

October 6, 2017

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

King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
Telephone (206) 477-0860  
Facsimile (206) 296-0198  
[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**AMENDED REPORT AND DECISION<sup>1</sup>**

**SUBJECT:** Department of Permitting and Environmental Review file no. **PLAT160002**  
Proposed ordinance no.: **2016-0414**

**ECHO LAKE ESTATES**  
Preliminary Plat Application

**Location:** South side of SE 96th Street, east of Snoqualmie Parkway,  
Snoqualmie

**Applicant:** Puget Western Inc  
*represented by* **Heather Burgess**  
724 Columbia Street NW Suite 320  
Olympia, WA 98501  
Telephone: (360) 742-3500  
Email: [hburgess@phillipsburgesslaw.com](mailto:hburgess@phillipsburgesslaw.com)

**King County:** Department of Permitting and Environmental Review  
*represented by* **Devon Shannon and Jina Kim**  
King County Courthouse  
516 Third Avenue Room W400  
Seattle, WA 98104  
Telephone: (206) 477-1120  
Email: [devon.shannon@kingcounty.gov](mailto:devon.shannon@kingcounty.gov);  
[jina.kim@kingcounty.gov](mailto:jina.kim@kingcounty.gov)

**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Approve, Subject to Conditions
Department's Final Recommendation:	Approve, Subject to Conditions
Examiner's October 12, 2016 Decision:	Approve, Subject to Conditions
Examiner's October 5, 2017 Decision:	Approve, Subject to <u>Additional</u> Conditions

<sup>1</sup> Findings 10–12, Conclusions 3–4, and Condition 17 are substantively amended from our October 12, 2016, report. Any changes to the remainder of the document are purely cosmetic.

EXAMINER PROCEEDINGS:

Hearing Opened: September 29, 2016  
Hearing Record Closed: September 29, 2016

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

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

FINDINGS:

1. General Information:

Applicant: Puget Western Inc.  
Attn David Yasuda  
PO Box 1529  
Bothell, WA 98041  
(425) 487-6544

Engineer: Eastside Consultants  
1320 NW Mall Street  
Issaquah, WA 98027  
(425) 392-5351

STR: 02-23-07

Location: The site is located east of Snoqualmie Parkway, on the south side of SE 96th Street, Snoqualmie

Parcel Nos. 746290-0110

Zoning: RA-5  
Acreage: 31.58 acres  
Number of Lots: Six  
Density: Approximately one unit per five acres  
Lot Size: Lots range from approximately one to three acres  
Proposed Use: Single Family Detached Dwellings  
Sewage Disposal: Individual on-site septic systems  
Water Supply: Private Community Well  
Fire District: King County Fire Protection District #10  
School District: Snoqualmie Valley  
Complete Application Date: February 16, 2016 (date filed), March 15, 2016 (complete)

2. Except as modified herein, the facts set forth in the Department of Permitting and Environmental Review (DPER) reports to the Examiner and the DPER testimony is found to be correct and are incorporated herein by reference.

3. This matter involves a request to subdivide 31.58 acres, zoned RA-5, into six lots for single-family detached dwellings, into tracts for critical areas and their associated buffers, and into driveway tracts. Known as Echo Lake Estates, each lot will be approximately one to three acres in size.
4. The subject property has a relatively thin, west-to-east strip along SE 96th Street (the northern boundary), merging into a somewhat thicker north-to-south rectangle along the western edge. The property contains some steep slopes, numerous wetlands, and one creek.
5. Dwelling unit lots One through Four will be clustered in the northerly strip, with lots Five and Six dipping slightly into the northeast portion of the rectangle. A critical areas tract for a northeast-to-southwest flowing creek is to be set aside between lots Two and Three, a wetland area will be protected along SE 96th Street between lots Three and Four, and a wetlands depression will remain between lots Five and Six.
6. Steep slopes running northwest-to-southeast abut the southerly edges of lots Five and Six in the westerly rectangle portion. The area from the top of the steep slopes to the southern property boundary is all set aside as critical areas and their respective buffers. After review by its geologist, DPER concluded that the default, 50-foot steep slope buffer could be reduced to 25 feet, meaning no clearing or grading within 25 feet of the top, toe, or sides of any steep slopes, with no structures located closer than 40 feet (given the 15-foot building setback line added to the buffer).
7. Access is fairly straightforward—Snoqualmie Parkway to SE 96th Street to relatively short joint use or individual driveways, except for a somewhat longer driveway to the proposed homesite area on Lot Six. Ron Meyers, president of the small water association to the north and east, noted that is harder and harder to get onto Snoqualmie Parkway from SE 96th Street. Echo Lake Estates' six building lots will generate significantly fewer trips than the thresholds that would trigger more intensive traffic review or require off-site mitigation.
8. The area to be developed generally slopes to the west, with average slopes ranging from approximately five to ten percent. Because of the numerous critical areas and steep slopes near the dwelling lots, DPER required the applicant, in advance of this preliminary plat approval, to show that there was space for both a feasible building envelope and for a sufficient drainfield, and to obtain preliminary Public Health approval. The applicant has complied.
9. Drainage is always a heightened concern, especially in the Raging River drainage basin. Looking from west to east, a small portion at the northwest corner (part of Lot One) will drain to the Snoqualmie Parkway drainage system. Most of Lot Two and the western portion of Lot Three will flow to the on-site creek, which itself flows southeast across an adjacent parcel and then continues onto the southerly portion of the plat, toward the Interstate 90 drainage system. The eastern portion of Lot Three, along with Lot Four, flow north toward the on-site wetland, which itself outlets north across a culvert under NE 96th Street. Lot Five and most of Lot Six flow into a wetland depression that has no natural outlet. And the eastern portion of the south part of Lot Six flows south towards the on-site stream and eventually the Interstate 90 drainage system. Further engineering

