

November 15, 2019

**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 nos. **PLAT180001 and SHOR180001**
Proposed ordinance no.: **2019-0306**

THREE RIVERS ESTATES
Preliminary Plat Application
Shoreline Substantial Development Permit

Location: West side of 436th Avenue SE, North Bend

Applicant: Anton Kusak
represented by **Thomas Barghausen**

[REDACTED]
Kent, WA 98032
[REDACTED]

King County: Department of Local Services
represented by **Kimberly Claussen**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0329
Email: kimberly.claussen@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Anton Kusak (Applicant) proposes to subdivide approximately 55.08 acres into 11 single-family detached dwelling unit lots. The project, which abuts the Snoqualmie River (River), requires a shoreline permit. At the end of our well-attended July 30 public

hearing, we kept the record open for the Applicant and others to address several items. Having closed the record on October 28, and after hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we approve (and condition) the preliminary plat and the shoreline permit.

2. We start with general information addressing the various issues we and hearing participants raised: access across the plat, density, drinking water, the floodplain, and the shoreline permit. Except as modified below, we find the facts set forth in the Department of Local Services, Permitting Division (Department) report and testimony correct, and we incorporate them by reference. Ex. 2.
3. General Information:

Applicant:	Kusak Tree Farm LLC 3910 46th Avenue South Seattle WA 98118
Engineer:	Barghausen Consulting Engineers 18215 72nd Avenue South Kent, WA 98032 (425) 251-6222
STR:	15-23-08 and 22-23-08
Location:	West of 436th Ave SE, north of the South Fork of the Snoqualmie River, and south of I-90 and of the former Cascade Golf Course
Parcels:	1523089018, 2223089002, 2223089019, 2223089026, 2223089055
Zoning:	RA-2.5, with a small portion RA-5 SO
Acreage:	55.08 acres
Number of Lots:	11
Density:	1 unit per 5 acres
Lot Size:	Approximately 1-2.36 acres
Proposed Use:	Single Family Detached Dwellings
Waterbody:	Snoqualmie River
Shoreline Environment:	Conservancy
Shoreline of Statewide Significance:	Yes
Sewage Disposal:	Individual on-site septic
Water Supply:	Sallal Water Association
Fire District:	Eastside Fire & Rescue
School District:	Snoqualmie Valley School District
Community Service Area:	Snoqualmie Valley/NE King County
Complete Application Filed:	February 23, 2018
Date Determined Complete:	March 3, 2018

Access Across the Plat

4. At hearing, Amy McGhee and Robert Yerkes testified to using the pre-existing road/path at the top of the bank/levy to reach, and walk alongside, the River; they wanted to continue doing this. This was followed up by the City of North Bend and the Si View Metropolitan Park District formally requesting that we require the Applicant to dedicate: a track for the general public along the River, and to improve this as a trail; a pedestrian trail between the Cascade golf course and the River; and a utility easement within this pedestrian trail.
5. Comp Plan policy S-305 states that the County shall
require public access to shorelines of the state for water-enjoyment, water-related, and nonwater-dependent non-residential uses and for subdivisions of land into more than four parcels unless:
 - a. The development proposal is not compatible with public access;
 - b. There is a safety or security concern;
 - c. Inclusion of public access will have an environmental impact that cannot be mitigated; or
 - d. There are legal limitations on allowing public access.
6. Similarly, KCC 21A.25.140 requires that:
 - A. Except as otherwise provided in subsection B. of this section, public access shall be required for: ... 2. New subdivisions of more than four lots; ...
 - B. Public access shall:
 1. Connect to other public and private public access and recreation facilities on adjacent parcels to the maximum extent practical;
 2. Be sited to ensure public safety is considered; and
 3. Be open to the general public;
 - C. Public access is not required if the applicant demonstrates to the satisfaction of the department that public access would be incompatible with the proposed use because of safety or security issues, would result in adverse impacts to the shoreline environment that cannot be mitigated or there are constitutional or other legal limitations that preclude requiring public access.

