

July 21, 2011

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department and Development and Environmental Services File No. **L10P0002**
Proposed Ordinance No. **2011-0223**

RED WING ACRES
Preliminary Plat Application

Location: Approximately SE 49th Court

Applicants: Robert Martin and Kathy Stewart
represented by **Encompass Engineering**
165 NE Juniper Street, Suite 201
Issaquah, WA 98027

King County: Department of Development and Environmental Services (DDES)
represented by **Kimberly Claussen**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 296-7167
Email: kimberly.claussen@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

EXAMINER PROCEEDINGS:

Hearing Opened:	June 21, 2011
Hearing Closed:	June 21, 2011

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.

ISSUES AND TOPICS ADDRESSED:

Lot calculation.

SUMMARY:

A subdivision of 49-plus acres in the RA-10 zone in the Rural Area is approved, subject to conditions.

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

FINDINGS:

1. **General Information:**

Owner/Developer: Kathy Stewart & Robert Martin
1918 Fourth Place
Kirkland WA 98033

Engineer: Encompass Engineering
165 NE Juniper Street, Suite 201
Issaquah WA 98027
425-392-0250

STR: 24-24-07

Location: The site is located on the east side of Fish Hatchery Road at approximately SE 49th Street (south of SE 47th Court)
Tax Parcel # 242407-9002

Zoning: RA-10
Acreage: 49-plus acres
Number of Lots: 5 (proposed)
Density: Approximately 1 unit per ten acres
Lot Size: Approximately 38,000-53,500 square feet in size
Proposed Use: Single Family Detached Dwellings
Sewage Disposal: Individual on-site septic systems
Water Supply: Fall City Water District and/or private well
Fire District: King County Fire District #27
School District: Snoqualmie Valley #410
Complete Application Date: December 10, 2010

2. The facts set forth in the King County Land Use Services Division’s preliminary report to the King County Hearing Examiner for the June 21, 2011, public hearing are found to be correct and are incorporated herein by this reference. The LUSD staff recommends approval of the application, subject to conditions.

3. King County Code Section 21A.12.070 provides that the permitted number of lots shall be determined as follows:

“A. The allowed number of dwelling units or lots (base density) shall be computed by multiplying the site area specified in KCC 21A.12.080 by the applicable residential base density number;...

“E. For subdivisions...in the RA and A zones, rounding up of the number of development units or lots is not allowed.”

KCC 21A.12.080 provides:

“B. For subdivisions and short subdivisions in the RA zone, if calculations of site area for base density result in fraction, the fraction shall be rounded to the nearest whole number as follows:

“1. Fractions of 0.50 or above shall be rounded up;...”

4. King County Department of Development and Environmental Services, in its form “Subdivision Density and Dimension Calculations”, revised 11-28-2007 provides the note “for parcels in the RA zone, no rounding is allowed when calculating the allowable number of dwelling units. For example, if calculation of the number of dwelling units equaled 2.75, the result would be two dwelling units. Rounding up to three is not allowed. See KCC 21A.12.070(E)”

5. The applicant has requested that the area of the adjacent roadway, SE Fish Hatchery Road, be included in the calculation of the area to be subdivided. KCC 21A.06.797 defines “net buildalbe area.” It is defined as the site area less the following areas:

“A. Areas within the project site that are required to be dedicated for public rights-of-way in excess of 60 feet in width;

“B. Critical areas and their buffers to the extent they are required by KCC Chapter 21A.24 to remain undeveloped;...and

“F. Other areas, excluding setbacks, required to remain undeveloped.”

The right-of-way of SE Fish Hatchery Road adjacent to the plat is no greater than 60 feet in width. Internal lots will be served by a private tract, less than 60 feet in width.

6. It is possible that a portion of the critical area tract(s) on the property may exceed the critical areas buffers that are required by KCC 21A.24 to remain undeveloped.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.

2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare, and for open spaces, drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreation, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.

3. The conditions for final plat approval recommended below are in the public interest and are reasonable and proportionate requirements necessary to mitigate the impacts of the development upon the environment.

4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the applicant on March 8, 2011, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development. Area shown for critical

areas may be modified, if supported by the applicant's critical areas consultant and approved by the DDES ecologist.

5. Area within the right-of-way of SE Fish Hatchery Road and the private access tract cannot be included in the computation of the site area for purposes of computing the allowable number of lots on the subject property.
6. The Examiner considers that the provisions of KCC 21A.12.070.E and 21A.12.080.B create an ambiguity in the King County Code. The former states that for subdivisions in the RA zone, rounding up of the number of development units or lots is not allowed. The latter states that for subdivisions in the RA zone, if calculations of site area for base density result in a fraction, the fraction shall be rounded to the nearest whole number, with fractions of 0.50 or above rounded up. DDES has interpreted the ambiguity in accordance with KCC 21A.12.070; the interpretation of DDES as the agency charged with administration of the King County Code should be accorded a degree of deference. On the other hand, an ambiguity in a land use restriction should be interpreted in favor of the property owner. It is the Hearing Examiner's conclusion that this ambiguity in the King County Code should be resolved favor of the property owner.

