

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PSUB2016-00276

APPLICANT: Terrene Ventures
C/o Johns Monroe Mitsunaga Koloušková PLLC
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Bellevue, WA 98004
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APPELLANTS: Lancaster Ridge HOA
Walter Pereyra
223rd Neighbors
C/o J. Richard Aramburu
Aramburu & Eustis, LLP
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Seattle, WA 98104
rick@aramburu-eustis.com

RESPONDENT: City of Sammamish: Public Works Department and
Department of Community Development
C/o Kenyon Disend, PLLC
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TYPE OF CASE: Consolidated: 1) Preliminary subdivision application (*Big Rock Vista*); 2) Appeal from approval of variations from the Interim Public Works Standards (“PWS”¹) associated with the *Big Rock Vista* preliminary subdivision application; and 3) Appeal from the State Environmental Policy Act (“SEPA”) threshold Determination of Nonsignificance (“DNS”) issued for *Big Rock Vista*

STAFF RECOMMENDATION: Approve preliminary subdivision subject to conditions

¹ Historically, “PWS” has been used by both City staff and the Examiner as the acronym for the Interim Public Works Standards. The Examiner will follow that precedent throughout this case. (The Examiner uses the acronym “2016 PWS” for the new, current edition of the Public Works Standards.)

EXAMINER DECISION: Preliminary subdivision: Return for Modification
PWS Appeal: Dismiss
SEPA Appeal: Dismiss

DATE OF DECISION: February 26, 2018

INTRODUCTION ²

Terrene Ventures (“Terrene”) seeks preliminary approval of *Big Rock Vista*, a 22-lot single-family residential subdivision of a 10.19 acre site which is partially zoned R-4 and partially zoned R-6.

Terrene filed a Base Land Use Application on August 30, 2016. (Exhibit 2 ³) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 3) The Department issued a Notice of Application on September 15, 2016 (Exhibit 4) which was reissued on October 4, 2016 (Exhibit 5) to correct a mailing error. (Exhibit 1:B9)

On May 10, 2017, the Lancaster Ridge Homeowners Association (“LRHOA”) filed an appeal (Exhibit 9001) from the approval on April 20, 2017, by the Sammamish Public Works Department (“PW”) of one variation from the PWS (Exhibit 24). ⁴

On September 12, 2017, the LRHOA, Walter Pereyra, and 223rd Neighbors ⁵ (collectively “Appellants”) filed an appeal (Exhibit 9007) from the issuance on August 22, 2017, by the Department of a SEPA DNS for *Big Rock Vista* (Exhibit 46).

The application and the two appeals were consolidated for hearing and decision making.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The pages in Exhibits 1 – 47 are each marked with a sequential “Bates” page number from 0001 to 00957. Citations to individual pages within those exhibits will follow the form “Exhibit X:B n ” where X is the exhibit number and n is the Bates page number without leading zeros.

⁴ The LRHOA appeal challenges variations allowing a cul-de-sac to exceed the PWS length limit and allowing the subdivision to take access from a substandard City street. (Exhibit 9001.1) In fact, PWS did not grant a variation to the PWS cul-de-sac length limit because it had concluded that Terrene’s proposal complied with the length limit. (Exhibit 15.2:B247) Since one cannot appeal something that didn’t happen, LRHOA’s objection to cul-de-sac length will be addressed in the discussion of the proposed preliminary subdivision.

⁵ The 223rd Neighbors are Ryan and Corey Colwell-Lipson, Jeff and Sheila Mallula, Nitin and Anjali Chadha, Dave and Sarah Aukland, Brett and Silvia Harmon, Rodrigo and Wendy Caamano, Jeff and Martha Wedeking, Dave and Jill Galiotto, Dick Hafner and Patricia Silverman, David and Stephanie Carlson, and Pekka and Mari Jaske, all of whom have residential access onto 223rd Avenue SE

The subject property abuts the south edge of the *Lancaster Ridge* subdivision, essentially straddling what would be the alignment of 223rd Avenue SE were it extended north from its present terminus to meet Lancaster Way SE ⁶ in *Lancaster Ridge*. The address of the one residence on the subject property is 1223 Lancaster Way SE. (Exhibit 1:B3)

The Sammamish Hearing Examiner (“Examiner”) viewed the subject property on January 29, 2018.

The Examiner convened an open record hearing on January 29, 2018. The hearing lasted approximately 20 hours over three days, concluding on January 31, 2018. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”); day-to-day continuations were announced on the record. (Exhibits 47; 51)

The Examiner requested and was granted five additional working days (15 working days total) in which to deliberate and prepare this written Decision because of the extensive record and the complexity of the issues. The agreed Decision issuance deadline was Friday, February 23, 2018. ⁷ The Examiner became ill during the weekend of February 18, 2018, and sought an additional five working days to complete the Decision. Terrene granted that request by E-mail to the Deputy City Clerk.

