

February 27, 2023

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

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

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **PLAT210004**
Proposed ordinance no.: **2022-0455**

FAY RIDGE

Preliminary Plat Application

Location: between 296th Ave NE (west) and Fay Road NE (east), south of
NE 120th St. (unopened) to Puget Sound Energy towers/line(s)
Carnation, WA

Applicant: J-P Wallace Azure Northwest, LLC (Tom Young)
represented by **George Newman**
Barghausen Consulting Engineers
18215 72nd Avenue S
Kent, WA 98032
Telephone: (425) 251-6222
Email: gnewman@barghausen.com

King County: Department of Local Services
represented by **Chad Tibbits**
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 477-0350
Email: chtibbits@kingcounty.gov

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 revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened: 2/15/2023
Hearing Closed: 2/15/2023
Hearing Record Closed: 2/15/2023 at 4:00 p.m.

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.

FINDINGS:

Overview

1. J–P Wallace Azure Northwest, LLC (Applicant) proposes a subdivision of approximately 206.3 acres zoned RA-5 (1 unit per 5 acres), into 41 lots for single family dwellings and tracts for open space, critical areas and associated buffers, drainage utilities, landscaping, and access/roads. Lots range in size from 2.34-4.87 acres. The applicant is utilizing clustering pursuant to KCC 21A.14.040.B. Approximately 67.76 acres, or 33% of the growth site area, is proposed to remain undeveloped in common open space and critical area tracts. Ex. D4 – 003; testimony of George Newman.
2. The Project, known as Fay Ridge, is located between 296th Ave NE (west) and Fay Road NE (east), south of NE 120th St. (unopened) to Puget Sound Energy towers/line(s) (Property). The Property lies in a rural area of north King County between Carnation to the south and Duvall to the north. The properties west of the plat are zoned RA-10, properties north and south are zoned RA-5 and east is both RA-5 and RA-2.5. There are many large undeveloped properties adjacent to the proposed plat and there are many properties surrounding the site developed with single-family dwellings. They include the developed area of Lake Marcel to the east zoned RA-2.5. Ex. D2 – 001, – 004.
3. George Newman represented the Applicant at the hearing.
4. Access to the site will be via a new private rural subaccess road (Tract I) that will connect to Fay Road NE approximately 360 feet south of the Fay Road NE and NE 110th Street intersection. The proposed plat will be located on a plateau approximately 250 feet higher in elevation than Fay Road NE. Multiple sensitive areas made the provision of a second access to the plat impractical. Turnaround requirements will be fulfilled by multiple cul-de-sacs. Ex. D2 – 005; testimony of Barry Talkington.
5. In order to approve the proposed subdivision, the Examiner must make findings that appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, but potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from

school. KCC 20.22.180.A; RCW 58.17.110(1).

6. Except where specifically noted herein, the Examiner finds that the Department of Local Services Permitting Division (Permitting) Staff Report to the Examiner is correct and are incorporated herein. However, the Staff Report would have benefited from a discussion of public comments and responses thereto¹ and of the current wetland mitigation proposal.² Ex. D2; testimony of John Pickett.
7. Together with its preliminary plat application, the Applicant submitted a Road Standards Variance Requests (VARR21-0002) to allow (a) a cul-de-sac length of 5,900 feet³; (b) on-site roads to be elevated to one side of the road with cross slope of 2%; and (c) elimination of frontage pavement widening to the south of the proposed entrance along Fay Road NE.⁴ The King County Road Engineer approved the variances on July 15 and July 18, 2022. Exs. D2 – 002, D15; Condition 6.B.
8. Permitting approved a drainage adjustment to allow for the onsite proposed dispersion devices to be located within a private drainage easement and to be maintained by the homeowners association, Drainage Adjustment File No. VARD22-0010. Exs. D2 – 002, D18.

Public Comments/Concerns

9. During its review, Permitting received comments from the community expressing concerns relating to rural clustering with smaller lots, traffic congestion and road safety, particularly on Fay Road NE and the roundabout at SR 203/NE 124th Street, deficiencies in Fay Road NE, school overcrowding, wildlife habitat, Lake Marcel water quality, use of the Property for hiking and horseback riding, stormwater, and housing affordability. Exs. D11, D22, P2.
10. Members of the public testifying at the hearing expressed similar concerns. Testimony of Cheri Stefani, David Schmidt.

