King County

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

July 2, 2013

Ordinance 17616

Proposed No. 2011-0404.3 **Sponsors** Gossett

AN ORDINANCE concurring with the decision of the hearing examiner to approve, subject to conditions, the preliminary plat of Tall Chief Country Club, located west side of West Snoqualmie River Road SE and the Snoqualmie River, North of 19th Way SE, between Redmond and Fall City, department of permitting and environmental review file no. L04P0032.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. This ordinance does hereby adopt and incorporate herein as its findings and conclusions the findings and conclusions contained in the report and decision of the hearing examiner dated April 11, 2013, to approve subject to conditions, the preliminary plat of Tall Chief Country Club, located west side of West Snoqualmie River Road SE and the Snoqualmie River, North of 19th Way SE, between Redmond and

Fall City, department of permitting and environmental review file no. L04P0032, and the council does hereby adopt as its action the decision contained in said report.

Ordinance 17616 was introduced on 10/10/2011 and passed by the Metropolitan King County Council on 7/1/2013, by the following vote:

Yes: 6 - Mr. Phillips, Mr. Gossett, Ms. Patterson, Mr. Dunn, Mr. McDermott and Mr. Dembowski
No: 3 - Mr. von Reichbauer, Ms. Hague and Ms. Lambert
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

Attachments: A. Hearing Examiner Report dated April 11, 2013

April 11, 2013

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION ON REMAND

SUBJECT: Department of Permitting and Environmental Review File Nos. **L04P0032**
Proposed Ordinance No. **2011-0404**

TALL CHIEF COUNTRY CLUB
Preliminary Plat Application

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

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

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

King County: Department of Permitting and Environmental Review
represented by **Jina Kim**
Prosecuting Attorney's Office
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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's Decision on Remand:	Approve, with additional, revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	November 29, 2011
Hearing Continued to:	December 15, 2011 and January 4, 2012
Hearing Continued on call:	January 4, 2012
Hearing Reconvened:	April 3, 2012
Hearing Administratively Continued:	April 3, 2012
Hearing Record Closed:	May 5, 2012
Council Appeal Hearing Opened:	October 8, 2012
Council Appeal Hearing Reconvened:	December 5, 2012
Remand Hearing Opened:	March 4, 2013
Remand Hearing Reconvened:	March 5, 2013
Remand Hearing Closed:	March 21, 2013
Remand Hearing Record Closed:	March 28, 2013

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

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

FINDINGS:

1. General Information:

Developer:	John Tomlinson 1738 Bellevue Way NE Bellevue, WA 98004
Agent:	De-En Lang Lang Associates 10658 Riviera Place Seattle, WA 98125
STR:	5-24-07
Location:	1313 W. Snoqualmie River Road. The site is located on the west side of W. Snoqualmie River Road and the Snoqualmie River, north of 19th Way
Zoning:	RA-5, RA-10, A-35
Acreage:	191.2 acres
Number of Lots:	18
Density:	Approximately 1 unit per 10 acres
Lot Size:	Approximately 2.4 to 5.45 acres in size
Proposed Use:	Single Family Detached Dwellings
Sewage Disposal:	Individual on-site septic
Water Supply:	Ames Lake Water Association

Fire District: King County Fire District No. 27
School District: Snoqualmie Valley District No. 410
Plat Submittal: December 27, 2004
Plat Application Completeness Date: December 27, 2004

2. After a series of hearing days over the course of several months in late 2011 and early 2012, on June 18, 2012, the previous examiner issued a report and decision approving the Tall Chief preliminary plat. Intervenors, Steve and Janet Keller and the Snoqualmie Valley Preservation Alliance, exercised their right to appeal to the Metropolitan King County Council. By that point the examiner who had conducted the hearing had departed County service, and a *pro tem* examiner presented the appeal during the Council process. On December 5, 2012, the Council remanded a subset of the appeal issues for additional information, clarification, and/or further consideration.

3. After the Council remand this matter, the *pro tem* examiner who had presented the appeal to the Council recused himself, and the remand hearing fell to the undersigned. On March 4, 5, and 21, 2013 we held hearings and heard argument on the Council-remanded issues of potentially adverse impacts to adjacent property owners (primarily hydrological impacts and farm-related concerns) and potential problems for plat residents themselves (specifically related to school transportation, flooding/runoff, and access). We kept the record open until March 28 to allow responses to several items the Intervenors raised on the final afternoon. The Department of Permitting and Environmental Review, the Applicant, and Intervenors, all submitted information on March 28, at which point the hearing record closed.

4. In order to provide a single consolidated Report and Decision, we have weaved our new findings and conclusions into this office's original June 18, 2012, document. Many of the paragraphs remain unchanged, only stylistically altered, or simply moved to a different location. To the degree appropriate in light of the remand proceedings, other paragraphs are substantially reworked. Many findings and conditions are new.

5. Except as modified herein, the facts set forth in DPER[1] and King County Department of Transportation (KCDOT) reports are found to be correct and are incorporated herein by reference.

6. The subject 191.2 acre property lies within the floodplain and side slopes of the Snoqualmie River Valley east of Redmond and northwest of Fall City. It sits along the W. Snoqualmie River Road SE (River Road), on the west side, encompassing the site of the current Tall Chief Country Club. The River Road here lies just west of the Snoqualmie River's normal channel, closer at the northern end of the property's River Road frontage. It is roughly an anvil-shaped parcel, with the northeasterly half within the Snoqualmie River floodplain (and partially within the floodway) and the westerly half (longer segment in the north-south dimension) lying on the generally moderately to gradually easterly descending slopes on the west side slopes of the valley. Some slope areas have steep portions. A stretch of five discrete Class wetlands lie in the westerly portion of the onsite floodplain abutting the topographic break; a Class 3 stream also courses onsite. The sideslopes are moderately wooded with successive growth of native overstory and groundcover; the eastern, floodplain portion is developed as a mostly grassy golf course with stands of mature trees. No critical areas other than the aforementioned steep slope and wetland areas lie onsite or within close proximity, except for the Snoqualmie River corridor on the east side of the River Road. The surrounding area in the floodplain is mostly developed in agricultural use including pasture and crop tillage as well as vegetable farming, with standard farm ensemble residences and outbuildings typical of agriculture. The sideslopes in the area, to the west of the discrete

[1] The decisions in this case were made by the agency under its former name, the Department of Development and Environmental Services (DDES). We employ the current iteration, DPER, throughout.

Snoqualmie River Valley, are developed with some areas of semi-rural/large-lot suburban single-family residential subdivisions, larger acreage homesites and vacant wooded tracts.

7. Applicant John Tomlinson proposes subdivision of the property with a cluster of 18 detached single-family residential lots and separate tracts for critical area preservation and buffering and drainage facilities, etc. Easterly tracts in the floodplain but outside wetland critical areas will be made available for agricultural usage. The current Tall Chief Country Club access drive (aka SE 10th Street) is proposed as the primary access road, running due west from the River Road before climbing out of the floodplain. At this point the primary emergency access route veers off and climbs up the hill to the west before reaching an RV and campground area ("Campground"), while the main plat road runs more or less due south, serving lots 1 through 12. At the southerly edge of the plat, the primary road makes a hairpin turn and climbs west up the hill to serve lots 13 through 18. At a "T" the main road heads back south for a short stretch, while a second emergency route heads up and west to Aldarra Ridge ("Aldarra"). The applicant has executed an easement with offsite owners for the Campground route, and has a signed agreement to execute an easement with the Aldarra owners (once the dust settles on exactly what access terms the County will require).

8. Water service would be provided to the homesites by the Ames Lake Water Association (but not to standard fireflow levels). Residential sanitation would be by the individual onsite septic systems.

9. The natural site drainage is into the Snoqualmie River basin; the natural southerly subbasin of the site drains easterly to an offsite wetland within that basin rather than into the Patterson Creek drainage, as earlier thought.

10. The development drainage system for the proposed subdivision must conform to the 1998 edition of the King County Surface Water Design Manual (Manual). Initially, the Applicant proposed directing most site development drainage directly to the Snoqualmie River, but modified the design approach to convey drainage primarily in collection systems to drainage detention and water quality facilities in the northerly portion of the site (above the floodplain), for release at flows conforming to certain standards (level 3 flow control (voluntarily offered) and basic water quality treatment).

11. DPER granted a formal drainage adjustment, L12V002, subject to a number of conditions, to permit diversion of the natural, southerly subbasin of the site (which drains easterly to an offsite wetland) to be diverted to be conveyed to the proposed detention pond.

12. The King County Department of Transportation (KCDOT) granted a road standards variance under file L04V0109 for cul-de-sac length and emergency turnarounds, and notes the acceptability of the emergency connection to the west, subject to DPER approval. The emergency access connection will be a road in private ownership, which the variance also approves. The variance decision denied a requested reduction of roadside obstacle setback requirements in order to preserve existing mature Lombardi poplars on the entrance road west from the River Road.

13. Before turning to specific issues on remand, we turn first to the flooding that either directly or indirectly impacts many of the remand topics. There is no dispute that the lower portions of the Tall Chief site (not including the home sites but very much including the main access road) and the adjacent neighborhood flood, and flood dramatically. The River Road itself is, on average, closed for a few days a year due to floodwater, and the main access road, at a lower elevation than the main access, appears to flood more frequently. There was a dispute as to where and how the area floods. In general, the Applicants' and DPER's witnesses testified that the floods in the area were slow moving, predictable affairs (predicted by frequently measured gauges). Conversely, Intervenors' witnesses, specifically veteran farmers with decades of experience in

this neighborhood, testified that floods were less predictable, did not correlate directly with upstream flood gauges, could change relatively quickly during a given day, and (especially at the low point of the Tall Chief site, the wetland corridor near the toe of the hill) could move with some velocity. As between the two, we give more weight to the neighbors' testimony. County and other witnesses may know more about flooding in the Snoqualmie Basin *in general*, but as for this specific sub-neighborhood, those who have to live it every day (and have for years) have a stronger foundation for their targeted testimony. We also accept as a starting point their testimony that, since the Snoqualmie Falls project, the flooding has been getting worse.

14. Neighboring and nearby property owners and residents, including Intervenors, expressed great concern about the proposed development, with its clustering and density, not adequately maintaining rural character. They asserted that rural character (as characterized by the comprehensive plan in its policy declarations) mandates lesser density of development. They also opine their concern about urban migrants to upscale rural homesites who possess value systems and perspectives different than existing residents and not befitting the agricultural and pastoral rural area.

15. The Council did not remand the rural character issue *per se*, but requested that we analyze whether the proposal for residential development nearby to farming activity had adequately addressed the interactions that such differing uses may have on one another. We agree with the two previous examiner's assessment of density and clustering, but depart from them as to whether the June 2012 decision adequately addressed the impact on adjacent farming.