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivision applications be issued within 120 net review days after the application is found to be complete and that decisions on administrative appeals generally be issued within 90 days of the appeal filing date. Neither deadline was met. The SMC provides two potential remedies for an untimely subdivision decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. The SMC allows that time limit to “be extended indefinitely” with the consent of the parties. [SMC 20.10.110] The timing of these proceedings was dictated by the filing of the two appeals, the requirement for a prehearing conference, ⁸ and the schedules of the principal parties and their counsel.

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (“RoP”) 224(c) and Exhibit 1019, ¶ 3, the Examiner entered the following administrative exhibits into the hearing record:

- Exhibit 9001: Form: Appeal of Type 2 Land Use Decision to Hearing Examiner, filed May 10, 2017, on behalf of Lancaster Ridge HOA re: PWS Variation issued for *Big Rock Vista*
- Exhibit 9001.1: Appeal Statement, dated May 10, 2017, re: PWS Variation issued for *Big Rock Vista*

⁶ When *Lancaster Ridge* was recorded, the street through the subdivision was labeled “223rd Way SE.” (Exhibit 57, Sheet 2) It is now known as Lancaster Way SE.

⁷ Terrene’s counsel filed a Notice of Unavailability for the period February 2 – 12, 2018. The Examiner stated on the record that he would not issue this Decision during that period.

⁸ Subsection 20.10.170(1) SMC requires the Examiner to hold a prehearing conference “in every appeal ... if timely requested by any party.” On October 2, 2017, Appellants filed a request for a prehearing conference. (Exhibit 9011)

- Exhibit 9001.2: Comment letter, *Big Rock Vista*, dated March 14, 2017
- Exhibit 9002: Letter, Examiner to Principal Parties, May 10, 2017
- Exhibit 9003: City of Sammamish's Motion to Dismiss, filed August 1, 2017
- Exhibit 9003.1: Declaration of Steve Leniszewski in Support of City of Sammamish's Motion to Dismiss, filed August 1, 2017
- Exhibit 9003.2: Declaration of Kim Adams Pratt in Support of City of Sammamish's Motion to Dismiss, filed August 1, 2017, with Exhibits A and B to be cited as Exhibits 9003.2A and 9003.2B
- Exhibit 9004: Applicant and Respondent Mike Walsh, Terrene Ventures' Response Regarding City of Sammamish's Motion to Dismiss, filed August 11, 2017, with Exhibits A and B to be cited as Exhibits 9004A and 9004B
- Exhibit 9005: Appellants' Response to City of Sammamish's Motion to Dismiss, filed August 11, 2017, with Attachments A and B to be cited as Exhibits 9005A and 9005B
- Exhibit 9006: Interlocutory Order Denying Motion to Dismiss, issued August 17, 2017
- Exhibit 9007: Form: Appeal of Type 2 Land Use Decision to Hearing Examiner, filed September 12, 2017, on behalf of Lancaster Ridge HOA, Walter T. Pereyra, and 223rd Neighbors re: SEPA DNS issued for *Big Rock Vista*
- Exhibit 9007.1: SEPA Appeal Statement, filed September 12, 2017
- Exhibit 9008: Letter, Examiner to Principal Parties, September 12, 2017
- Exhibit 9009: E-mails: September 12, 2017: Examiner to Principal Parties; September 12, 2017: Mr. Aramburu to Examiner; September 12, 2017: Examiner to Principal Parties; September 21, 2017: Ms. Pratt to Examiner; September 21, 2017: Ms. Koloušková to Examiner; September 22, 2017: Mr. Aramburu to Examiner; September 25, 2017: Ms. Koloušková to Examiner; September 25, 2017, Examiner to Principal Parties
- Exhibit 9010: Interlocutory Order on Procedural Matters, issued September 27, 2017
- Exhibit 9011: Motion for Reconsideration of Interlocutory Order on Procedural Matters by Appellants and Request for Prehearing Conference, filed October 2, 2017
- Exhibit 9012: E-mail, Hearing Examiner to Principal Parties, October 2, 2017, at 12:56 p.m. (asking for comments on Exhibit 9011)
- Exhibit 9013: E-mail, Aramburu to Hearing Examiner, October 2, 2017, at 2:47 p.m. (clarifying that Appellants seek a prehearing conference in both of their appeals)
- Exhibit 9014: Applicant's Response to Motion for Reconsideration of Interlocutory Order, received October 5, 2017, at 1:22 p.m.
- Exhibit 9015: Interlocutory Order on Motion for Reconsideration and Request for Prehearing Conference, issued October 6, 2017
- Exhibit 9016: City of Sammamish's Response to Motion for Reconsideration, filed October 6, 2017
- Exhibit 9017: E-mail chain among Principal Parties and Examiner, October 6 – 20, 2017 (setting prehearing conference date and start time)
- Exhibit 9018: E-mail, Examiner to Principal Parties, October 10, 2017 (prehearing conference date/time)