¹ With its Staff Report, Permitting submitted Exhibit D11 which summarized comments received and the Applicant's responses to seven topics. Unfortunately, it did not include the actual comments. The Examiner expects that, in the future, Permitting will submit as a separate exhibit comments it received. In response to the Examiner's request, Permitting subsequently submitted Exhibit D22, which contains the comments and which the Examiner was able to review prior to the hearing in this matter.

² At the hearing in this matter, there was considerable confusion regarding the current wetland mitigation proposal. Staff concluded that Condition 11 in its Staff Report did not reflect the current proposal. The Examiner left the record open until the close of business February 15 to allow Permitting to submit a corrected condition. Permitting then submitted a revised report, Exhibit D23, and subsequently confirmed that the only revision to its original Staff Report is to Condition 11. Except where otherwise noted, references in this decision are to the original Staff Report.

³ Due to the inability to provide a second access.

⁴ To avoid impacts to critical areas and their buffers. Prior to the approval of the variance, the Applicant had prepared a conceptual mitigation plan for impacts critical areas/buffer impacts that would have resulted from frontage improvements to Fay Road NE south of the proposed Project entrance. Granting the variance makes the majority of the conceptual mitigation plan irrelevant. Its discussion of buffer averaging remains relevant. The conceptual mitigation plan is found in Exhibit D12 – 230 – 254.

11. Carl and Diana Lechner had difficulty getting their microphone to work and were not able to offer oral testimony at the hearing. The Examiner allowed them to submit written comment later that day. Their questions regarding sewage disposal and stormwater are addressed in Stormwater and Sanitary Wastes, below. The remaining questions are best directed to the Applicant. Ex. P3.

State Environmental Policy Act (SEPA)

12. Pursuant to SEPA, Chapter 43.21C RCW, the responsible official issued a Determination of Non-significance (DNS) for the proposed subdivision on October 17, 2022. The DNS was not appealed. Exs. D2 – 002; D5.

Critical Areas

13. Wetlands: The Applicant submitted a Wetland and Fish and Wildlife Habitat Assessment Report by Soundview Consultants dated April 2020 and revised in November 2020 and April 2022. The wetland/wildlife study included an evaluation of the Property and areas within 300 feet of the Property for wetlands and wildlife. This study documented the presence of nine wetlands: Wetlands A – F and I are wholly or partially on-site, and Wetlands G and H are off-site. Wetlands C, F, and G are Category III wetlands with moderate habitat scores of 6 or 7 points, requiring 110-foot buffers based on the proposed moderate land use intensity. Wetlands D and E are Category III wetlands with a low habitat score of 5 points, requiring 60-foot buffers. Wetlands A, B, H, and I are Category IV wetlands requiring a standard 40-foot buffer. The wetlands included both Slope and Depressional wetlands that had Forested, Scrub-shrub, and Emergent Cowardian classifications. Exs. D2 – 003, D12; Condition 11.A.
14. The Applicant has avoided impacts to all wetlands and has proposed buffer averaging at one of the wetlands (Wetland I) to provide safe access to the Property from Fay Road NE. The buffer of Wetland I is proposed to be reduced on the east side by 1,767 square feet and expanded on the west side by 2,582 square feet, providing a net gain of 815 square feet of wetland buffer. Buffer averaging is allowed under KCC 21A.24.325.B. Exs. D2 – 003, D12 – 260 – 262; testimony of John Pickett and Joseph Pursley; Condition 11.B.
15. In order to protect wetland hydrology following construction of this Project, the Applicant will be required to provide an evaluation of the hydrology for the on-site wetlands consistent with 2016 KCSWDM, Reference 5, Guidesheet 3B with its detailed engineering plans. Condition 11.H.
16. Aquatic areas: One Type N aquatic area (Stream Z) was delineated. It requires a 65-foot buffer which is anticipated to be located entirely within Wetland A and/or its buffer. No impacts to the aquatic area are proposed. Exs. D2 – 003; D12 – 031.