16. As to zoning, the plat is predominantly Rural Area (RA-10 with some RA-5) with a small portion zoned Agricultural (A-35 or "Ag"). At over 180 acres of RA-zoned property, the proposed residential density would be slightly less than one dwelling unit per 10 acres for the RA portion of the site, in conformity with the code's density provisions. Employing KCC 21A.14.040's clustering provisions, the lot sizes range from approximately 2.4 to 5.5 acres. The Applicant has received County approval of the required farm management plan for the proposed open space farm tracts in the eastern, flatter portion of the site.

17. KCC 21A.04.060 states the purpose of the RA zone is "to provide for an area-wide long-term rural character and to minimize land use conflicts with nearby agricultural . . . production districts" by, among other items, "limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts." The Council already determined that one residential lot per ten acres was appropriate for the majority of the Tall Chief site and compatible with rural character and nearby resource production districts when the Council zoned the bulk of the site RA, instead of something like a resource lands designation. The dye was cast that the site could house 18 units.

18. When the Council adopted the clustering regulations in KCC 21A.14.040 – especially subsection seven, which specifically details the interplay of clustering and resource land tracts in the RA zone – the dye was similarly cast regarding potential lot sizes and the interplay with resources tracts. The criteria for managing such resource lands tracts could have been better flushed out by public rules the County was supposed to adopt, but the lack of those rules (perhaps because such resource land designations have been rare enough that the County has not prioritized the required rulemaking) cannot be held against an applicant. Although, as discussed below, we give credence to the neighbors' concerns with whether farming will actually work on the plat in the long run, between the King Conservation District-approved farm plan, the maxim that a preliminary plat process is only an "approximate" exercise (leaving for the final plat stage the "all elements and requirements" obligation), and Applicant's farming expert's credible testimony, we conclude that

the Applicant has generally met its burden at this preliminary plat phase that its clustering proposal is feasible.[2]

19. The proposal's compliance with the development regulations related to density and clustering puts the thumb squarely on the side of approving the plat. However, we depart from the previous examiner's language categorizing the concerns about the plat's compatibility with adjacent farming as potentially being mere "personal preferences or general fears" or pure policy concerns beyond our purview. We find Intervenors' concerns weightier. While the code strongly circumscribes the range of solutions, the Intervenors concerns are something we can address, at least to a limited extent.

20. In some respects, the project promotes area farming. No one countered Applicant's assertion that Tall Chief is one of the larger attempts to re-establish farming on Ag land previously taken out of farming (in this case, to a golf course). The Applicant discussed the "theme" of the project as "integrating" residential development with farming practices. The Applicant has a King Conservation-approved farm plan, each prospective homeowner would be responsible for managing a half-acre of farm, and the homeowners' association would have a financial incentive to see the larger Ag tracts efficiently and effectively farmed.

21. We give heavy weight to the neighbors' educated concerns (in the original hearing and on remand) that, especially given the upward trend of flood volumes and velocities on the subject property in recent years, farming on Tall Chief will simply not work. Yet this is not a scenario, where, for example the Applicant gets to sell additional homes on a site in some sort of trade off for creating farming space. In that scenario, if farming efforts failed after the lots were finally platted and sold, the Applicant would have pulled a proverbial fast one, benefiting from additional home sales it never should have been allowed. Instead, in reality, subsection seven of KCC 21.14.040, which allows resource land tracts as part of clustering, is simply an alternative to the remainder KCC 21.14.040, which allows permanent open space tracts as part of clustering. If farming does not pan out in the long run, the County will not be left with a raw deal. It will be left with the permanent open space it would have had if the Applicant gone the traditional clustering route in the first place. Given the importance of farming to the County, and the well-chronicled problem of so much farmland being taken out of production, we are not going to deny someone the opportunity to at least take a shot at re-farming the land, nor would we permanently write-off farming on the Tall Chief site because it *might* not succeed.

22. Yet the tension between the established farms and a new subdivision whose residents commute the River Road every day is palpable. Under the totality of the circumstances, we agree with Intervenors that something more than a nebulous reference to farming in title documents is reasonable under the circumstances. Otherwise, the first time a new buyer with an idealized version of farming discovers that the smells wafting off the fields are not the anticipated lavender, but instead the business end of a cow, or the morning commute along the River Road is not the pleasant carriage ride from *Anne of Green Gables*, but instead involves getting stuck behind a farm truck unloading hay, the neighborhood peace will drop precipitously.

23. Intervenors request a required notice regarding agriculture that would show up on a would-be-purchaser's title report and would put that would-be-purchaser on notice of this state's definition of farming. Given the plat's agricultural components, as well as the surrounding agricultural uses, fully apprising potential residents of what they will likely encounter moving into the neighborhood is warranted, and we incorporate it as a condition. It will help make the "theme" of an integrated farming/residential development more likely to become a reality and offer fuller disclosure to would-be purchasers. It is no panacea, but given the established density and

[2] The most pressing concerns – whether the cluster will be adequately served by roads and on-site septic systems – are discussed below.

clustering regulations, it is the only tool in our tool kit that addresses the Ag/RA intersection and provides rough proportionality between the impact to the community and the burden to the Applicant. Tensions undoubtedly will arise, but the state's Right-to-Farm law, putting the thumb on farmers' side in terms of nuisance lawsuits, RCW 7.48.300-.320, provides an additional measure of mitigation.

24. The Council next asked us to consider whether the proposal to construct the plat entry road (by placing surcharge fill within the floodplain for road construction and removing such fill before commencement of the rainy season) will result in any permanent net increase in fill within the floodplain and, if so, cause any adverse impacts to adjacent properties. There is no dispute that the entry road will not result in a permanent net increase of fill within the floodplain; when completed, the road will have removed more fill than it added.[3] But that does not end the discussion.

25. During the remand hearing, the Intervenors spent much direct testimony and cross-examination time on the topic of whether the surcharge method would be effective and could be completed in one season. We do not to discount the Intervenors' concerns regarding construction management and timing issues, but given that this is the preliminary plat review stage, where we conduct an "approximate drawing" level of review (preliminary and conceptual but with sufficient facts presented to make the "appropriate provisions" determinations mandated by RCW 58.17.110), we agree that the Applicant has shown that the road improvement likely can occur in conformity with the Road Standards and the flood hazard regulations. Per the ground rules we must play by, the implementation in detail is left for the construction plan and final plat review stages.

26. Moreover, if the surcharge does not achieve compaction within the non-flood season window sufficient to obtain agency approval, then the risk is really to the Applicant, who would need to remove the fill by the end of September and either figure out another method or come back the following spring and surcharge all over again. In a worst-case scenario, where the Applicant is slow removing the surcharge in September and the flooding season starts particularly early that year, there could be a negative impact to adjacent property owners. On remand, the Applicant has satisfied this concern by agreeing to post a bond that would allow the County to quickly come in (if the Applicant appears unable or unwilling to remove the surcharge before the beginning of the flood season) and remedy the situation.

27. As to the amount of the bond, the Intervenors requested 200%, and the Applicant asserted that 130% was reasonable. The standard rule for overtime is time-and-a-half. And in the scenario where the County has to remove the fill, it will by definition be under an extremely tight time frame, an overtime-type scenario. Thus, a bond for 150% of the normal cost seems the right amount to fully satisfy the surcharge concern. The Applicant will need to provide a geotech report by September 3 (the day after Labor Day) demonstrating that the surcharge will be removed by September 30. By September 9, the County will review and inspect. If the County determines that the Applicant will not be able to comply with the September 30 deadline, the County can step in, invoke the bond, and remove the surcharge.[4]

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[3] The Intervenors never asserted that there would be net fill; their original appeal was that *no* fill was allowed. The Council did not remand this legal definition question, and the original examiner conclusion (that no *net* fill is the standard) remains unchanged.

[4] The parties submitted comments on the surcharge condition on March 28, 2013. We comment briefly. First, DPER sought to remove the final paragraph about invoking the bond, stating that it might limit DPER's ability to react. We will clarify that this provision is in addition to any other authority the County would have to remove the fill. With this new condition in place, the need to micromanage the front end of the construction process, like how long before starting the process in the spring the Applicant should meet or how many early reports the Applicant must submit, disappears. Again, with the end game in place (that the Applicant will need to present a plan by September 3 for removing the fill by September 30, whether or not it has achieved compaction, and that the County will perform the

28. The Intervenors cited an additional concern with constructing the main access road, namely the possible long term impact to adjacent property owners from permanently adding fill along the toe of the slope. As we understand Intervenors' witness testimony, even if there is no net fill remaining when road construction is complete (*i.e.*, the road, on average, will be lower than where it started), the "add fill" side of the leger is concentrated at the toe of the slope, near the low spot of the subject property, where flood waters typically flow first and fastest. We find the concern credible, although we also found credible Applicant's project manager's testimony that by removing so much more fill than they will be placing, any localized increase in flooding from raising the toe likely would quickly be over-compensated by the new, lowered roadway sections.

29. But that is not a battle of the experts, or at least this is not the place in the plat sequence for that battle. Once again, the point in the process the code (for good or bad) provides for when an applicant must produce the full level of detail and DPER (and/or DNRP or another agency, for aspects impacting the floodplain) must drill down and analyze things like final engineering plans is later in the process. For purposes of our preliminary-plat level review today, we conclude that the Applicant has met its burden of showing feasibility. We can add a condition ensuring (or doubly ensuring, since it apparently would be reviewed anyway) that the impact from adding fill at that location in the floodplain is studied prior to final approval, but we cannot deny preliminary plat approval based even on Intervenors' well-articulated concerns.

30. The next remand issue involved the adequacy and achievability of establishing an emergency access route to the residential lots of the plat during floods, and the safety of student transportation to and from school during major flood events.

31. As discussed above, Tall Chief has arranged for two emergency access routes up and over the hill. The northerly route through the Campground is the primary emergency access route. The southerly route, to be used in the event both the main access route and the Campground route are impassable (or at any time, if school children need to reach the emergency bus stop), is through Aldarra.[5] Among the amended conditions coming out of this remand, the entrance of both emergency access routes will be gated, with passcodes for homeowners, emergency numbers for non-residents, and a default to the "open" position in case of a power outage.

32. The City of Snoqualmie's Fire Chief and Emergency Management Director, reviewed the plans for the alternate emergency access and stated that (once completed) such emergency access would be "very much adequate" for emergency vehicles and for plat residents in times of emergency. The Snoqualmie Valley School District's Transportation Supervisor saw no unique challenges to Tall Chief, nothing the School District had not encountered before. He stated that while a mile walk is the District's standard for everyday walking distance from a bus stop, a walk of up to two miles is acceptable in an alternative-route situation.