Exhibit 9019: Order Memorializing a Prehearing Conference, issued November 16, 2017

Pursuant to RoP 224(d), RoP 224(f), and Exhibit 1003, ¶ 3, the Department pre-filed Exhibits 1 – 47 and provided an index listing of those exhibits on pages 33 and 34 of Exhibit 1. The Department separately pre-filed Exhibits 48 – 50: Exhibit 48: Resume of Nell Lund; Exhibit 49: Letter, Nell Lund, January 22, 2018; and Exhibit 50: Prehearing Brief, January 22, 2018. Appellants moved to strike proposed Exhibit 49. (Exhibit 1023) After entertaining brief oral argument on the Motion to Strike, the Examiner denied the Motion. There was no other objection to entry of the Department's exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from the Department as follows:

Exhibit 51: Notice of Canceled and Rescheduled Hearing, issued October 31, 2017
Exhibit 52: Letter, R. Scott and Barbara J. Cochrane, January 29, 2018
Exhibit 53: Proposed BLA2016-00030, August 2, 2017 version
Exhibit 54: Proposed BLA2016-00030, October 17, 2017 version
Exhibit 55: Letter, Sanjeet Dhinsa, January 23, 2018
Exhibit 56: Letter, Ravi Soin, January 26, 2018
Exhibit 57: Recorded Plat of *Lancaster Ridge*, recorded June 21, 1988
Exhibit 58.1: City of Sammamish Map, Special Overlays/Districts
Exhibit 58.2: Enlargement of the portion of Exhibit 58.1 covering the area around *Big Rock Vista*
Exhibit 58.3: Portion of Figure 5c from the King County East Lake Sammamish Basin and Nonpoint Action Plan, December, 1994
Exhibit 59: Certificate of Concurrency, issued January 31, 2018
Exhibit 60: Letter, Yensheng Wang, undated, 2018

Pursuant to RoP 224(e) and Exhibit 1003, ¶ 3, Appellants pre-filed Exhibits 1001 – 23 and provided an index listing of those exhibits. On January 26, 2018, the Appellants filed a Notice of Dispositive Motions, identifying two motions which they intended to offer at the outset of the hearing. The Examiner assigned Exhibit 24 to that Notice. There was no objection to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Appellants as follows:

Exhibit 1025: Excerpt from Recommended Guidelines for Subdivision Streets, Institute of Transportation Engineers
Exhibit 1026: Excerpt from Residential Streets, Second Edition, American Society of Civil Engineers/National Association of Home Builders/Urban Land Institute
Exhibit 1027: Excerpts from the 2016 King County Surface Water Design Manual
Exhibit 1028: Sarah Cooke Rebuttal Report, January 29, 2018
Exhibit 1029: King County drainage outfall route diagram, *Redford Ranch* subdivisions

Pursuant to RoP 224(f) and Exhibit 1003, ¶ 3, Terrene pre-filed Exhibits 2001 - 2021 and provided an index listing of those exhibits. The Examiner subdivided proposed Exhibit 2019 into 2019: Prehearing brief; and 2019.A: Excerpts from the Final East lake Sammamish Basin and Nonpoint Action Plan. There was no objection to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Terrene as follows:

Exhibit 2022:	Proposed additional condition re: Safe walking conditions for school children
Exhibit 2023:	Slope calculation for southwest corner of Parcel 9165

MOTIONS

Five motions were decided during the proceedings, two prior to the start of the open record hearing and three during the hearing.

On August 1, 2017, the City filed a Motion to Dismiss LRHOA's PWS variation appeal on the grounds that vested rights do not extend to procedures and the 2016 PWS does not provide the right of administrative appeal from PW's variation decisions. (Exhibit 9003) Terrene and LRHOA filed responses to the motion. (Exhibits 9004; 9005) On August 17, 2017, the Examiner denied the Motion to Dismiss, concluding that although case law generally supported the City's position, the specific language of the 2016 PWS allows a project vested to the PWS to be subject to the appeal provisions within that version of the PWS. (Exhibit 9006)

On September 27, 2017, the Examiner issued an Interlocutory Order on Procedural Matters addressing hearing procedures. (Exhibit 9010) On October 2, 2017, the Appellants filed a Motion for Reconsideration of Interlocutory Order on Procedural Matters by Appellants and Request for Prehearing Conference. (Exhibit 9011) On October 6, 2017, the Examiner denied (dismissed) the reconsideration request for lack of jurisdiction, but granted the request for a prehearing conference as required by SMC 20.10.170(1).

