

January 21, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **PLAT180008**

STAFFORD MEADOWS
SEPA Threshold Determination Appeal

Location: 4015 S 280th Street, Auburn

Appellant: Star Lake Glen Homeowners Association
represented by **Irene and Richard Bymers**
28027 39th Avenue S
Auburn, WA 98001
Telephone: (253) 854-0654
Email: wrotkowski@comcast.net

Applicant: Cary Lang
represented by **Duana Kolouskova**
11201 SE 8th Street Suite 120
Bellevue, WA 98004
Telephone: (425) 467-9966
Email: kolouskova@jmmlaw.com

King County: Department of Local Services
represented by **Kevin LeClair**
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-2717
Email: kevin.leclair@kingcounty.gov

RECOMMENDATIONS/DECISION:

Department’s Preliminary Recommendation:	Deny Appeal
Department’s Final Recommendation:	Deny Appeal
Examiner’s Decision:	Deny Appeal

After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, the Examiner enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1. This proposal is a 25-lot plat on two parcels totaling 4.78 acres in the R-4 zone in the urban area (Property). The Applicant seeks to exceed the base density of 19 dwelling units by utilizing three rural Transfer of Development Rights (TDRs).
2. The responsible official issued a threshold Determination of Non-Significance (DNS) on October 28, 2019. Star Lake Glen Homeowners’ Association (Appellant) timely appealed the DNS. *See*, December 18, 2019 Pre-Hearing Order and Notice of Consolidated Hearings (Pre-Hearing Order).
3. As set forth in the Pre-Hearing Order, the issues/claims in the SEPA appeal are as follows:
 - A. Whether the preliminary plat will cause significant adverse impacts on public safety due to its location on S. 280th Street across the street from Valhalla Elementary school and the existing width of S. 280th Street.
 - B. Whether the preliminary plat will cause significant adverse impacts to the habitat of Bingaman Pond.
4. At the hearing Appellant clarified that its concerns on both issues relate to the impacts of the additional 6 dwelling units proposed to be accomplished through purchase of rural TDRs. Stated differently, it would not have brought its appeal had the Applicant proposed 19 dwelling units. Testimony of Irene Bymers.
5. The relief Appellant requests relates solely to Issue A: (1) the widening of 42nd Ave. S. south of Star Lake Road; (2) the widening of S. 280th St. west of 42nd Ave. S. to add a center turn lane; and (3) installation of a 3-way stop at the S. 280th St./42nd Ave. S. intersection. Ex. 13.

Habitat of Bingaman Pond

6. KCC 21A.24.010 describes the purpose of the County’s critical area regulations:

The purpose of this chapter is to implement the goals and policies of the Growth Management Act, chapter 36.70A RCW, Washington state Environmental Policy Act, chapter 43.21C RCW, and the King County Comprehensive Plan...” (Emphasis added.)

7. Pursuant to RCW 43.21C.240, the County adopted KCC 20.44.080.C, which provides:

Within the urban growth areas, substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where specific adverse impacts are not addressed by regulations as set forth below or unusual circumstances exist.

The enumerated regulations include chapter 21A.24, critical areas.

8. The Property is located within the Lower Green River watershed, Water Resource Inventory Area 9. Habitat Technologies prepared a critical areas delineation and rating report dated June 2018. Ex. D1; testimony of Colleen Kroe. Colleen Kroe, Environmental Scientist III, verified the wetland boundary, rating, and required buffer size in the field on October 9, 2018. Exs. D1 and D2; testimony of Colleen Kroe. She confirmed the wetland to be a Category I wetland with a standard buffer of 187.5 feet. Ex. D1; testimony of Colleen Kroe.
9. Although the critical areas regulations allow a buffer reduction of up to 25% in the urban area under certain circumstances, the Applicant did not request a buffer reduction. Testimony of Colleen Kroe and John Everett.
10. The preliminary plat complies with the County’s critical area regulations. Appellant did not present evidence of specific adverse impacts to the Category I wetland or regulated habitat that are not addressed by the Critical Areas regulations. Nor did they present evidence of unusual circumstances.
11. Although it is not a regulated critical area, Tract E provides some impact minimization functions for the Category I wetland, including reduction of potential disturbance from lights, noise, and pets and human disturbance. *See* KCC 21A.24.325.A.3. In addition, as retained and newly planted trees grow, the perimeter of Tract E will eventually provide additional forested buffer. Ex. D3, Sheet 6. Testimony of John Everett.
12. While a number of species may use the Property, including black tailed deer, coyote, red tailed hawk, bald eagle, and Western screech owl, no regulated wildlife habitat conservation areas have been identified on the Property. No threatened, endangered, or otherwise protected wildlife habitat on the Property is mapped on the County GIS system or the Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species (PHS) website. The WDFW Salmon Scape maps and the WDFW PHS map do not identify any priority fish and wildlife habitats or species on or within 215 feet of the Property.