review will be required, but the drainage seem sufficient for purposes of preliminary plat approval.

10. The most significant concern is potable water, especially given Mr. Meyers’ testimony that his neighboring water association is in dire straits, having already been pinched by the Snoqualmie Ridge development. Mr. Meyers fears the impact future water withdrawals for Echo Lake Estates may have on him.
11. The applicant here submitted a water well report from 1982, from 1989, and from 1994. Ex. 13. Bill Moffett testified that they recently drilled a 300-foot deep well (approximately 130 feet deeper than the shallower, 168-foot main well Ron Meyers’ association uses) with a 275-foot deep pump, and found the water table at around 150–160 feet. Their drawdown test produced “massive” water, way more than would be needed to supply six homes. And although Public Health noted several conditions that will need to be addressed prior to final platting, Public Health reviewed the evidence and approved the application for the well source site for a Group B system serving six lots as sufficient for preliminary plat purposes. Ex. 10.
12. While further approvals are due before *final* approval, the applicant has met its initial burden of proof on showing appropriate potable water for the preliminary plat stage. Mr. Meyers’ travails are serious, and we in no way minimize them, but his evidence does not overcome the other evidence in the record. The applicant has made the required threshold showing of *factual* water availability. (Whether there is a required threshold showing of *legal* water availability is discussed in the Conclusions.)
13. Finally, no children will walk to school; a bus will pick up and return the children along SE 96th Street.

#### 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 RA-5 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, welfare use, and interest.
3. WAC 173-507-030 is inapplicable to the permit-exempt wells the applicant is proposing to use here.
4. In our attached Final Order, we analyze *Whatcom County v. Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016), in depth, concluding there that, more likely than not, *Hirst* does not apply to permit-exempt wells until after the County amends its comprehensive plan and regulations. But our conclusion on this point is in no sense ironclad. Moreover, the *Hirst* dissent’s warning about the “astronomical task” a straight (meaning prior to the County taking a comprehensive look and figuring out some sort of solution) application of *Hirst* would assign to individual building permit applicants leads us to conclude that it would be unconscionable to allow final platting to occur here without the applicant first showing

the legal water availability that DPER would require of building permit applicants. We thus include a Condition 17, below.

5. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

DECISION:

The preliminary plat Echo Lake Estates, 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 requirements of the RA-5 zone classification, as well as the rural lot clustering requirements of KCC 21A.14.040. All lots shall be the larger of the minimal dimensional requirements of the RA-5 zone classification or those shown on the face of the approved preliminary plat except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the DPER.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DPER 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 2007 King County Road Design and Construction Standards (KCRD&CS) established and adopted by Ordinance No. 15753, as amended.
5. The applicant must obtain the approval of the King County Fire Marshal for the adequacy of the fire department access, fire hydrant locations, water main, and fire flow of the International Fire Code as amended by Chapter 17 of the King County Code (KCC) and in accordance with King County Public Rules.
6. The drainage facilities shall meet the requirements of the 2009 King County Surface Water Design Manual (KCSWDM). The site is subject to the conservation flow control and basic water quality requirements in the KCSWDM.
7. To implement the required Best Management Practices (BMPs) 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 BMPs are outlined in Chapter 5 of the 2009 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and shall provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMPs for site development.