33. The Applicant has arranged for emergency school bus pickup for Tall Chief children up the hill at the end of one of the emergency access routes, obviating the need (in flood conditions) to cross any flood-prone areas to get between the homes and the emergency pickup. Intervenors' witnesses testified that such emergency access routes would be unsafe for a young child to walk alone, due to distance, predators, darkness, and grade. We largely accept that testimony.

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removal, at a steep price, if the Applicant cannot), the risk of the Applicant not having all its ducks in a row before or during early phases of construction begins remains squarely on the Applicant.

[5] Tall Chief's March 26, 2009, "Agreement to Grant Emergency Access Easement" with the Aldarra Ridge Homeowners Association and Patterson Creek Preserve, LLC, provides Tall Chief with emergency access over Aldarra, and Aldarra emergency access over Tall Chief. It states that "best efforts" should be made not to use such routes "unless other means of ingress and egress are impassible," although recognizing that fire trucks, aid cars and other emergency response vehicles would not be restricted. A later letter from Aldarra confirms that children could walk the Aldarra route to reach the bus stop regardless of the passability of the Campground route.

However, we also accept the testimony of the School District and of Snoqualmie's Emergency Management Director that in flood-type situations, parents drive more and make alternative arrangements for their children's transportation. It seems against all reason that a parent who would care enough and be aware enough to confirm that on a given day the flooding is potentially so bad that the school bus will pick up/drop off kids at the emergency location, would then leave a young child to his or her own devices to walk alone, in flood conditions, a mile or more up or down a hill, potentially in the dark. That not only seems bi-polar, it assumes a level of parental neglect we cannot attribute to future residents. It could theoretically happen, but relatively speaking, we are not nearly as uneasy with the scenario when everyone in the plat knows to use, and does use, the emergency access routes, as we are about the flood-related risks described below.

34. After listening to the neighbors' testimony, our more pressing concern is ensuring that children use (and as discussed later, adults), know to (and do) use those emergency access routes in times of flood. The neighbors described a no-man's land situation of uncertainty and micro changes within the valley related to floods that do not necessarily correlate directly with a single flood gauge, of floodwaters flowing south (against the usual grain) at the toe of the Tall Chief hill, and of a situation changing during a given day that might strand individuals, particularly children, on the other side of flood waters from their homes. And while the School District described the lengths it goes to ensure that the roads are safe for its buses – or whether an alternative route is necessary – the School District clarified that it could ensure the safety of school children between the bus stop and school, but not between the bus stop and a child's home.

35. On remand, the Applicant proposed the regular (non-emergency) bus stop for approximately the mid-point of the main access entry road, thus on the other side (from the residents) of the toe of the slope. This would have required school children to cross the low spot of Tall Chief, where flood waters typically flow first and fastest, to reach or return from the bus stop. We found it a realistic fear (more serious than the one discussed two paragraphs above) that on a given day the School District could determine that its access to the bus stop was adequate, yet dangerous flood conditions could exist for children between their houses and that bus stop. In addition, while Applicant and DPER witnesses testified about the variety of ways they had to alert residents about potential flooding conditions and changes in school pick up, it seems reasonably foreseeable that some parent would not (on a given day) get the word that the school had changed the pickup to the emergency route, and would send a child to the normal pickup spot, necessitating a short but potentially perilous walk across the low-lying toe area. Similarly, a bus returning the students after school might drop off the children at a dry bus stop, leaving the children to have to cross what could be a flooded toe.

36. In response to our concern, the Applicant reanalyzed the situation, conferred with the School District, and confirmed that it would be feasible to place the regular bus stop out of the floodplain, on the houses side of the toe. Thus, there would be no low-lying area for children to walk across to or from the bus stop. That satisfies the school safety concern. If the School District – with its decades of experience navigating flooding and other inclement weather situations – can get its bus safely to the bus stop, the children can make it safely to and from school. And even in the scenario where a parent or child does not get the message that the pickup location has changed, the child may be left waiting at the regular bus stop, but he and she will be waiting high and relatively dry, with no intervening, flood-prone areas to navigate. With our amended condition requiring that the bus stop be located on the homes' side of the flood-prone area, we conclude the Applicant has met its duty regarding safe school transportation.

37. That still leaves a concern about adult safety (or perhaps adults who may be driving with children) during flood situations. Beyond the specific focus on school transportation issues, the Council requested that we analyze whether risks to the health and safety of future plat residents from construction of an access road through the floodplain (and more generally, the flooding risks

to the residents of the proposed plat) have been adequately addressed. There is no dispute that, in a given flood season, the main access road and even the River Road may be unsafe to traverse for several days. Applicant and DPER witnesses testified about their efforts to notify residents of dangers and closed roads, including all the list serves, text notices, and other resources available in this electronic age. And the Applicant is agreeing to (and we are making it a condition that it) install flood warning signs and staff gauges at the low point of the main access road. Still, we find credible the neighbors' testimony regarding flood dangers within the valley, of even seasoned farmers making bad choices on valley roads and taking risks they should not have. Given that those with extensive knowledge and experience dealing with such floods testified to poor decision-making that got them or others in the community into trouble, no amount of prevention or warning can insure that future plat residents will not endanger themselves trying to access the plat via the main road (instead of via the available emergency routes) when flood conditions should counsel elsewise. There will undeniably be some component of risk to plat residents from an access road prone to flooding.

38. Section .120 of the state subdivision code, RCW 58.17, provides that:

> The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.
>
> No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington.

39. Intervenors argue that this provides a basis for denying the preliminary plat. Intervenors and DPER that this section has been effectively repealed. We agree with DPER and Applicants as to the second paragraph. The Department of Ecology has many duties, presumably including approvals for construction of certain components of the eventually-built plat. But it no longer appears to have that role in approving or disapproving a preliminary plat *per se* in a flood control zone. We will send a copy of this decision to Ecology, to the extent Ecology believes its powers are otherwise and wants to weigh in during the appeal period. In the interim, we will not hold up the process by requiring the Applicant to obtain an approval from a source that likely no longer has authority to issue it.

40. Yet subsequent state law changes do not obviously render obsolete RCW 58.17.120's first paragraph, the requirement that the county legislative body "shall" consider physical conditions in weighing a preliminary plat application, and the state-sanctioned authority for that legislative body to disapprove a proposed plat on the basis of flooding. Thus we agree with Intervenors that we have a duty to consider the interplay of the physical characteristics of the site and flooding and the authority (if we found that the facts and circumstances warrant) to deny the application, or at least to deny an application utilizing flood-prone SE 10th Street as the primary access route.

41. Reviewing the evidence, we cannot conclude that such a denial, or a denial with SE 10th Street as the main access road, is warranted. In general, we found DPER and Applicant witnesses' testimony about the great lengths they go to warn residents of flooding to be comprehensive. And potential plat residents would be significantly *better* positioned than most others in the neighborhood. The plat has not one, but two emergency access routes where residents can avoid the floodplain and leave or return to their homes. Thus, the decision a plat resident has in a flood situation is whether to drive the longer way around to reach home or the outside world vs. chancing a road with floodwaters running across it. It is not the far more wrenching dilemma

most of the neighbors face of whether to be stuck at home (perhaps for days) or worse, be stuck *away* from home (perhaps with dependents waiting at home) vs. chancing a road with floodwaters running across it.

42. That does not mean that no future plat residents will make poor decisions and risk floodwaters to avoid a longer trip. But we cannot conclude that the choice facing plat residents here is the same one the neighbors describe, nor that, under the circumstances, is it reasonable to deny the application or deny the application with SE 10th Street as the primary access route. Between the flood gauge the Applicant will install at the low point of SE 10th Street and the extensive flood warning notification systems DPER and Applicant witnesses testified to – notice of which is a condition of this approval – the dual emergency access routes, and other factors Snoqualmie's Emergency Management Director opined were steps "above and beyond" what he would expect regarding public safety, we conclude that the risks to the health and safety of future plat residents from construction of an access road through the floodplain have been adequately addressed.

43. That leads directly to the next issue the Council asked us to address, namely why not make one of the emergency access routes the primary access route?

44. As to the technical/physical feasibility of transforming an emergency road to a primary access road, the Applicant's project manager pointed to the challenging topography of the Campground road, being adjacent to sensitive areas on either side of the roadway and facing steep slopes. The Applicant had to receive variances just to meet minor access variances for width and slope, and he did not think the Campground could comply with the Road Standards if it had to upgrade all the way to a main, everyday access road.

45. The point person for the Applicant's efforts to secure access through neighboring properties described the Campground road as primitive by design, with a gravel service road not set up for nor ever intended for daily commuting. He opined that re-routing normal Plat traffic through there would be inconsistent both with the road and with camping. He did not think it likely that the Campground owners would allow everyday access, as cars coming through on a regular basis would be inconsistent with camping. (This seems particularly true during the summer season, when camping is at its peak and flood concerns are at their lowest.) As to the gated community of Aldarra, he described the Aldarra owners as very, very reluctant, to provide even emergency access to Tall Chief, willing only if the Campground emergency access route (let alone SE 10th Street) was not accessible and the road was kept to a minimum.[6] He opined that obtaining the consent required from Aldarra would be "almost impossible."

46. Intervenors, however, pointed to a 2006 easement agreement between Tall Chief and Aldarra that, at a cost to Tall Chief of $100,000, expanded an early agreement to provide access to four Tall Chief lots to six Tall Chief lots. The Applicant attempted to counter this, stating that at the time of earlier agreements there were not houses yet at Aldarra Ridge (and thus Aldarra was not so reticent to grant Tall Chief easements) and that at the time of the 2006 agreement, the grantors were actually angling to purchase those six Tall Chief lots.

47. Yet at some point, almost everyone has their price. If Tall Chief would throw enough money at either Aldarra or the Campground, it seems likely that either or both would find it in their hearts to sell Tall Chief the necessary legal access. A requirement that forced Tall Chief to obtain primary access over the Campground or Aldarra would give those parties enormous bargaining leverage (more than they had when they exacted $50,000/lot for access rights), holding Tall Chief

[6] The exact wording from the March 26, 2009, "Agreement to Grant Emergency Access Easement" on these issues was that Tall Chief would not use the Aldarra route "except when both the Main Road and the [Campground] Emergency Access Road are impassible" and that the Aldarra route would be "improved only to the minimum level required by King County or other governmental authority."

firmly over a barrel. And that would not even be the only – or necessarily even the predominant – cost such a re-routing would cost. There would be a long distance via either route to bring up to main access route standards – assuming they even could be brought up to the more robust Road Standard requirements for primary (versus emergency) access. If this project were something of the magnitude of a Redmond Ridge East, such an expenditure might be absorbable. An eighteen-lot subdivision is not on the same footing.