Public Safety

13. S. 280th St. is classified as an urban neighborhood collector. The 2016 King County Road Design and Construction Standards require a minimum 56-foot right-of-way for an urban neighborhood collector, or 28 feet on either side of the right-of-way centerline. The existing S. 280th St. right-of-way is 30 feet wide with one travel lane in each direction. The Applicant is proposing 30 feet of right-of-way dedication. Frontage improvements include 12 feet of paving, vertical curb and gutter, 5 feet of sidewalk, and a 12.5-foot easement and planting area.
14. Appellant’s safety concerns relate to the congestion that occurs on S. 280th St. and the intersection of S. 280th St./42nd Ave. S. during the morning drop-off and afternoon pickup of students at Valhalla Elementary school. During these times, it can be difficult for a vehicle in the opposing lane to pass school buses, parents, and other caregivers waiting for students to park in no parking zones. Testimony of Irene Bymers; Exs. 4, 6, 8, and 9; photographs attached to Ex. 13.
15. The morning drop off and afternoon pick up at Valhalla Elementary School tend to last 15-20 and 15-25 minutes, respectively. Testimony of Robert Eichelsdoerfer and Edward Koltonowski. All parties agreed that there are congestions at these times. However, the road system in this vicinity is operating safely overall. Testimony of Robert Eichelsdoerfer.
16. KCC 14.80.030.A provides:

For purposes of the State Environmental Policy Act and this section, a significant adverse impact is defined as any traffic condition directly caused by proposed development that would reasonably result in one or more of the following conditions at the time any part of the development is completed and able to generate traffic:

 - A. A roadway intersection that provides access to a proposed development, that will function at a level of service worse than “E” and that will carry 30 or more added vehicles in any one-hour period as a direct impact of the proposed development, and that will be impacted by at least 20% of the new traffic generated from the proposed development in that same one-hour period; or
 - B. A roadway intersection or approach lane where the County Road engineer determines that a hazard to safety could reasonably result. (Emphasis added).
17. Following receipt of the SEPA appeal, the Applicant engaged Gibson Traffic Consultants to conduct counts of traffic on S. 280th St. and the intersection of S. 280th St./42nd Ave. S. and observe traffic and driver behavior during the morning drop-off and

- afternoon pickup at Valhalla Elementary School. Ex. L2; testimony of Edward Koltonowski. Even though the peak hour of the elementary school traffic and the peak hour of the road system are somewhat different, to provide a conservative analysis, it treated the school peak hour and the street system peak hour as the same. Testimony of Edward Koltonowski.
18. Two homes currently exist on the Property. The plat proposes to divide the Property into 25 lots, which would result in a net increase of 23 dwelling units. Using the ITE Trip Generation Manual, 10th edition, one single-family home generates 9.44 vehicle trips per day, .74 trips in the AM peak hour, and .99 trips in the PM peak hour. Testimony of Robert Eichelsdoerfer, Senior Engineer, Road Services Division, Department of Local Services. The 23 net new dwelling units would thus generate 217 daily trips; 17 AM peak hour trips; and 23 PM peak hour trips. Testimony of Edward Koltonowski.
 19. The volume of traffic on S. 280th is low for a two-lane road. Testimony of Edward Koltonowski.
 20. Neither S. 280th in the vicinity of the proposed plat nor the intersection of 42nd Ave S./S. 280th Street is classified as a high collision location. Ex. D1; testimony of Robert Eichelsdoerfer.
 21. Washington State Department of Transportation (WSDOT) accident data for the 5-year period 2015-2019 indicate no collisions on S. 280th Street between 40th Ave. S. and 42nd Ave. S. and one collision in the section of 42nd Ave. S. along the Valhalla Elementary School frontage. Testimony of Robert Eichelsdoerfer.
 22. There is no evidence in the record that the proposed development would result in a roadway intersection or approach lane hazard to safety. Nor has the County Road Engineer determined that such a hazard would result. Ex. D1; testimony of Robert Eichelsdoerfer.
 23. The majority of school traffic is to/from the north on 42nd Ave. S. to Star Lake Road. Testimony of Edward Koltonowski.
 24. The 6 dwelling units proposed to be achieved through use of TDRs would generate 1-2 trips during the peak hours of the Valhalla Elementary school. Testimony of Edward Koltonowski. This number of trips would not be noticeable as traffic varies us up to 10% on any given day. Testimony of Edward Koltonowski.
 25. Using the Federal Way School District multiplier for estimating the number of students a single-family dwelling will generate, the 25 lot plat would generate at most 10 students for grades K-12. Ex. D1; testimony of Robert Eichelsdoerfer.
 26. The Federal Way School District advised the Applicant that students attending Valhalla Elementary School and Thomas Jefferson High School will walk to school; students