17. All wetlands, aquatic areas, and their associated buffers will be placed in separate Critical Area Tracts (Tracts A, C, F, H, and J) to be owned and maintained in undivided interest or a Homeowner's Association. Prior to final approval of construction activities on the site, the boundary between the Critical Area Tracts and adjacent land must be delineated by a split rail fence with permanent critical areas signs attached. A 15-foot building setback (BSBL) is required from the edge of all critical areas tracts. Exs. D2 – 003; D8 – 002; A2 – 002; Conditions 11.E, 11.G, 11.K and 12.
18. Steep Slopes: Steep slope hazard areas (slopes 40 percent or steeper and 10 feet or higher) are present throughout the site. Two steep slope hazard areas and their buffers in the northwest and west sides of the site measure greater than 1 acre and will be located within Tracts E and F. Smaller, isolated steep slopes are located to the north and south of the entrance road near the southeast corner of the site within lots 2, 3, 21, and 22. The limits of the steep slope hazards, buffers, and building setback lines are shown on the plans. Exs. D2 – 003, D8 – 002, A2 – 002.
19. The Applicant provided Geotechnical Reports by Earth Solutions NW, LLC (April 2020 and July 2022). These studies evaluated site subsurface conditions, performed slope stability analyses, and provided recommendations for reduced vegetated buffer widths of 25 feet from steep slopes and exemption of steep slopes, both those existing and created through proposed grading, less than 20 feet tall as allowed by KCC 21A.24.310. The reports also provided general geotechnical recommendations associated with future construction – i.e., drainage, foundations, structural fill, retaining walls, etc. Exs. D2 – 003, D13; Conditions 11.C, 11.D 11.E, 11.G.
20. Erosion Hazard Areas: Large portions of the site are mapped as erosion hazard areas. Additionally, soils classified as having a severe to very severe erosion hazard by the USDA Soil Conservation Survey, such as the Tokul gravelly medial loam on slopes 15 percent or greater that cover much of the site, are considered erosion hazard areas. Exs. D2 – 003-004, D13.
21. KCC 21A.24.220.B requires that a note be added to the final engineering plans stating that all existing vegetation within erosion hazard areas shall be retained until building permits are approved for development on those individual lots, except where the clearing is a necessary part of the required plat improvements. Condition 11.I.
22. Mapped Critical Areas: The King County GIS Critical Areas Folio identifies erosion hazard areas, steep slopes, wetlands and streams largely in the northwest portion of the proposed plat. Ex D2 – 004.
23. Wildlife: The Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species (PHS) does not identify any priority habitats or species documented on or within 300 feet of the Property. Biologists from Soundview Consultants conducted a fish and wildlife habitat assessment in December 2019 and January 2020. They made visual observations using stationary and walking survey methods for both aquatic and upland habits noting any special habitat features or signs of fish and wildlife activity. The

Soundview Report confirms that there are no priority habitats or species on the Property. Exs. D2 – 004, D12.

24. The biologists observed no other potentially regulated fish and wildlife habitats on or within 300 feet of the Property during the site investigations. Small birds and animals undoubtedly inhabit this site; however, their population and species are limited due to nearby development. Larger species may visit this site on occasion. No threatened or endangered species are known to exist on or near the property. Ex. D2 – 004.
25. The Staff Report indicates in Section F.7 that, prior to clearing or grading within the subdivision, a wildlife survey will be required to document the presence or absence of King County Species of Local Importance. The Examiner has added a Condition 11.L to implement this requirement. Ex. D2 – 004; Condition 11.L.
26. The County’s regulations for protecting wildlife habitat conservation areas are found in KCC 21A.24.382 through 21A.24.388. The protected habitat conservation areas include such things as bald eagle nests, active breeding sites, and wildlife habitat corridors designated in the King County Comprehensive Plan (KCCP). None of the identified habitat conservation areas has been documented as present on site; nor has the KCCP designated a wildlife habitat network at the Project site.

Clustering

27. The base density in the RA – 5 zone is 0.2 dwelling unit/acre (one dwelling unit/5 acres). The minimum lot size is 3.75 acres. KCC 21A.12.030.A. However, this minimum lot size does not apply to clustering consistent with KCC chapter 21A.14. KCC 21A.13.030.B.13.
28. The Applicant seeks to utilize the clustering provisions of KCC 21A.14.040.B. As Mr. Tibbits explained, there is no minimum lot size for a lot within a rural clustered project. As recommended by Permitting, the second sentence of Condition 2.A (Condition 3.A below) would read: “All lots shall be the larger of the minimum dimensional requirements of the RA – 5 zone classification or those shown on the face of the approved preliminary plat...” This sentence is either superfluous, as there is no minimum lot size for lots within a rural cluster, or the referenced sentence could be read to require that all lots be at least 3.75 acres in size. The Examiner has revised it to be consistent with the proposal. Exs. D2 – 004, D2 – 008; testimony of Chad Tibbits; Condition 3.A.
29. KCC 21A.06.196 defines clustering as “development of a subdivision at the existing zoned density that reduces the size of individual lots and creates natural open space for the preservation of critical areas, parks and permanent open space or as a reserve for future development.”
30. The Project is essentially one large cluster to be developed in three phases. Only four lots are smaller than 2.5 acres. Therefore, KCC 21A.14.040.B.1 – .3 and .8 are not

applicable.⁵ Testimony of George Newman and Barry Talkington.

