

March 22, 2023

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **PLAT210005**
Proposed ordinance no.: **2023-0003**

CEDAR 23

Preliminary Plat Application

Location: 4218 and 4250 324th Avenue SE, Fall City

Applicant: Cedar 17 Investments LLC
represented by **Robert Fitzmaurice**
Taylor Development
15 Lake Bellevue Drive South
Bellevue, WA 98005
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King County: Department of Local Services
represented by **Brian Lee**
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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 revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	2/28/2023
Hearing Closed:	2/28/2023
Hearing Record Closed:	3/10/2023
Hearing Record Reopened:	3/13/2023
Hearing Record Closed:	3/20/2023

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:

Preliminary Matters

1. The Examiner's review of a proposed preliminary plat generally begins with a review of the Department of Local Services, Permitting Division (Permitting or DLS) report to the Examiner (Staff Report) and the exhibits thereto. Unfortunately, in this matter, the Staff Report and some of its exhibits did not meet the Examiner's expectations. Shortcomings included the following:
 - A. As originally submitted, the proposed preliminary plat application included one parcel (parcel 152407 – 9053) and 17 lots. In July 2021 (more than one and a half years before the date of the Staff Report) the Applicant revised its proposal to include an additional parcel (parcel 152407 – 9122), with the result that the proposal before the Examiner is a 23-lot proposed preliminary plat. The schools and school walkway analysis, water availability certificate, fire district receipt, and assessor's map Permitting provided with its exhibits were for the original 17 – lot proposal, not the proposal before the Examiner. Exs. D17, D18, D19, D23.¹
 - B. The Staff Report incorrectly states in the Summary of Proposed Action that the required recreation area will be located in Tract B, the location of the Large On-Site Sewage Disposal System. This error is continued in proposed condition 12.D. (Under the discussion of subdivision design features, it does correctly note that recreation area is proposed to be located in Tract C). Ex. D1 – 002, – 005; Staff's proposed Condition 12.D.
 - C. The Staff Report incorrectly states that the September 1, 2020, critical areas determination (CAD) addressed both parcels. It did not. Exs. D1 – 004, D12.²
 - D. The exhibits included a critical areas report for a property not included in the proposed preliminary plat. Ex. D13.

¹ The Applicant provided the schools and school walkway analysis, water availability certificate and fire district receipt for the 23-lot proposal: Exs A10, A3, and A5, respectively. After some confusion, Permitting confirmed that it had received these documents and had reviewed them. Testimony of Brian Lee.

² The Applicant provided a wetlands and stream reconnaissance report that addressed the second parcel. Permitting confirmed that it had reviewed and concurred in the results of this analysis. Ex. A11; testimony of Joseph Pursley.

- E. The Staff Report incorrectly indicates in footnotes 3 and 4 that the Applicant could have proposed use of Residential Density Initiatives or Transfer of Development Rights despite the fact that, in the Examiner’s recent Report and Decision on the Fall City II preliminary plat, the Examiner expressly found that these incentives are *not* available in the Rural Town of Fall City. Ex. D1, footnotes 3 and 4; February 1, 2023, Revised Report and Decision for Fall City II, DLS file number PLAT 200003.
- F. Permitting did not provide the Cultural Resources Assessment, the DAHP Archaeology concurrence letter or the proposed landscape – recreation plans.³
- G. A few other errors are addressed in footnotes.

Except as noted above or as modified herein, the facts set forth in the Staff Report and the County testimony are found to be correct and are incorporated herein by reference. Ex. D1.

2. It is helpful to understand the difference between a preliminary plat such as the one before the Examiner and a final plat, as well as what takes place between preliminary and final plat approval. A preliminary plat is a neat and *approximate* drawing of a proposed subdivision showing the *general* layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of Chapter 58.17 RCW. It is the basis for the approval or disapproval of the *general* layout of a subdivision. A final plat is the final drawing of the subdivision and dedication prepared for filing for recording with the county auditor and containing all elements and requirements set forth in Chapter 58.17 RCW and in local regulations adopted under Chapter 58.17 RCW. Detailed engineering and design occurs between the preliminary and final plat, often resulting in revisions to the preliminary plat. A final plat must contain a statement of approval from the county engineer as to the layout of streets, alleys and other rights-of-way, sewage and water systems, and other structures; RCW 58.17.020(4), (5) (emphasis added in *italics*), 58.17.160; KCC 19A.16.030.
3. In order to approve the proposed preliminary plat, 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, 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).

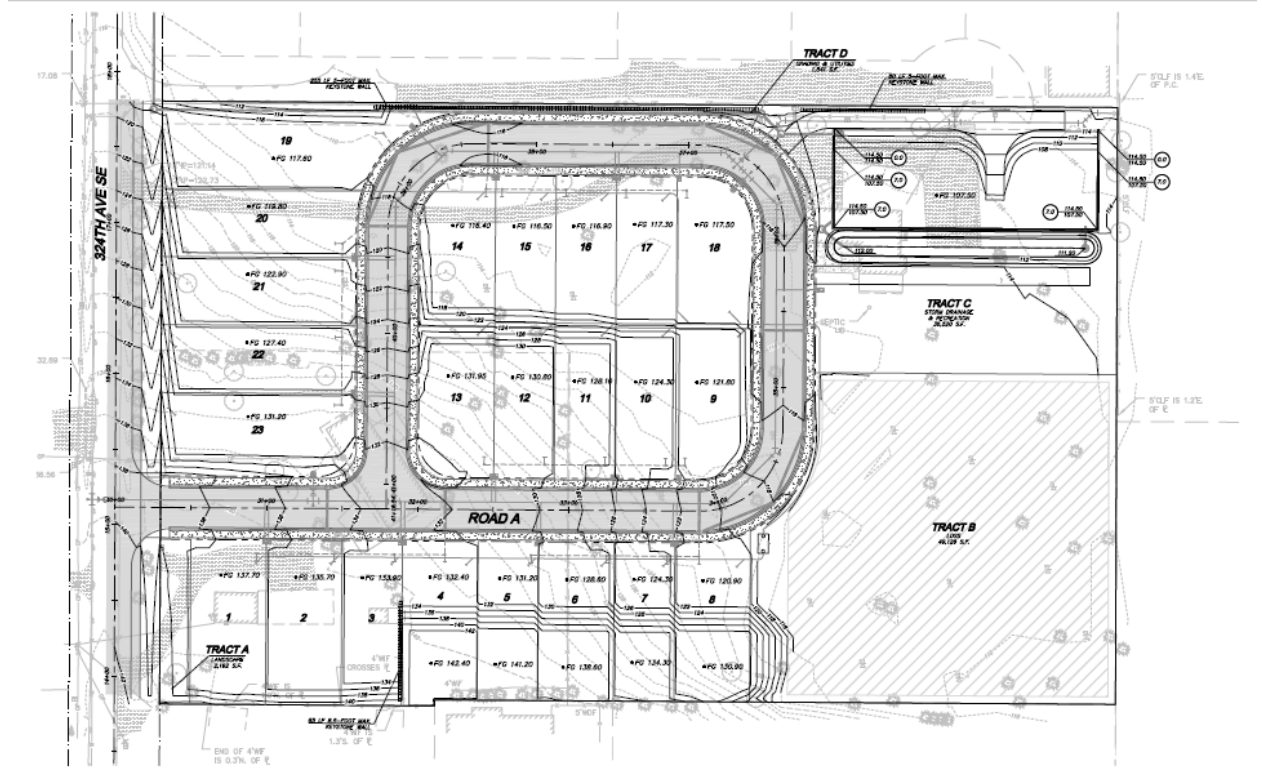
Overview

4. Cedar 17 Investments, LLC (Applicant) proposes a subdivision of 2 parcels totaling approximately 5.74 acres, zoned R – 4 (four units per acre, Rural Town) into 23 lots for the future development of single-family dwellings with associated roadways, utilities, stormwater facility/recreation space and Large On-Site Sewage Disposal System (LOSS)

³ The Applicant did. Exs. A4, A6, A9.

(Project, proposed preliminary plat or Cedar 23). The Project, known as Cedar 23, includes separate tracts for landscaping (Tract A), septic drainfield (Tract B), and the stormwater facility and recreation space (Tract C). The Project is located at 4218 324th Ave. SE, Fall City, WA 98024 (Property).

- The basic layout is essentially:



- Access to the site will be via a 42-foot-wide private access road (Road A) that will connect directly to 324th Ave SE. The new access road will include 28-foot-wide paved roadway, curb, and gutter, and 5-foot sidewalks along both sides. Exs. D1 – 002, D3.
- In July 2021, the Applicant revised its proposal to include parcel 152407 – 9122. The addition of this parcel allowed the Applicant to eliminate use of Southeast 42nd Place for access and increase the number of lots from 17 to 23. Based on these revisions, Permitting issued a revised Notice of Application on September 9, 2021, providing a second comment period from September 9 through October 7, 2021. Exs. D1 – 003, D4, D5, D9 – 001; testimony of Maher Joudi.

