

June 30, 2020

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

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**REPORT AND DECISION**

SUBJECT: Department of Local Services file no. **PLAT180009**  
Proposed ordinance no.: **2020-0082**

**SAMMAMISH 18TH ASSEMBLAGE**

Preliminary Plat Application

Location: East of 244th Avenue NE, Sammamish

Applicant: Toll Brothers, Inc  
*represented by* **Clara Park**  
Millennium Tower  
719 Second Avenue Suite 1150  
Seattle, WA 98104-1728  
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King County: Department of Local Services  
*represented by* **Kimberly Claussen**  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to conditions
Examiner's Decision:	Approve subject to conditions

## EXAMINER PROCEEDINGS:

Hearing Opened:	June 9, 2020
Hearing Closed: (Record Left Open for Additional Submittals)	June 9, 2020
Record Closed:	June 16, 2020

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.

## MOTION TO RESCHEDULE:

1. The May 13, 2020 Pre-Hearing Order and Notice of Video/Telephone Hearing (PHO) permitted Patrick Husting to file a motion for a continuance to address his contention that he required two transportation studies that may be in King County Archives to prepare for the hearing in this matter. Archives currently cannot retrieve the studies due to the coronavirus pandemic. Mr. Husting timely filed a motion and supporting declaration. Ms. Claussen, representing the Department of Local Services (Department), timely filed an email response. Through its attorneys, Clara Park and Jay Derr, the Applicant timely filed a response and supporting declaration.
2. Mr. Husting's motion advanced two contentions: (1) none of the most recent 13 subdivisions approved for the area by King County, including the Sammamish 18<sup>th</sup> Assemblage (which had not been approved at the time of his motion), had looked at traffic impacts cumulatively or holistically; and (2) the Examiner should require an in-person hearing once such a hearing becomes permissible under the Governor's Executive Orders related to public safety during the pandemic. Motion to Cancel and Reschedule Hearing Date (Motion). The second issue was beyond the scope of the PHO and the Examiner did not consider it further.
3. By order dated May 28, 2020, the Examiner denied the Motion on both relevance and legal grounds.
4. The two transportation studies are not relevant for numerous reasons. First, the two plats, PLAT12-003 (Monarch Ridge) and PLAT17-003 (Monarch Place aka Atherton Plat), are now more than 7 years old. Applicant's Opposition to Motion. Significant improvements have been made to 244<sup>th</sup> Ave. NE since 2013. Declaration of Jeff Peterson in Support of Applicant's Opposition (Peterson Declaration). Traffic studies performed prior to 2013 obviously do not reflect these improvements; nor do they incorporate applications filed since 2013.

Second, it appears that no traffic study was submitted for the Monarch Place Plat. January 28, 2020 email from Jonathan Bibler to Patrick Husting (included in April 20, 2020 email string from Hearing Examiner's office to Hearing Examiner and parties). Third, the Applicant's revised Traffic Impact Analysis (TIA) included traffic from Monarch Ridge and Monarch Place as "pipeline projects." Peterson Declaration, Ex. B,

- p. 14. (The Revised the TIA is also included in the record as Ex. D9-A.) It evaluated the level of service and collision history at 10 intersections on 244<sup>th</sup> Ave. NE from NE 8<sup>th</sup> St. on the south to SR 202 on the north as well as the intersection of 242<sup>nd</sup> Ave. NE/NE 8<sup>th</sup> Street. Peterson Declaration, Ex. B.
5. The proposal will provide a pedestrian-only connection to the adjacent Woodhaven development located to the southeast of the project site. With this connection, a continuous walking route for students to/from the Rachel Carson elementary and Inglewood middle schools and the proposed project will be provided. Peterson Declaration, Ex. B, pp. 2 and 27-28.
  6. The proposal will improve the entering sight distance (ESD) at the 244<sup>th</sup> Ave. NE/NE 18<sup>th</sup> Street intersection. Peterson Declaration, Ex. B, p. 2.
  7. The Examiner took official notice of the fact that the responsible official issued a threshold Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) and that Mr. Husting did not appeal the DNS. Had there been an appeal, it would have been consolidated with the hearing on the merits, as required by KCC 20.44.120.B. Transportation, including transportation systems, vehicular traffic, parking, movement/circulation of people or goods, and traffic hazards, is an element of the environment which the responsible official must consider in issuing a threshold determination. WAC 197-11-440(2)(c). In issuing the DNS, the responsible official concluded that the preliminary plat would not generate significant adverse transportation impacts. WAC 197-11-340. The Examiner must give substantial weight to the responsible official's determination. RCW 43.21C.090; KCC 23.44.120.A.3.
  8. In order to approve a preliminary plat, the Examiner must find, among other things, that appropriate provisions are made for the public health, safety, and general welfare and for ... roads, alleys, other public ways, transit stops, ... sidewalks and other planning features that assure safe walking to conditions for students who only walk to and from school." RCW 58.17.110; KCC 20.22.180. Consequently, it is entirely appropriate for the Examiner to evaluate the proposal's impact on the transportation system and on pedestrian safety. It is also appropriate to consider whether the Applicant's transportation study took into account the trips that would be generated by previously approved subdivisions. Those issues are addressed in the findings and conclusion on the subdivision below. It is not necessary to have the two transportation studies at issue to make these determinations.