31. KCC 21A.14.040.B.4 requires that the overall amount, and the individual degree of clustering be limited to a level that can be adequately served by rural facilities and services, including, but not limited to, on-site sewage disposal systems and rural roadways. Transportation and sanitary wastes are discussed in their respective headings below.
32. KCC 21A.14.040.B.5 applies to clusters “adjoining different types of development such as commercial and industrial uses [and between] differing types of residential development...” Permitting interprets “differing types of residential development” to mean different zoning designations. Had that been the King County Council’s intent it would have been simple to refer to “differing residential zoning designations.” Thus, the Examiner is not persuaded by Permitting’s interpretation. Nevertheless, there is no evidence in the record that there are differing types of residential development adjacent to the Property.
33. Tracts B and O⁶ will be designated as permanent open space. KCC 21A.14.040.B.6; testimony of George Newman.
34. KCC 21A.14.040.B.7 does not apply as the Applicant is not proposing resource tracts.

Transportation

35. Access to the Project will be from Fay Road NE on the western edge of the Property. All lots will access directly from private internal roads with cul-de-sac turnarounds (Tract I), which will extend westerly – northwesterly from Fay Road NE throughout the proposed Project. The private internal roads will be constructed in accordance with 2016 King County Road Design and Construction Standards (KCRDCS) and rural subaccess and rural minor access road standards. Improvements will include shoulder, walkway, and roadside ditches. Ex. D2 – 006; Condition 6.A.
36. The Applicant will provide an additional seven feet of pavement on the west side of Fay Road NE along the frontage to make up the required shoulder width.⁷ The Applicant requested a road variance to eliminate the frontage widening on Fay Road NE south of the proposed entrance to avoid impacts to the existing critical areas and their associated

⁵ KCC 21A.14.040.B.1 – 2 apply to clusters containing at least 8 lots smaller than 2.5 acres. KCC 21A.14.040.B.3 applies to separation between clusters and is not applicable as there is only one cluster. KCC 21A.14.040.B.8 authorizes the Director to modify the requirements of KCC 21A.14.040.B.1 – .3 none of which applies; therefore, is not applicable.

⁶ The Applicant submitted revised plans to our office on February 13, 2023, in response to an email from Karl Teunissen advising that he has an access easement over two of the parcels included in the Project. The revisions place the easement area in an open space tract, Tract O. The revised plans make revisions to sheets 1, 2, and 18. Exs. P1, A1, A2; testimony of George Newman.

⁷ The Examiner notes that the Conceptual Wetland Mitigation Plan incorrectly states that half-frontage improvements (construction of a sidewalk, curb, gutters, and landscaping) will be constructed along the western side of Fay Road NE. Ex. D12 – 231.

- buffers. The Development Engineer granted the variance on July 18, 2022, under File No. VARR21-0002. Exs. D2 – 005, D4 – 008, D8 – 003, D15, A2 – 003.
37. Transpo Group performed a level one traffic impact analysis (TIA) in February 2021, supplemented by a revised analysis in April 2022. The TIA estimated that 444 net new vehicular weekday daily trips with 35 AM peak-hour trips and 47 PM peak-hour trips will be generated by full development of the Project (including a potential adjacent plat). This calculation includes service vehicles (i.e., mail delivery, garbage pick-up, school bus trips) which may currently serve this neighborhood as well as work trips, shopping trips, etc. Exs. D2 – 006, D11 – 002, D14.
38. The TIA evaluated trip generation, volumes, level-of-service, circulation, collision rates, intersection spacing, sight distances, and general traffic impacts. The analysis also included analyses of future (2025) cumulative impacts including traffic forecasted growth in the vicinity. The TIA analyzed Level of Service (LOS) for the AM and PM peak hours, for existing, future without the Project and future with the Project for two off-site intersections (Carnation – Duvall Road NE (SR 203)/NE 124th Street and SR 203/Fay Road NE as well as and the intersection at the Project access. The analysis concludes the intersections will operate at level-of-service C or better with the build-out of the proposed Project, which is an acceptable LOS. Exs. D2 – 005 – 006, D14.
39. In response to public comments, Transpo supplemented the TIA with collision data from 2020 and 2021. The new data show a general (small) decrease in overall collision history. Ex. A3; testimony of Mike Swenson.
40. The proposed subdivision is located within the Woodinville/Duvall travelshed, which currently passes the King County concurrency standard. The transportation improvements or strategies will be in place at the time of development, or a financial commitment is in place to complete the improvements or strategies within six (6) years, according to RCW 36.70A.070(6). Exs. D2 – 006; D4 – 017.
41. Several members of the public expressed concerns about the state of Fay Road NE, including speeding, blind corners, a recent landslide and the need for vegetation maintenance. Permitting acknowledged that the road is winding and has physical constraints, which it has tried to address through imposing speed limits. No capital improvements are planned. Ex. P2; testimony of Cheri Stefani and Huey-yi Sung.