Public Comments/Concerns

- During its review, Permitting received numerous comments from the community expressing concerns relating to pedestrian safety, impacts to area schools, allowed density, lot sizes, inconsistency of new developments with the existing rural character of Fall City, loss of vegetation including large trees and wildlife habitat, water safety, impacts to utilities, the proposed LOSS system, as well as concerns relating to increased

vehicular traffic and maintenance concerns for, and street parking along, 324th Ave. SE . Several commenters stated that the Applicant should contribute to the completion of the West Side Trail along SR 202. Representatives from the Snoqualmie Indian Tribe Department of Archaeology and Historic Preservation also recommended an archaeological review and requested the opportunity to be present during any ground disturbance at the site. Copies of the comment letters were shared with pertinent County staff and the Applicant and considered during Permitting’s review. The Applicant also provided a detailed response to many of these concerns. Exs. D1 – 003, D8, D9, A12 – A14.

9. Community members submitted additional comments and a video for the hearing, as well as testimony expressing concerns about compatibility with the rural character of Fall City, the Transportation Impact Analysis (TIA), the need for traffic calming, neighborhood connections, the suitability of the area for a LOSS, suitability of the LOSS for recreational use,⁴ questions about the soils logs provided to the Washington Department of Health (DOH) in the Predesign Report for the LOSS, impact on the Water District’s well-head protection zones, cumulative impacts of the 6 – 7 subdivisions proposed by Taylor Development entities, school capacity, presence of springs and wet areas on the property, and allegations that the application was incomplete.^{5,6} Exs. P1 – P49;⁷ testimony of Megan Brocco, Angela Donaldson, Cindy Parks, Rachel Shepard, Mike Street, Mike Suelzle, Janna Treisman, and Robert Fitzmaurice.

Rural Character

10. The Project is located on the western edge of the unincorporated Fall City Rural Town. Compatibility with the rural town character was a major focus of written comments received as well as testimony and presentations at the hearing.
11. The regulations applying within the boundaries of the Fall City Rural Town are a mixture of rural standards, such as the rural road standards for roads outside the preliminary plat, and more urban standards such as the R – 4 zone and urban road standards for the internal preliminary plat road.
12. The King County Council has provided one regulatory tool to address Fall City rural character. In response to a recommendation in the 1999 Fall City Plan that the King County Code be amended to eliminate the minimum density and maximum density requirements for R – 4 zoned properties in Fall City, the King County Council adopted KCC 21A.12.030.B.22 and B.23 which expressly limit the maximum density in the R – 4 zone in Fall City to four units per acre and eliminate the minimum density requirement. Elsewhere in the County, the R – 4 zone allows a maximum density of six to eight units

⁴ The comments about recreational use of the LOSS tract we based on the errors in the Staff Report.

⁵ The concerns about the completeness of the application stemmed largely from the exhibits Permitting submitted for the earlier 17 – lot proposal and the fact that the CAD addressed only the larger parcel.

⁶ To address the cumulative effects concern, where relevant, the Examiner discusses some of those other subdivisions, including Arrington Court (built out and formerly known as Fall City), Cha, and Fall City II.

⁷ At the close of the hearing, the Examiner left the record open until March 7, 2023, to allow members of the public to respond to Exhibits A17 – 19 *only*. Exhibit P47 goes well beyond the limited scope. The Examiner considered only those portions of Exhibit P47 that responded to Exhibits A17 – 19.

- per acre. KCC 21A.12.030.A; September 15, 2017, Report and Decision for the Fall City preliminary application, DLS file number PLAT 60004.
13. In the 2017 decision on the Fall City preliminary plat (now known as and referred to herein as Arrington Court), this Examiner concluded that the R – 4 zoning as conditioned by KCC 21A.12.030.B.22 and B.23 is consistent with the 1999 Fall City Plan and the King County Comprehensive Plan and protects rural character.
 14. The record developed in this matter does not allow the Examiner to reach the same conclusion as a matter of law.
 - A. There is no minimum lot size R – 4 zone, although no construction is permitted on a lot that contains an area of less than 2500 ft.² KCC 21A.12.030.A, 21A.12.100.A.
 - B. The use of LOSS systems as opposed to individual on-site septic systems (OSS) allows an applicant to increase significantly the number of lots that can be created and to reduce significantly the lot sizes. In Cedar 23, 18 lots could be developed using OSS (assuming a 4 – bedroom home on each lot) as compared to the 23 that can be developed using LOSS (assuming a 3 – bedroom home on each lot). Ex. A19; testimony of David Jensen.
 - C. In the intervening years, the Arrington Court plat has been built out using a LOSS system. The homes are large. While they are likely no larger than some of the homes recently constructed in subdivisions members of the community characterized as “traditional R – 4 subdivisions” using OSS, the relatively small size of the lots and the proximity of the homes to 324th Ave. SE increases the appearance of their size. Exs. P13 – 006 (traditional R – 4 subdivisions), P13 – 007 (Arrington Court), P13 – 009 (comparison of layout of historic R – 4 subdivision with Arrington Court); testimony of Rachel Shepard.
 - D. The Arrington Court recreation space is located in the LOSS tract. The LOSS cannot be graded to make its surface level, reducing its utility as a recreation area.
 - E. Arrington Court, Fall City II, and Cedar 23, all proposed by Taylor Development entities, already provide or will provide adequate parking for their residents, but little to no room for boats, trailers, RVs and other recreational vehicles typical in rural areas.
 - F. Following the development of Arrington Court, the County signed 324th Ave. SE “No Parking” Ex. P42 – 001; testimony of Mike Suelzle.
 15. For these reasons, the Examiner is not persuaded that Cedar 23 is consistent with rural character. Exhibit P13 and testimony from numerous witnesses offered tools that would increase its compatibility, such as somewhat larger lots, somewhat smaller homes, variety in the design of homes, and varying setbacks. However, the King County Council has not given Permitting or the Examiner tools other than the maximum density to address compatibility with rural character. Ex. P13; testimony of Rachel Shepard.

16. As concluded below, the Project is consistent with the maximum density of four dwelling unit/acre for the Rural Town of Fall City.

State Environmental Policy Act (SEPA)

17. Pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, the responsible official issued a threshold Determination of Non-Significance (DNS) for the proposed preliminary plat on September 15, 2022. This determination was based on the review of the environmental checklist, Technical Information Report, and other pertinent documents, resulting in the conclusion that the requirements for environmental mitigation have been adequately addressed in the development regulations and comprehensive plans adopted under the Growth Management Act, Chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, as provided in RCW 43.21C.240 and WAC 197-11-158. The DNS specifically notes that the proposal will be reviewed for compliance with all applicable King County Code provisions which regulate development activities including Title 21A, the International Fire and Building Codes, King County Road Design and Construction Standards, Surface Water Design Manual, and the grading and critical areas regulations. Exs. D1 – 003, D6, D7.
18. The 24 – day comment period closed on October 10, 2022. No appeal was filed. Ex. D3 – 003.

Cultural Resources

19. In 2021, the Applicant commissioned a Cultural Resources Assessment by Cultural Resources Consultants, LLC. After conducting background research and field investigation, Cultural Resource Consultants identified no archaeological sites at the Property. It identified and inventoried one historic-era structure, recommending that it not be eligible for listing on historic registers. Ex. A4.
20. It recommended that, if project activities result in the discovery of archaeological materials, Project staff should halt work in the immediate area and contact the technical staff at the Department of Archaeology and Historic Preservation (DAHP) and representatives of identified area Tribes. Work should be stopped until further investigation and appropriate consultation have concluded. In the event that human remains are inadvertently revealed, Project staff should immediately stop work, cover, and secure the remains against further disturbance, and contact law enforcement personnel, consistent with the provisions set forth in RCW 27.44.055 and RCW 68.60.055. The detailed protocol may be found in Attachment C to the Assessment. Ex. A4 – 043.
21. DAHP concurred with the result and recommendations made in the Assessment. Ex. A6.
22. The Applicant has been working directly with the Snoqualmie Tribe to allow access to the Property during excavation. In response to the Examiner's request to submit its email correspondence with the Tribe, the Applicant submitted correspondence regarding a similar request for the Fall City II preliminary plat. In that case, the Applicant indicated

that it is willing to work with the Snoqualmie Indian Tribe to reach an agreement providing an opportunity for the Tribe to be present during any ground disturbing activities and that the agreement would need to address safety, indemnification, insurance, site access and specific activities the Tribe intends to undertake. The Tribe indicated its understanding and acceptance of these needs. Ex. A17; testimony of Maher Joudi; February 1, 2023, Revised Report and Decision for Fall City II, DLS File PLAT200003, Finding 21; testimony of Maher Joudi and Robert Fitzmaurice.