48. In sum, given the above, as well as our findings about safety and our added requirement requiring full disclosure to would-be-purchasers about all that farming entails, we cannot conclude that requiring the Applicant to go back to the drawing board and attempt to force a main access road up and over the hill is reasonable. The State and County standard is whether the Applicant has made "appropriate provisions," not whether it has made the ones that we would choose if we ruled the world. Even if flooding is predicted to worsen, for the overwhelming majority of any given year SE 10th Street will be completely passable. We might prefer that the Applicant avoid the River Road and make one of the emergency access roads the primary access road, but under the circumstances, we find insufficient justification to force it to do so.

49. In addition to flooding-related risks to plat residents discussed above, and risks to plat and non-plat residents specifically related to construction of the access road, the Council tasked us with inquiring more generally into potential flooding hazards associated with debris and runoff from new development, especially any increased flooding risks to adjacent and nearby farms resulting from plat development. Specifically with relation to the Intervenors Keller, whose property abuts the site in the southeastern portion, the questions include whether plat development will create adverse hydrological impacts, will result in the diversion of drainage flows toward the Keller property , and (if so) will create adverse impacts.

50. We start with the later portion of the preceding paragraph. The Kellers expressed concern, both during the original examiner hearing and on remand, about the proposal for the downslope portions of the abutting and nearby lots to have their development drainage infiltrate into the soil, fearing that such drainage infiltration will cause adverse drainage impacts (greater inundation and/or of more duration, of concern for tillage viability) on their property.

51. The original examiner noted that in many areas there are intervening wetlands (which naturally retard discharge) between the lots and Intervenors' adjacent active farm fields, and, more critically, that the development's drainage provisions must still meet the Manual's standards, including release rates. The original examiner found no factual justification and no legal authority to require measures above and beyond the express, detailed, applicable Manual standards which were promulgated under express authority granted by the County's legislative authority and constitutes a GMA development regulation. We agree generally with previous examiner's assessment of the situation. But the question deserves additional analysis, and we add some additional conditions.

52. For the lots whose dispersal is downhill of the formal flow control facilities proposed for the other lots, the Applicant proposes to meet the Manual by employing exemption 5 of 5.2.1.'s Best Management Practices (BMPs) in-lieu-of Facilities, namely forested open space. This generally means designating 65% of the lots as forested open space. The Applicant provided preliminary plans showing how, conceptually, a building envelop could be developed that would meet the forested open-space rules. Intervenors take exception to this on several grounds, and request that we eliminate these lots.

53. First, Intervenors assert that all the forested open space must be downslope of the roadways and buildings. Manual 5.2.1, numbered paragraph 3, states that "open space areas must be located downslope of roadways and building sites." Intervenors read that as meaning "ALL open space areas must be located downslope of roadways and building sites," while DPER and the Applicant

assert it means "SOME open space areas must be located downslope of roadways and building sites." We find the wording ambiguous, which would be in DPER's favor, given our duty to accord an agency interpretation "great deference" in such scenarios.[7] In addition, C.2.2. in the Manual's appendix, "Native Growth Open Space BMPs," numbered paragraph 4, states that, "If feasible, the open space should be located downslope from the building sites, since flow control and water quality is enhanced by flow dispersion through duff, undisturbed soils, and native vegetation." That sentence – especially the "if feasible" and the "should" versus "shall" – would be inconsistent with a requirement that *all* open space must be located downslope.

54. Moreover, a requirement that all the open space be located downslope would make a particularly poor choice for these specific lots. As best illustrated in Intervenors' Exhibit 98, the upper portion of the relevant lots are presently forested areas, while the lower areas are fairway. As discussed directly below, Intervenors challenge (and not without reason) whether reforested fairway areas should be allowed to count as forested open space. Shoving the entire building envelope to the highest portion of the property would mean wiping out more of the pre-existing forest that is perhaps the most beneficial (water-flow-wise) portion of each site. It would also run into the language of Appendix C.2.2., numbered paragraph 5, that all existing trees (with exceptions) shall be retained.[8] Achieving an optimal forest open space for these lots likely involves some mix of upslope forest retention and downslope forest replanting.

55. Second, Intervenors challenge whether the golf fairway areas can even be reforested such that they can count as forested open space. Manual C.2.2., paragraph 5, explicitly contemplates re-forestation, noting that an owner of an illegally cleared area may submit a restoration plan and then have that restored area count as forested open space. Intervenors argue that this allowance is only for owners of *illegally* cleared land and that the same allowance is not to be afforded owners of a *legally* cleared area. That would create a perverse incentive that seems diametrically opposed to how the Code typically handles culpable versus non-culpable owners, namely providing more leeway to non-culpable owners.[9] Such a statutory construction would create the type of absurd result we are cautioned to avoid.[10] As DPER's managing engineer noted, DPER "prefers" native vegetation, but re-vegetation does not eliminate forested open space as an option.[11]

56. Third, Intervenors challenge whether ground that has been previously disturbed – mostly the areas previously converted to a golf course fairway – can count as forested open space. The Manual contains no direct prohibition, although paragraph 1 (discussing the dispersion benefit of "duff, undisturbed soils and native vegetation"), as well as C.2.2. in the Manual's appendix's paragraph 4 (which notes the precept that "flow control and water quality is enhanced by flow

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[7] *Overlake Hosp. Ass'n v. Dept. of Health of State of Wash.*, 170 Wn.2d 43, 56, 239 P.3d 1095 (2010).

[8] There is no absolute prohibition against additional clearing, as numbered paragraph 1 explains, only against additional clearing that results in *exceeding* the maximum clearing amounts (in this case, 35%). Number paragraph 5, and footnote 2 of numbered paragraph 2, expressly approve of developing a Forest Management Plan for a lot. And Forest Management Plans typically involve harvesting, followed by a replanting plan. If the Manual had designed forested open space to be only "native forest, never to be cut," it would not seem consistent to direct someone to the Forest Management Plan process.

[9] *See, e.g.*, KCC 23.02.010 (while "remediate" generally means restoring a site to the condition that "existed when the violation occurred," for innocent owners "remediate" means only restoring a site to a condition that "does not pose a probable threat"); KCC 23.02.130 (a property owner responsible for code compliance is fully responsible, while a property owner affirmatively demonstrating that the action was taken without his or her knowledge or consent is "responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances"); KCC 23.36.030 ("Strict compliance with permit requirements may be waived regarding the performance of such an abatement in order to avoid doing substantial injustice to a non-culpable property owner.").

[10] *In re Parentage of J.M.K.*, 155 Wn.2d 373, 387, 119 P.3d 840 (2005).

[11] Footnote 1 to 5.2.1. about "naturally non-forested (e.g., meadows)" seems to be getting at something else, namely areas that would not need *any* re-forestation to qualify. That is not relevant to whether a normal, deforested area could be replanted to count as forested open space.

dispersion through duff, undisturbed soils, and native vegetation") clarify that undisturbed areas are preferable. The Applicant's geotech opined that the fairways were in relatively good shape already, but that there may be a need to till/augment in the fairway area prior to re-vegetating. DPER's engineer confirmed that DPER considers the golf course non-native, requiring enhancement and soil amendment. We find no prohibition against augmenting the golf course area, then replanting it, and counting the result toward the forested open space total.

57. But the combination of all those elements gives us pause. The need for soil augmentation and replanting of downslope area when the Manual puts a premium on "undisturbed soils." The need for those re-forested areas to mature before they deliver all the benefits of a mature forest. The not insignificant percentage of open space located upslope of the building envelop, when the Manual puts a premium on open space located downslope. The existing forested area to be cleared for the building sites, when the Manual states that trees within the forested open space at the time of permit application need to be retained. We conclude these are not the type of lots the Manual's drafters likely had in mind when they concluded that 65% forested open space would generally be a suitable alternative to formal flow control facilities.

58. As such, some margin of safety should to be factored in to ensure that these lots achieve the equivalent benefits a traditional lot meeting the 65% rule would achieve. To a certain extent, the Applicant is already offering that compensation from other lots, volunteering to place the 65% forested open space requirement on *all* lots, even those lots for which it proposes formal flow control (and thus where forest open space is not even a requirement). The extra benefit from those lots offers to the water balance cannot be overlooked. But it is not necessarily an apples to apples comparison. If, for example, more water (than in a pre-project condition) is flowing to the Kellers from the lots abutting their property, it may be small consolation that other areas of Tall Chief may be sending less water (than in a pre-project condition) in other directions. We conclude that an additional 5% (bringing the open space to 70%) should be a condition of approval for those lots relying only forested open space as an alternative to formal flow control.

59. Even with this enhanced condition, the burden will be on the Applicant to show that a combination of cutting some (but not all) of the upslope present forest, soil augmentation and replanting of the downslope areas, and restrictions on the building envelope for the lots relying on forested open space, cumulatively provides the necessary flow control. As discussed below, there is no guarantee that the Applicant will successfully meet all the drainage requirements for those lots prior to *final* plat approval, or that it will not lose some of the lots if it cannot make this showing (a condition we add). But at this *preliminary* plat approval stage, the Applicant has met its burden to enable it to move towards final plat approval.

60. DPER proposes extending the time for ensuring compliance with the forested open space provisions to even beyond final plat stage, namely to when a lot owner would come in for a building permit. DPER's rationale has logic, avoiding a premature assessment of where precisely open space should be on a given lot prior to learning (from a building permit application) about the specific size and location of the house, driveway, and septic fields, etc. We do not doubt that the building permit process allows DPER to fine tune the best configuration. But Intervenors strenuously objected to extend the time for establishing the forested open space to beyond final plat approval, and we agree with Intervenors. First, Manual 5.2.1., numbered paragraph 2, requires the forested open space must be shown "in the final recording plan for plats"; unlike the forested open space issues discussed above, there is no ambiguity. Second, if a lot is finally platted, it can be sold, and the cost of needing to go through an expensive forested open space analysis/building plan adjustment might be borne by a hapless, individual lot purchaser, instead of a seasoned developer that has already spent years studying the issue on these proposed lots.

61. Third, any government is – and should be – far more reticent to deny a building permit on a lot than it is to deny a subdivider one lot out of many. Looking to regulatory takings law, in the

scenario where, prior to final plat review stage, DPER reviewed the situation, determined that a given lot or even a few lots would not work drainage-wise, and required Tall Chief to reduce the subdivision by a few lots, the County might face a relatively easy-to-defend-against *Penn Central* suit.[12] The economic impact prong of the *Penn Central* analysis would look at the diminution of the parcel-as-a-whole, meaning the entire Tall Chief subdivision. Comparing the diminution in value of a, say, fifteen-lot subdivision with an eighteen-lot subdivision would nowhere nearly approach the threshold where the County would need to pay compensation. Understanding its relatively strong litigation position, DPER likely would not feel forced to accept a questionable drainage outcome on a given parcel.