Therefore, the Motion to Reschedule is **DENIED**.

#### FINDINGS OF FACT:

1. Any Finding of Fact which is more properly considered a Conclusion of Law is adopted as a Conclusion of Law.

## Hearing Procedures:

1. The coronavirus pandemic has required significant changes to the Hearing Examiner's normal operating protocols and hearing procedures. The hearing in this matter was the first video hearing that the Hearing Examiner's office has conducted. To ensure adequate opportunity for public participation, we did numerous things differently than an in-person land use hearing:
  - A. In a typical in-person land use hearing, parties and interested persons may submit exhibits at the hearing. For a video hearing this was not possible. Therefore, in the PHO we established deadlines for parties to submit exhibits prior to the hearing, so that interested persons would have the opportunity to review them beforehand.<sup>1</sup> The parties were required to submit any exhibits they wished the Examiner to consider by May 26. The Examiner received 22 exhibits from the Department and 3 from the Applicant. Although rebuttal exhibits were permitted, the parties did not submit any. Members of the public were permitted to submit a written statement by June 5, 2020. This deadline gave members of the public 10 days to review the original exhibits and 3 days to review any rebuttal exhibits. The Examiner timely received and admitted one comment letter from a member of the public. Ex. P-1. The Hearing Examiner's Office posted all of the timely filed exhibits in a Dropbox as they were received.
  - B. We posted a recording of the prehearing conference in the Dropbox the day following the conference.
  - C. We confirmed with everyone calling into the prehearing conference that he or she has access to the ZOOM technology.
  - D. We prepared ZOOM Hearing Procedural Protocols which we provided to all parties of record. The Protocols clearly state that if an interested person has a strong interest in offering oral testimony, he or she may email the Hearing Examiner's office or call the hearing examiner's telephone number at least 3 days prior to the hearing date. While many interested persons complied with the deadline, we received several requests to testify up to the morning of the hearing. Because this is a new process for all, the Examiner permitted all persons wishing to testify the opportunity to testify.
  - E. We posted a recording of the hearing in the Dropbox the day following the hearing.
  - F. The Examiner left the record open for 3 business days after the close of the hearing to allow the Department to respond to questions regarding its plans to repair a slide that had occurred adjacent to 244<sup>th</sup> Ave. NE and for interested persons to submit written comments on issues that they heard or learned of at the hearing that they could not have addressed in written comments by June 5. At

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<sup>1</sup> For an in-person hearing, the means of reviewing the Department's exhibits would be to review the Department's files and/or file a public records request. The applicant's exhibits, other than those contained in the Department's files, such as technical studies, are not typically pre-filed and are not available for review prior to the hearing.

both the prehearing conference and the hearing itself, the Examiner emphasized the limited purpose of leaving the record open and that it did not provide an opportunity to submit late comments.

Overview:

1. The proposal is a 32-lot plat on 3 parcels totaling 5.41 acres in the urban area (Property). The Property is zoned R-4 and is within potential annexation area for the City of Sammamish. The Applicant seeks to exceed the base density of 22 dwelling units by utilizing 10 Transfer of Development Rights (TDRs). The proposed plat, thus, has an effective density of 6 units/acre. The maximum density in the R-4 zone is 8 units/acre. The maximum density can be achieved through use of density incentives or a combination of TDRs and density incentives. KCC 21A.12.030; testimony of Kim Claussen. The Department recommends approval, with conditions.
2. Neighbors submitted comments to the Department during its review of the application and actively participated at the June 9, 2020 ZOOM hearing, providing informed perspectives on density, wildlife displacement, school capacity, safe walking conditions for students who walk to school, pedestrian safety, transportation, and public safety issues. A selection of comments submitted to the Department during its review is contained in Ex. D-15. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the arguments and the relevant law, the Examiner approves the preliminary plat.
3. Except as modified herein, facts set forth in the Department's report to the Examiner, Ex. D-1, and in the testimony offered by the Department are found to be correct and are incorporated herein by reference. At the hearing in this matter, the Department corrected a reference in Ex. D-1, Section G. The reference to Woodbrook I & II in the discussion of recently developed plats should be Woodhaven I & II. Testimony of Kim Claussen.
4. The responsible official issued a threshold Determination of Non-Significance (DNS) on December 6, 2019. However, due to administrative errors, the responsible official withdrew and reissued the DNS on January 13, 2020. The responsible official received no comments. The DNS was not appealed. Ex. D-1; testimony of Kim Claussen.