23. Condition 18 implements Cultural Resources Consultants inadvertent discovery recommendation.

Critical Areas

24. Category I Critical Aquifer Recharge Area (CARA): Category I CARAs include areas the County has determined are highly susceptible to groundwater contamination and that are located within a sole source aquifer or wellhead protection area; or in an area where hydrogeologic mapping or a numerical flow transport model in a DOH approved wellhead protection plan demonstrates that the area is within the one-year time of travel to a wellhead for a Group A water system. KCC 21A.24.313.B.
25. On September 1, 2020, Permitting issued a Critical Areas Designation (CADS20-0115) concluding that that parcel 152407-9053 contains a Category I CARA.⁸ Exs. D1 – 004, D12 – 001.
26. Although the County did not issue a CAD for parcel 152407-9122, evidence in the record indicates that it is also within a Category I CARA. Ex. P45 – 006.
27. To protect the CARA, the Applicant must provide appropriate measures to protect groundwater according to the 2016 King County Surface Water Design Manual (KCSWDM). Condition 9.G.
28. Wetlands and streams: A prior owner of parcel 152407-9122 submitted written comment and testified to the presence of springs and wet areas on the parcel. Ex. P33; testimony of Jenna Treisman.
29. The Applicant commissioned Altmann Oliver Associates (Altmann) to perform a Wetland & Stream Reconnaissance of both parcels. After conducting field investigation in April 2020 and July 2021, Altmann identified no wetlands or streams on or immediately adjacent to the Property. Permitting reviewed and concurred with the Altmann analysis Ex. A11; testimony of Joseph Pursley.
30. Mapped Critical Areas: The Critical Areas Folio does not identify any mapped critical areas as being present on these parcels. The Snoqualmie River is located approximately 0.60 miles north/northeast of the site. The Raging River is located approximately 0.63 miles southeast of the site. Ex. D1 – 004.

⁸ The Staff Report incorrectly states that the CAD also applied to parcel 152407-9122. Ex. D1 – 004.

31. Wildlife: In response to public comment that there may be an eagle nests on site, the Applicant commissioned Altmann to perform a Wildlife Habitat Conservation Area Review. In April 2020 Altmann reviewed the site to identify any Wildlife Habitat Conservation Areas regulated under KCC 21A.24.382.B through .K. It conducted additional field investigation in July 2021 after the Project was revised to include Parcel 152407 – 9122. Altmann found no active bald eagle nests on or within 400 feet of the Property. Further, it found none of the other regulated Habitat Conservation Areas on or adjacent to the Property. Exs. D9 – 010, D21.
32. The Washington Department of Fish and Wildlife (WDFW) PHS database indicates a Township-wide potential for the gray wolf in the vicinity of the site. However, the site does not provide habitat for the gray wolf and this database does not indicate the presence of any data points for any individual WDFW priority species, nor did AOA any identify any during the field investigation. Exs. D1 – 004, D21.
33. Ms. Treisman, a prior owner of Parcel 152407 – 9122 has observed coyote, raccoon, opossum, chipmunk, Douglas squirrel, gray squirrel, short-tailed weasel, salamanders, alligator lizards, several species of frogs and a host of bird species on or near the parcel. As she pointed out, the Applicant’s SEPA checklist did not identify any of these species. As found above, the Applicant’s wildlife habitat conservation area review focused on habitat conservation areas regulated under KCC 21A.24.382.B through .K. Exs. D21, P33, P45 – 99 through – 100; testimony of Janna Treisman.
34. Prior to any clearing or grading activities during the breeding season Condition 15 requires:

2 to 3 weeks prior to clearing and grading a wildlife survey will be conducted to identify any nests or habitat of species listed in KCC 21A.24.382 and of any active breeding site of any federal or state listed endangered, threatened, sensitive and candidate species or King County species of local importance not in listed in subsections KCC 21A.24.382.B. through J.

Ex. D1 – 004; Condition 15.
35. Trees: Trees within the LOSS (Tract B) and the recreation portion of Tract C will be retained. The tree may be removed only if a health assessment by an arborist determines the tree is not viable or hazardous. The Examiner has added a condition reflecting this commitment. Exs. D9 – 002, A9 – 001; testimony of Maher Joudi; new Condition 17.
36. The LOSS will be designed to avoid the preserved trees. A drip irrigation system will be installed about 8 inches deep using a small vibratory plow to avoid damage to significant root systems. The effluent will likely fertilize the trees. Testimony of David Jensen.
37. Ms. Brocco argues that the Applicant has not complied with significant tree retention requirements. However, as concluded below, there appear to be no significant tree retention or landscaping requirements for single-family subdivisions in the R – 4 zone

outside of the urban growth area. Ex. P45 – 078 – 080; KCC 16.82.152 and 16.82.156, 16.82.152, Chapter 21A.16.

Stormwater/Drainage

38. The Property is in the Patterson Creek Drainage Basin in the Snoqualmie River Watershed in the Snohomish WRIA (WRIA #7). The site is subject to Conservation Flow Control and Basic Water Quality requirements pursuant to the KCSWDM Application Maps. Ex. D1 – 006; Condition 9.
39. D. R. Strong Consulting Engineers, Inc. performed a Level 1 downstream analysis for the proposed preliminary plat pursuant to KCSWDM Core Requirement #2. It found no downstream nuisances such as erosion, sedimentation, under capacity and flooding. The Project is not anticipated to create new downstream problems. The analysis can be found in the preliminary Technical Information Report (TIR). Exs. D1 – 006, D15.
40. The Applicant proposes a bioswale facility for Water Quality Treatment followed by an infiltration facility for Flow Control. The two facilities combined will meet Conservation Flow Control and Basic Water Quality requirements in accordance with the KCSWDM. The analysis along with modeling is included in the TIR. Exs. D1 – 006, D15.
41. As the Property is larger than 1 acre and the Applicant is proposing full infiltration, a mounding analysis for the infiltration facility will be required during engineering. As part of the infiltration facility design, the Applicant will be required to monitor groundwater in the area of the stormwater facility over the wet season. That monitoring currently is occurring and will determine the seasonal high groundwater. Testimony of Maher Joudi.

Transportation

42. The King County Transportation Plan classifies the western frontage road, 324th Ave. SE as a rural subcollector. The 2016 King County Road Design and Construction Standards (Road Standards) require the minimum right-of-way for a rural subcollector to be 60 feet or 30 feet on either side of the right-of-way centerline. The existing half of the right-of-way fronting the project is 30 feet wide; therefore, no additional dedication is required. The road classification requires frontage improvements including lane widening, extending the shoulder and installing a ditch. The Applicant is proposing these improvements. The Examiner has revised Condition 10.A to require a “fog line” along the eastern edge of the shoulder as was done in Arrington Court. Exs. D1 – 006, D3 – 003; Conditions 6, 10.
43. As found above, access to the subdivision will be via a new internal plat road that will connect directly to 324th Ave. SE. The new private road will be built to the urban sub-access roadway standard with typical 22-foot traveled way plus 6-foot paved surface for parking, sidewalk, curb and gutter on both sides.
44. Transportation Engineering NorthWest performed a level one traffic impact analysis (TIA) to evaluate the cumulative impacts of the seven residential plats within what it

refers to as the Fall City Assemblage.⁹ All seven of the developments are located south of SR 202 (Redmond Fall City Road SE) between 324th Ave. SE and 332nd Ave. SE. All Traffic Data conducted traffic counts from 7–9 AM and 4–6 PM in November 2021 when the schools were in session. The TIA used a 2% forecasted growth in the vicinity to the year 2025. The Cedar 23 development is anticipated to generate approximately 261 new average daily trips with approximately 20 new AM peak-hour trips and approximately 25 new PM peak-hour trips. This calculation includes service vehicles (e.g., mail delivery, garbage pick-up, school bus trips) which may serve this proposed preliminary plat as well as work trips, shopping trips, etc. Exs. D1 – 006, D16.

45. These 7 residential plats are shown on Figure 1 of Ex. D16, copied below:



46. The TIA evaluated Level of Service (LOS) for the AM and PM peak hours, for existing conditions, for the future without the seven developments and for the future with the seven developments, for two off-site intersections (SE Redmond Fall City Rd./324th Ave. SE and SE Redmond Fall City Rd./332th Ave. SE). The study concludes that the intersections will operate at LOS C or better with minimal queuing with the build-out of the seven developments (including the Cedar 23 subdivision). LOS C is an acceptable LOS. Exs. D1 – 007, D16.