7. In her decision on the *Starwater* plat and shoreline application, Examiner Moss adeptly walked through those and other provisions of the shoreline code, zoning code, shoreline master program, and the WAC. Applying the canons of statutory construction, she illuminated why public access to or along a shoreline is *not* a necessary plat requirement.¹
8. To her *tour de force* we add that both the policy and code clarify that public access to shorelines is not required where there are “legal limitations on allowing public access,” or “constitutional or other legal limitations that preclude requiring public access.” S-305(e); KCC 21A.25.140.C.
9. No local government may impose any tax, fee, or charge, either direct or indirect, on the subdivision of land, except where “reasonably necessary as a *direct result* of the proposed development or plat to which the dedication of land or easement is to apply.” RCW 82.02.020 (italics added). This “reasonably necessary” requirement incorporates the nexus and rough proportionality takings tests articulated in *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). *Common Sense Alliance v. Growth Management Hearings Bd.*, 189 Wn. App. 1026 (2015) (unpublished).
10. In *Nollan*, the owner applied to replace a bungalow with a three-story home. The commission attempted to condition approval on the owner dedicating a public easement along his beachfront. The Court observed that requiring the owner to mitigate for the view blockage his higher building would create (such as by providing some sort of replacement viewing area) would likely have been acceptable. However, the Court held that requiring an easement for the public to walk along the beachfront lacked the necessary essential nexus to save it from being extortionate. 483 U.S. at 835–37.
11. In *Dolan*, the owner applied to double the size of her existing store and to pave a large parking lot. The city required, among other items, that the owner dedicate a public pedestrian/bicycle pathway across her property. The Court determined that the city had not shown that dedicating a public path was roughly proportionate to the development’s impact. The Court found the easement requirement an unconstitutional exaction. 512 U.S. at 395.
12. We do not doubt that the District, City, and neighbors want and need an easement to get from the golf course to the River and to run water between the golf course and the River. But they do not have that now, and there is nothing in the record showing how the proposed development is creating that need. A jurisdiction can require a subdivision to dedicate an easement only where the jurisdiction demonstrates that the easement is “reasonably necessary as a *direct result of the proposed development or plat* to which the dedication of land or easement is to apply.” RCW 82.02.020.
13. Having a public pathway parallel to the River may be in the District’s, City’s and general public’s interest, but *Dolan* rejected that as insufficient. There the:

¹ See https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/preliminary-plats/2014/PLAT130002_SHOR130017_Starwater.ashx?la=en at ¶¶15-32.

city stated that omitting the planned section of the pathway across petitioner’s property would conflict with its adopted policy of providing a continuous pathway system. But the Takings Clause requires the city to implement its policy by condemnation unless the required relationship between petitioner’s development and [impacts] is shown.

512 U.S. at 395 n.10.

14. Similarly, in *Nollan*, the commission argued that requiring public access along the beach was “part of a comprehensive program to provide continuous public access along” that stretch of beach. The Court characterized this as:

simply an expression of the Commission’s belief that the public interest will be served by a continuous strip of publicly accessible beach along the coast. The Commission may well be right that it is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization.... [If California] wants an easement across the Nollans’ property, it must pay for it.