62. But that situation may reverse once the lots are finally platted, especially if a lot is sold off to an arms-length purchaser. Now the parcel-as-whole might be an individual lot itself. And it DPER reviewed the building application and determined that building on that lot would not work drainage-wise, and it denied a building permit entirely, it might face not a *Penn Central* takings claim but a *Lucas* claim.[13] In that scenario, to avoid compensation the burden would be an uphill one for the County to show that the proposed development amounted to something like a common law nuisance.[14] Understanding its significantly weaker litigation position, DPER likely *would* feel forced to accept a questionable drainage outcome on a given parcel or parcels.

63. Thus, there is more protection to both the Intervenors and to the County by requiring specific proof that (and exactly how) building on a lot will work, drainage-wise, prior to final plat approval. A lot owner might be able to get some sort of adjustment at the building permit application stage, but by the final plat stage the Applicant will need to prove that at least *some* workable building envelope configuration has been reviewed and determined to be feasible, a default blueprint a would-be builder can follow.

64. Turning to the other drainage-related questions the Council tasked us with reviewing, if there was one overarching theme of argument and testimony for the remand hearing, it was that Intervenors presented problems and concerns with the Applicant's plans, as they have evolved at this stage in the plat process (the preliminary plat phase), while the Applicant (to a certain extent) and DPER (to a greater extent) *agreed* that those were issues that would need to be addressed, but countered that the time for that fine-tooth combing was not at the preliminary plat stage but later in the process. We agree with the Applicant and DPER, not because it satisfies us that much of the analysis is left for a later day and likely beyond our review, but because that is how the County has chosen to structure the plat process. In addition to the forested open space conditions discussed above, we do add some additional, drainage-related conditions, below.

65. On remand, we consider slope stability and the potential that landslides could lead to erosion and runoff of water or sediment onto adjacent properties. The Applicant's geotech opined that the risk of slides was maybe moderate in specific locations (to which he offered some adjusted conditions), but overall low, and that building setbacks (from slope edges) in the preliminary plat were very adequate. Intervenors' geotech explained in credible detail his rationale for predicting a "moderate" landslide likelihood, noting that it would depend how much excavating or filling was ultimately undertaken. Intervenors' chief expert pointed to the excavation of a detention pond reasonably close to bottom of a steep slope,[15] as well as cuts and fills for the roadway further up the hill, as sources of trouble. We do not discount Intervenors' concerns. Yet, as DPER noted, the

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[12] *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).
[13] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
[14] If DPER, instead of denying a building permit, offered a substantially reduced footprint, then the takings issue would be a *Penn Central* one instead of a *Lucas* one, but a more robust *Penn Central* claim than in the eighteen lot vs. fifteen lot scenario described above.
[15] The Applicant's geotech countered that the area above the pond was a 2:1 ratio, the default/recommended slope in the Manual for ponds.

specific engineering solutions to those issues are not due at the preliminary plat stage; the Applicant will need to provide them, and DPER will need to fully evaluate the situation, but at a later phase. We cannot conclude that the potential slope issues are so technically challenging or insurmountable that, at this preliminary plat phase, we should prevent the Applicant from moving forward.

66. Next we turn to the on-site septic systems that will provide sanitation to each of the proposed residences. The septic analysis entails a volume component and a steep slope component.

67. Intervenors' geotech and chief expert both asserted that exfiltration from the septic tanks should be calculated into the flows going to the pond. Applicant's project manager did not include exfiltration from the septic drainfields in the flow control model; he opined (without dissent) that such exfiltration from a septic system would only amount to 3% of the annual rainwater falling on top of that same drainfield area, and thus the septic flows were minimal. Still, we agree with Intervenors that if the septic systems add to the groundwater, and if groundwater could potentially displace pond water and reduce the system's ability to handle stormwater, septic exfiltration should be included in the equation. DPER's managing engineer agreed that if septic adds to the groundwater, the Applicant would need to address this. We include a condition to this effect.

68. The concern that some of the drainfields could be too close to steep slopes is a legitimate one but one premature at this preliminary plat stage. The Applicant will need to design the building envelopes/forested open space areas to accommodate drainfields, and the Health Code requires drainfield setbacks from steep slopes and from the pond. There is no lot anyone testified simply *could not* accommodate a fully-functioning drainfield, only that some of the sketches the Applicant provided that roughed in a conceptual layout of the lots seemed troublesome. We add a condition that if the Applicant cannot find a way to meet the requirements on a given lot, it may lose the lot prior to final plat recording. But it should not lose them now.

69. Turning to groundwater, Intervenors' chief expert described why the groundwater test pit the Applicant used once to measure groundwater was inadequate and how excess groundwater could fill in the pond, displace stormwater detention, and reduce the pond's capacity to handle stormwater surges. The parties disputed the magnitude of the groundwater concern, but we concur that, especially given the location of the pond and because the proposed French drain would have a large area to potentially pick up groundwater from, groundwater should be included in the analysis. DPER indicated this groundwater analysis would be required, but we agree with Intervenors that measuring groundwater in any one given year might not capture an accurate picture. We add a condition that groundwater should be measured over the course of two years during pond construction, and, more broadly, that groundwater should be assessed in modeling the drainage system (to the extent it might not otherwise be).

70. That does not eliminate the drainage-related and pond-specific concerns entirely. Although there was conflicting testimony as to how susceptible to breakdown and how easily repaired the drainage system would be, we found Intervenors' chief expert's concern that problems with the system could arise that would not have an obvious resolution (problems that would not arise until after the subdivision was built out) a legitimate one. It certainly makes us uncomfortable that problems could crop up after the County had accepted the system into public responsibility and after the bonds on a project would be released, leaving the County to foot the bill for a difficult-to-achieve fix. But that is not a problem unique to this site, and the acceptance/bond system is what it is. It is not something we can re-create.

71. Specifically with regard to the Kellers, Applicant's witnesses noted that they plan to intercept some of the drainage currently (in the pre-build scenario) flowing downhill to the Kellers and divert it away from the Kellers. The Applicant's project manager opined that there would likely be slightly less water coming down to the Kellers than in the pre-build scenario. The Applicant's

water engineer testified that impacts to wetland hydrology and to the Kellers would be minimal, given the low effective impervious area of the Tall Chief proposal; using his model and the project manager's, he concluded that, especially given the Level 3 flow control system, runoff post development would likely closely match pre-project conditions. That is not definitive, and the devil may be in the details of later engineering, but it is sufficient for preliminary plat purposes.

72. On the final day of re-hearing DPER offered to change the original condition 7.j, which had recommended a flow splitter to send part of the water to Wetland A (closer to the Kellers) and part to Wetland D (directly adjacent to the storm pond and further away from the Kellers). The new condition would discharge all the pond water to Wetland D. Intervenors agreed. This would tend to further lessen the potential for negative hydrological impacts to the Kellers. We incorporate the change.

73. Although there was some dispute as to the import of maintaining all of the culverts (especially those on the relatively flat golf course fairway), there was no dispute that proper culvert maintenance would assist the drainage picture. As we understand the testimony, there are two types of culverts, those that will be part of the formal drainage facilities the County will assume permanent responsibility to maintain, and culverts that are not. For this latter category, the culverts will, in the long run, be the homeowners' association's (not the County's) responsibility. It was the second group, involving the culverts in the wetlands/fairway area, which sparked the controversy.

74. The parties argued at length over the need for, and language of, a potential condition related to the wetland/fairway area culverts. The testimony was not precisely clear, but the issue appears to have two phases. In the short run, the Applicant should have the responsibility to insure (or make corrections to insure) the culverts start out the life of the subdivision in working order. In the longer run, maintenance will be the homeowners' association's responsibility. It is not obvious where to draw that short run/long run line, but we will set it at the time there is a functioning homeowners' association. We will add a condition to this effect, and provide DPER flexibility to change the responsibility handoff date if it concludes there is a more appropriate time in the process.

75. The final drainage component involves a dispute over modeling flows downstream from the detention pond. It was one of the few technical areas where DPER disagreed with Intervenors that more analysis would be required at later stages of the process. However, as we understand the downstream issue, there are two components, one of which does not require modeling, one of which does. As we understand the Manual, the very concept with a Level 3 drainage facility is that it completely mitigates downstream impacts, thus eliminating the need for a detailed downstream analysis. The Applicant will need to show that its facility meets the Level 3 standard, but if it does, by definition there is no need for more downstream analysis. Conversely, as discussed above, the Applicant *will* need to perform a downstream analysis on flood flows if it permanently adds fill in the floodplain that raises the road at the toe of the slope; thus the possibility that road fill could create a dam with deleterious effects will be analyzed.

76. Summarizing the drainage issues, the above is not to say that the Applicant will, prior to final plat approval, successfully meet all the drainage requirements for the entire project. And if it cannot, it can and should lose some of the lots, or at least lose the ability to have the lots in its chosen configuration. We have added a specific condition to that effect, that lack of compliance with drainage requirements (including erosion) "may result in reducing the number of lots (and/or require a change to the location of the lots) shown on the preliminary approved plat." But as for this preliminary plat approval stage, we conclude that the Applicant has shown sufficient feasibility to move forward. It would be inappropriate to deny the current preliminary plat

application or to reduce lots now, prior to the time in the process for the Applicant to prove full, technical compliance.

77. Wrapping up our overall assessment of this preliminary plat, we find that the Applicant has made appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and that the plat and dedications will serve the public use and interest. The key term here is "appropriate provisions," not "optimal provisions." And with the amended and stricter conditions we place on the plat today, we find the Applicant has met the standard to proceed to the next phase.

78. Finally, there are two additional findings the original examiner made that were not part of the remand hearing and that, for completeness sake, we simply re-list directly below, without amendment.

79. The development was reviewed under the standard traffic impact reviews set forth in Title 14 KCC. No intersection improvements or imposition of Mitigation Payment System (MPS) fees are required. (The development will generate less traffic than was projected for the existing golf course development, and thus presents no net traffic increase and thus no nexus of adverse traffic impacts.)

80. Under the Shoreline Management Act and the County's implementing Shoreline Management Master Program, the shoreline environment designation of the property is Conservancy. A Shoreline Management Substantial Development Permit is required for the access road reconstruction and construction of certain drainage facilities, due to their location in the Snoqualmie River floodplain, and is an application component of this proceeding. The proposal has been analyzed by DPER for conformity with the shoreline master program and the Shoreline Management Act (SMA) and county implementing regulations, which analysis is incorporated herein by reference. The proposal conforms to the criteria for approval of the requested substantial development permit.