Stormwater

42. The Property is in the Snoqualmie River Drainage Basin in the Snohomish Watershed. Ex. D2 – 005.
43. The Applicant submitted and received a drainage adjustment (File No. VARD22-0010), dated July 25, 2022, to allow the private ownership and maintenance of the dispersion trenches serving the internal roadways. Otherwise, the Project is subject to the

requirements of the 2016 King County Surface Water Design Manual (KCSWDM). Exs. D2 – 005, D18; Condition 5.

44. A Level 1 downstream analysis was performed for the proposed subdivision pursuant to Core Requirement #2 of the KCSWDM. No downstream nuisances such as erosion, sedimentation, under capacity or flooding were found. The project is not anticipated to create new downstream problems. The analysis can be found in the preliminary Technical Information Report (TIR). Exs. D2 – 005, D17.
45. The Project is outside of the Urban Growth Area and must show compliance with the LID performance standard. Preliminary project design proposes Full Dispersion for Flow Control and Water Quality. The design will meet Conservation Flow Control and Basic Water Quality requirements of the KCSWDM. The preliminary analysis along with hydraulic modeling are included in the TIR. Exs. D2 – 005, D4 – 006, D17; testimony of Barry Talkington.

Sanitary wastes

46. Domestic sewage septic tank – drainfield systems will be utilized on the individual lots and designed to King County Health Department standards. Ex. D4 – 008.

Schools and safe walking routes

47. Students residing within the Project will be served by Stillwater Elementary, Tolt Middle and Cedarcrest High Schools, all located within the Riverview School District No. 407. Exs. D2 – 006.
48. The School District has indicated that the future students from this subdivision will be bussed to Stillwater Elementary, Tolt Middle School, and Cedarcrest High Schools. The School District has indicated that the bus stop will be located at the entrance of the Project from Fay Road, which would need to accommodate a forty-foot bus with turnaround and good visibility. In the event of inclement weather, there will be no bus service provided directly to the Project. All students would be required to be dropped off/picked up at Stillwater Elementary School. Middle and high school students would be bussed to and from their respective schools from this location. Exs. D2 – 007, D14 – 018, D16 – 005 – 006.
49. The Applicant has coordinated safe walking conditions to the future bus stop with the School District. New roadways within the Project will be rural sub-access roads or rural minor access roads with 28 feet and 24 feet of roadway width, respectively. With the typical traveled way of 20 feet for both roadway classifications. With striping, at least 4 – 6 feet of paved shoulder width would be delineated on one side of each roadway to facilitate pedestrian travel. Exs. D2 – 007, D14 – 018.

50. The Applicant will be required to pay a school impact fee, the current amount of which is \$9,328 per single family dwelling unit. Ex. D2 – 006; KCC 27.44.010; Condition 9.

Recreation

37. The nearest public King County Parks are the Stillwater Natural Area, and the Snoqualmie Valley Trail Site located a half mile south of the site. The Tolt Pipeline Trail Site is located three quarters of a mile to the north of the site. The SEPA checklist also explains that nearby King County Parks and recreational areas include Lake Joy Park and Moss Lake Natural Areas, a few miles to the east; Chinook Bend Natural Area a few miles to the south near the City of Carnation; and Duvall Park close to the City of Duvall. Exs. D2 – 007, D4 – 016.
38. The King County Code does not require recreation space on-site for rural plats. Exs. D2 – 007, D4 – 016.
39. The Project includes approximately 70 acres of open space and critical areas tracts for passive recreation. Ex. D4 – 016.