⁹ Arlington Court (17 single-family houses); Mount Si (16 single-family houses); Cha Cha 15 (15 single-family houses); Cedar 23 (23 single-family houses); Stevens 21 (21 single-family houses); Fall City II (13 single-family houses); Hazel 16 (16 single-family houses).

47. This area is classified as rural (although it is zoned R – 4, which is not a rural zone) and as documented in the Road Standards, land developments in rural areas shall provide shoulder-type road improvements (as opposed to sidewalk improvements in the urban area designation). Ex. D16 – 020.
48. The proposed preliminary plat is located within the Snoqualmie Valley travel shed that currently passes the King County concurrency standard, indicating that transportation improvements or strategies will be in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years, as required by RCW 36.70A.070(6). Ex. D1 – 007.
49. The County currently has no plans to improve 324th Ave. SE, which is narrow in many places and frequently used by pedestrians, bicyclists, and equestrians. Ex. P46; testimony of Huey-yi Sung.

Parking

50. Each home will have a minimum two-car garage and a 20-foot-deep driveway. Exs. D6 – 012, D9 – 009.
51. In addition, the internal roadway is designed at 28 feet, curb to curb, which allows for parking on one side of the street. Ex. D9 – 003.

Fire Protection and Water Supply

52. The record contains persuasive testimony and documentation that it would be wise for the Fall City Water District to update its Comprehensive Water System Plan and perhaps its Wellhead Protection Plan. However, the Certificate of Water Availability from the Fall City Water District indicates that it will be able to provide water service to the Property pending construction of improvements (distribution system) and subject to a Developer Extension Agreement. Exs. A3; P45.
53. Prior to final recording of the plat, the water service facilities must be reviewed and approved pursuant to King County Fire Flow Standards.
54. Fire District 27 has provided a Fire District Receipt, demonstrating this proposal will be served by the Fire Protection District. Exs. D1 – 008, A5; Condition 7.
55. Future residences must be sprinklered unless otherwise approved by the King County Fire Marshal or designee. Condition 7.

Sewage Disposal

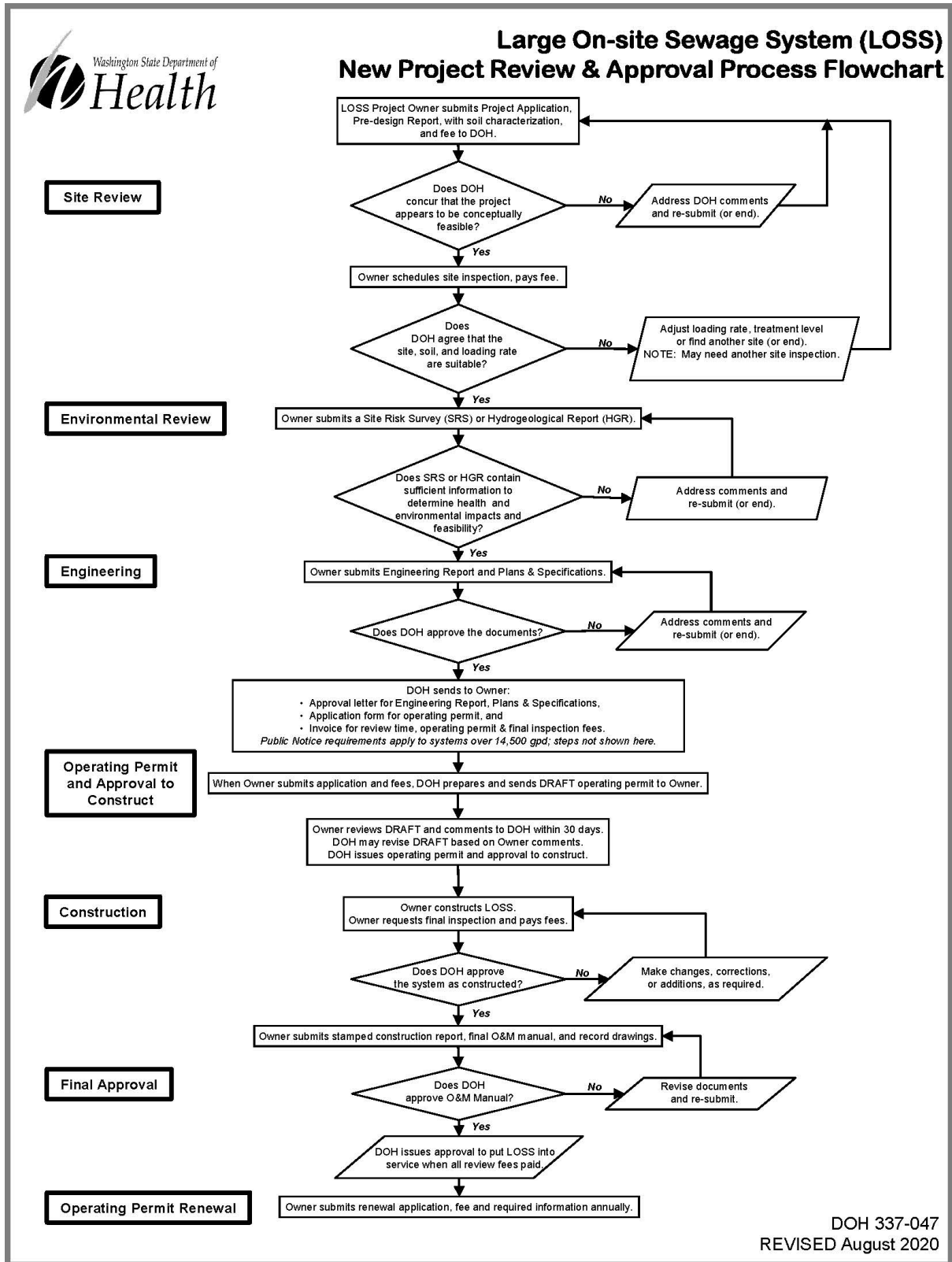
56. The Applicant proposes to serve the Project with a LOSS. Exs. D1 – 008; testimony of Maher Joudi, David Jensen.
57. The legislature adopted Chapter 70A.115 RCW to establish in a single state agency, DOH, comprehensive regulation of the design, operation and maintenance of LOSSs and their operators. To accomplish these purposes, Chapter 70A.115 RCW provides for

the permitting and continuing oversight of LOSSs as well as the establishment of standards and rules for siting, design, construction, installation, operation, maintenance and repair of LOSSs. DOH's LOSS rules are in Chapter 246 – 272B WAC and are intended to achieve sustainable long term sewage management. RCW 70A.115.005, 70A.115.020; WAC 246 – 272B – 01000.

58. Consistent with Chapter 70A.115 RCW, Permitting defers to DOH for review of LOSS systems. Testimony of Dan Gariepy.
59. DOH issued a Notice to Proceed to Environmental Review on July 7, 2022. As discussed in the subsequent Finding, this step follows DOH review of the design engineer's Pre-design Report and determination that the LOSS appears to be viable as well as a site inspection with DOH. D1 – 008,¹⁰ D20.

¹⁰ The Staff Report incorrectly characterizes the July 2022 Notice as a Notice to Proceed to Soil Inspection, a step which precedes the Notice to Proceed to Environmental Review.

60. The chart below and following Findings summarize the key steps in DOH’s review of a proposed LOSS:



- A. The owner submits a Predesign Report prepared, stamped, signed and dated by a design engineer. If the conceptual treatment design appears to be viable, DOH issues a notice to proceed to site inspection. The Cedar 23 has completed this step. WAC 246 – 272B – 02000; testimony of Maher Joudi.
- B. After receiving the notice to proceed, the owner may proceed with the site inspection by scheduling the site inspection with DOH, the design engineer, and the person who prepared the soil logs (if different than the design engineer). The Applicant’s civil engineer indicated that it had received this notice on August 9, 2021. WAC 246 – 272B – 02000; testimony of Maher Joudi.
- C. If DOH determines that the soil information is consistent with the conceptual treatment design, it issues a notice of determination that includes the maximum loading rate and instructions to proceed to environmental review. DOH issued this notice for Cedar 23 on July 7, 2022. The notice indicates:
- [DOH] completed a site visit on June 16, 2022, to verify the soil type in the area of the proposed drainfield for Cedar 23 LOSS. The soils observed during the site visit were found to be predominately Type 4 soils and were consistent with the soil logs provided in the July 2021 Predesign Report. I concur with the recommended soil for the LOSS design is Type 4 soils with the use of sand lined trenches. The vertical separation was found to be greater than 36 – inches.
- The soils verification for this LOSS is complete. Hydraulic loading rate for the LOSS drainfield will be based on Type 4 soils. **This correspondence is your notification of approval to proceed with the environmental review.** (Bold in original).
- WAC 246 – 272B – 02000; Ex. D20; testimony of Maher Joudi.
- D. If DOH issues a notice to proceed, the owner may proceed with the environmental review, submitting a site risk survey (SRS) and, if required, a hydrogeology report (HGR). Included in the extensive list of information required, the SRS must identify critical areas designated by a local, state or federal agency if the primary or reserve drainfield is located within a critical aquifer recharge area or designated wellhead protection area, WAC 246 – 272B – 02050, 246 – 272B – 03200.
- E. If DOH determines that the SRS contains sufficient information to determine the public health and environmental impacts of the LOSS and the LOSS is feasible, it issues a notice of determination including instructions to proceed to engineering. WAC 246 – 272B – 02050.