On January 23, 2018, Appellants filed a Motion to Strike City Exhibit 49. (Exhibit 1023) As previously noted, that Motion was denied during the process of entering pre-filed exhibits.

On January 26, 2018, Appellants filed a Notice of Dispositive Motions. (Exhibit 1024) The two motions listed in that Notice were taken up at the outset of the open record hearing. The first motion sought a ruling on whether consideration of a density transfer subdivision application may proceed where there is currently no lot divided by a zone boundary. The Examiner entertained brief oral argument on the motion.

The Examiner orally ruled that the hearing could proceed. It is logical that an action which permanently merges parcels owned by different parties for the purpose of a future development would not take place until the development for which the merger is desired has received City approval. (If merger occurred and approval were never granted, owners would have a mess trying to return their parcels to their original, pre-merger status.) Until the merger actually occurs, the property sought to be subdivided does not even legally

exist. Admittedly, that forces review of a proposal relying on such a future merger to occur in a “hypothetical” or “presumptive” world: The property to be developed does not legally exist; the Examiner must assume merger will occur as proposed.

However, the hypothetical aspect must be minimized to the extent of at least having in the record an application to accomplish the proposed merger. Without such an application, the Examiner would not know what the shape of the property to be subdivided will be. The Examiner would not favorably consider a project for a parcel the proposed boundaries of which are not known before such approval is granted.

The Examiner indicated that he would entertain argument on the question of whether the current proposal requires consideration of density transfer and will address that in this Decision.

The second motion sought a ruling on whether consideration of a subdivision application may proceed where a required Certificate of Concurrence (“CoC”) expired before the subdivision application was filed. The Examiner entertained brief oral argument on the motion.

After discussing the provisions within Chapter 14A.10 SMC regarding CoCs, the Examiner orally ruled that the hearing could proceed, but that the proposed preliminary subdivision could not be approved without existence in the record of a valid CoC.

The Interlocutory Orders and the oral rulings are herewith incorporated herein by reference as if set forth in full.

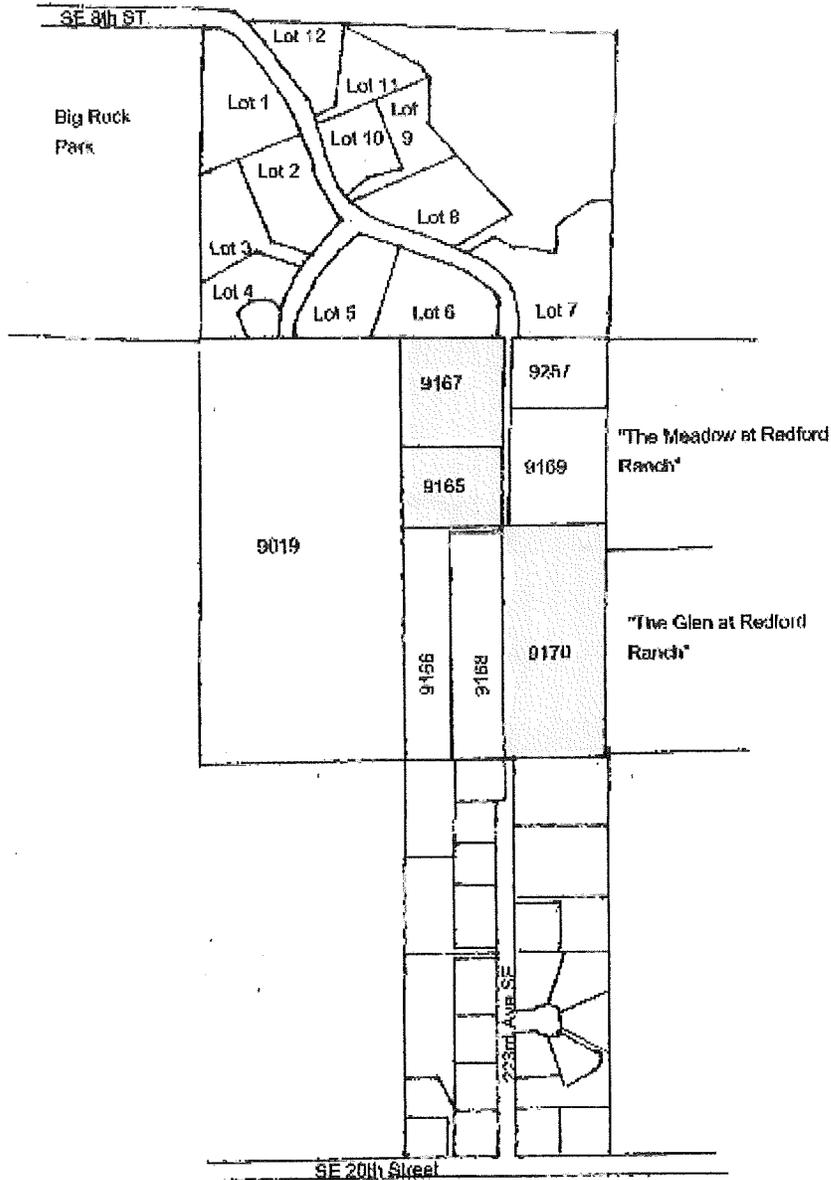
The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. This consolidated proceeding involves three separate, but related components:
 - A. The underlying component is Terrene’s application for preliminary subdivision approval of *Big Rock Vista*.
 - B. The second component (at least chronologically the second) is LRHOA’s appeal from the PWS variation granted by PW to allow *Big Rock Vista* to take access from Lancaster Way, a public street which does not meet current City street standards, through *Lancaster Ridge*.
 - C. The third component is the Appellants’ appeal from the SEPA DNS issued by the Department for *Big Rock Vista*.