TDRs/Density:

1. The main thrust of the Examiner's inquiry and a principal concern expressed in public comment is the use of TDRs to achieve greater than the base density allowed in the R-4 zone. Neighbors were concerned with impacts the additional 10 dwelling units might generate. The Examiner's concern was with the adequacy of the analysis of impacts provided in the Department's report. The proposed plat is a formal subdivision. For formal subdivisions, a receiving site may accept TDRs "only as authorized in a subarea

- study that includes a comprehensive analysis of the impacts of receiving development rights.” KCC 21A.37.030.C.2 (Emphasis added).
2. The Department’s report states that it constitutes the required subarea study for the use of TDRs. Ex. D-1, Section H.2. However, the report simply sets out 4 Growth Management Act (GMA) goals (goals 1, 2, 9 and 10 relating to encouraging urban growth in urban areas, reducing sprawl, retaining open space, enhancing recreational opportunities and conserving fish and wildlife habitat, and protecting the environment, respectively) and 1 Comprehensive Plan policy. It provides no definition or description of the subarea studied or a comprehensive analysis of the additional 10 lots.
  3. The Department’s analysis is virtually the same as that provided in its report on Stafford Meadows, PLAT18-0008. As the Examiner found in her Report and Decision on that preliminary plat and observed at the hearing in this matter, the analysis provided in the Department’s report does not constitute the required subarea study. The recitation of the cited GMA goals and Comprehensive Plan Policy would support the use of TDRs in any formal subdivision located in the urban area that complies with the King County Code, 2016 King County Surface Water Design Manual, and 2016 King County Road Design and Construction Standards and has the required water and sewer certificates of availability.
  4. At the hearing in this matter, staff explained that the Department had analyzed the impacts of the proposal and found that they were adequately mitigated by applicable regulations. Testimony of Kim Claussen. The Applicant took a similar approach. However, analysis of a project’s impacts is required for any project and cannot constitute the required subarea study. Had that been what the Metropolitan King County Council intended, it would not have adopted KCC 21A.37.030.C.2. It would simply have allowed use of TDRs without a subarea study, as it did for short subdivisions. KCC 21A.37.030.C.1.
  5. The Department’s report in and of itself does not constitute the required subarea study because it provides neither a description of the subarea purportedly studied nor a comprehensive analysis of the impacts of receiving development rights. However, after careful consideration of the full record developed during the hearing, the Examiner concludes that the record generally describes the relevant subarea and provides the required comprehensive analysis supporting use of TDRs to achieve an additional 10 dwelling units on the Property.
    - A. The average lot size in the proposed Sammamish 18<sup>th</sup> Assemblage preliminary plat, with TDRs, is approximately 4,673 ft.<sup>2</sup> Several of the recent or in-progress subdivisions in the area have similar average lot sizes. The average lot size within the Woodhaven I and II subdivisions is 4,520 ft.<sup>2</sup> The average lot size within the Mystic Lake subdivision is 4,163 ft.<sup>2</sup> Within the Monarch Ridge subdivision, it is 4,000-5,000 ft.<sup>2</sup> Ex. D-1; Testimony of Kim Claussen.

- B. The Updated Traffic Impact Analysis (TIA), Ex. D-9A, is quite comprehensive for a subdivision of this size. It analyzes 11 intersections, those identified by the City of Sammamish and the County for study. It includes 9 pipeline projects including approximately 350 single family homes. The pipeline projects include Canterbury Park (aka Mystic Lake, to the southwest of Sammamish 18<sup>th</sup> Assemblage), Monarch Ridge (to the south), Kensington Enclave (to the north across NE 18<sup>th</sup> Street) and Woodhaven I and II (to the south and southeast).
- C. Much of the public testimony focused on the number of homes contained in these newer subdivisions and the impacts, particularly traffic, that they would generate. Thus, it is reasonable to define the subarea as the area containing the Kensington Enclave subdivision to the north, the Woodhaven I and II and Monarch Ridge subdivisions to the south and southeast, and the Mystic Lake subdivision to the west.
- D. The grading plan for the preliminary plat would be the same whether it included 22 lots (the base density) or 32 lots (the density achieved with use of TDRs). Testimony of Maher Joudi.
- E. King County and the City of Sammamish have not entered into an Interlocal agreement for mitigation of impacts. Therefore, the County does not impose conditions beyond those required in its own regulations to mitigate impacts within the City. Testimony of Kim Claussen. However, the Applicant entered into an Impact Fee and Mitigation Agreement with the City. Ex. A-1. It provides for:
- i. Traffic and park impact fees for the 29 net new dwelling units.
  - ii. A pro rata share of the costs of a right-hand turn pocket, a City-planned improvement at 242<sup>nd</sup> Ave. NE/NE 8<sup>th</sup> Street, the entrance to Inglewood Middle School.
  - iii. Sight distance improvements and a northbound right-hand turn taper at the 244<sup>th</sup> Ave. NE/NE 18<sup>th</sup> Street intersection.
  - iv. A crosswalk across NE 18<sup>th</sup> Street at 244<sup>th</sup> Ave. NE.
  - v. A protected pedestrian pathway along the east shoulder up 244<sup>th</sup> Ave. NE to NE 16<sup>th</sup> Street.
- F. A southbound left turn pocket on 244<sup>th</sup> Ave. NE will be provided by the Kensington project. TENW performed the transportation analyses for both projects. The pocket is intended to address the impacts of the additional traffic from the Kensington and Sammamish 18<sup>th</sup> Assemblage subdivisions. Testimony of Jeff Schramm. At least one resident described nearly being “rear-ended” on southbound 244<sup>th</sup> Ave. NE as he tried to turn left (eastbound) onto NE 18<sup>th</sup>