attending Totem Middle School will be bused from a bus stop on the southeast corner of the intersection of 40th Ave. S./S. Star Lake Rd. Ex. L8; testimony of John Everett. All students would have to walk east from the plat entrance to reach the Elementary and High Schools and the Middle School bus stop.

27. Currently, there are no sidewalks or separated shoulder on the south side of S. 280th Street. Testimony of Irene Bymers and John Everett; Exs. 1 and 2. As explained in Finding 13, the preliminary plat would provide frontage improvements, including a 5-foot sidewalk along its frontage; however, until properties to the east are redeveloped extending the sidewalk to the east, the new sidewalk will not provide a safe walking route to any of the schools.
28. A sidewalk exists on the north side of S. 280th St. from intersection of the western leg of the school bus loop on the Valhalla Elementary School property with S. 280th St. to 42nd Ave. S. The Applicant proposes a crosswalk to the western side of the western leg of the school bus loop that will allow students to reach the sidewalk on the north side of S. 280th Street. Ex. D3, Sheet 4. The proposed location of the crosswalk is approximate. To permit installation of this crosswalk, the Roads Division, Traffic Operations Section must determine that it meets warrants. Testimony of Robert Eichelsdoerfer. The Traffic Operations Section will take into account the location of the schools, the need for safe walking routes, adjacent driveways, and other factors both in determining whether warrants are met and in locating an approved crosswalk if they are met. The Examiner urges the Traffic Operations Section to approve a crosswalk allowing students to safely cross S. 280th St. to reach the sidewalk on the north side of the street.
29. Currently the 3-way intersection of S. 280th St./42nd Ave. S. has a stop sign only at the eastbound S. 280th St. leg of this intersection. Periodically, the Traffic Operations Section reviews this intersection to determine whether it should be an all-way stop. The Manual for Uniform Traffic Control Devices (MUTCD) warrants are not yet met, but this intersection is on the Division's "radar." It will likely take another look at it if the preliminary plat is approved. Testimony of Robert Eichelsdoerfer.
30. Any Finding of Fact which is more appropriately considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS OF LAW

1. Any Conclusion of Law which is more appropriately considered a Finding of Fact is hereby adopted as a Finding of Fact.
2. The scope of the SEPA appeal is limited to matters or issues raised in the appeal statement. KCC 20.22.080.G. Appellant testified to a number of topics not raised in the appeal statement. Such topics, including potential hazard trees, are outside of the scope of the appeal. Therefore, the Examiner has not addressed them.

3. Appellant bears the burden of proving that the DNS it is "clearly erroneous" based on the record as a whole *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001)(citations omitted); Rule XV.E.1 of the Hearing Examiner's Rules of Procedure and Mediation (Examiner's Rules). A decision is clearly erroneous if, although there is evidence in the record to support it, the Hearing Examiner is "left with a definite and firm conviction that a mistake has been committed." *Moss v. Bellingham*, 109 Wn. App. at 6.
4. The standard of proof is a preponderance of the evidence. Examiner's Rules, Rule XV.F.2.
5. The Hearing Examiner must accord the decision of the responsible official substantial weight. KCC 20.44.120.A.3, citing RCW 43.21C.075(3)(d).
6. The vehicular trips projected to be generated by development and occupancy of the preliminary plat do not constitute a significant adverse impact under KCC 14.80.030.A.1 which would allow or warrant the imposition of mitigation measures under SEPA.
7. Appellant's concerns regarding congestion, unauthorized parking, and the potential to impede emergency vehicles are certainly understandable. However, those impacts are the not caused by the proposed plat nor will they be noticeably exacerbated by the proposed plat.
8. Appellant has not shown by a preponderance of the evidence that the proposed plat would result in a roadway intersection or approach lane hazard to safety. The KCC 14.80.030.A.2 criterion is not met.
9. The Appellant has not demonstrated the proposed plat will result in specific adverse impacts are not addressed by the critical areas regulations or that unusual circumstances exist.