- F. If at any of these steps, DOH is not able to instruct the owner to proceed to the next step, it discontinues review and treats any future LOSS proposal as a new project.
 - G. The engineering report must include a draft Operations & Maintenance (O&M) manual prepared by the design engineer and meeting the requirements of WAC 246 – 272B – 04000.
 - H. If DOH approves the engineering report and the draft O&M manual, the owner may proceed to plans and specifications. If DOH approves the plans, the owner may submit an operating permit application. WAC 246 – 272B – 02100.
 - I. Following issuance of the operating permit, which must be renewed annually, the owner may not begin construction until receiving DOH’s written approval to construct. WAC 246 – 272B – 02400.
 - J. DOH must conduct a final inspection. WAC 246 – 272B – 05300.
 - K. The design engineer must prepare a LOSS construction completion report which must include record drawings and a description of any changes from the approved plans and specifications, the final management plan and the final O&M manual. WAC 246 – 272B – 05400.
 - L. For development including individually owned lots, such as the Taylor Development entities’ proposals, the LOSS must be managed by either a public entity, a wastewater company regulated by the Washington Utilities and Transportation Commission (WUTC) or a private management entity with a public entity or wastewater company regulated by the WUTC contracted as a third-party guarantor. The management plan must include a contingency plan to operate, maintain, and manage the LOSS so that public health and the environment are protected during a transition from one management entity to another WAC 246 – 272B – 04100.
61. David Jensen is the design engineer for the Arrington Court, Cha, Fall City II, and Cedar 23 LOSS systems. Testimony of David Jensen.
62. Type 4 soils are ideal for treating effluent. Testimony of David Jensen.
63. Many comments expressed concern about problems encountered with the Arrington Court LOSS and that that the other LOSSs proposed by the Taylor Development entities could run into the same difficulties. *See, e.g.*, Exs. P12, P32, P45.
64. Mr. Jensen reviewed the challenges encountered at the Arrington Court subdivision. The issues derive from the components on the individual lots, not the actual LOSS system where the effluent goes into the ground. A few of the residents disposed of waste products not suitable for septic systems; a few sent excessive amounts of water to the system. Testimony of David Jensen.

65. The main issue has been treatment of nitrogen and nitrates. Each home stubs out into a single-compartment, 900-gallon tank which settles out biodegradable products. The tank has an outlet to a proprietary secondary waste treatment system using activated sludge and a biomembrane. Bacterial colonies grow within this system and break down the waste strengths. The effluent then goes to a pump chamber that pumps the effluent off the lot into a common collection pipe to a large pump chamber in the LOSS. The pump chamber doses the LOSS 24 times/day. Testimony of David Jensen.
66. The membranes on each lot have been removed, cleaned, reinstalled, and the systems re-seeded (two had to be re-seeded again). Colonies are establishing themselves, but have not yet reached the necessary maturity to achieve the targeted waste strength. Nitrates are intended to be no more than 10 mg/L before being discharged into the drainfield; they are currently 30 mg/L, down from 50 mg/L. By comparison, the nitrate standard for a lot less than one acre in size on OSS is 30 mg/L. Testimony of David Jensen.
67. In response to lessons learned at Arrington Court and community concerns, the Cedar 23 design will *not* include individual treatment systems on each lot. The treatment unit will be in Tract B. Consequently, there will be one treatment system, rather than 23, to manage. Testimony of David Jensen.
68. Mr. Jensen also plans centralized treatment for the Fall City II proposed preliminary plat. Testimony of David Jensen.
69. In addition, as discussed under Recreation, the Cedar 23 recreation area will not be located over the LOSS, although the recreation area for the Fall City II preliminary plat currently is proposed over the LOSS. Testimony of David Jensen and Maher Joudi.
70. The Fall City Water District commissioned Robinson Noble, Inc. to review the potential impacts of a LOSS proposed for the Cha proposed plat (a Taylor Development entity proposal north of Cedar 23 and south of Arrington Court). Ms. Brocco included the Robinson Noble review letter in Ex. P12 and excerpted the following portions in her PowerPoint presentation, Ex. P45:

[A] single LOSS poses even more of a threat than multiple residences each served by their own septic systems and drainfields because the large on-site system will allow increased housing density and concentrate the septic effluent in one compact area. The increased housing density will result in a commensurate increase in the effluent loading requiring[, a higher total septic system capacity to accommodate the loading from more residences.] This results in a larger waste stream being applied in a more concentrated drainfield area than occurs under existing conditions.¹¹

Exs. P12 – 013 through – 015, P45 – 056 through – 058.

¹¹ Ex. P45 also included the following: “The mounding of effluent underneath the drainfield of the proposed LOSS may be sufficient to locally alter groundwater flow directions, with the result that some of the effluent flows towards the wellheads.” However, that statement is not included in the Robinson Noble letter.

- 71. The District did not comment specifically on Cedar 23. Testimony of Dan Gariepy.
- 72. Mr. Jensen reviewed the Robinson Noble letter as well as public comments on the LOSS system. Testimony of David Jensen.
- 73. In response to those comments, he provided calculations of the mass loading in pounds per day for the Cedar 23 LOSS (Scenario 1) and two scenarios using OSS on the Property. He analyzed the applicable waste strength requirements for nitrates (N), biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and gas (O&G) Scenario 1 assumes a three – bedroom home generating 360 gallons per day of effluent; Scenarios 2 and 3 assume a four– bedroom home generating 570 gallons per day of effluent. Ex. A19; testimony of David Jensen.
- 74. Scenario 2 is not particularly relevant as it assumes five lots each of which is larger than 1 acre. Ex. A19.
- 75. Scenario 3 examines the maximum number of lots which could be created on the property using OSS. Based on the site soils and Property location in a Category I CARA, a maximum of 13 lots could be developed on OSS. Ex. A19; testimony of David Jensen.
- 76. The following table compares the total mass loading from the LOSS (Scenario 1) with 13 individual OSS (Scenario 3):

Mass Loading	Scenario 1 23 homes using LOSS	Scenario 3 13 homes using OSS (cumulative)
N	0.69 pounds per day	1.23 pounds per day
BOD	0.69 pounds per day	7.72 pounds per day
TSS	0.69 pounds per day	4.94 pounds per day
O&G	0.0 pounds per day	1.23 pounds per day

Ex. A19; testimony of David Jensen.

- 77. This mass loading from the LOSS would occur in the drainfield area and dissipate as it mixes with groundwater. DOH’s intent is achieve background conditions at the property line. More mixing occurs as the effluent moves downgradient in the aquifer, further reducing waste strength. Testimony of David Jensen and Dave Baumgarten.
- 78. A LOSS system requires a minimum of 3 feet of undisturbed, permeable soils below the drainfield trench component as compared to 1 foot for an OSS. Testimony of David Jensen.