CONCLUSIONS:[16]

1. Disputation by Intervenors of the vesting of the application, principally whereby they argue that the version of the Manual that should pertain is that in effect at the time of the later-realized-necessary 2007 application for the shoreline permit rather than the version pertaining at the time the plat application was complete, is not persuasive. The drainage aspects of the development are subordinate to the central application for subdivision, as is the shoreline permit component. To rule that the subordinate shoreline permit vesting date should drive the vesting date of the plat application's secondary aspects merely because of essentially a cross-referencing of regulations would be tantamount to allowing a backdoor challenge to the plat vesting date. This the Examiner cannot permit; it does not comport to the essential holdings of subdivision application vesting in the state. Except for directly discrete aspects of the shoreline regulations, all of the land use controls appurtenant to and secondarily involved in review of the subdivision proposal are those in effect on December 27, 2004.

2. The Examiner accords deference to DPER's interpretation of the fill-restricting shoreline regulations as limiting fill to no net fill increase. The interpretation by the professional

[16] We make no substantive changes to the June 18, 2012, "Conclusions" section.

administrative staff charged with administering the county land use codes, not shown to be clearly in error, is deserving of deference.[17]

3. The cluster subdivision requirement of perimeter vegetation buffering is shown to be able to be met, within the floodplain area or by use of code-established allowances of alternative measures. The final outcome of the examinations of options in such regard and ultimate compliance with code requirements is a matter to be addressed post-preliminary plat approval and decided administratively by DPER in construction plan review prior to final plat approval, as provided in recommended condition language.

4. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the RA-5, RA-10 and A-35 zoning applied to the pertinent portions of the site.

5. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.

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

7. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on April 3, 2012, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Tall Chief* subdivision, as revised dated March 7, 2012, and received by DPER March 9, 2012, 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, RA-10 and A-35 zone classifications. All lots shall meet the minimum dimensional requirements of the RA-10 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Permitting and Environmental Review (DPER).

   Any plat boundary discrepancy shall be resolved to the satisfaction of DPER prior to submitting the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary, or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. The applicant must obtain final approval from the King County Health Department, prior to recording.

5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).

[17] *Mall, Inc. v. City of Seattle,* 108 Wash. 2d 369, 385, 739 P.2d 668 (1987).

6. The applicant has agreed to address the concerns of King County Fire Protection District No. 27, as expressed in correspondence dated 1/21/10 and 1/3/12 from the District, and dated 12/14/11 and 12/29/11 from the applicant's engineer, Hagenson Consultants. Therefore, the following conditions shall be met:

   a. All new building constructed in the subject plat which require a building permit shall contain a fire protection sprinkler system. The sprinkler system shall comply with the King County Fire Code requirements, with the exception of compliance with the fire flow standards. The requirement to install a sprinkler system shall not apply to agricultural related buildings constructed in Tracts A and R, unless otherwise required by County or State regulations.

   b. Only non-combustible roof systems shall be used on all new buildings constructed in the subject plat, including outbuildings.

   c. To address concerns related to forest fires, a minimum 30-foot-wide defensible space shall be provided around all new buildings constructed in the subject plat. Plantings in the defensible space shall be limited to those specific plant varieties listed in the brochure entitled "Fire Resistant Landscape Plants for the Puget Sound Basin." For any trees not listed in the brochure whose trunk is located outside of the 30-foot-wide defensible space, these trees shall be cleared of limbs that extend into the defensible space up to a height of 10 feet from the ground surface. Note, the above-noted brochure shall both be referenced on the final recorded plat of Tall Chief, and recorded therewith.

   d. Driveways on each of the lots in the subject plat shall have a minimum width of 12 feet and shall not exceed a 15 percent grade. The driveways shall meet the surfacing and radius requirements of the King County Fire Code. For those driveways which exceed 150 feet in length, measured along the centerline of the driveway from the centerline of the public road serving the lot to the building being served, shall provide a fire truck turnaround (hammer-head). The turnaround shall meet the requirements of KCC 17.04.400 or Figure 2-011 of the 2007 King County Road Design and Construction Standards.

   e. An emergency access connection shall be provided from SE 23rd Street in the subject plat through the adjacent plat of Aldarra Ridge, via SE 23rd Place in Aldarra Ridge (aka Tract E of Aldarra Ridge). Prior to engineering plan approval for the subject plat, the applicant shall provide a copy of a recorded easement which allows for emergency access for both vehicles and pedestrians from the subject plat through Aldarra Ridge, as well as access by emergency vehicles. The availability of emergency pedestrian access for school children from Tall Chief and access by emergency vehicles shall not be predicated on whether the northerly emergency access referred to in Condition 8.c below is traversable. (See Condition 8.f below for required improvements to SE 23rd Place).

   f. A minimum of two fire hydrants shall be provided within the subject plat, if their installation is permitted by the Ames Lake Water Association. The location of the hydrants shall be determined by King County Fire District No. 27. (Note, the hydrants are not required to comply with the King County fire flow standards.)

   g. The northern corner of proposed Lot 13 shall be revised, if necessary, to meet the radius requirements of the King County Fire Code, KCC Title 17, and shall be reviewed and approved by the King County Fire Marshal.

   h. Notes shall be placed on the final plat and engineering plans which implement Conditions 6.a-.d above.

7. Final plat approval shall require full compliance with the drainage provisions (including erosion) set forth in King County Code 9.04. Lack of compliance may result in reducing the number of lots (and/or require a change to the location of the lots) shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual must also be satisfied during engineering and final review.

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

b. Current standard plan notes and ESC notes, as established by DPER Engineering Review shall be shown on the engineering plans.

c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #_____ on file with DPER and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration or dispersion systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

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

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

f. For that portion of the subject plat where stormwater dispersion is proposed, the plat includes designs for using the Forested Open Space (FOS) flow control exemption as outlined in the drainage manual for Core Requirement No. 3. The final engineering plans shall show all applicable requirements including 70% (the usual 65%, plus an additional 5%) forested open space boundaries and flow control BMPs for dispersion of storm water. If portions of the site proposed for FOS were previously cleared land areas, a mitigation plan shall be submitted to restore the vegetation and soils to meet the criteria for FOS. The final plat shall also show the area of FOS on the affected lots. Dispersal points for Lots 4 and 5 shall be spaced such that flows will not re-concentrate prior to reaching the steep slope. Dispersal points for Lots 4 and 5 shall be located based on recommendations from a geotechnical engineer at the time of lot development.

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

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

i. As to groundwater:

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

ii. In addition, the final engineering plans shall address groundwater, including anticipated septic exfiltration and whether groundwater could potentially displace pond water and reduce the system's ability to handle stormwater.

iii. During pond construction, groundwater shall be monitored for two years prior to the County providing final approval for the constructed facility.

j. The stormwater detention pond located within Tract P shall include an outlet to discharge drainage to Wetland D.

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

l. In addition to the usual State or County requirements, to the extent the Applicant proposes, in constructing SE 10th Street, to permanently add fill to the area of the wetlands complex near the toe of the slope, DPER shall insure that the Applicant performs the necessary downstream analysis on flood flows.

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

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

b. The onsite cul-de-sac street labeled as SE 10th Street/ 304th Avenue SE shall be improved as a rural subaccess street except as otherwise approved by the King County road variance process. The roadway serving Lots 13-18 shall be improved to rural minor access standards. As allowed by the road variance decision, the onsite roadway shall be private. The final plat shall include provisions for ownership and maintenance of the private road. Flood warning signs and staff gauges (W8-18 and W8-19 per 2009 Manual on Uniform Traffic Control Devices) shall be installed at the low point of SE 10th Street and advance warning signs shall be installed as recommended by KCDOT.

c. To provide emergency access for the subdivision, the existing gravel road shown on the preliminary plat map within easement #6094030 (Tract E on the preliminary plat) shall be improved to meet King County road standards except as allowed by the variance decision referenced above. The onsite portion of the emergency access shall include a 20-

foot wide paved roadway. The offsite portions shall also be improved 20 feet wide with gravel surfacing and improvements for horizontal curvature on the campground property. An emergency access easement has been obtained by the applicant to make the offsite improvements and allow future use of the roadway. Tract E shall be owned and maintained by the homeowners association or other private entity as allowed by King County.

Signage shall be placed at the intersection of Tract E with 304th Avenue SE in the subject plat, identifying Tract E as an emergency access. Signage shall also be placed within the Campground property indicating the direction to the Tall Chief emergency access road. This emergency access shall be gated with a lockbox access or other suitable automatic device. The gate shall default to the "open" position during power outages and have a manual over-ride. A numeric keypad access or other suitable device shall be provide and pass codes distributed to homeowners. The emergency access sign shall further identify an emergency contact phone number whereby non-resident motorists may call to gain ingress/egress.

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

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

f. The SE 23rd Place emergency connection (see Condition 6.e above) shall be improved as a rural sub-access road, consistent with the King County Road Standards (KCRS), and shall include a shoulder design for school pedestrian access in accordance with KCRS 3.09. The road design, including the vertical curvature of the road, shall be reviewed and approved by the King County Fire Marshal. Signage shall be placed within the subject plat at the entrance to the SE 23rd Place, identifying SE 23rd Place as an emergency access. This access shall be gated with a lockbox access or other suitable automatic device. The gate shall default to the "open" position during power outages and have a manual over-ride. A numeric keypad access or other suitable device shall be provide and pass codes distributed to homeowners. The emergency access sign shall further identify an emergency contact phone number whereby non-resident motorists may call to gain ingress/egress.

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

h. The final engineering plans for the project shall address design requirements for road construction within the floodplain which may contain soft and compressible soils. A geotechnical report prepared by S&EE, Inc., recommends compaction for road construction using a surcharge preload of fill material for a time period of 8 to 12 weeks. The engineering plans shall contain notes and recommendations to remove the surcharge material prior to the flood season (September 30 to May 1). The following are surcharge-related conditions for SE 10th Street, in addition to the usual and customary requirements, processes, and DPER authority:

1. The Final Engineering Design shall be supported by a geotechnical engineering report demonstrating feasibility of the surcharge construction method.

2. A comprehensive construction plan shall be submitted that addresses all aspects of completing the surcharge construction method during the non-flood season, including estimated fill amounts, number of trucks, anticipated logistics on site and at pit, anticipated settlement rates, anticipated time to place and remove fill materials, and estimated cost to remove the surcharge. The plan shall be stamped by a licensed engineer and shall be approved by the DPER Development Engineer. The DPER Development Engineer has discretion to require any and all changes deemed necessary to ensure an appropriate plan that can be accomplished during the non-flood season.

3. The Applicant shall request a preconstruction meeting prior to starting the surcharge construction.

4. The applicant shall post a cash bond with the County prior to the preconstruction meeting in the amount of 150% of the estimated cost of surcharge removal stated in the approved comprehensive construction plan. The cash bond shall authorize the County to take over the construction site with five days' notice to the Applicant and contractor for the purpose of removing the surcharge prior to the flood season.