483 U.S. at 841–42.

15. To the extent our facts differ from *Nollan* or *Dolan*, those distinctions cut against the requested exaction here.
- In *Dolan*, the city had previously adopted a detailed plan that required dedicating a pedestrian/bicycle pathway along the applicant’s and other similarly-situated properties. 512 U.S. at 378. In *Nollan*, the commission had previously required the same public easements across most of the adjacent parcels. 483 U.S. at 829. Neither of those were enough to save the exactions. Here, the permitting jurisdiction—the County—clarified at hearing that the Applicant’s property is *not* part of any dedicated corridor or regional trail and that the County has no easement plan in this vicinity. *See also* Exs. 26 & 27.
 - In *Dolan*, the city made findings about increased traffic and other impacts from the proposed project. 512 U.S. at 395. In *Nollan*, the commission made factual findings about the impacts from Nollan’s use of the shoreline. 483 U.S. at 828–29. Those were not enough to save either exaction. Our record lacks evidence showing how the plat proposal is creating the identified need.
 - In *Dolan* and *Nollan*, the permitting agency was the one seeking the exaction. Here, the subject property sits entirely in an unincorporated area, making the Department the appropriate permitting agency. With no interlocal agreement, the Department and the examiner (and potentially the Council) must apply County requirements, not City or District requirements. And the County is not asserting that an exaction would be appropriate here—the Department expressly disclaimed this at hearing.

16. There is one twist as it relates to the pathway paralleling the River. As noted above, witnesses testified to their (and the general public's) long-standing use of the levee trail along the River edge of the subject property. When we walked the trail immediately after the hearing, we were not alone—members of the public were using it to walk along the River, and then to walk from the trail down a well-worn path to the water. It bore the hallmarks of a classic prescriptive easement.² Thus unlike the perpendicular—and aspirational—golf course-to-River pedestrian or flowage easement, there may *already* be a public access easement running parallel to the River.
17. That could impact our decision today if, for example, the Applicant were proposing to develop the levee area or to cut off access. However, the Applicant is not proposing construction in the levee trail vicinity. The Applicant is not proposing to block off a pre-existing public access or to otherwise interfere with any such passage. The Applicant is proposing a north-south walking path (perpendicular to the River) for plat residents that will meet up with the pre-existing east-west river trail (parallel to the River), but that is not inconsistent with the existing river trail or prescriptive easement, and it does not impact the public's (putative) right to traverse along the River's bank. Any such rights will remain in the post-plat scenario just as they are today.
18. That does not mean it is in anyone's interest to simply let the situation languish until, for example, a future lot owner gets upset and tries to block off public access along the riverbank, prompting an expensive court fight. As Ken Konigsmark, the Mountains-to-Sound-Greenway representative who testified at the hearing noted, it is a “nightmare” to try to work with a homeowners' association on something like a trails easement. Negotiation seems a wise option to avoid uncertainty and a costly future fight, and a trail easement can provide an owner with up to 90% off its property tax bill. KCC 20.36.100.B.4 & C.6, .160. However, that is not something we can order in today's decision.

Density

19. North Bend submitted concerns about large lot development surrounding their city. Ex. 22. However, there is no interlocal agreement between North Bend and the County that would allow the Department—or examiner—to apply a standard other than the County's. If Three Rivers meets the County's zoning requirements, that is the definitive word.
20. We raised two-density related, KCC-specific concerns at hearing, concerns we left the record open for the Applicant to address.
21. First, the County allows—even encourages—developers to cluster lots, leaving larger swaths of undeveloped land for critical area and other beneficial uses. Here, for example

² *Gamboa v. Clark*, 183 Wn.2d 38, 43, 348 P.3d 1214 (2015) (elements of a prescriptive easement are using another's land for ten years in a manner: (1) open and notorious; (2) continuous or uninterrupted; (3) over a uniform route; (4) adverse to the landowner; and (5) with the knowledge of such owner at a time when he was able in law to assert and enforce his rights).

the homesites only encompass a third of the total plat acreage. However, residential lot clustering in the RA zone is limited to eight lots under 2.5 acres. KCC 21A.14.040.B.1. We pointed out at hearing that, as the plat was then laid out, all eleven of the lots were under 2.5 acres. The Applicant has since reconfigured the plat, slightly increasing the size of lots 9-11 and leaving only lots 1-8 under 2.5 acres. Ex. 36B.