79. Dave Baumgarten, the Applicant's hydrogeologist, addressed the cumulative effects of multiple LOSS systems. He reviewed the Water District's Comprehensive Plan and Wellhead Protection Plan and the letter from Robinson Nobel. The Cedar 23 LOSS, as well as the other LOSS systems being proposed, will discharge into the upper sand and gravel aquifer, which is separated from the aquifer from which the Water District draws its water by a 30 – 80-foot aquitard. Ex. P12; testimony of Dave Baumgarten.
80. In response to concerns expressed by community members that the LOSS singly or cumulatively may change the direction of groundwater flow, Mr. Baumgarten testified that there may be some very localized change around the LOSS system(s) but because sand and gravel aquifer is highly conductive, the overall gradient would overwhelm any localized small changes in flow. Testimony of Dave Baumgarten.
81. The Project is located within the six-month travel zone for Fall City Water District wells 1, 2, and 5. Presumably, this was one basis for designating the CARA as a Category I CARA. KCC 21A.24.313.B; Ex. P45 – 013 through – 015; testimony of Megan Brocco.
82. Ms. Brocco and Ms. Shepard raised questions about whether the soils logs the Applicant provided to DOH were taken from the area of the proposed LOSS or elsewhere on the Property and the date(s) the soil logs were taken. Exs. P35 – 010, P48, P49.
83. At the Examiner's request, the Applicant provided the soil logs it provided to DOH as part of its July 2021 Predesign Report. The requested information is contained in Exhibit A18. It indicates that ten soil logs were taken within the LOSS tract on January 23, 2021, during the typical wet season. None of the soil logs had water in them. Exs. A18, A20; testimony of David Jensen.
84. The Examiner afforded the public an opportunity to respond to Exhibit A18. Ms. Brocco and Ms. Shepard continued to question the location and dates of the soil logs. To be able to evaluate their allegations, the Examiner asked that the Applicant submit the entire July 2021 Predesign Report. It is contained in Exhibit A21.
85. The soil log map contained in Exhibit A18 – 003 corresponds to the soil log map in the Predesign Report, A21 – 016. The soil log description descriptions contained in Exhibit A18 – 001 – 002 correspond to those contained in Section V of the Predesign Report, Exhibit A21 – 031 – 033. Both state that the soils were logged on January 23, 2021.
86. In its Notice to Proceed to Environmental Review, DOH confirms that the soils it verified in its June 16, 2022, site visit were consistent with the soil logs provided in the Predesign Report. The Examiner finds that Applicant's testimony and exhibits on the question of the soils logs persuasive.
87. Ms. Brocco and others requested that the LOSS be subject to the High Quality Effluent (HQE) standard. The Applicant has agreed to this parameter. Exs. P45, P47– 043, P47– 046, A20; testimony of Megan Brocco.
88. The Applicant must obtain final DOH approval before recording the final plat. KCC 19A.16.030.F; Condition 16.

89. Given the considerable concern about the individual LOSS system as well as the potential cumulative impacts of multiple LOSS systems, the Examiner will retain jurisdiction in the event DOH denies LOSS design. Condition 24.
90. Had the LOSS record been as flushed out in Fall City II as it is here, the Examiner would have similarly retained jurisdiction in the event DOH denied that LOSS design and would have included a condition to that effect.

Recreation

91. The Applicant discussed the request to contribute to the West Side Trail with King County and the Washington State Department of Transportation and concluded that there is no way to contribute to the project as there is no funding for the project. Ex. D9 – 002.
92. Multiple opportunities to enjoy recreational facilities exist. The nearest public park is Quigley Park, located 3/4 mile east, which provides river access, picnic benches, and play areas. Fall City Park, located approximately 1.15 miles of travel distance from the proposed preliminary plat, includes amenities such as baseball diamond, oval track, picnic tables, restroom facilities, and a walking path to and along Snoqualmie river. Chief Kanim Middle School is also located one parcel northeast of this subdivision and provides additional recreational opportunities. D1 – 007.
93. In addition, all residential subdivisions of more than four units in the R – 4 zone at a density of eight units or less per acre must provide recreation space for leisure, play and sport activities at a rate of 390 SF per unit. Ex. D1 – 007; KCC 21A.14.180.A.
94. As found above, a LOSS cannot be graded to make its surface level. The LOSS area thus cannot provide particularly usable recreation space. Had the Examiner understood this, she would not have found that the Fall City II proposed preliminary plat made appropriate provision for parks and recreation and playgrounds and would not have approved it as currently designed.
95. The proposed preliminary plat density is 3.95 units per acre and is required to provide at least 8,970 square feet of on-site recreation space. The Applicant's proposal includes a single on-site recreation space of 11,690 square feet within Tract C, which will include 1,785 square feet of play area with a separate tot-lot and swing set, or similar equipment. Ex. D1 – 007; Condition 13.
96. A detailed improvement plan for the recreation tract with equipment landscaping, surfacing, etc. is required for submittal, review, and approval by Permitting prior to engineering plan approval. Ex. D1 – 007 – 008; KCC 21A.14.180.A; Condition 13.A.
97. The Examiner has added conditions requiring that, prior to recording of the final plat, the recreation facilities be constructed and Permitting confirm that that required recreation area is provided and usable for its intended purposes. Revised Condition 13.C, New Condition 13.D.

98. Had the LOSS record been as flushed out in Fall City II as it is here, the Examiner would have added similar conditions to that effect.
99. If it is determined during engineering plan review that additional area is required for the drainage facilities, the recreation space and improvements may have to be relocated. This may result in the reconfiguration and/or loss of lots. Revised Condition 13.E.

Schools and Safe Walking Routes

100. Students residing within the Project will be served by Fall City Elementary, Chief Kanim Middle, and Mount Si High Schools, all within Snoqualmie Valley #410 School District. Exs. D1 – 007, D17 – 001.
101. Bus service is available to all three schools. The bus stops for all three schools are located along 324th Ave. SE, which fronts the Property. Students attending Fall City Elementary School will have access to the 37-am school bus at the entrance of the Cedar 23 development. Students attending Chief Kanim Middle and Mount Si High Schools will walk north along 324th Ave. SE a short distance to catch the 35-am school bus across the street at 4201 324th Ave. SE. There are no sidewalks and no official shoulder on this portion of 324th Ave. SE, but traffic volumes are low. Exs. D1 – 007, A10 – 001 – 002.
102. The Applicant has provided a School Walkway Analysis that identifies the expected travel routes to area schools or bus stops. Staff has reviewed the analysis and determined that the analysis and photographs adequately support a safe school walk route from the new development. Ex. A10.
103. The School District did not submit a comment letter. Ex. D3 – 003.
104. The Applicant testified that it is willing to work with the School District and Reign Church to provide an informal walking path to the Middle School. The Examiner has added a condition to that effect. Testimony of Robert Fitzmaurice; New Condition 19.
105. Chapter 27.44 KCC requires that an impact fee per lot be imposed to fund school system improvements to serve new development within this district. Payment of this fee in a manner consistent with KCC 27.44.010 is a condition of subdivision approval. The current fee is \$16,203 per single-family dwelling unit. Ex. D1 – 007; Condition 12.
106. 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 Examiner has no authority over the design of a LOSS. Through Chapter 70A.115 RCW the legislature established this authority in the Department of Health. Based on

- DOH's Notice to Proceed to Environmental Review, Exhibit D20, Condition 16 which requires final DOH approval of the LOSS prior to recording of the final plat, and the Examiner's retention of jurisdiction in the event DOH denies the LOSS design, the Examiner concludes that appropriate provision has been made for sanitary wastes.
3. The purpose of Chapter 365-196 WAC is to provide criteria to assist counties and cities in adopting comprehensive plans that satisfy the GMA requirements and development regulations that implement those plans. WAC 365-196-020, 365-196-030(4). Development regulations do not include decisions on project permit applications such as the proposed Cedar 23 preliminary plat. WAC 365-196-200(8), RCW 36.70B.020(4). WAC 365-196-425 in particular guides the development of the rural element of a comprehensive plan. Again, it does not apply directly to individual projects such as the subject preliminary plat.
 4. Further, during Project review, applicable development regulations are determinative of the type of land use permitted at the site. RCW 36.70B.030(2)(a). It is true that, in the absence of applicable development regulations, the local government may consider appropriate elements of the comprehensive plan adopted under the GMA to determine the type of land use, level of development and characteristics of the development, among other things. RCW 36.70B.030(1), 36.70B.040(1). However, that is not the case here. The King County Council has adopted specific density requirements for the Fall City Rural Town and has chosen not to adopt other regulations many of those submitting written or oral comments wish they had. Finally, even assuming there were an inconsistency between the zoning and the King County Comprehensive Plan, a specific zoning ordinance prevails over an inconsistent comprehensive plan. *Citizens for Mount Vernon V. City of Mount Vernon*, 133 Wn. 2d 861, 873, 947 2nd 1208 (1997).
 5. The Examiner has no authority to require the Applicant to contribute to the West Side Trail or the Route 202 corridor improvement project.
 6. The Examiner has no authority to require the Fall City Water District to update its Comprehensive Plan or Wellhead Protection Plan or to place the Cedar 23 preliminary plat on hold until it does so.
 7. KCC 16.82.156 does not apply, as the Fall City Rural Town is not within the urban growth area. KCC 16.82.152 does not apply, as the applicable zoning designation is R – 4, not rural residential (RA). Chapter 21A.16 KCC does not apply, as it does not provide standards for single-family subdivisions outside of the urban growth area.
 8. While the construction of the Project will undoubtedly displace wildlife currently using the site, the Examiner has no authority under the King County Code to condition the Project for wildlife protection.
 9. The proposed preliminary plat, 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 zoning regulations for the Rural Town of Fall City.

10. If approved subject to the conditions below, the proposed preliminary plat 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.
11. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
12. 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.