Street. Testimony of Zak Middleton. The design of this improvement addresses both the hill Mr. Middleton described and the design speed on 244<sup>th</sup> Ave. NE. Testimony of Jeff Schramm. The incidents Mr. Middleton described obviously occurred prior to trips being generated by either the Kensington or Sammamish 18<sup>th</sup> Assemblage subdivisions. Therefore, this left turn pocket should increase safety compared to existing conditions.

G. The Applicant’s environmental consultant, Raedeke Associates, Inc., has reviewed critical areas and wildlife presence on properties in the area 15 times since 2017. Testimony of Kolten Koters.

6. Public comments submitted to the Department during its review of the proposal and during the hearing in this matter expressed displeasure with the location from which the Applicant obtained the TDRs and/or the appropriateness of use of TDRs at this location. Ex. D-15; testimony of Patrick Husting, Hal Howard, Scott Selby, Krista White, Christie Malchow, Karen Moran, and Glenn Grant.

#### Traffic:

1. The Property is located in the Snoqualmie Valley travelshed, which currently passes concurrency. Ex. D-1.
2. In addition to the improvements discussed above, the project proposes to construct a northbound right turn taper on 244<sup>th</sup> Ave. NE at NE 18<sup>th</sup> Street; regrade NE 18<sup>th</sup> Street to address the existing stopping sight distance deficiency at the proposed West Access Road intersection; and construct a split access median on NE 18<sup>th</sup> Street approaching 244<sup>th</sup> Ave. NE to satisfy fire access requirements.
3. Mr. Husting did not present any evidence or argument on cumulative traffic impacts at hearing.
4. Several members of the public commented about the impact of a slide on to 244<sup>th</sup> Ave. NE just south of SR 202. King County Road Services Division reports that design work for the slide repair will begin later this year (2020) with construction anticipated to occur in 2022. The repairs will be for the slope only; 244<sup>th</sup> Ave. NE will not be widened as part of this project. Ex. D-23. Based on this timing, the Applicant anticipates that the slope repairs will precede the occupancy of the majority of homes within the Project. Home construction will occur primarily in 2022-2023. Consequently, traffic from the new homes is not expected to occur until 2022-2023. Ex. A-4.

#### Schools/Safe Walking Conditions:

1. To approve a preliminary plat, the Examiner must find that appropriate provisions are made for sidewalks and other planning features that assure walking conditions for students who walk to and from school. RCW 58.17.110; KCC 20.22.180.A.



2. The Lake Washington School District has indicated that future students from this subdivision will have access to bus service to the Rachel Carson Elementary, Inglewood Middle, and Eastlake Senior High schools. Ex. D-1. An existing bus stop is located on 244<sup>th</sup> Ave. NE at NE 18<sup>th</sup> St. Ex. D-1. Northbound buses stop on the east side of 244<sup>th</sup> Ave. NE; southbound buses stop on the west side. The buses have stop sign paddles which are extended to stop traffic so that exiting and entering students may safely cross 244<sup>th</sup> Ave. NE. Testimony of Jeff Peterson.
3. The proposed subdivision is within 1 mile of the elementary and middle schools. Ex. D-1; testimony of Jeff Peterson. To address the possibility that elementary and middle school students will not be bused,<sup>2</sup> the Applicant analyzed walking routes to the schools. They are depicted on Ex. D-9A, p. 28. The School District Transportation Manager has reviewed the proposed walking route and indicated that it is sufficient. Testimony of Jeff Peterson.
4. Under its Impact Fee and Mitigation Agreement with the City of Sammamish, the Applicant will pay a proportionate share of the cost of a right-hand turn pocket improvement at 242<sup>nd</sup> Ave. NE/NE 8<sup>th</sup> Street, improving access to the Inglewood Middle School. Ex. A-1; testimony of Jeff Peterson.
5. The School District submitted a post-hearing comment letter expressing general concerns about “any proposal, like this proposal, that would provide for more intensive development than that currently planned.” Ex. P-4. It is unclear what the District means by intensity greater than that currently planned. As found above, the R-4 zone allows densities up to 8 units/acre. At 6 units/acre, the proposal is well within the permitted density. The Examiner acknowledges that the letter advises that the District expects the area’s schools to be at, or over, capacity in the near term. Mitigation of capacity impacts is addressed by the County’s per lot school impact fee, which must be used by the District to fund school system improvements to serve new development within the District. The 2020 school impact for the Lake Washington School District is \$13,633.00/lot. Ex. D-1.