2. The property proposed to be subdivided is a rather unique assemblage of all of three parcels plus a small, former portion of a fourth parcel, all located immediately south of *Lancaster Ridge* and north of the present end of the public street portion of 223rd Avenue SE. The property and surrounding area are depicted on the diagram on the next page and described in subsequent paragraphs.

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Source: Exhibits 47:8939; 25:8547;
Testimony

0 200 400 Feet
Scale (Approx.)

- A. The property proposed to be subdivided under the *Big Rock Vista* application is the shaded area on the preceding diagram. It consists of King County Tax Parcels 0424069165 (“Parcel 9165”), 0424069167 (“Parcel 9167”), 0424069170 (“Parcel 9170”), and the 15 foot wide by 167 foot long former panhandle of 0424069166 (“Parcel 9166 Panhandle”). (Exhibit 7:B142, 143) Parcel 9167 contains a single-family residence, accessory buildings, and a riding arena; Parcel 9165 contains a barn, two sheds, and a former man-made stock pond. The two parcels contain about five acres and have been developed as one unit with access from the north coming off the end of Lancaster Way SE. The two parcels are enclosed by a 6-foot chain link fence. (Exhibits 7:B143; 52, photographs 1, 2, 4, and 5) Parcel 9170 also contains about five acres; it is undeveloped. The Parcel 9166 Panhandle contains a paved driveway. (Exhibit 52)
- B. *Big Rock Vista* is bordered on the north by *Lancaster Ridge*, a 12-lot subdivision developed under King County regulations and recorded in June, 1988, some 11 years prior to Sammamish’s incorporation in 1999. The lots in *Lancaster Ridge* are generally between one and two acres in size. *Lancaster Ridge* is accessed via Lancaster Way SE (originally called 223rd Way SE), a public street built within a 60-foot wide right-of-way. Lancaster Way SE is essentially a southeasterly extension of SE 8th Street. At its southern end, the Lancaster Way SE pavement ends in a “temporary turnaround.” The face of the recorded plat states that “The temporary turnaround easement shall automatically expire when the public street is extended and maintained by a public agency.” (Exhibit 57) The Lancaster Way SE street section is a 28-foot wide, thickened-edge pavement with shoulder areas, but no sidewalks. (Exhibit 21:B369 - 374; and testimony)
- C. The two acreage parcels to the east of Parcels 9167 and 9165 (“Parcel 9257” and “Parcel 9169”) were created by King County short subdivision KCSP S89S0080, Recording No. 9103149008. (Exhibit 22:B490; Parcel 9257 is Lot 1; Parcel 9169 is Lot 2) It would appear from the file documents that King County required dedication of the westerly 30 feet of those parcels as public right-of-way for the eventual southerly extension of what was then known as 223rd Place SE. Regardless of how it came to be, the fact is that the Lancaster Way SE right-of-way extends from the south boundary of *Lancaster Ridge* for approximately 583 feet as a 30-foot wide, undeveloped, public right-of-way to the south line of Parcel 9169. (Exhibit 7:B142) That undeveloped right-of-way will be referred to as the “Undeveloped 223rd right-of-way” in view of the fact that it aligns with the 223rd developed right-of-way further to the south. Parcels 9257 and 9169 each contain a single-family residence; their driveways traverse the northern portion of the Undeveloped 223rd right-of-way. The residence on Parcel 9169 has a second driveway from the south utilizing the “223rd Easement.” (Exhibit 22:B402; See Finding of Fact 2.E, below, for a description of that easement.)