Fire Protection

51. The Certificate of Water Availability from King County Water District No. 119 indicates that water is presently available to the site in sufficient quantity to satisfy King County Fire Flow Standards. Prior to final recording of the plat, the water service facilities must be reviewed and approved per King County Fire Flow Standards. The future residences will require sprinklers, unless otherwise approved by the King County Fire Marshall. Exs. D2 – 007, D19; Condition 4.A.

Sewage Disposal

52. The Applicant proposes to serve the subject subdivision by means of on-site septic systems (OSS). A King County Public Health On-Site Septic System Approval letter, dated October 12, 2022, indicates the ability to provide septic systems for these proposed lots. Exs. D2 – 007, D-20.

Water Supply

53. The Applicant proposes to serve the Project subdivision with a water supply and distribution system managed by King County Water District No. 119. A Certificate of Water Availability, dated February 10, 2021, indicates the District's ability to serve the Project. Exs. D2 – 007, D-19.
54. Any Finding of Fact which should more properly be considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS:

1. Any Conclusion of Law which should more properly be considered a Finding of Fact is hereby adopted as a Finding of Fact.
2. The proposed Fay Ridge subdivision is consistent with the applicable provisions of KCC 21A.14.040.B (clustering in the rural zone).
3. 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 RA – 5 zone.
4. 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.
5. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

DECISION:

1. The preliminary plat of Fay Ridge is approved subject to the following conditions of approval.
2. Compliance with all platting provisions of Title 19A of the King County Code.
3. 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 requirements of the RA-5 zone classification, as well as the rural lot clustering requirements of KCC 21A.14.040. All lots shall be as 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.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 18420, as amended (2016 KCRDCS) & VARR21-0002.

5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
 - A. Any future residences are required to be sprinklered unless otherwise approved by the King County Fire Marshal or designee

6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location 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 K.C.C. 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 # *_ Permitting Division issued plan record number to be inserted in space provided* 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. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file.
 - D. The drainage facilities shall meet the requirements of the 2016 KCSWDM. The site is subject to the Conservation Flow Control and Basic Water Quality Requirements of the 2016 KCSWDM.
 - E. The drainage adjustment (VARD22-0004) conditions shall be met including, but not limited to, ensuring that a maintenance covenant is approved and recorded naming the lot owners are responsible for the maintenance of the Full Dispersion facilities serving the plat roadways. The covenants shall refer to specific easements and Native Growth Retention Areas for the roadways that are demonstrated to allow feasible building sites. Some lots may require more detailed analysis for driveways, septic field locations and building footprints prior to approval of the engineering plans.

- F. To implement the required Best Management Practices (BMPs), the final engineering plans and Technical Information Report shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in the KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required 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.

7. The proposed subdivision shall comply with the 2016 KCRDCS including the following requirements:
- A. The new interior road network (Tract I) shall be constructed, at a minimum, to the rural subaccess and rural minor access standards.
 - B. Comply with road variance VARR21-0002.
 - C. Modifications to the above road conditions may be considered according to the variance provisions of Section 1.13 of the 2016 KCRDCS.
 - D. 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.
8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
10. To implement KCC 16.82.152, which applies to the site, a detailed clearing/grading plan shall be submitted with the engineering plans for the subject plat. The clearing/grading plan (and engineering plans) shall be consistent with the requirements of KCC 16.82.152. Clearing shall not exceed thirty-five percent of the area of the subdivision and the area remaining uncleared shall be:
- A. shown on the face of the recorded plat map to delineate where the uncleared area is to remain on each lot; and

- B. marked with at least one sign per buildable lot adjoining the area indicating that the area is a permanent resource management area.

No clearing of the subject property is permitted until the final clearing/grading plan is approved by the Permitting Division. Flagging and temporary fencing of area to remain uncleared shall be provided. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas, except for grading work permitted.