#### Stormwater:

1. The project proposes to collect and convey stormwater runoff from the majority of the development to a stormwater facility located in the northwest portion of the Property. After treatment, flows will be routed to an underground infiltration vault that is designed to fully infiltrate the runoff. Stormwater from the backyard areas of Lots 13-18 cannot be collected and routed to the proposed stormwater facility. Stormwater from this area will continue to uniformly sheet flow to the east. Exs. D-1; D-8; D-12; testimony of Jeff Peterson and Maher Joudi.

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<sup>2</sup> This could occur for numerous reasons. The Examiner takes notice of the fact that school districts annually review bus routes and may adjust them. Further, as the Project is within the designated walking distance of the schools, the School District may choose not to bus students from this project. Students may also choose to walk.

**Wildlife:**

1. The August 2018 Wetland Reconnaissance Memo, Raedeke Associates, Inc., Ex. D-10, evaluated the presence of wetlands and streams on-site, the approximate location of any off-site wetlands or streams whose buffers may extend onto the Property, and the presence of any regulated Fish and Wildlife Habitat Conservation Areas that may be present in the vicinity of the project site. Raedeke did not identify any wetlands or streams on the project site. The wetland ecologist for the Department reviewed and concurred with Raedeke's findings. Ex. D-1; testimony of Jeff Peterson. During the site visit, the author did not observe any evidence of nesting within the site or vicinity by hawks, eagles, great blue heron, or other species of concern. The Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species database shows no mapped occurrences of endangered, threatened, sensitive, or other priority species or habitats on the site or in the vicinity. The author did note the presence of woodpecker foraging excavation of several trees and snags within the project site, but did not observe any nest or cavities suitable for nesting.
2. In response to concerns raised by neighbors, Raedeke reevaluated the site, Ex. D-10. The approximately 2.7-acre undeveloped portion of the project site does not meet the recommended urban/suburban habitat size threshold recommended by WDFW. The Property is bordered to the east, south and west by parcels that contain a similar composition of single-family residences and amenities which do not readily provide accessible habitat corridors. Mammals recorded on a local game camera, including bobcats, deer, coyote, and bear may forage or traverse through the project site but are not listed as endangered, threatened, sensitive, candidate or priority species by WDFW. Ex. D-10.
3. Several commenters requested a condition requiring a wildlife corridor. Ex. P-1; testimony of Patrick Husting and others. The surrounding properties are developed. Therefore, there is no logical location for a wildlife corridor. Testimony of Laura Casey.

**Tree Retention:**

1. The project includes a tree retention tract, Tract C. Ex. D-6. In addition, trees on the eastern portion of Lots 13-18 will be retained and protected through a mechanism such as an easement or notice on title. Ex. D-14, p. 8; testimony of Jeff Peterson and Maher Joudi.

**CONCLUSIONS OF LAW:**

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-4 zone.
2. Any of Conclusion of Law which is more properly considered a Finding of Fact is adopted as a Finding of Fact.

3. The Examiner does not have the authority to evaluate the merits of a TDR sending site, the permissible location of receiving sites (other than the KCC 21A.37.030.C.2 requirement for a subarea study for formal subdivisions), or the TDR program as a whole.
4. As conditioned below, the Sammamish 18<sup>th</sup> Assemblage proposed subdivision will conform to applicable land use requirements.
5. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated in RCW 58.17.110 and KCC 20.22.180, and will serve the public health, safety and welfare, and the public use and interest.
6. The conditions for final plat approval set forth below are reasonable requirements and in the public interest. The Examiner has wordsmithed a few of the conditions carried over from the Department's report as revised by Ex. D-22. She has made no substantive revisions or additions.

#### DECISION:

The preliminary plat Sammamish 18th Assemblage, 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.
  - A. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall be the larger of the minimum dimensional requirements of the R-4 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 discretion of the Permitting Division.
  - B. Any/all plat boundary discrepancy shall be resolved to the satisfaction of the Permitting Division 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.
  - C. The applicant shall provide the TDR certificate with the submittal of the engineering plans and the final plat. If the TDR certificate cannot be obtained, the applicant shall redesign the number of lots based upon the allowable density. This will result in the reconfiguration and loss of lots.

