

Direct Phone (206) 447-5942
Direct Facsimile (206) 749-1946
E-Mail gills@foster.com

September 26, 2012

By U.S. Mail and E-Mail

Anne Noris, Clerk of the Council
King County Courthouse
516 Third Avenue, Room 1200
Seattle, WA 98104

Re: Nelsen-Catterall Plat Appeal—Inadmissibility of Letter Submitted by Diane Weinstein

Dear Ms. Noris:

This Firm represents Toll WA LP (“Toll”), the applicant for the Nelsen-Catterall subdivision. On October 15, 2012 at 1:30 p.m., the Council is scheduled to consider the appeal filed by the Brookshire Estates Homeowners Association (“Brookshire”) of the Hearing Examiner’s Report and Decision, dated June 13, 2012, granting preliminary approval of the Nelsen-Catterall subdivision.

We write to request that you, in consultation with the Chair of the Council, Larry Gossett, remove from the Council file the letter submitted by Diane Weinstein that is dated July 22, 2012, and stamped “received” by your Office on July 24, 2012. Ms. Weinstein did not serve her letter on Toll, and we obtained a copy only on July 31st, after requesting from your office copies of all documents filed with regard to the Brookshire appeal. Ms. Weinstein’s letter should be removed from the Council file because it violates the County Code and is not properly part of the record in this case.

King County Code 20.24.222.A allows “written appeal statements or arguments in response to the notice of appeal and appeal statement” to be submitted within fourteen days of the date the clerk of the council gives notice of an appeal, but the Code does not allow new appeals to be filed after the initial appeal period, which in this case ended on June 27, 2012, twenty-seven days before Ms. Weinstein submitted her letter to the County but not to Toll.

The content of Ms. Weinstein’s letter violates the Code by attempting to raise multiple new appeal issues in addition to the two issues that Brookshire timely raised. Brookshire raised the issue of whether Toll should be required to construct a second connection to the Nelsen-Catterall Plat, and whether Toll should be required to provide 15-foot setbacks along the lots bordering Brookshire. Ms. Weinstein’s letter attempts to raise numerous other issues, for example that the “Wetland Determination & Conceptual Mitigation report was incomplete,” and that “The Nelsen Catterall Plat as a whole was not thoroughly or adequately evaluated as to its impact on wildlife.” Similarly, the letter requests new relief not requested by Brookshire, e.g., Ms. Weinstein asks the Council to “[p]rovide a corridor linking the wetlands on the Nelsen

September 26, 2012

Page 2

Catterall property to the native growth protection areas in Brookshire and Klahanie;" and to "[e]nlarge and enhance buffers along the three wetlands." In addition, Ms. Weinstein's letter makes many factual assertions not supported by citation to the record.

Only the first two paragraphs of Ms. Weinstein's letter, which identify her and state her general support for the appeal filed by Brookshire, are unobjectionable. The remainder of the letter is an untimely new appeal that Toll has no opportunity to respond to because the Code limits Toll to a single response to the appeal statement filed by Brookshire on July 5, 2012, and the Code required Toll to file its single response within the same fourteen day period in which Ms. Weinstein submitted her letter without notice to Toll. Thus Toll has no opportunity under the Code to respond to the merits of Ms. Weinstein's arguments, and there is manifest and substantial prejudice to Toll if a non-appellant such as Ms. Weinstein is allowed to raise new appeal issues, make new arguments, request new relief, and make factual assertions to which Toll has no opportunity to respond.

The timely Brookshire appeal invoked the quasi-judicial process set forth in the Code. That process does not allow a person who did not bring a timely appeal to the Council to submit a belated appeal that prejudices of one of the parties and undermines the integrity of the Council's quasi-judicial process. Toll asks that Ms. Weinstein's letter be removed from the file so that it is not considered by the Councilmembers in their deliberations on the Brookshire appeal.

Sincerely,

FOSTER PEPPER PLLC



Patrick J. Schneider

cc: Diane Weinstein (by U.S. Mail only)
J. Richard Aramburu (counsel for Brookshire)
Darren Carnell, Senior Deputy Prosecuting Attorney



King County

Metropolitan King County Council

King County Courthouse
516 Third Avenue, Room 1200
Seattle, WA 98104-3272

206-296-1000 TTY 206-296-1024
Toll Free: 1-800-325-6165
www.kingcounty.gov/council

October 1, 2012

Patrick Schneider
Foster Pepper PLLC
1111 Third Avenue Ste 3400
Seattle, WA 98101-3299

Dear Mr. Schneider:

This will acknowledge receipt of your letter dated September 26, 2012 relating to the Nelson-Catterall plat appeal.

I have spoken with the Hearing Examiner concerning the issues you raise and have reviewed Ms. Weinstein's letter.

After review, it does not appear to me that Ms. Weinstein's letter is a new appeal, but is a timely-filed response to the appeal filed by Brookshire. Ms. Weinstein provided testimony during the Hearing Examiner proceedings and is therefore entitled to file a response. To the extent that the letter relates to issues raised by the appellant Brookshire, it may be considered by the Council in its deliberations.

Other issues raised by Ms. Weinstein, to the extent that they were raised before the Hearing Examiner and are contained in the record, may also be addressed by the Council if it so chooses.

Your letter of September 26, as well as Ms. Weinstein's letter and a letter filed by Rainbow Lake Ranch Improvement Association, will be included in the appeal packet that will be distributed to Councilmembers on October 1. The appeal packet will also be posted to the Hearing Examiner's website, <http://www.kingcounty.gov/property/HearingExaminer.aspx>, on October 1.

Sincerely,

Anne Noris
Clerk of the Council