DECISION: The Appeal is **DENIED**.

ORDERED January 21, 2020.



Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

**MINUTES OF THE JANUARY 9, 2020, HEARING ON
SEPA THRESHOLD DETERMINATION APPEAL,
STAFFORD MEADOWS, NO. PLAT180008,
PROPOSED ORDINANCE NO. 2019-046**

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Kevin LeClair, Robert Eichelsdoerfer, Colleen Kroe, John Everett, Irene Bymers, Duana Kolouskova, and Edward Koltonowski.

The following exhibits were offered and entered into the hearing record by the Appellant:

- Exhibit no. 1 Photograph of S. 280th Street from the top of Star Lake Glen Development
- Exhibit no. 2 Photograph of S. 280th Street looking West from 42nd Ave S.
- Exhibit no. 3 Photograph of only the North and South crosswalk on S. 280th Street
- Exhibit no. 4 Photograph of second student crossing guard that runs East and West on 42nd Avenue S.
- Exhibit no. 5 Photograph of congestion
- Exhibit no. 6 Photograph of traffic sign
- Exhibit no. 7 Photograph of vehicles entering school entrance
- Exhibit no. 8 Photograph of school buses entering parking area
- Exhibit no. 9 Photograph of school bus turning from 42nd Avenue S onto S. 280th Street
- Exhibit no. 10 Photograph of crosswalk running East and West on S. 280th Street
- Exhibit no. 11 Photograph of trees on parcel no. 796765TRCT
- Exhibit no. 12 Appellant summary of exhibits no. 1 – 11, received December 24, 2019
- Exhibit no. 13 Appeal transmittal, received November 26, 2019

The following exhibits were offered and entered into the hearing record by the Applicant:

- Exhibit no. L1 Collision history for 280th and 42nd
- Exhibit no. L2 Traffic counts for 280th
- Exhibit no. L3 Resume of Eric LaBrie, ESM Consulting Engineers
- Exhibit no. L4 Resume of John Everett, ESM Consulting Engineers
- Exhibit no. L5 Resume of Brandon Loucks, ESM Consulting Engineers
- Exhibit no. L6 Resume of Edward Koltonowski, Gibson Traffic Consultants
- Exhibit no. L7 Resume of Matt Palmer, Gibson Traffic Consultants
- Exhibit no. L8 Safe School Walking Maps (2nd page)

The following exhibits were offered and entered into the hearing record by the Department:

- Exhibit no. D1 Staff Report
- Exhibit no. D2 Resume for Colleen Kroe
- Exhibit no. D3 Revised preliminary plat map and labeled lot layout, dated July 16, 2019

AM/jo

Archuleta, Wally
Department of Local Services

Bardales, Josue
Hardcopy

Bloom, Stacia

Bymers, Irene/Richard
Hardcopy

Carlson, Joanne
Department of Local Services

Craig, Cristy
Prosecuting Attorney's Office

Crow, Deborah
Hardcopy

Eichelsdoerfer, Robert
Department of Local Services

Everett, John
Hardcopy

Goll, Shirley
Department of Local Services

Kolouskova, Duana
Hardcopy

Koltonowski, Edward
Gibson Traffic Consultants
Hardcopy

Kroe, Colleen
Department of Local Services

La Victoir, John and Sheila
Hardcopy

Lang, Cary
Cary Lang Construction
Hardcopy

Lebree, Eric
Hardcopy

LeClair, Kevin
Department of Local Services

Lennon, Zack
ESM Consulting Engineers LLC
Hardcopy

Lindblad, Phyllis
Hardcopy

Loucks, Brandon
ESM Consulting Engineers LLC
Hardcopy

Pedroza, Melani
Metropolitan King County Council

Pena, Linda and Ruben
Hardcopy

Reider, Matt
ESM Consulting Engineers LLC
Hardcopy

Scott, Todd
King County Historic Preservation Program

Smythe, Roger and Lee
Hardcopy

Star Lake Glen Homeowners Association

Sung, Huey-yi
Department of Local Services

Taylor, John
Hardcopy

Vogler, Christine
Department of Local Services

Williams, Dean
Johns Monroe Mitsunaga Kolousková
Hardcopy

Wojciechowski, Jennifer
Hardcopy

Woody, Ahn
Hardcopy

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **PLAT180008**

STAFFORD MEADOWS
SEPA Threshold Determination Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 21, 2020.