22. Second, most of the site is zoned RA-2.5. (Despite the moniker “2.5,” which would seem to indicate one home per 2.5 acres, the base density in the RA-2.5 zone is actually one home per five acres. KCC 21A.12.030.A.) However, an approximately one-acre portion at the western edge of the site is zoned RA-5 (i.e., a base density of one home per 10 acres). Given the reduced zoning on that portion, our concern was that a site only a hair over 55 acres could only legally support 10 lots. In its post-hearing submittal, the Applicant satisfactorily explained that treating the one-acre area as only half an acre (because RA-5 can only support half the density of RA-2.5) still yields a functional 54.58-acre, RA-2.5 site. This rounds up to 55 acres, thus supporting 11 dwelling units. Ex. 36 at 2; Ex. 36D.

Drinking Water

23. A hearing participant questioned the adequacy of the Applicant’s 2017 water certificate. Ex. 18. The Applicant has supplemented the record with an August 2019 certificate of water availability from the Sallal Water Association. The Applicant has satisfied the requirement of making appropriate provisions for potable water supplies. Ex. 36C; RCW 58.17.110(2).

Floodplain

24. There was testimony, primarily from Dr. Ed McCarthy, about the River’s 100-year floodplain. He explained that the boundaries he found on the ground were different from those shown on the federal insurance rate map. He discussed various processes the applicant could use try to get some sort of amendment or revision. We wanted to nail down exactly what the Applicant is applying for from the feds, and what happens to the plat if the feds turn down that application. We kept the record open.
25. The Applicant provided a supplementary condition explaining “next steps” and what happens if those next steps fail. The Department tweaked the amended condition further. As reflected in plat condition 12 below, the current proposal is sufficient.

Shoreline Substantial Development Permit

27. The Department’s staff report does a thorough job analyzing the shoreline issue and why a shoreline substantial development permit (SSDP) is warranted. Ex. 2 at 4-8. We adopt that analysis, providing only highlights here. The Department required the Applicant to revise its proposal, modifying what had originally been extensive shoreline jurisdiction development. Most of the revised, proposed improvements are now outside the shoreline jurisdiction.

28. The remaining shoreline-related improvements will consist of some fill within the floodplain for the access road and for the required 436th Avenue SE frontage improvements and a soft-surface pedestrian trail for plat residents to access the River.³ The Applicant will mitigate impacts to critical areas buffers by enhancing other buffers on the site, will provide compensatory flood storage mitigation for the added fill, and will protect additional forested area within the shoreline jurisdiction.

Summation

29. This preliminary plat, as conditioned below, conforms to the applicable land use controls. The development type and overall density are specifically permitted under the RA-2.5 and SO RA-5 zones. 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.
30. Provided the required conditions are met, the project will comply with the Shoreline Management Act and with the King County Shoreline Master Program, and it will not result in a net loss of shoreline ecological processes and functions. We approve the shoreline permit.

DECISION:

Preliminary Plat

We approve the Three Rivers Estates preliminary plat, as revised September 3, 2019, Ex. 36B, subject to the following conditions:

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 applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location and fire flow standards of KCC chapter 17.08 KCC.
4. The plat shall comply with the density requirements of the RA-2.5 and RA-5 SO zone classification. All lots shall be the larger of the minimum dimensional requirements of the RA-2.5 and RA-5 SO zone classification or those shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the Permitting Division's discretion.

³ A pedestrian path to the shoreline for plat residents is a requirement of KCC 21A.25.230.D. The frontage requirements come from a variety of sources.