- 11. The proposed subdivision shall comply with the Critical Areas Code as outlined in KCC Chapter 21A.24 at the time of application. Impacts to critical areas shall be avoided where possible, and compensatory mitigation is required for approved adverse impacts. 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. Wetlands and aquatic areas on site shall be protected from future clearing, grading, and construction with adjacent upland buffers. The buffer for Category IV wetland (Tract A) is 50 feet wide but has been reduced to 40 feet.
 - B. The applicant has avoided impacts to all wetlands and has proposed buffer averaging at one of the wetlands (Wetland I/Tract J) to avoid buffer impacts. The buffer of Wetland I will be reduced on the east side by 1,767 square feet and then the wetland buffer expanded on the west side by 2,582 square feet which provides a net gain of 815 square feet of wetland buffer. Buffer averaging is allowed under King County Code 21A.24.325.B.
 - C. Steep slope hazard areas with total vertical relief of 20 feet or more shall be protected from future clearing, grading, and construction with 25-foot-wide buffers. The 25-foot buffer width has been reduced from the standard 50-foot buffer based on analysis and recommendations in the Earth Solutions NW, LLC geotechnical reports in accordance with KCC 21A.24.310.B.2.
 - D. Critical area tract(s) shall be used to delineate and protect all wetlands, aquatic areas, and their buffers, as well as steep slope hazard areas and associated buffers measuring 1 acre or more, 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 all critical area buffers 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) in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of 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 with a split rail fence. Permanent critical areas signs shall be attached to the fence. Fence and sign specifications shall be shown on the final engineering plans and shall be installed every 50 feet or as deemed appropriate by Permitting Division critical area staff at the time of engineering plan review.
- H. Wetland hydrology must be protected following construction of this development. The applicant shall provide an evaluation of the hydrology for the on-site wetland to show that it will be protected following development consistent with 2016 KCSWDM, Reference 5, Guidesheet 3B. This shall be submitted with the detailed engineering plans for review and approval by the Permitting Division.
- I. Per KCC 21A.24.220.B, a note shall be added to the final engineering plans stating that all existing vegetation within erosion hazard areas shall be retained until building permits are approved for development on those individual lots, except where the clearing is a necessary part of the required plat improvements.
- J. During engineering review, the detailed plan set shall be routed to Permitting Division Critical Areas staff to determine if the above conditions have been met.
- K. The following note shall be shown on the final engineering plan and recorded plat:

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

Dedication of a critical area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/critical area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/critical area and buffer. The vegetation within the tract/critical area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Local Services – 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 in the vicinity of the critical area are completed. No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

- L. Prior to clearing or grading within the subdivision, a wildlife survey will be required to document the presence or absence of King County Species of Local Importance.
12. A homeowners' association or other workable organization shall be established to the satisfaction of the Permitting Division which provides for the ownership and continued maintenance of the critical area tract(s). Notes shall be shown on the engineering plans and final plat.
13. The subdivision shall conform to K.C.C. 16.82 relating to grading on private property.
14. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
15. 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 WSDOE.
 - C. Water Quality Modification Permit from WSDOE.
 - D. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.

DATED February 27, 2023.



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 *March 23, 2023*, 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 *March 23, 2023*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *March 23, 2023*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE FEBRUARY 15, 2023, HEARING ON PRELIMINARY PLAT APPLICATION FAY RIDGE, DEPARTMENT OF LOCAL SERVICES FILE NO. PLAT210004, PROPOSED ORDINANCE NO. 2022-0455

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Doug Lapchis, George Newman, Jon Pickett, Joseph Pursley, David Schmidt, Cheri Stefani, Huey-yi Sung, Chad Tibbitts and Mike Swenson.