2. 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. 18420, as amended (2016 KCRDCS).
3. 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 (KCC).
  - A. Any future residences are required to be sprinklered unless otherwise approved by the King County Fire Marshal or designee.
4. Final plat approval shall require full compliance with the drainage provisions set forth in KCC ch. 9.04. Compliance may result in reducing the number and/or relocation of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC ch. 9.04 and the 2016 King County Surface Water Design Manual (2016 SWDM) must also be satisfied during engineering and final review.
  - A. Drainage plans and analysis shall comply with the 2016 SWDM 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 Engineering Review, shall be shown on the engineering plans.
  - C. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with the Permitting Division and/or the 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."
  - D. The drainage facilities shall meet the requirements of the 2016 SWDM. The site is subject to the Conservation Flow Control and Basic Water Quality Requirements of the 2016 SWDM.
  - E. Proposed drainage systems or improvements within 244<sup>th</sup> Ave. NE shall be subject to City of Sammamish review and approval prior to engineering plan approval.

- F. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and 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 SWDM. 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 BMPs for site development.

The required BMPs shall also be shown on the individual residential building permit applications upon submittal of the permit applications. The individual building permit applications shall also include the required covenants, easements, notes, and other details to implement the BMP design.

5. The proposed subdivision shall comply with the 2016 KCRDCS including the following requirements.
- A. Frontage: NE 18<sup>th</sup> St. shall be improved at a minimum to the urban subcollector street standard, including adequate right-of-way dedication for the improvements. The first 180 feet (approximately) of the NE 18<sup>th</sup> St. east of 244<sup>th</sup> Ave. NE shall be constructed as a widened boulevard entry. The boulevard section shall have a 20-foot eastbound traveled way and a 20-foot westbound traveled way, separated by an 8-foot wide median. NE 18<sup>th</sup> St. shall be re-graded and reconstructed to provide minimum stopping sight distance (SSD) per the 2016 KCRDCS.
- B. Frontage: The 244<sup>th</sup> Ave. NE frontage is located within the City of Sammamish. Right-of-Way dedication and frontage improvements, if any, along the east side of 244<sup>th</sup> Ave. NE Street which encompasses the frontage along Tract A and lots 1-4, shall be subject to the City of Sammamish review and approval prior to engineering plan approval.
- C. Internal roads, Roads A and B, shall be improved at a minimum to the urban subaccess street standard.
- D. Private Access Tracts (PAT) and Joint Use Driveway (JUD) tracts, if any, shall be improved to the PAT and/or JUD standard per sections 2.09 and 3.01 of the 2016 KCRDCS. Notes regarding ownership and maintenance of the private access tracts and/or joint use driveways shall be shown on the final plat.
- E. No direct access shall be allowed to 244<sup>th</sup> Ave. NE. Notes 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 provisions in Section 1.13 of the 2016 KCRDCS.

6. Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2016 KCRDCS.
7. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
8. Lots within this subdivision are subject to KCC ch. 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.
9. A homeowners' association (HOA) or other workable organization satisfactory to the Permitting Division shall be established and provide for the ownership and continued maintenance of the recreation and open space tract(s). An easement shall be provided to King County over the recreation tract for access and maintenance of the storm water facilities or as needed by the 2016 SWDM.
10. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 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 the Permitting Division and King County Parks prior to or concurrent with the submittal of engineering plans. The plans must include additional recreation facilities per KCC 21A.14.180E, and fencing and landscaping along the road perimeter to alleviate potential conflicts between users of the recreation and open space tract(s) and vehicles.
  - B. A performance bond for recreation space improvements shall be posted prior to recording the plat.
11. Street trees shall be provided as follows (per 2016 KCRDCS 5.03 and KCC 21A.16.050):
  - A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009-5-013 of the 2016 KCRDCS, unless King County Road Services Division determines that trees should not be located in the street right-of-way.

- C. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - D. The trees shall be owned and maintained by the abutting lot owners or the homeowner's association or other workable organization, unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the engineering plans and final recorded plat.
  - E. The species of trees shall be approved by the Permitting Division if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that are not compatible with overhead utility lines.
  - F. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by the Permitting Division prior to engineering plan approval.
  - G. The applicant shall contact Metro Transit Planning at (206) 553-3000 to determine if 244<sup>th</sup> Ave. NE is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
  - H. The street trees must be installed and inspected, or a performance bond posted, prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after Permitting Division has completed a second inspection and determined that the trees have been kept healthy and thriving.
12. To implement KCC 16.82.156, which applies to the site, a detailed significant tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of KCC 16.82.156 and shall include retention of trees on the eastern portion of Lots 13-18 as shown in Ex. D-14. No clearing of the subject property is permitted until the final tree retention plan is approved by the Permitting Division. Flagging and temporary fencing of trees to be retained shall be provided. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for permitted grading work.