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- D. To the east of Parcels 9257, 9169, and 9170 are the “*Redford Ranch*” subdivisions: *The Meadow at Redford Ranch* and *The Glen at Redford Ranch*. Collectively, those two subdivisions contain over 100 lots.
- E. A 60-foot wide ingress and egress easement straddles the common boundary between Parcels 9168 and 9170. That easement abuts the south end of the Undeveloped 223rd right-of-way and the north end of the developed portion of 223rd Avenue SE. (Exhibit 7:B142 - 144) That easement will be referred to as the “223rd Easement.” The 223rd Easement contains an essentially one-lane, dirt/gravel road which is in rather poor condition. The gravel road is entirely located on the portion of the easement which encumbers Parcel 9170. (Exhibits 7:B143, 144; 1020.8 - .11)
- F. To the south of Parcels 9166, 9168, and 9170 are a number of smaller (but still mostly one-half acre plus) lots served by 223rd Avenue SE extending north from SE 20th Street. The 223rd Neighbors reside on those lots. 223rd Avenue SE exists as a approximate 20-foot wide, paved, two-lane public street without curbs, gutters, or sidewalks between SE 20th Street and the south boundary of Parcels 9168 and 9170. (Exhibits 7:B144; 14.11:B216; 1020.8)
- G. Parcels 9166 and 9168 are each approximately 2.5 acres in area. Most⁹ of former Parcel 9166 is owned by Robert and Barbara Cochrane (“Cochrane”). (Exhibit 1009) Access to their home is over the 223rd Easement from 223rd Avenue SE; their paved driveway traverses the Parcel 9166 Panhandle at the north end of the lot to reach their house located in the central part of the parcel. (Exhibit 52, photographs 1 and 2) Parcel 9168 contains a single-family residence located near that parcel’s south end. (Exhibits 22:B402, 482; 2013, Index photograph) Parcel 9168 is owned by Adam and Andrea Smith. (Exhibit 36:B862)
- H. To the west of Parcels 9167, 9165, and 9166 is a 20± acre parcel (“Parcel 9019”) which was deeded to the City by its prior owner (Mary Pigott) for use as a park. (Exhibit 1010) Big Rock Park is located diagonally northwest of the northwest corner of Parcel 9019. (Exhibit 21:B368)
3. Terrene does not own the *Big Rock Vista* property: It has an agreement to purchase the subject property from Hi-Lo Tech Partners, LLC (“Hi-Lo”) which is acquiring the parcels comprising the subject property for investment purposes.¹⁰
- A. Parcels 9165 and 9167 are owned jointly by Beth Fortmueller and Jeanne Holden (“Fortmueller and Holden”). They have an agreement to sell their parcels to Hi-Lo. (Testimony)

⁹ See Finding of Fact 3.C, below, for explanation of the word “Most.”

¹⁰ Some record documents identify this entity as “Hilo Tech Partners, LLC” while others identify it as “Hi-Lo Tech Partners, LLC.” The Examiner has chosen to use the latter version throughout this Decision.

- B. Patrick and Chenoa Haluptzok (“Haluptzok”) sold Parcel 9170 to Hi-Lo in November, 2016. (Exhibit 1008) Haluptzok’s daughter is Mrs. Smith, the co-owner of Parcel 9168. (Testimony)
- C. In December, 2016, Cochrane sold the Parcel 9166 Panhandle to Hi-Lo in fee simple, reserving an easement for ingress, egress, and utilities over, under, and across the panhandle for the benefit of Parcel 9166. Cochrane also agreed in the deed instrument to repair any damage to the road within the panhandle (his paved driveway) “caused or contributed to” by Cochrane after development of *Big Rock Vista*.¹¹ (Exhibit 1009)
4. The subject property lies on a west to southwest aspect, descending slope. The top of the slope is essentially at the western edge of the *Redford Ranch* subdivisions at approximate elevation 475 feet. The slope descends to approximate elevation 400 feet in the vicinity of the 223rd Easement. The upper part of the slope is substantially steeper than the lower portion in most areas; slopes on the upper portion are in the 30% range. Parcels 9167 and 9165 rise somewhat above the common lay of the land, starting at the Undeveloped 223rd right-of-way, and then descend more sharply along their west and southwest edges. Depending upon where one places the top and toe of a measured slope, the slope in the southwest corner of Parcel 9165 varies from about 25% to about 30%. (Exhibits 7:B143 and 144; 22:B401; 2023)
5. The entire site consists of Alderwood gravely sandy loam soils with slopes between 6% and 35%. Alderwood soils form on glacial till and are considered moderately well drained. (Exhibit 25:B540)
- The SMC lists Alderwood gravely sandy loam soils which occur on slopes of 15% or greater as erosion hazard areas. [SMC 21A.15.415(1)]
6. A total of eight wetlands occur on or in the near vicinity of the subject property.¹²
- A. Wetland A. Wetland A is located off-site within the 30-foot wide Unopened 223rd right-of-way abutting Parcels 9167 and 9165. It is a Category III wetland with 14 habitat points. The