DECISION:

1. The preliminary plat Cedar 23 is approved subject to the following conditions of approval.
2. The plat configuration shall be developed in substantial conformance with the revised preliminary drawings dated July 8, 2021, and August 20, 2021 (Exhibits D3 and A9).
3. Compliance with all platting provisions of Title 19A of the King County Code (KCC).
4. 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.
5. The plat shall comply with the density requirements of the R-4 zone classification for the Fall City Rural Town. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of DLS – Permitting in accordance with KCC19A.12.030.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DLS-Permitting prior to the submittal of the engineering plans. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary, or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title. Note this may result in the reconfiguration and/or loss of lot(s).

6. All construction and upgrading of public and private roads shall be done in accordance with the 2016 King County Road Design and Construction Standards (KCRDCS) established and adopted by Ordinance 18420, as amended.
7. The applicant must obtain the approval of the King County Deputy Fire Marshal for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 KCC. Any future residences are required to be sprinklered unless otherwise approved by the King County Fire Marshal or designee.

8. Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the KCRDCS.
9. Final plat approval shall require full compliance with the drainage provisions set forth in Chapter 9.04 KCC. 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 Chapter 9.04 KCC 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 KCSWDM and applicable updates adopted by DLS - Permitting. Approval of the drainage and roadway plans is required prior to any construction.
 - B. Current standard plan notes and ESC notes, as established by DLS - Permitting 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 # (DLS – Permitting-issued plan record number to be inserted in space provided) on file with DLS - Permitting and/or the King County Road Services Division. This plan shall be submitted with the application for 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 plans on file.
 - D. The site is within the mapped Conservation Flow Control and Basic Water Quality Areas. A full drainage review is required demonstrating compliance with all nine (9) core requirements and all five (5) special requirements of the KCSWDM. Level 2 Flow Control is required for the on-site basin.
 - E. The Flow Control and Water Quality Facilities shall meet the design requirements of the KCSWDM. The Facilities shall be shown on the final engineering plans and documented in the TIR to demonstrate compliance with the KCSWDM.
 - F. To implement the required Best Management Practices (BMPs), the final engineering plans and TIR shall clearly demonstrate compliance with all applicable design standards. The requirements for BMPs 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.

- G. The project is located within a Category I Critical Aquifer Recharge Area and must provide the appropriate measures to protect groundwater as per KCSWDM. These measures may include lining Water Quality and Flow Control Facilities as specified in KCSWDM.
 - H. Retaining walls that are over 4 feet in height measured from the bottom of the footing to the top of the wall shall be designed by a licensed structural engineer.
10. The proposed subdivision shall comply with the KCRDCS, including the following requirements:
- A. 324th Avenue SE shall be constructed at a minimum to the rural subcollector standard per KCRDCS Section 2.02 and shall include a “fog line” along the eastern edge of the shoulder.
 - B. The new interior road shall be constructed at a minimum to the urban subaccess standard per KCRDCS Section 2.03.
 - C. Private access tracts (PAT) and Joint use driveway tracts (JUD), if any, shall be improved to the PAT and/or JUD standard pursuant to section 2.09 and 3.01 of the KCRDCS.
 - D. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.13 of the KCRDCS.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
12. Lots within this subdivision are subject to Chapter 21A.43 KCC, 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.
13. 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. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DLS – Permitting concurrent with the submittal of the engineering plans.
 - B. Recreation Tract(s) shall be fenced where adjacent to right-of-way and/or private roadway(s) to alleviate potential conflicts between users of recreation tract and

- vehicles. Fencing shall be a minimum split rail with landscaping and/or vinyl chain link and shown on the detailed recreation plan. Split rail with landscaping is preferred.
- C. Except as provided in KCC 19A.08.160.B, the recreation space improvements shall be constructed prior to final plat recording.
 - D. Prior to recording of the final plat, the DLS –Permitting shall confirm that that required recreation area will be usable for its intended purposes.
 - E. The recreation space is proposed adjacent to the storm drainage facilities in Tract B. If, during engineering plan review, the stormwater facilities are enlarged such that the recreation space does not satisfy KCC 21A.14.180, the recreation space and improvements shall be relocated. This may result in the reconfiguration and/or loss of lots.
14. A homeowners' association or other workable organization satisfactory to DLS, shall be established and shall provide for the ownership and continued maintenance of the community drainfield, recreation facilities, and private road(s).
 15. Prior to starting any clearing and grading activity, a wildlife survey shall be conducted 2 to 3 weeks prior in order to identify any nests or habitat of species listed in KCC 21A.24.382 and of any active breeding site of any federal or state listed endangered, threated, sensitive and candidate species or King County species of local importance not in listed in subsections KCC 21A.24.382 B. through J.
 16. Final Health approval shall be obtained from the Washington State Department of Health for the community drainfield prior to final recording.
 17. The trees within the Tract B and the recreation portion of Tract C shown on Exhibit A9 shall be retained. A tree may be removed only if a health assessment by an arborist, reviewed and concurred in by DLS – Permitting, determines a tree is not viable or is hazardous.
 18. If any employee, contractor, subcontractor, etc. believes a cultural resource and/or human remains have been uncovered at any point in the construction of the project, all work in the area must stop and the location be secured (see Chapter 27.44 RCW). The appropriate Tribes, agencies and authorities (e.g. Snoqualmie Indian Tribe, archaeological consultant, Washington State Department of Archaeology 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 determinations and approved resumption of work.
 19. The Applicant shall work with the School District and Reign Church to provide an informal walking path to the Chief Kanim Middle School.
 20. The preliminary plat approval will be valid for a period of 60 months from the date of approval. Pursuant to KCC 19A.12.020, if the associated final plat is not recorded within the time limit provided, preliminary plat approval shall become void.

21. The subdivision shall conform to KCC Chapter 16.82 relating to grading on private property.
22. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
23. 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 Permit from the Washington State Department of Ecology.
 - C. Water Quality Modification Permit from the Washington State Department of Ecology.
 - D. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.
24. Given the considerable concern about the individual LOSS system as well as the potential cumulative impacts of multiple LOSS systems, the Examiner will retain jurisdiction in the event DOH denies LOSS design.

DATED March 22, 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 *April 17, 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 *April 17, 2023*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *April 17, 2023*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE FEBRUARY 28, 2023, HEARING ON PRELIMINARY PLAT APPLICATION CEDAR 23, DEPARTMENT OF LOCAL SERVICES FILE NO. PLAT210005, PROPOSED ORDINANCE NO. 2023-0003

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were David Baumgarten, Megan Brocco, Angela Donaldson, Robert Fitzmaurice, Daniel Gariepy, Cory Huskinson, David Jensen, Maher Joudi, Brian Lee, Cindy Parks, Joseph Pursley, Rachel Shepard, Michael Street, Mike Suelzle, Huey-yi Sung, Janna Treisman, and Cory Vance.

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

Exhibit no. D1	Department of Local Services Staff Report
Exhibit no. D2	Land Use Application, received on February 19, 2021
Exhibit no. D3	Revised Preliminary Plans, dated July 8, 2021
Exhibit no. D4	Notice of Application, dated April 15, 2021
Exhibit no. D5	Revised Notice of Application, dated September 9, 2021
Exhibit no. D6	Revised SEPA Checklist, dated July 7, 2021
Exhibit no. D7	SEPA Threshold Determination of Non-significance, issued September 15, 2022
Exhibit no. D8	Public Comments
Exhibit no. D9	Applicant’s Response to Comments, dated March 11, 2022
Exhibit no. D10	Geotechnical Report, dated July 7, 2021
Exhibit no. D11	Survey Map, dated February 12, 2021
Exhibit no. D12	CADS20-0115, dated September 1, 2020
<i>Exhibit no. D13</i>	<i>Critical Areas Report, dated January 27, 2021, not entered into the record</i>
Exhibit no. D14	Density Calculation Worksheet, received July 20, 2021
Exhibit no. D15	Revised Technical Information Report, dated July 8, 2021
Exhibit no. D16	Updated Traffic Impact Analysis, for Fall City Residential Assemblage dated August 2, 2022
Exhibit no. D17	School Walkway Analysis, dated February 10, 2021 (17 – lot proposal)
Exhibit no. D18	Certificate of Water Availability, dated January 20, 2021 (17 – lot proposal)
Exhibit no. D19	Fire District Receipt, dated January 27, 2021
Exhibit no. D20	Septic System Notice to Proceed, dated July 7, 2022

Exhibit no. D21	Wildlife Habitat Assessment, dated July 14, 2021
Exhibit no. D22	Notice of Public Hearing, dated January 18, 2023
Exhibit no. D23	Assessors Map
Exhibit no. D24	Power Point Presentation, submitted February 28, 2023