- The required BMPs shall also be shown on the individual residential building permit application submittal. The individual building permit applications shall also include the required covenants, easements, notes, and other details to implement the BMP design.
8. The 100-year floodplain for any onsite or adjoining streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the 2009 KCSWDM.
  9. The proposed subdivision shall comply with the 2007 KCRD&CS and 2009 KCSWDM, including the following requirements:
    - A. Driveway(s) and joint use driveways shall be improved per Sections 3.01 of the KCRD&CS, including drainage controls. Notes regarding ownership and maintenance of the joint use driveways shall be shown on the final plat.
    - B. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.12 of the KCRD&CS.
  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 KCC 14.75, 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 KCC 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 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 plat's dwelling units 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. All on-site wetlands and critical areas buffers shall be placed within Critical Area Tracts (CAT) generally as shown on the revised site plan, dated July 11, 2016. A

15-foot building set back (BSBL) is required from the edge of all CAT boundaries and shall be shown on all affected lots on the engineering plans and final plat.

- B. Prior to plat recording, a physical barrier such as a split railed fence or similar with critical area signs shall to be installed along the tract boundaries to demarcate the CAT boundaries.
- C. The plans shall be routed to the Critical Area section for review and approval prior to engineering plan approval and final plat/recording.
- D. 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 Permitting and Environmental Review 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 DPER which provides for the ownership and continued maintenance of the open space tract(s) and critical area tract(s).
- 16. The minimum 100-foot well radius shall be shown on the engineering plans and final plat, unless otherwise approved by King County Public Health.

17. Prior to final plat approval, the applicant shall establish, to DPER’s satisfaction, not only the *physical* water requirements set forth in Public Health’s September 28, 2015, approval (Exhibit 13), but such *legal* water availability as DPER will consider sufficient to support building permit applications for the Echo Lake lots.

DATED October 6, 2017.



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David Spohr  
King County Hearing Examiner

### **NOTICE OF RIGHT TO APPEAL**

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

Prior to the close of business (4:30 p.m.) on *October 30, 2017*, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto:Clerk.Council@kingcounty.gov) and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *October 30, 2017*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *October 30, 2017*, the Examiner will notify all parties and interested persons and provide information about “next steps.”



**MINUTES OF THE SEPTEMBER 29, 2016, HEARING ON DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. PLAT160002, PROPOSED ORDINANCE NO. 2016-0414.**

David Spohr was the Hearing Examiner in this matter. Kim Claussen, Pat Simmons, Bill Moffet, Ron Meyers, and Joseph Amedson participated in the hearing.

The following exhibits were offered and entered into the hearing record on September 29:

- Exhibit no. 1 Department of Permitting and Environmental Review file no. PLAT160002
- Exhibit no. 2 Preliminary department report, transmitted to the Examiner on September 29, 2016
- Exhibit no. 3 Application for Land Use Permits, received February 16, 2016
- Exhibit no. 4 State Environmental Policy Act (SEPA) checklist, received February 16, 2016
- Exhibit no. 5 SEPA Determination of Non-Significance, issued June 14, 2016
- Exhibit no. 6
  - A. Affidavit of posting of notice of permit application, indicating March 23, 2016 as date of posting
  - B. Affidavit of posting of SEPA threshold determination issuance, dated June 7, 2016
  - C. Affidavit of posting of notice of hearing, posted August 16, 2016
- Exhibit no. 7
  - A. Revised preliminary plat map, received July 11, 2016
  - B. Revised conceptual drainage plan, received April 29, 2016
- Exhibit no. 8 Assessors map of NE & NW 02-23-07, SE & SW 35-24-07
- Exhibit no. 9 Critical areas designation (CAD) CADS120003, dated November 7, 2012
- Exhibit no. 10 Public Health preliminary approval, received February 16, 2016
- Exhibit no. 11 Wetland study by Raedeke Associates, Inc., received July 11, 2016
- Exhibit no. 12 Wildlife reconnaissance by Raedeke Associates, Inc., received April 29, 2016
- Exhibit no. 13 Technical information report by Eastside Consultants, dated February 15, 2016
- Exhibit no. 14 iMap of plat, dated September 29, 2016

The Examiner took official notice of the following documents on October 5, 2017:

- A. State Ecology's *Focus on Water Availability* (rev. Nov. 2016), available at: <https://fortress.wa.gov/ecy/publications/documents/1111012.pdf>
- B. DPER's *Special Notice Private "Exempt" Wells* (Dec. 2016), available at: <http://www.kingcounty.gov/~media/depts/permitting-environmental-review/fire-marshall/Media%20folder/RICKETTSDPERSpecialNoticeExemptWells003PDF.a shx?la=en>