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots (Lots 13-18) and HOA. (Note that the tree plan shall be included as part of the final engineering plans for the subject plat.)

13. Inadvertent Discovery Plan: If any employee, contractor, subcontractor, etc. believes cultural resource and/or human remains have been uncovered at any point in the project, all work in the area must stop and the location secured (see RCW ch. 27.44). The appropriate agencies and authorities (i.e. archaeological consultant, Washington State Dept. of Archeology and Historic Preservation, King County 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.

Other Considerations:

1. The subdivision shall conform to KCC ch. 16.82 relating to grading on private property.
2. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
3. Preliminary approval of this application does not limit the applicant's responsibility to obtain any required permit or license from the State or other regulatory body. This may include, but is not limited to the following.
  - A. Forest Practice Permit from the Washington State Department of Natural Resources.
  - B. National Pollutant Discharge Elimination System (NPDES) Permit from Washington State Department of Ecology (WSDOE).
  - C. Water Quality Modification Permit from WSDOE.
  - D. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.

DATED June 30, 2020.



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Alison Moss

King County Hearing Examiner *pro tem*

### **NOTICE OF RIGHT TO APPEAL**

A person appeals this Examiner decision 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 *July 24, 2020*, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto: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 *July 24, 2020*, the Examiner's decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *July 24, 2020*, the Examiner will notify all parties and interested persons and provide information about "next steps."

**MINUTES OF THE JUNE 9, 2020, HEARING IN THE APPEAL OF SAMMAMISH  
18TH ASSEMBLAGE, DEPARTMENT OF LOCAL SERVICES FILE NO.  
PLAT180009**

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Steve Bottheim, Laura Casey, Tess Christensen, Kimberly Claussen, Robert Eichelsdoerfer, Edward Eisele, Larry Herrick, Aaron Hollingbery, Hal Howard, Ben Hughes, Patrick and Jennifer Husting, Maher Joudi, Curtis Koger, Kolten Koters, Barbara Martin, Zak Middleton, Miki Mullor, Clara Park, Jeff Peterson, Jay Regenstreif, Jeff Schramm, Karthik Seetharaman, Scott Selby, James Sheeman, Wade Tiedeman, and Krista White. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

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

Exhibit no. D1	DLS Permitting Division Preliminary Report, dated June 9, 2020 w/attachments
Exhibit no. D2	Application, submitted September 25, 2018 ( <i>signed copy in main file</i> )
Exhibit no. D3	Environmental Checklist, received September 25, 2018
Exhibit no. D4	Declaration of Non-Significance (DNS), dated January 13, 2020
Exhibit no. D5	Affidavits of posting indicating December 6, 2018 NOA as date posted (reissue), January 8, 2020 SEPA as date posted (reissue), and May 14, 2020 NOH as date posted
Exhibit no. D6	Plan set (sheets 1-6) dated June 12, 2019, received June 24, 2019
Exhibit no. D7	Assessors maps - NW 26-25-06, NE 27-25-06
Exhibit no. D8	Preliminary TIR by DR Strong (revision), dated June 12, 2019
Exhibit no. D9	Traffic Impact Analysis (TIA) by TENW (revision) including school walkway and appendix F, dated June 6, 2019
Exhibit no. D10	Raedeker Assoc, Technical Memo (wetland recon), dated March 26, 2018 and Response Memo, dated March 1, 2019

Exhibit no. D11	Geotechnical Report AESI, dated September 24, 2018
Exhibit no. D12	Hydrological & Infiltration study by AESI, dated September 17, 2019
Exhibit no. D13	Transfer of Development Rights certificate #369, issued January 25, 2018
Exhibit no. D14	Tree Plan -WA Forestry Consultants, dated March 27, 2019
Exhibit no. D15	Neighborhood/Citizen comments ( <i>representative selection – Clark, Husting, Kroll, Tiedman, Clark</i> )
Exhibit no. D16	KC GIS zoning map (vicinity)
Exhibit no. D17	Residential Density Worksheet, dated June 19, 2019
Exhibit no. D18	Conceptual Recreation plan, dated November 26, 2019
Exhibit no. D19	Witness list
Exhibit no. D20	Certificate Water Availability Samm. Plateau Water & Sewer, September 25, 2018
Exhibit no. D21	Certificate Sewer Availability Samm. Plateau Water & Sewer, September 25, 2018
Exhibit no. D22	Revised condition 6a. Permitting Division DLS report & recommendations
Exhibit no. D23	Email from Kimberly Claussen, sent June 11, 2020