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

Exhibit no. A1.	Applicant Status Permit Transfer, dated December 21, 2022
Exhibit no. A2.	Certificate and Transfer-Applicant Status (Rohrbaugh), dated July 26, 2021
Exhibit no. A3.	Certificate of Water Availability, dated January 30, 2023
Exhibit no. A4.	Cultural Resources Assessment (23 lots), dated November 12, 2021
Exhibit no. A5.	Fire District Receipt, dated July 7, 2021
Exhibit no. A6.	DAHP Archeology Concurrence letter, dated March 3, 2022
Exhibit no. A7.	Land Use Applications, dated June 16, 2021
Exhibit no. A8.	Permit Application; Applicant affidavit, dated December 21, 2022
Exhibit no. A9.	Preliminary landscape-recreation plan, dated August 20, 2021
Exhibit no. A10.	School Walkway Analysis, dated July 7, 2021
Exhibit no. A11.	Wetland and Stream Recon Report, dated August 31, 2021
Exhibit no. A12.	Public comments (17 lots), received May 12, 2021
Exhibit no. A13.	Public comments (23 lots), received October 7, 2021
Exhibit no. A14.	Public comments (23 lots), received January 26, 2022
Exhibit no. A15.	Expert Witness List and Qualifications
Exhibit no. A16.	Revised Expert Witness List and Qualifications, submitted April 21, 2023
Exhibit no. A17.	Correspondence with Snoqualmie Indian Tribe in Fall City II submitted February 28, 2023
Exhibit no. A18.	Soil logs and maps, submitted February 28, 2023
Exhibit no. A19.	Mass Loading Calculations, submitted February 28, 2023
Exhibit no. A20.	Response to exhibits P47-P48, submitted March 10, 2023
Exhibit no. A21.	Response to exhibit P49, submitted March 20, 2023

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

Exhibit no. P1.	Email from Teresa Kluver, submitted February 8, 2023
Exhibit no. P2.	Email from Janice Cannon-Kyte, submitted, February 10, 2023
Exhibit no. P3.	Email from Cindy Parks, submitted February 13, 2023
Exhibit no. P4.	Email from Carol Killingsworth, submitted February 13, 2023
Exhibit no. P5.	Email from Dwight and Rebecca Miller, submitted February 13, 2023
Exhibit no. P6.	Email from Debra Boutin, submitted February 13, 2023
Exhibit no. P7.	Email from Rick Stamm, submitted February 13, 2023
Exhibit no. P8.	Email presentation from Mike Suelzle, submitted February 13, 2023, need to provide revised presentation
Exhibit no. P9.	Email from Lori Cleary, submitted February 13, 2023
Exhibit no. P10.	Email from Alison Apple, submitted February 13, 2023
Exhibit no. P11.	Email from Susan Street-Wong, submitted February 14, 2023
Exhibit no. P12.	Email presentation from Megan Brocco, submitted February 14, 2023
Exhibit no. P13.	Email presentation from Rachel Shepard, submitted February 14, 2023

- Exhibit no. P14. Email from Debbie Pettersson, submitted February 14, 2023
- Exhibit no. P15. Video from Mike Suelzle, submitted February 14, 2023
- Exhibit no. P16. Email from Debra Boutin, submitted February 14, 2023
- Exhibit no. P17. Email from Kelly Young, submitted February 17, 2023
- Exhibit no. P18. Letter from Rachel Shepard, submitted February 21, 2023
- Exhibit no. P19. Email from Norm and Mary Jacobson, submitted February 22, 2023
- Exhibit no. P20. Email from William Swan, submitted February 22, 2023
- Exhibit no. P21. Email from Kyle and Tennyson Jacobson, submitted February 23, 2023
- Exhibit no. P22. Email from Cassandra Morgan, submitted February 23, 2023
- Exhibit no. P23. Email from Christina Lathrop, submitted February 23, 2023
- Exhibit no. P24. Email from Megan Scoggins, submitted February 24, 2023
- Exhibit no. P25. Email from Karen Newton, submitted February 24, 2023
- Exhibit no. P26. Email from Danielle Miller, submitted February 24, 2023
- Exhibit no. P27. Email from Nancy and Tom Doolittle, submitted February 24, 2023
- Exhibit no. P28. Email from Patricia Rose, submitted February 24, 2023
- Exhibit no. P29. Letter from Jacqueline Evans, submitted February 24, 2023
- Exhibit no. P30. Email from Doug and Yvonne Vogt, submitted February 24, 2023
- Exhibit no. P31. Email from Angela Donaldson, submitted February 24, 2023
- Exhibit no. P32. Email from Zack Treisman, submitted February 24, 2023
- Exhibit no. P33. Email from Janna Treisman, submitted February 24, 2023
- Exhibit no. P34. Email from Lacy Linney, submitted February 24, 2023
- Exhibit no. P35. Letter from Megan Brocco, submitted February 24, 2023
- Exhibit no. P36. Email from Sean Frisbee, submitted February 24, 2023
- Exhibit no. P37. Email from Katie Frisbee, submitted February 24, 2023
- Exhibit no. P38. Email from Mary and Mel Butler, submitted February 24, 2023
- Exhibit no. P39. Email from Rachel Shepard, submitted February 24, 2023
- Exhibit no. P40. Letter from Michael Street, submitted February 24, 2023
- Exhibit no. P41. Letter from Rachel Shepard, submitted February 24, 2023
- Exhibit no. P42. Letter from Taylor Baker, submitted February 24, 2023
- Exhibit no. P43. Email from Chris Arnold, submitted February 24, 2023
- Exhibit no. P44. Additional presentation slides from Exhibit P13, from Rachel Shepard, submitted February 28, 2023
- Exhibit no. P45. Revised presentation from Exhibit P12, from Megan Brocco, submitted February 28, 2023
- Exhibit no. P46. Revised presentation from Exhibit P8, from Mike Suelzle, submitted February 28, 2023
- Exhibit no. P47. Response to exhibits A17-A19, from Megan Brocco, submitted March 7, 2023, limited to direct responses to exhibits A17-A19.
- Exhibit no. P48. Response to exhibits A17-A19, from Rachel Shepard, submitted March 7, 2023, limited to direct responses to exhibits A17-A19.
- Exhibit no. P49. Response to exhibits A17-A19, from Rachel Shepard, submitted March 2, 2023

March 22, 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. **PLAT210005**
Proposed ordinance no.: **2023-0003**

CEDAR 23

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 March 22, 2023.



Jessica Oscoy
Office Manager

Anderson, Kris

Apple, Alison

Hardcopy

Arnold, Chris

Hardcopy

Baker, Taylor

Baumgarten, David

The Riley Group Inc

Hardcopy

Boutin, Debra

Brocco, Megan

Butler, Mary/Mel

Cannon-Kyte, Janice

Cedar 17 Investments LLC

Cleary, Lori

Hardcopy

Donaldson, Angela/Jeff

Hardcopy

Doolittle, Nancy/Tom

Escobar, Lisa

Evans, Jacqueline

Fairchild, Mary

Fitzmaurice, Robert

Taylor Development

Hardcopy

Frisbee, Sean/Katie

Gariepy, Daniel

Department of Local Services

Gordon, Glen/Rebecca

Hardcopy

Halim, Mike

Huskinson, Lena/Cory

Jacobson, Kyle/Tennyson

Hardcopy

Jacobson, Norm/Mary

Jensen, David

Jensen Engineering Inc

Hardcopy

Jones, April

Taylor Development

Joudi, Maher

DR Strong Consulting Engineers Inc

Hardcopy

Kanberg, Tamy

Killingsworth, Carol

Kluver, Teresa

Hardcopy

Larson, Kenneth

Hardcopy

Lathrop, Christina

Lee, Brian

Department of Local Services

Lemiasheuski, Anton

Hardcopy

Lindsey, Daniel/Leigh

Linney, Lacy

McCarthy, Glenn

Hardcopy

McGill, Rich/Anne

Hardcopy

Miller, Danielle

Miller, Marlynn

Miller, Rebecca/Dwight

Hardcopy

Morgan, Kassandra

Mullaney, Patrick

Stoel Rives LLP

Nakamura, Corbin

Newton, Karen

Newton, William

Hardcopy

Noel, Charlotte

Hardcopy

Osbekoff, Adam

Snoqualmie Tribe Enviro and Natural Resources Dept

Hardcopy

Parks, Cindy
Hardcopy

Pedroza, Melani
Metropolitan King County Council

Pettersson, Debbie

Pursley, Joseph
Department of Local Services

Refisland, Jason

Rose, Patricia

Sahm, Teri

Scheffler, Ryan
Department of Local Services

Scoggins, Meagan

Shepard, Rachel

Stamm, Rick
Hardcopy

Street, Michael

Street, Susan

Suelzle, Mike
Hardcopy

Sung, Huey-yi
Department of Local Services

Swan, William

Treisman, Janna/Zack
Hardcopy

Vance, Cory

Vogt, Doug/Ivonne

Weber, Joe

Wherlock, Karen
Hardcopy

White, T

Young, Kelly