5. During construction, the Applicant shall provide to DPER reports (of a content and a frequency DPER or King County Roads Services requires) prepared and stamped by the geotechnical engineer regarding the compression. The Applicant shall provide one such a report no later than September 3 that demonstrates that the surcharge will be removed prior to September 30.

6. By September 9, the DPER Development Engineer shall review this report and conduct an inspection. On or after September 9, the DPER Development Engineer has authority to determine that the Applicant and contractor will not be able to comply with the September 30 deadline for removal of surcharge. If the DPER Development Engineer so determines, then the DPER Development Engineer shall provide notice to the Applicant, order all work stopped on the site which is in conflict with the surcharge removal, invoke the bond, and take all steps necessary to remove the surcharge as soon as possible.

i. The preliminary plat map shows an area at the south terminus of 304th Avenue SE for additional right-of-way dedication. During the final plat process, the area shown as right-of-way shall be revised to a private tract and/or private easement, with access rights granted to the southerly property owners (Tax Lots 0824079062 and 0824079001) as required by King County Road Variance L09V0043.

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

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

10. As part of construction plan review, DPER shall assess the condition of the culverts connecting the wetlands. The Applicant shall perform any maintenance necessary to restore or keep the culverts functioning in a manner acceptable to DPER. Once a homeowners' association is functioning, the culverts shall be maintained or replaced by the homeowners' association as

necessary to ensure culvert functionality. (To the extent DPER concludes that there is a more logical point in the process where culvert maintenance responsibility would transfer from the Applicant to a homeowner's association, such an adjustment is allowed.)

11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

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

a. The Class II wetlands shall have a 50-foot buffer as shown on the preliminary plat map dated March 7, 2012 (received March 9, 2012).

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

c. Signage shall be installed along the Sensitive Area Tract boundaries for long term protection and to clearly mark the extent of the tract.

d. A 15-foot building set back line (BSBL) is required from the edge of all Sensitive Area Tracts and shall be shown on all affected lots.

e. Sensitive Area Tract boundaries shall be clearly marked with bright orange construction and silt fencing prior to construction or site clearing activities. The boundaries shall remain marked until construction is complete.

f. Road crossings of wetlands and buffers maybe allowed per KCC 21A.24.330. Construction techniques such as retaining walls maybe required at wetland crossings to limit wetland impacts. A final mitigation plan shall be required during engineering review. (Also see Condition 21 below in the Shoreline Management Substantial Development Permit approval.)

g. The outer 25 feet of buffer on the eastern side of the wetlands may be used for farming activities as defined in the farm management plan. Fencing shall be installed along the wetland buffer/Critical Area Tract boundaries and the inner wetland buffer areas shall be planted with native vegetation.

h. Wetland hydrology may not be altered either during or after development. A hydrology analysis may be required during engineering review to show how wetland hydrology will be maintained after the site is developed.

i. The engineering plans shall be routed to Critical Areas Staff for review of compliance to the above conditions.

Geotechnical

j. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer from these slopes. The buffer may be reduced with the submittal of a satisfactory soils report, subject to review and approval by a DPER geologist, prior to engineering plan

approval. Per KCC 21A.24.310F, steep slope areas which have less than 20 feet of vertical relief may be exempted from the requirements of KCC 21A.24.310, subject to the review and DPER approval of a satisfactory soils report concluding there will be no adverse impact. All remaining steep slope areas one acre or greater in size shall be place in a Sensitive Areas Tract.

k. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). The delineation of such areas shall be approved by a DPER geologist. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.

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

RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

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

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

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

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

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

15. To implement the Applicant's proposal, all lots in the subject plat shall have a minimum of 65 percent open space. The area of open space shall be delineated on the final plat and engineering plans. Open space may include landscaped areas, except as required by the King County Surface Water Design Manual (see Condition 7.f above.)

16. Pursuant to Ordinance 15032, Sec. 19, Tracts A and R shall be identified as a "Working Farm" on the final plat.

17. Prior to final plat recording, the Applicant shall indicate in writing whether it is the Applicant's intent for Tracts A and/or R to be owned by the residents of the subject plat. If so, the final plat shall indicate Tracts A and/or R shall be owned in undivided interest by the plat lot owners, pursuant to Ordinance 15032, Sec. 19, and a homeowners' association shall be established prior to plat recording to assure implementation of the approved farm management plan.

18. Pursuant to Ordinance 15032, Sec. 19, prior to plat recording, the applicant shall file a notice on title that informs future lot owners of the subject plat that Tracts A and R are designated as a "working farm," which must be managed in accordance with the County approved farm management plan.

Any person who farms or otherwise practices agriculture on Tracts A or R shall submit a voluntary Farm Plan for approval by the King Conservation District prior to performing said practices. Any person who farms or otherwise practices agriculture on Tracts A or R shall comply with the following:

a. During flood season (September 30 through May 1), all equipment and vehicles shall be removed from the floodplain during non-working hours.

b. During flood season, oil, chemicals, fertilizers, pesticides and polluting substances shall be removed from the floodplain during non-working hours.

c. During flood season, debris, garbage, and floatable materials shall be removed from the floodplain during non-working hours.

The homeowners association shall make available an area located above the floodplain and in proximity to the clubhouse dedicated to farm storage for equipment, oils, fertilizers, pesticides, debris, garbage and floatable materials.

19. Pursuant to KCC 21A.24.240, the final plat shall include the following verbiage:

"Lots and structures located within flood hazard areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions."

"Residents and property owners should familiarize themselves with flood warning resources available through the Federal, State, and Local Government, including King County and the Snoqualmie Valley School District. The Developers or Homeowners' Association shall distribute a Homeowner's Packet to each lot owner at the time of purchase containing instructions on how to enroll in King County's Flood Alert Program, and shall include the following URLs for additional flood information alerts:

Flood Resources

- Floodzilla Alerts—Real-time email flood alerts for the Snoqualmie River; http://www.floodzilla.com
- Floodzilla Snoqualmie River Status—Live Snoqualmie River combined gauge status with graph; http://www.floodzilla.com/river/snoqualmie
- King County Flood Warning System; http://green.kingcounty.gov/rivergagedata/gage-data.aspx?=snoqualmie
- King County/USGS—Snoqualmie River Flooding Information; http://green.kingcounty.gov/rivergagedata/gage-data.aspx?=snoqualmie

- NOAA—Advanced Hydrologic Prediction Service; http://www.nws.noaa.gov/oh/ahps/index.html
- NOAA—Northwest River Forecast Center; http://www.nwrfc.noaa.gov/rfc/
- NOAA—Snoqualmie Stations; http://www.nwrfc.noaa.gov/river/riverlist.cgi?skey=river&okey=name&ss=SNOQUALMIE
- Norcom—Reverse 911 Phone Notification for Flooding Emergencies; http://www.norcom.org/contacts.cfm

Government Emergency Resources

- FEMA—Federal Emergency Management Agency; http://www.fema.gov
- King County Emergency Services; http://www.kingcounty.gov/safety/prepare.aspx

Snoqualmie Valley School District Emergency Resources

- Snoqualmie Valley School District Emergency Info;
- http://www.svsd410.ord/departments/transportation/EmergencyInfo.asp

20. The following notice shall be shown clearly on the face of the final recorded plat, shall appear in large, bold type, separated from other notes on the final plat, and shall be recorded with sufficient, property-specific detail that the text below should show up on a title report for each individual lot.

NOTICE ON TITLE
THIS NOTICE APPLIES TO ALL LOTS AND TRACTS WITHIN THIS SUBDIVIVISION AND TO ALL FUTURE PURCHASERS AND SELLERS

The lots and tracts of this subdivision are located in close proximity to farms and King County designated agricultural lands. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington Right to Farm Act. RCW 7.48.310(1) defines "agricultural activity" as

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

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

21. A red-tailed hawk's nest has been identified adjacent of the south end of the site. Per the Applicant's proposed site plan, Tract N shall include a native growth restriction on the final plat map. In addition, a 650-foot seasonal restriction on construction activities requiring a building permit, as shown on the applicant's site plan, shall appear on the final play map. No construction requiring a building permit shall occur between March 1st through July 31st, unless it can be shown that either the nest has been abandoned or is not in use during a particular nesting season. A note to this effect shall appear on the final plat map.

22. W. Snoqualmie River Road SE has been designated as a "Heritage Corridor" by the King County Road Services—Historic and Scenic Corridors Project. With regard to required shoulder widening to achieve a 4-foot-wide shoulder along the subject property frontage (Condition 8.e above), the applicant shall retain existing trees along the frontage to the extent practical.

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

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

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

If the applicant demonstrates, to the satisfaction of DPER staff, that it is not practical to provide the above-noted landscaping along W. Snoqualmie River Rd. and meet the applicable County floodplain regulations in effect on December 27, 2004, the required landscaping may be placed elsewhere on the site at a location which will partially obscure the views of the residences of the subject plat from W. Snoqualmie River Road In order to provide the Type II landscape screen along W. Snoqualmie River Road, the Applicant may be required to revise the lot layout or eliminate one or more lots from the plat to provide sufficient floodplain compensating storage.

24. The regular school bus stop shall be located out of the floodplain, such that children do not need to cross the site's low-lying, flood-prone areas to walk to or from their bus stop and their homes. Prior to final plat approval, the Snoqualmie Valley School District shall have acknowledged in writing (a) the acceptability of this amended, regular bus stop, and (b) the availability of the secondary emergency access vehicle and pedestrian route to be utilized during periods when the main subdivision access road is forecast to be or is experiencing inundation during flood events.

Shoreline Management Substantial Development Permit Conditions[18]

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.

2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.

3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.

4. TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090). The following requirements shall apply to all permits.

   a. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and the act, local government may adopt appropriate time limits as a part of action on a substantial development permit and local government, with the approval of the department, may adopt appropriate time limits as a part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.

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

      i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

      ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

      iii. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to

[18] None of our amendments today alter the June 18, 2012, Shoreline Management Development Permit analysis (Finding #80) or these conditions. We simply re-provide the text here, so that a future reader will have all the information available in one document. For some undisclosed reason, the June 18, 2012, decision did not list shoreline conditions 18, 20, or 21, but simply pointed the reader to Exhibit 65. For ease of use, we have transcribed shoreline conditions 18, 20, and 21 from Exhibit 65.

inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.

iv. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided,* that an alternative compliance limit may be specified in the permit.

v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under Condition 4.b.ii above: *Provided,* that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

vi. Local government shall notify the Department of Ecology in writing of any change to the effective date of a permit as authorized above, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this condition shall require a new permit application.

5. Construction shall occur in conformance to the revised project plans and information received by King County on March 9, 2012.

6. Any subsequent changes to the approved plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.

7. If required, a Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish & Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this shoreline permit.