¹¹ This transaction was likely consummated in violation of Title 19A SMC, Land Division. The result of the sale was to create a new parcel: The Parcel 9166 Panhandle. The division of Parcel 9166 into two parcels constituted a short subdivision as defined by SMC 19A.04.310; the division of Parcel 9166 into two parcels would not qualify for any of the exemptions to land division regulation as set forth in SMC 19A.08.040. Any lot created pursuant to Title 19A SMC must, among other requirements, comply with the requirements of Title 21A SMC. [SMC 19A.08.060(8)] A 15-foot wide lot does not meet the minimum lot width requirement for a lot in any residential zone in the City. [SMC 21A.25.030(A)] Therefore, not only was the panhandle lot created without benefit of the review process required by Title 19A SMC, but the panhandle lot could not have been approved in any event because of its narrow width.

The Examiner understands that Hi-Lo’s apparent intent is to merge the Parcel 9166 Panhandle with Parcels 9165, 9167, and 9170 through the Boundary Line Adjustment (“BLA”) process. However, the BLA that would accomplish that goal has yet to be approved. Hi-Lo essentially put the cart before the horse.

¹² This total does not include the former farm pond on Parcel 9165 which all parties agree was man-made and not subject to regulation.

SMC requires a 50-foot buffer for such wetlands. Wetland A drains south into a culvert to join a Type Np stream which will be described in Finding of Fact 8.B, below. (Exhibits 7:B143; 25:B543, 544)

- B. Wetland B. Wetland B is a small wetland located in the northwest portion of Parcel 9170. It is a Category III wetland with five habitat points. The SMC requires a 50-foot buffer for such wetlands. (Exhibits 7:B143; 25:B544)
 - C. Wetland C. Wetland C is a slope wetland located in the east-central portion of Parcel 9170. It is a Category IV wetland with five habitat points. The SMC requires a 50-foot buffer for such wetlands. (Exhibits 7:B143, 144; 25:B544)
 - D. Wetlands D1 and D2. Wetlands D1 and D2 are part of a large depressional wetland located at the base of the eastern slope. The dirt road within the 223rd Easement separates the two wetlands. Wetland D1 is located in the southwestern corner of parcel 9170; Wetland D2 crosses Parcels 9168 and 9166. Both are Category II depressional wetlands with a habitat score of six. The SMC requires a 100-foot buffer for such wetlands. (Exhibits 7:B143, 144; 25:B544, 545)
 - E. Wetland E. Wetland E is a slope wetland located in the northeast portion of Parcel 9170. It is a Category IV wetland with five habitat points. The SMC requires a 50-foot buffer for such wetlands. (Exhibits 7:B143; 25:B544)
 - F. *Redford Ranch* wetlands. Tracts B and E in the *Redford Ranch* subdivisions each contain an apparent Category III wetland, one with a creek that used to flow westerly through it. Those wetlands and/or their buffers abut the east edge of Parcels 9257 and 9169/9170. (Exhibits 22:B482; 25:B538, 654, 547)
7. Depending on which map source one relies upon, either a small area in the northern end of Parcel 9167 or about half of Parcels 9167 and 9165 lie within Wetland Management Area (“WMA”)-61. (Exhibits 58.1; 58.2; 58.3) The difference is insignificant because the only requirement applicable to that portion of the subject property that appears to be within WMA-61 is compliance with Stream Protection Standard (BW-2), a standard which has been rendered obsolete in recent years by more restrictive stormwater management regulations. (Exhibit 2019.A; and testimony)
8. A total of two streams occur on the subject property.
- A. Ebright Creek. Ebright Creek originates in Wetland D1, flows through Wetland D2, and passes within 20 feet of the southwest corner of Parcel 9165, before crossing into Parcel 9019 on its way to eventually discharge into Lake Sammamish. Ebright Creek is a Type F (fish-bearing, perennial) stream. The SMC requires a 150-foot buffer for such streams.