DECISION:

The proposed subdivision, as revised and received on March 8, 2011, should be granted preliminary approval, subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the RA-10 zone classification. 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, 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. The total acreage of the site shall be provided by the applicant and verified by DDES prior to engineering plan submittal. As a result of the ambiguity between KCC 21A.12.070.E and KCC 21A.12.080.B, if the site area meets or exceeds 49.50 acres, the number of lots to be developed by this subdivision may equal five lots.

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

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRS).
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code. In lieu of fire flow, future residences shall be sprinklered, unless otherwise approved by the King County Fire Protection Engineer. A note to this effect shall be shown on the final plat.

6. The drainage facilities shall meet the requirements of the 2009 King County Surface Water Design Manual (KCSWDM). The site is subject to Conservation Flow Control and Basic Water Quality requirements of the 2009 KCSWDM.
7. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2009 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 following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRD&CS):
 - a. Tract A shall be improved at a minimum to the Joint Use Driveway Standard per section 3.01 of the KCRD&CS. Lots fronting Fish Hatchery Road shall have direct access to Fish Hatchery Road.
 - b. FRONTAGE: The frontage along Fish Hatchery Road (fronting Lots 1 and 5 only), shall be improved with a minimum 4-foot wide paved shoulder on the easterly side per the rural sub access street standards.
 - c. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.12 of the KCRD&CS.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50 percent) 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. 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.
13. 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 March 8, 2011 were verified by King County DDES staff. The Category I wetland shall have a 225-foot buffer as measured from the wetland edge. Modification to the critical areas or critical areas tracts may be approved, based upon a modified submission by the applicant's critical areas consultant, subject to approval by the DDES ecologist.
- b. The applicant shall use critical area tracts (CAT's) to delineate and protect the critical areas and their buffers in development proposals for subdivision and shall record the tracts on all documents of title of record, KCC 21A.24.180.
- c. A 15' building set back line is required from the edge of Critical Area Tracts and shall be shown on all affected lots.
- d. The engineering plans and/or final engineering plans shall be submitted and reviewed by Critical Areas Staff.
- e. 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.
- f. Prior to plat recording the applicant shall delineate the boundary between the adjoining property and CATs using iron or concrete markers as established by current survey standards. The applicant shall also identify the CAT boundary with permanent signs.
- g. The following note shall be shown on the final engineering plan and recorded plat:

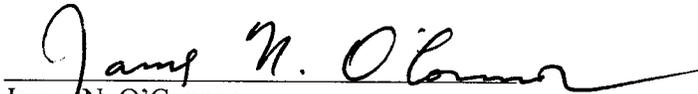
**RESTRICTIONS FOR CRITICAL AREA TRACTS AND
CRITICAL AREAS AND BUFFERS**

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.

14. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the open space and/or critical area tract(s).
15. The applicant must obtain final approval from the King County Health Department.

ORDERED July 21, 2011.


 James N. O'Connor
 King County Hearing Examiner *pro tem*

NOTICE OF APPEAL

In order to appeal the decision of the Hearing Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250 (check payable to King County Office of Finance) on or before **August 4, 2011**. If a notice of appeal is filed, the original two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before **August 11, 2011**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

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

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

MINUTES OF THE JUNE 21, 2011, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L10P0002.

Mr. Jim O'Connor was the Hearing Examiner in this matter. Participating in the proceeding were Kimberly Claussen and Bruce Whittaker representing DDES and Chad Allen of Encompass Engineering representing the Applicants.

The following Exhibits were offered and entered into the record:

Exhibit no. 1	DDES file no. L10P0002
Exhibit no. 2	Preliminary Report, dated June 21, 2011
Exhibit no. 3	Application for Land Use Permits submitted September 8, 2010
Exhibit no. 4	State Environmental Policy Act (SEPA) checklist submitted September 8, 2010
Exhibit no. 5	SEPA Determination of Non-Significance issued March 31, 2011
Exhibit no. 6	Affidavit of Posting nothing a posting date of February 18, 2011
Exhibit no. 7	Revised preliminary plat map received March 8, 2011
Exhibit no. 8	Assessor maps: NE and NW 24-24-07; SE and SW 13-24-07

- Exhibit no. 9 Critical Areas Designation issued November 4, 2009
- Exhibit no. 10 Technical information report submitted September 8, 2010
- Exhibit no. 11 Level I downstream drainage report
- Exhibit no. 12 Technical information report submitted March 8, 2011
- Exhibit no. 13 Critical areas study submitted September 8, 2010
- Exhibit no. 14 Subdivision density and dimension calculations submitted November 22, 2010
- Exhibit no. 15 Student walkway assessment submitted September 8, 2010
- Exhibit no. 16 Revisions to DDES staff recommendations nos. 4 and 7
- Exhibit no. 17 Letter from Encompass Engineering and Surveying clarifying DDES staff report
- Exhibit no. 18 Map depicting Fish Hatchery Road, with areas requested to be included in density calculations
- Exhibit no. 19 Email from Pat Simmons, DDES Engineer, regarding Fish Hatchery Road
- Exhibit no. 20 Revisions to DDES staff condition no. 8

JNOC/vsm