8. If required, an U.S. Army Corps of Engineers Permit "Corps Permit" shall be obtained from the U.S. Army Corps of Engineers prior to any work. Any conditions of the Corps Permit shall be considered conditions of this shoreline permit. In any event, erosion controls and Best Management Practices (BMPs) shall be implemented and maintained to prevent uncontrolled discharge of water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.

9. Issuance of this Shoreline Management Substantial Development Permit does not grant the right to trespass upon private property.

10. Prior to work, the applicant shall obtain final approval of the engineering plans for the pending plat of Tall Chief (L04P0032) and shall abide by any conditions set forth therein. Conditions of the plat approval shall be considered conditions of this Shoreline Permit.

11. The applicant shall control erosion of disturbed areas by implementing Best Management Practices. The applicant's erosion and sedimentation control plan shall include the following as warranted: installation of silt dams or catchments between work areas and all sensitive areas; the use of mulch and hydroseeding; planting of disturbed areas with native vegetation; and any measures determined to be appropriate. Appropriateness of fencing and location shall be

approved and verified by a King County representative prior to commencement of any clearing, grading, or construction activities.

12. Conduct refueling activities within a designated refueling area at a distance of not less than 200 feet away from the Snoqualmie River and associated wetland areas. Additionally, drip pans shall be fitted with absorbent pads and placed under all equipment being fueled. All equipment, if kept on site overnight, shall be parked at least 200 feet away from the river and associated wetland areas.

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

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

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

16. (Deleted)

17. (Deleted)

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

19. As part of the development of the subject plat, no permanent fill may be placed within the floodway, which would result in a reduction of the flood storage capacity of the floodway. All applicable King County regulations regarding improvements in the floodplain shall be met.

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

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

DATED April 11, 2013.

David W. Spohr
Interim Deputy King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

In order to appeal the Examiner's Report and Decision on Remand, written notice of appeal must be filed with the Clerk of the King County Council with a fee of $250 (check payable to King County Office of Finance) ***on or before April 25, 2013***. 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 May 2, 2013***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed by April 25, 2013, or if a written appeal statement and argument are not filed by May 2, 2013, the Clerk of the Council shall place a proposed ordinance that implements the Examiner's Report and Decision on Remand on the agenda for consideration at the next available Council meeting.

The action of the Council approving or adopting the Examiner's Report and Decision on Remand is final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act (LUPA) is timely commenced.

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

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

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

Exhibit no. 1	DPER file no. L04P0032
Exhibit no. 2	Preliminary Report, dated November 29, 2011
Exhibit no. 3	Application for Land Use Permits received December 27, 2004
Exhibit no. 3B	Application for Shoreline permit received May 8, 2007
Exhibit no. 4	State Environmental Policy Act (SEPA) received December 23, 2003
Exhibit no. 4B	State Environmental Policy Act (SEPA) checklist for the Shoreline permit received May 8, 2007
Exhibit no. 5	SEPA Determination of Non-Significance issued September 29, 2011
Exhibit no. 6	Affidavit of posting noting posting date of October 25, 2011
Exhibit no. 7	Revised preliminary plat map received May 25, 2011
Exhibit no. 8	Assessor maps NW 5-24-07. 8-24-7
Exhibit no. 9	Amended and Restated Easement Agreement recorded October 6, 2009
Exhibit no. 9B	Second Amended and Restated Easement Agreement recorded June 21, 2010
Exhibit no. 10	Farm Management Plan submitted May 4, 2009
Exhibit no. 11	Report of Geotechnical Investigation received December 27, 2004
Exhibit no. 12	Addendum to Geotechnical report received May 4, 2009
Exhibit no. 13	Wetland and Wildlife Study received December 27, 2004
Exhibit no. 14	Conceptual Wetland Mitigation Plan received May 4, 2003

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

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

Exhibit no. 35	*not entered into record*
Exhibit no. 36	Email from De-En Lang to Lanny Henoch sent December 7, 2011, relaying subdivision density dimension calculations
Exhibit no. 36B	Subdivision Density and Dimension Calculations Worksheet for the RA-10 zoned property dated April 27, 2009
Exhibit no. 36C	Subdivision Density and Dimension Calculations Worksheet for the RA-5-P dated April 27, 2009
Exhibit no. 36D	Subdivision Density and Dimension Calculations Worksheet for the A-35 zoned property dated April 27, 2009
Exhibit no. 37	Downstream Analysis originally prepared December 23, 2004, revised March 22, 2007
Exhibit no. 38	Certificate of Transportation Concurrency dated December 16, 2005
Exhibit no. 39	Hagenson Consultants letter to DPER regarding King County Fire District #27's letter dated January 21, 2010
Exhibit no. 40	Email from Don Gauthier to Hal Hagenson sent December 12, 2011 regarding the applicable FEMA flood maps
Exhibit no. 41	King County's Fire-resistant Landscape Plants for the Puget Sound Basin

Exhibit no. 42	Request for Subdivision Pre-Application Review to Public Health, Environmental Health Division
Exhibit no. 43	Letter from Paul McCombs, Master GIS Analyst and DPER GIS Program Manager, explaining county zoning maps, dated December 12, 2011
Exhibit no. 44	Zoning Map of the subject and surrounding properties as extracted and formatted by Paul McCombs on December 12, 2011
Exhibit no. 45	Applicant's Response to Interrogatories to Parties and Submittal of Exhibits
Exhibit no. 46	Preliminary plat (Alt B) map dated September 28, 2009

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

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

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

Exhibit no. 54	Revised plat drawing, Sheet 1 of 1
Exhibit no. 55	Revised plat drawing, Sheet C2-ALTC
Exhibit no. 56	Revised plat drawing, Sheet C4-A
Exhibit no. 57	Letter from DPER to the Applicant and Engineer on issuance of the new Surface Water Design Manual Adjustment for file no. L12V0002
Exhibit no. 58	Wetland Hydrologic Analysis completed by Goldsmith Land Development Services dated March 2012
Exhibit no. 59	Letter to the Hearing Examiner from Thomas M. Pors dated March 27, 2012
Exhibit no. 60	Letter with copy of Expert Rebuttal Testimony of Harold Hagenson from Thomas Pors to the Hearing Examiner dated March 30, 2012
Exhibit no. 61	Letter to Peter Dye from Ed McCarthy dated February 29, 2012
Exhibit no. 62	Aerial photo of Jubilee Farms
Exhibit no. 63	Natural Resource Conservation Service Soil Survey
Exhibit no. 64	Soil Map of Tall Chief property
Exhibit no. 65	Staff Revised Conditions
Exhibit no. 66	Letter to Lanny Henoch from James M. Garhart dated March 14, 2012
Exhibit no. 67	Agreement to Grant Emergency Access Easement with Aldarra Ridge Homeowners Association
Exhibit no. 68	Letter from John C. Cochenour, President of Patterson Creek Preserve, LLC and Aldarra Ridge Homeowners Association dated March 28, 2012
Exhibit no. 69	Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated December 29, 2011
Exhibit no. 70	Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated December 14, 2011
Exhibit no. 71	Letter to James Zogg from C. J. Shin of Soil & Environmental Engineers, Inc. dated January 12, 2012
Exhibit no. 72	Excerpt from Ordinance 15032
Exhibit no. 73	Letter to Lanny Henoch from Hal Hagenson of Hagenson Consultants, LLC dated March 26, 2012 on School Bus Emergency Routes
Exhibit no. 74	School Bus Emergency Travel Route

MINUTES OF THE MARCH 4, 5 AND 21, 2013, REMAND PUBLIC HEARING ON PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. L04P0032.

David W. Spohr was the Hearing Examiner in this matter. Participating in the proceeding were Thomas Pors and Grant S. Degginger representing the Applicant; Charles Klinge representing the Intervenors; Jina Kim and Kim Claussen representing the Department of Permitting and Environmental Review; James Garhart, Ruth Brandal, Bruce L. Blyton, Mark A. Barber, Hal Hagenson, Robert Rowe, W. Martin McCabe, William Lider, Steve Keller, Bob Seana, Ken Zweig, Craig Comfort, Molly Johnson and Pete Dye.

The following exhibits were offered and entered into the record on March 4, 2013:

Exhibit no. 75	Resume of Bruce L. Blyton
Exhibit no. 76	Resume of Mark A. Barber
Exhibit no. 77	Resume of Hal Hagenson
Exhibit no. 78	Resume of Robert Rowe
Exhibit no. 79	Colored plat map of Tall Chief
Exhibit no. 80	Memo to David W. Spohr, interim Deputy Hearing Examiner from Hal Hagenson dated February 21, 2013
Exhibit no. 81	Memorandum to Tom Pors from Bruce Blyton dated February 21, 2013
Exhibit no. 82	Technical Memorandum to Tall Chief Golf, Inc. from Jeffrey P. Laub and Bruce L. Blyton dated February 22, 2013
Exhibit no. 83	Letter to King County DDES from Mark A. Barber dated February 15, 2012
Exhibit no. 84	Plat maps of Tall Chief Country Club Tracts, Alternate B – Detention prepared by Hagenson Consultants, LLC
Exhibit no. 85	Drainage Review Frequently Asked Questions, Bulletin #29 taken from King County Department of Permitting and Environmental Review web site
Exhibit no. 86	Preliminary Subdivision Applications: Instructions taken from King County Department of Permitting and Environmental Review web site
Exhibit no. 87	Aerial photographs of the Snoqualmie River Valley taken in 1936 and 2000
Exhibit no. 88	Applicant's Proposed Revisions to Conditions of Approval for Tall Chief Preliminary
Exhibit no. 89	Flooding Services and Information from King County
Exhibit no. 90	Plat map of Tall Chief showing wetland
Exhibit no. 91	Colored aerial photo showing route
Exhibit no. 92	Road closures near Tall Chief Plat indicating dates of closings
Exhibit no. 93	Resume of W. Martin McCabe
Exhibit no. 94	Resume of William Lider
Exhibit no. 95	Color photographs of area
Exhibit no. 96	Point of Compliance Analysis and Diversion Area Water Balance Analysis prepared by Hagenson Consultants, LLC, dated January 18, 2012
Exhibit no. 97	Easement Agreement between Patterson Creek Preserve, LLC, Aldarra Ridge Homeowners Association and Tall Chief Golf, Inc. dated November 13, 2006

The following exhibits were offered and entered into the record on March 5, 2013:

Exhibit no. 98	Color-coded Map of plat showing forested area to remain/be cleared; fairway declared forested area to be planted and fairway area developable
Exhibit no. 99	Email from Hal Hagenson to Bruce L. Blyton regarding Tall Chief Surcharge Volume dated February 6, 2013
Exhibit no. 100	Excerpt from King County 1998 Surface Water Design Manual
Exhibit no. 101	*Not entered into the record*
Exhibit no. 102	Excerpt from King County 1998 Surface Water Design Manual C.2.1
Exhibit no. 103	Replacement conditions