

June 13, 2012

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

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**REPORT AND DECISION**

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

**NELSEN CATTERALL**  
Preliminary Plat Application

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

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

**King County:** Department of Development and Environmental Services (DDES)  
*represented by Kimberly Claussen*  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
Telephone: (206) 296-7167  
Email: [kimberly.claussen@kingcounty.gov](mailto:kimberly.claussen@kingcounty.gov)

**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Approve with conditions
Department's Final Recommendation:	Approve with revised conditions
Examiner's Decision:	Approve with further revised conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:	March 29, 2012
Hearing Continued Administratively	March 29, 2012
Hearing Record Closed:	April 5, 2012

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

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

**FINDINGS:**

**1. General Information:**

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

**Engineer:** Core Design  
14711 NE 29<sup>th</sup> Place, Suite 101  
Bellevue WA 98007  
425-885-7877

**STR:** 15-24-06

**Location:** The site is located on the north side of 238<sup>th</sup> Way SE, east of Issaquah-Pine Lake Road  
  
Tax Parcels 1524069036, 1524069043, 1524069048, 1150001390

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

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

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject property lies on the Sammamish Plateau, directly abutting the corporate limits of the City of Sammamish. (The property's west side fronts Issaquah-Pine Lake Road, which lies within the City limits). The City of Issaquah lies in very close proximity as well, to the south and further to the west. The property is roughly a blocky-L in shape and 13.72 acres in area. Its

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

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

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

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

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

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

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<sup>1</sup> The legislative wisdom of state and county lawmakers must be respected "as is" in deciding land use applications, since policy decisions are the province of the legislative authority. [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997)] A quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)] The personal preferences and concerns of other property owners and residents in the area also cannot be honored in an arbitrary or capricious manner; only where such concerns or preferences are addressed by or reflected in applicable regulation and policy may they be honored, and only in the fashion permitted under due authority.

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

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

#### CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-6 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on December 28, 2010, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

## DECISION:

The preliminary plat of the *Nelsen Catterall* subdivision, as revised and received December 28, 2010, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is greater, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

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

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRD&CS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location, water main and fire flow standards of Chapter 17.08 KCC. Prior to submission of engineering plans, the applicant shall do one of the following:
  - A. Provide a recorded restriction on the development of all homes in the plat, in language approved by the King County Fire Marshal, to require sprinklers; or
  - B. Obtain the approval of the King County Fire Marshal to remove the sprinkler requirement from the subdivision by providing a minimum 20-foot wide fire lane with minimum 28-foot wide curb to curb internal roads with parking restricted to one side. Provide "No Parking – Fire Lane" signs and/or other markings approved by the Fire Marshal pursuant to KCC 17.04.420, provided signage dimensions and material specifications shall comply with the Manual on Uniform Traffic Control Devices (MUTCD). The homeowners association shall be responsible for monitoring and inspecting parking compliance and signage on a regular basis. DDES shall review and approve the relevant homeowner association covenants, conditions and restrictions language. A note referencing this requirement shall be recorded on the final plat.

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

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

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

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

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

- g. Right-of-way for a public road within Tract C shall be provided with the engineering plans, per KCRDS & CS Section 1.05F. The internal roads shall also be public roads.
  - h. Variance L11V0008 was approved by KCDOT on July 28, 2011. The Applicant shall comply with any/all conditions associated with the Variance approval.
  - i. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRD&CS 1.12.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
13. The proposed subdivision shall comply with the Critical Areas code as outlined in KCC 21A.24. Permanent survey markings and signs, as specified in KCC 21A.24.160, shall also be addressed prior to final approval. Temporary marking of critical areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are complete.
14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant:
- a. The Critical Areas shown on the site plan dated December 28, 2010 have been verified and approved by King County DDES staff.
  - b. The Category III wetland shall have a 75 foot buffer as measured from the wetland edge. The Category IV wetlands shall have a 50 foot buffer as measured from the wetland edge. These buffers are proposed for buffer averaging.

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

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

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

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

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

15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation tract and critical area tract(s).
16. The following has been established by the MDNS issued under SEPA authority as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with this item prior to final approval.

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

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

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

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

ORDERED June 13, 2012.



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Peter T. Donahue  
King County Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before June 27, 2012*. If a notice of appeal is filed, the original and two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before July 5, 2012*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1039, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

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

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

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

The following Exhibits were offered and entered into the record:

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

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

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

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

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