5. Any/all plat boundary discrepancies shall be resolved to the Permitting Division's satisfaction prior to the submittal of engineering plans. 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. Note this may result in the reconfiguration and/or loss of lot(s).
6. All construction and upgrading of public and private roads shall be done in accordance with the 2016 King County Road Design and Construction Standards (KCRDCS), established and adopted by Ordinance No. 18420, as amended.
7. Sprinklers: any future residences are required to be equipped with fire sprinklers per NFPA 13D, unless the requirement is modified or removed by the King County Fire Marshal or designee. The Fire Code requires all portions of the exterior walls of the structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20-foot wide, unobstructed driving surface. To qualify for removal of the sprinkler requirement, the driving surface of the new roadway must be a minimum of 28 feet in width (if parking is allowed on one side of the roadway) and at least 36 feet in width (if parking is permitted on both sides).
8. Final plat approval shall require full compliance with the drainage provisions set forth in KCC chapter 9.04. Compliance may result in a reduction of the number and/or reconfiguration of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC chapter 9.04 and the 2016 King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
 - A. Drainage plans and analysis shall comply with the 2016 KCSWDM and applicable updates adopted by King County. Permitting Division approval of the drainage and roadway plans is required prior to any construction.
 - B. Current standard plan notes and ESC notes, as established by Permitting Division, 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 Permitting Division and/or King County Road Services Division. 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 dispersion systems, the systems shall be constructed at the

time of the building permit and shall comply with the plans on file.

9. The drainage facilities shall meet the requirements of the 2016 KCSWDM.
10. The site is subject to the Conservation flow Control and Basic Water Quality Requirements of the 2016 KCSWDM.
11. Proposed infiltration facilities shall meet the Groundwater Protection Requirements per Section 5.2.1 of the 2016 KCSWDM. Proposed water quality treatment facilities shall meet the Facility Liners requirements per Section 6.2.4 of the 2016 KCSWDM.
12. Floodplain issues:
 - A. The 100-year floodplain for the Snoqualmie River, as determined by the Minor Floodplain Study by Ed McCarthy, Inc., dated December 26, 2018, revised flood certification (dated June 13, 2019) shall be shown on the engineering plans and final plat per Special Requirement 2 of the 2016 KCSWDM.
 - B. Prior to engineering approval, the applicant shall submit a Letter of Map Amendment (LOMA) to FEMA for the subject property. The objective of the LOMA will be to remove areas from the flood zone of the Flood Insurance Rate Map (FIRM) that were inadvertently mapped as flood hazard areas. The full package submitted to FEMA must also be submitted to King County Permitting Division for reference. Any floodplain development proposal or proposal to place fill within the remaining flood hazard area must, prior to engineering approval, comply with the County's flood hazard development requirements described in KCC Title 21A.
 - C. In the event the LOMA is not approved by FEMA prior to the submittal of individual building permit applications, subsequent building permit applications shall be designed to account for flood hazard areas. Any floodplain development proposal or proposal to place fill within a flood hazard area shall comply with the County's flood hazard development requires described in KCC Title 21A.
13. To implement the Required Best Management Practices (BMPs) 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 Section 1.2.9 of the 2016 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plan shall include all required covenants, easements, notes and other details to implement the required BMPs for site development.

The required BMPs shall also be shown on the individual residential building permit applications upon submittal of the permits. The individual building permit applications

shall also include the required covenants, easements, notes and other details to implement the BMP design.

14. The following road improvements are required to be constructed according to the 2016 KCRDCS:
 - A. Road A shall be improved at a minimum to the rural minor access standard.
 - B. All conditions and requirements for road variance (VARR19-0001) shall be met prior to approval of engineering plans.
 - C. Frontage Improvements: A minimum six-foot paved shoulder shall be provided on 436th Ave SE.
 - D. Notes regarding ownership and maintenance of the Road A/Tract D shall be shown on the engineering plans and final recorded plat.
 - E. There shall be no direct access to or from 436th Avenue SE. Note(s) to this affect shall be shown on the engineering plans and final plat.
 - F. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.12 of the KCRDCS.
15. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
16. Lots within this subdivision are subject to KCC chapter 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 50% of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
17. The proposed subdivision shall comply with the Critical Areas code, as outlined in KCC chapter 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 completed.
18. 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. Aquatic areas on site shall be protected from future clearing, grading, and construction with adjacent upland buffers. The South Fork Snoqualmie River Type S Aquatic Area shall be protected with a 165-foot buffer.