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

Exhibit no. A1	Impact Fee and Mitigation Agreement by and between Toll Bros., Inc. and City of Sammamish, January 9, 2020
Exhibit no. A2	Raedeke Associates, Inc., Response to City Comments, dated January 23, 2019
Exhibit no. A3	D.R. Strong, Plat Screening Transmittal, dated June 24, 2019
Exhibit no. A4	Response to additional comments, received June 16, 2020

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

Exhibit no. P1	Comment from Angie Robertson, received June 4, 2020
Exhibit no. P2	Letter from Lake Washington School District dated September 19, 2019, sent by Patrick Husting on June 9, 2020
Exhibit no. P3	Comment from Jill Corriveau, sent June 11, 2020
Exhibit no. P4	Letter from Bill Buck, sent June 11, 2020
Exhibit no. P5	Comment from Scott Martin, sent June 11, 2020
Exhibit no. P6	Comment from Heidi Eisenstein, sent June 11, 2020
Exhibit no. P7	Comment from Kim Middleton, sent June 12, 2020
Exhibit no. P8	Comment from Larry Herrick, sent June 12, 2020
Exhibit no. P9	Comment from Barbara Martin, sent June 12, 2020
Exhibit no. P10	Comment from Jennifer Husting, sent June 12, 2020
Exhibit no. P11	Comment from Christie Malchow, sent June 12, 2020

AM/JO

June 30, 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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services file no. **PLAT180009**  
Proposed ordinance no.: **2020-0082**

**SAMMAMISH 18TH ASSEMBLAGE**

Preliminary Plat Application

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 June 30, 2020.



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Jessica Oscoy  
Legislative Secretary

**Agsunod, Marilyn**

Hardcopy

**Amadio, Lou**

Hardcopy

**Bansal, Kimberly**

Hardcopy

**Behrens, Dave**

Hardcopy

**Bottheim, Steve**

Department of Local Services

**Boyden, Marilyn**

Hardcopy

**Buck, Brian**

**Casey, Laura**

Department of Local Services

**Christensen, Tess**

**Ciliberti, Molly**

Hardcopy

**Clark, Maureen/Todd**

Hardcopy

**Claussen, Kimberly**

Department of Local Services

**Corriveau, Jill**

**DeLappe, Scott / Teresa**

Hardcopy

**Dimitriou, John**

Hardcopy

**Eichelsdoerfer, Robert**

Department of Local Services

**Eisele, Edward / Tamami**

Hardcopy

**Eisenstein, Heidi**

Hardcopy

**Flynn, Samantha**

**Grant, Glen/Donna**

Hardcopy

**Herrick, Larry**

Hardcopy

**Hollingbery, Aaron**

Toll WA

Hardcopy

**Hooper, Cheryl**

Hardcopy

**Howard, Hal**

Hardcopy

**Hughes, Ben**

Department of Local Services

**Husting, Jennifer/Pat**

Hardcopy

**Joudi, Maher**

DR Strong Consulting Engineers Inc

Hardcopy

**Koger, Curtis**

Associated Earth Sciences

Hardcopy

**Kosters, Kolten**

Hardcopy

**LaMonte, Tiffany**

Hardcopy

**LeClair, Kevin**

Department of Local Services

**Malchow, Christie**

Hardcopy

**Martin, Barbara/Scott**

Hardcopy

**McIntosh/Meher, Brandon/Rita**

Hardcopy

**Middleton, Zak/Kimberley**

Hardcopy

**Moran, Karen**

Hardcopy

**Mullor, Miki**

Hardcopy

**Nelson, Diane**

Hardcopy

**Oosteroff, Natalie**

Department of Local Services

**Park, Clara**

Van Ness Feldman

Hardcopy

**Pedroza, Melani**  
Metropolitan King County Council

**Wong, Kyle**  
Hardcopy

**Peterson, Jeff**  
Toll Brothers, Inc  
Hardcopy

**Yip, Eddie**  
Hardcopy

**Peterson, Ty**  
Department of Local Services

**Pyle, David**  
City of Sammamish  
Hardcopy

**Regenstreif, Jay**  
Hardcopy

**Resquir, Francis/Jovita**  
Hardcopy

**Robertson, Angie/Keith**  
Hardcopy

**Schramm, Jeff**  
Transportation Engineering NorthWest  
Hardcopy

**Seavey, Joe**  
Hardcopy

**Seetharaman, Karthik**  
Hardcopy

**Selby, Scott**  
Hardcopy

**Sheeman, James/Paula**  
Hardcopy

**Shoukry, Amy**

**Stevens, Stephanie**  
Hardcopy

**Tedrow, Paul**  
Hardcopy

**Thiel, Susann**  
Hardcopy

**Tiedeman, Wade/Ankle**  
Hardcopy

**Toll Brothers, Inc**  
Hardcopy

**Valentine, Connor**  
Hardcopy

**White, Krista**  
Hardcopy