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

- | | |
|-----------------|--|
| Exhibit no. D1 | King County Assessor’s Map, dated February 16, 2021 |
| Exhibit no. D2 | Preliminary department report, transmitted to the Examiner on February 1, 2023 |
| Exhibit no. D3 | Application, dated January 21, 2021 |
| Exhibit no. D4 | Revised Environmental Checklist, dated April 27, 2022 |
| Exhibit no. D5 | SEPA Determination of Non-significance, issued October 17, 2022, and SEPA Notice of Decision, dated October 17, 2022 (mailed October 14, 2022) |
| Exhibit no. D6 | Notice of Application, mailed April 8, 2021 |
| Exhibit no. D7 | Notice of Public Hearing, mailed January 13, 2023 |
| Exhibit no. D8 | Revised Preliminary Plat Maps, dated July 28, 2022 |
| Exhibit no. D9 | Residential Density Worksheet, dated February 15, 2021 |
| Exhibit no. D10 | Archeology Risk Map, by Department of Archaeology and Historic Preservation, dated December 6, 2019 |
| Exhibit no. D11 | Public Comments and Responses |
| Exhibit no. D12 | Revised Critical Areas Study, prepared by Soundview Consultants, dated April 2022; Revised Conceptual Mitigation Plan, prepared by Soundview Consultants, dated April 2022; Revised Wetland Buffer Averaging Plan, prepared by Soundview Consultants, dated September 26, 2022 |
| Exhibit no. D13 | Critical Areas Study (Geotechnical), prepared by Earth Solutions, LLC, dated December 2020; Earth Solutions Geotech Response Letter, dated April 15, 2022; Earth Solutions Geotech Response Letter, dated July 27, 2022 |
| Exhibit no. D14 | Traffic Impact Analysis, prepared by Transpogroup, dated April 2022 |
| Exhibit no. D15 | Road Variance File No. VARR21-0002 (Cul-de-sac and Cross Section), dated July 15, 2020, and Road Variance File No. VARR21-0002 (Frontage Improvements), dated July 18, 2022 |
| Exhibit no. D16 | School Walkway Conditions Email between Barghausen and Robert Eichelsdoerfer, dated September 17, 2021, and School Bus Stop Email, dated December 6, 2019 |
| Exhibit no. D17 | Revised Technical Information Report (TIR), prepared by Barghausen Consulting Engineers, dated July 28, 2022 |

- Exhibit no. D18 Drainage Adjustment File No. VARD22-0010 Application and Approval, dated July 25, 2022
- Exhibit no. D19 King County Water District No. 119, Water Availability Certificate, dated February 10, 2021
- Exhibit no. D20 King County Public Health On-Site Septic Approval, dated October 12, 2022
- Exhibit no. D21 King County Fire District No. 45, Fire District Receipt, dated February 9, 2021
- Exhibit no. D22 Revised Public Comments and Responses, submitted February 13, 2022
- Exhibit no. D23 Staff report with revised condition no. 11, submitted February 15, 2023

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

- Exhibit no. A1 Email response to exhibit P1, submitted February 13, 2023
- Exhibit no. A2 Revised Preliminary Plat Maps, submitted February 13, 2023
- Exhibit no. A3 Collision Data Update Memorandum, submitted February 15, 2023

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

- Exhibit no. P1. Email from Karl Teunissen, submitted February 1, 2023
- Exhibit no. P2. Email on behalf of a group of residents from Lake Marcel, submitted February 13, 2023
- Exhibit no. P3. Email from Diana Lechner, submitted February 15, 2023 (*due to Ms. Lechner's technical challenges during the hearing we allowed Ms. Lechner's emailed comments to be entered into the record*)

February 27, 2023

**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 no. **PLAT210004**
Proposed ordinance no.: **2022-0455**

FAY RIDGE
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 February 27, 2023.



Jessica Oscoy
Office Manager

Barghausen, Thomas
Barghausen Consulting Engineers
Hardcopy

Cavalli, Toni

Coomer, Sally

Doolan, Gisselle

Eichelsdoerfer, Robert
Department of Local Services

Gariepy, Daniel
Department of Local Services

Gilreath, Kristine

Greenstreet, Pete
Hardcopy

Griffin, Sandra
Hardcopy

Hanlon, Kristen

Hanson, Dennis
Hardcopy

Hayes, Pete
Hardcopy

Hidalgo, Brittany

Knowles, Jay

Lapchis, Doug

Laughlin, Gene
Hardcopy

Lechner, Diana

MacWhiney, Betsy

Mauseth, Pamela

Mussey, Carrie

Newman, George
Barghausen Consulting Engineers
Hardcopy

Oppedal, Susie

Pedroza, Melani
Metropolitan King County Council

Pickett, Jon
Soundview Consultants
Hardcopy

Pursley, Joseph
Department of Local Services

Scheffler, Ryan
Department of Local Services

Schmidt, David

Shanafelt, Alice

Smith, Scott-DLSP
Department of Local Services

Stefani, Cheri
Hardcopy

Sung, Huey-yi
Department of Local Services

Swenson, Mike
Transpo Group
Hardcopy

Talkington, Barry
Barghausen Consulting Engineers
Hardcopy

Teunissen, Karl

Tibbits, Chad
Department of Local Services

Tyson, S

Varas, Vicente
Barghausen Consulting Engineers
Hardcopy

Yoshimi, Crystal
Hardcopy

Young, Tom
J-P Wallace Azure NW, LLC
Hardcopy