- B. A small area of the aquatic area buffer will be permanently impacted for construction of a three-foot, soft-surface pedestrian trail providing plat residents access to the River. Compensatory mitigation will be required through buffer enhancement elsewhere on the site. A final mitigation plan will be required for review and approval by Permitting Division environmental scientist staff concurrent with engineering plan review. A financial guarantee may also be required prior to approval of the mitigation and engineering plans.
- C. Elk in their historic range are identified as a species of local importance in the County Comprehensive Plan. Active breeding sites for species of local importance are specifically protected from development. Elk use this site, and site contains an active breeding site. An Elk Management Plan has been provided by the applicant and approved by Washington Department of Fish and Wildlife. The elk breeding site has been identified and protected within a Wildlife Habitat Conservation Area.
- D. Critical area tract(s) shall be used to delineate and protect these critical areas and buffers in development proposals for subdivisions and shall be recorded on all documents of title of record for all affected lots.
- E. A 15-foot building set back line (BSBL) shall be established from the edge of buffer and/or the critical area tract(s) and shown on all affected lots.
- F. Prior to commencing construction activities on the site, the applicant shall temporarily mark critical area tract(s) within 50 feet of proposed development activities in a highly visible manner, and these areas must remain so marked until all development proposal activities near the critical areas are completed.
- G. Prior to final approval of construction activities on the site, the boundary between the critical area tract(s) and adjacent land shall be identified using permanent signs. Sign specifications shall be shown on the final engineering plans and shall be installed every 150 feet or as deemed appropriate by Permitting Division environmental scientist staff at the time of engineering plan review.
- H. During engineering review, the plan set shall be routed to Permitting Division Critical Areas staff to determine if the above conditions have been met.
- 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 Permitting Division 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 near the critical area are completed.

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

- J. Compensatory storage shall be provided for fill within floodplain (Road A/Tract D) in accordance with King County Code 21A.24. Details of fill and mitigation/compensatory storage shall be reviewed and approved by Permitting Division critical area staff prior to engineering plan approval.
19. A homeowners' association or other workable organization shall be established, to the Permitting Division's satisfaction, to provide ownership and continued maintenance of the open space tract(s) and critical area tract(s). Notes shall be shown on the engineering plans and final plat.
20. The plat shall demonstrate compliance with the shoreline permit conditions of approval (file no. SHOR18-0001).
21. Inadvertent Discovery Plan: If any employee, contractor, subcontractor, etc. believes cultural resources and/or human remains have been uncovered at any point in the project, all work in the area must stop and location secured (see chapter 27.44 RCW). The appropriate agencies and authorities (i.e. archaeological consultant, Washington State Dept. of Archeology and Historic Preservation, King County Medical Examiner, King County Sheriff) must be consulted. Work may not resume until all agencies

involved have reviewed, made final determination(s), and approval to resume work has been granted.

Shoreline Substantial Development Permit

We approve the shoreline substantial development permit, SSDP SHOR18-0001, revised and received January 18, 2019, subject to the following conditions:

1. Nothing in this permit excuses 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 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 shoreline master program and the Shoreline Management 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 of Ecology, 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 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 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 final approval of the plat.
 - v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired, 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 in writing of any change to the effective date of a permit, as authorized by this section, 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 section shall require a new permit application.
5. Any substantive changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.
6. Conditions of King County Preliminary Plat (file no. PLAT18-0001) shall be considered conditions of this SSDP.
7. Minor modifications resulting from implementing conditions of the preliminary plat permit may be allowed provided they are within the scope and intent of this permit and no substantial adverse environmental impact or net loss of shoreline ecological functions will be caused by the project revision. Any subsequent changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-27-100.

8. Erosion controls and BMPs consistent with the KCSWDM and the Regional Road Maintenance ESA Program Guidelines shall be implemented and maintained to prevent uncontrolled discharge of concrete, cement, water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
9. The applicant shall control erosion of disturbed areas by implementing BMPs as approved for PLAT18-0001.
10. All man-made debris from the project within the construction zone shall be removed and disposed of at a location licensed for such disposal.
11. A copy of the approved shoreline plans shall be kept on-site at all times during construction.
12. Compensatory mitigation for adverse impacts to shoreline ecological functions is required. Compensatory flood storage will be provided for filling within shoreline jurisdiction associated with road improvements. Mitigation will also be required for permanent impacts from the proposed internal soft-surface pedestrian trail crossing shoreline jurisdiction. This mitigation can occur through protecting additional forested area within shoreline jurisdiction.
13. This permit may be rescinded pursuant to the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.

DATED November 15, 2019.



David Spohr
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Preliminary Plat

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

Prior to the close of business (4:30 p.m.) on *December 9, 2019*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal

statement must be delivered to the Clerk of the Council’s Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *December 9, 2019*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *December 9, 2019*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

Shoreline Substantial Development Permit

The permit decision may be appealed to the State Shorelines Hearings Board. Requests for review are governed by RCW 90.58.180 and Chapter 461-08 WAC. More detailed information on appeal procedures may be obtained from the Shorelines Hearings Board at (360) 664-9160 or at <http://www.eho.wa.gov/>.

MINUTES OF THE JULY 30, 2019, HEARING ON PRELIMINARY PLAT APPLICATION THREE RIVERS ESTATES, DEPARTMENT OF LOCAL SERVICES FILE NOS. PLAT180001 AND SHOR180001, PROPOSED ORDINANCE NO. 2019-0306

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Thomas Barghausen, Jamie Burrell, Laura Casey, Kimberly Claussen, Ken Konigsmark, Julie Lewis, Dr. McCarthy, Amy McGhee, Travis Stombaugh, Gary Talkington, and Robert Yerkes.

The following exhibits were offered and entered into the hearing record on July 30, 2019:

- | | |
|---------------|---|
| Exhibit no. 1 | Department of Local Services file no. PLAT180001 and SHOR180001 |
| Exhibit no. 2 | Preliminary department report, transmitted to the Examiner on July 16, 2019 |
| Exhibit no. 3 | Land use permit application, received February 13, 2018 |
| Exhibit no. 4 | State Environmental Policy Act (SEPA) checklist, submitted January 17, 2019 |
| Exhibit no. 5 | SEPA determination of non-significance, issued May 6, 2019 |
| Exhibit no. 6 | <ul style="list-style-type: none"> A. Affidavit of posting notice of plat application, posted on March 9, 2018 (NOA) B. Affidavit of posting notice of plat application, posted on May 2, 2019 (SEPA) C. Affidavit of posting notice of plat application, posted on July 2, 2019 (NOH) |
| Exhibit no. 7 | Revised Plan, received January 17, 2019 |

- Exhibit no. 8 Map, Accessor, by Barghausen Consulting Engineers, received February 13, 2018
- Exhibit no. 9 Revised Preliminary TIR, by Barghausen Consulting Engineers, dated January 9, 2019
- Exhibit no. 10 Geotechnical report, by Earth Solutions NW, dated January 3, 2018
- Exhibit no. 11 Critical Areas Designations
- Exhibit no. 12 Revised Zero-rise Floodplain Study, by Ed McCarthy, dated December 26, 2018
- Exhibit no. 13 Revised Flood Certificate, received June 13, 2019
- Exhibit no. 14 Wildlife Habitat and Elk Management Plan, by Wetland Resources, dated December 17, 2019
- Exhibit no. 15 Letter, Washington Department of Fish and Wildlife, dated December 19, 2018
- Exhibit no. 16 Revised SSDP Shoreline questionnaire, received January 17, 2019
- Exhibit no. 17 Revised SSDP memo (BCE), dated January 9, 2019
- Exhibit no. 18 Certificate of water availability, by Sallal Water Association, dated February 13, 2018
- Exhibit no. 19 Preliminary Health Approval, dated April 3, 2018
- Exhibit no. 20 Road Variance decision, dated March 11, 2019
- Exhibit no. 21 School and Walkway, by Barghausen Consulting Engineers, received January 26, 2018
- Exhibit no. 22 E-mail, City of North Bend, received May 29, 2019
- Exhibit no. 23 E-mail, Si View Park District (with attachments), dated May 20, 2019
- Exhibit no. 24 E-mail, Snoqualmie Tribe, by J. Lewis, received May 30, 2019
- Exhibit no. 25 E-mail, from Mountaineers, received July 26, 2019
- Exhibit no. 26 Regional Trail Needs Report, 2016
- Exhibit no. 27 Revised King County Open Space Plan, Figures 2 and 9, 2016
- Exhibit no. 28 King County Code 21A.14.230 Trail Corridors applicability
- Exhibit no. 29 Revised Condition #7
- Exhibit no. 30 Revised Condition #12, by Thomas Barghausen, received July 30, 2019
- Exhibit no. 31 Proposed Trails and Paths, submitted by Jamie Burrell, received July 30, 2019
- Exhibit no. 32 Letter from Mountains Sound Greenway, submitted by Ken Konigsmark, received July 30, 2019
- Exhibit no. 33 E-mail, received by Kim Claussen, received July 30, 2019
- Exhibit no. 34 Letter, from Director of the City of Si View Metropolitan Park District, received August 15, 2019
- Exhibit no. 35 Letter, from the Mayor of the City of North Bend, received August 14, 2019

The following exhibits were offered and entered into the hearing record on October 28, 2019:

- Exhibit no. 36 Applicant: Cover Letter to the Department, including:
- A. Notice from the Hearing Examiner, sent August 21, 2019
 - B. Revised plat map

- C. Non-conditional Water Availability Certificate by Sallal Water Association, dated August 26, 2019
 - D. Spreadsheet “Three Rivers Dwelling Unit Calculation” to justify 11 clustered lots
 - E. Three Rivers Proposed Substitute Condition 12
- Department: E-mail, response to Notice of Supplementary Materials
Applicant: Letter, response to North Bend and Metropolitan Parks

Exhibit no. 37

Exhibit no. 38

DS/jo

November 15, 2019

**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

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file nos. **PLAT180001 and SHOR180001**
Proposed ordinance no.: **2019-0306**

THREE RIVERS ESTATES
Preliminary Plat Application
Shoreline Substantial Development Permit

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 November 15, 2019.



Jessica Oscoy
Legislative Secretary

Barghausen, Thomas

Barghausen Consulting Engineers
Hardcopy

Bottheim, Steve

Department of Local Services

Burrell, Jamie

City of North Bend
Hardcopy

Carlson, Joanne

Department of Local Services

Casey, Laura

Department of Local Services

Claussen, Kimberly

Department of Local Services

Edwards, Olympia & David

Hardcopy

Eichelsdoerfer, Robert

Department of Local Services

Goll, Shirley

Department of Local Services

Grochala, Lynn

Hardcopy

Konigsmark, Ken

Hardcopy

Kusak, Anton

Kusak Family Tree Farms LLC
Hardcopy

Lewis, Julie

Snoqualmie Tribe Enviro and Natural Resources Dept
Hardcopy

Lynn, Curtis

Hardcopy

McCarthy, Edward

Hardcopy

McGhee, Amy

Hardcopy

Melissa Grant, Mark West

Hardcopy

Mullen-Moses, Steven

Snoqualmie Tribe Enviro and Natural Resources Dept
Hardcopy

Newman, George

Barghausen Consulting Engineers
Hardcopy

Parsons, Ronal

Peterson, Ty

Department of Local Services

Roberge, Steve

Department of Local Services

Smith, Kerry

Stombaugh, Travis

Si View Metropolitan Park District
Hardcopy

Talkington, Gary

Barghausen Consulting Engineers
Hardcopy

Yerkes, Robert

Hardcopy