(Exhibit 7:B143, 144; 25:B548; 2023) Ebright Creek is about 2.25 miles long. (Exhibit 1011, p. 17, Finding of Fact B.5.A, ¶ 1)

Ebright Creek is one of the major tributaries to Lake Sammamish from the Sammamish Plateau. It is home to Coho, sockeye, and Kokanee salmon and to resident cutthroat trout. (Exhibit 1011, p. 17, Finding of Fact B.5.A, ¶ 4)

Kokanee are native to the Lake Sammamish and Lake Washington watersheds, but are currently only found in Lake Sammamish and a few of its tributaries, including Ebright Creek. (Exhibit 1011, p. 19, Finding of Fact B.6, ¶ 1)

Extensive work is underway to reverse the declining numbers of Kokanee in the Lake Sammamish system. This effort is spearheaded by the Kokanee Work Group, a consortium of local governments (including Sammamish), state agencies, Indian tribes, community groups, and fisheries advocates. The major emphasis is on restoring and preserving spawning habitat in tributary streams. Ebright Creek is one of the four primary spawning streams for Kokanee. Two restoration projects have been identified: Replacing the culvert at SE 12th Street and “preventing or minimizing bank stabilization and upstream slopes”. (Exhibit 1011, p. 19, Finding of Fact B.6, ¶ 2)

Ebright Creek holds a special significance to the legislative officials of the City: They have specifically called it out as one of four streams of “special significance” in the City. [SMC 21A.15.1240(1)(b)] Ebright Creek is the major Kokanee stream in the City (and one of the two major Kokanee streams feeding into Lake Sammamish). (Exhibit 1011, p. 40, Conclusion of Law E.4)

- B. Unnamed stream. An unnamed Type Np (non-fish bearing, perennial) stream arises along the east side of the 223rd Easement dirt road near the north end of the road, flows southerly adjacent to the road for approximately 240 feet, and then flows through a culvert beneath the dirt road to join Ebright Creek. The Type Np stream appears to be fed from two sources: outflow from Wetland A and piped outflow from the *Redford Ranch* detention ponds upslope to the east. (Exhibits 7:B143; 25:B548¹³; 41; 42; 1029)
9. The subject property lies at the convergence of four different zoning designations, all dating from pre-incorporation King County zoning action. *Lancaster Ridge* and the north half of Parcel 9019 are zoned R-1 (one dwelling unit (“DU”) per acre). The R-1 zoning extends further to the north and west. (Exhibit 8)

¹³ Terrene’s consultant labeled this stream as a Type Ns (non-fish bearing, seasonal). See also Exhibit 2020. All critical areas experts involved in this case now agree that it is Type Np.

Parcels 9167, 9165, 9166, 9168 and the parcels on both sides of 223rd Avenue SE south of Parcels 9166 and 9168 are zoned R-4 (four DU per acre). The R-4 zoning extends further south and east. (Exhibit 8)

Parcels 9257, 9169, and 9170, together with the southerly of the *Redford Ranch* subdivisions are zoned R-6 (six DU per acre). Also, the south half of Parcel 9019 and a connecting strip down to SE 20th Street are likewise so zoned. (Exhibit 8)

The majority of the northerly *Redford Ranch* subdivision is zoned R-8 (eight DU per acre). An area immediately adjacent to 228th Avenue SE is zoned R-12 (12 DU per acre). (Exhibit 8)

This zoning pattern places R-4 and R-6 zoning on the hillside feeding the headwaters of Ebright Creek, puts half of the Pigott Farm property in R-1 and half in the R-6 zone for no logically apparent reason (especially given that Ebright Creek flows through both parts), and sandwiches a finger of R-4 zoning between two areas of R-6 zoning, again for no apparent reason. The simple fact is that the area zoning pattern seems to have been adopted with little to no awareness of or consideration of the existence of Ebright Creek and its importance to the area.

10. The maximum permissible lot yield for a proposed subdivision is calculated by determining a base density and adding to it any “bonus or transfer units authorized by Chapter 21A.75 [Residential Density Incentives] or 21A.80 [Transfer of Development Rights] SMC”. [SMC 21A.25.070(1) and (2); quote from (2)] The base density is calculated by multiplying an adjusted site area “by the applicable residential base density number” obtained from SMC 21A.25.030(A). [SMC 21A.25.070(1)] Fractional results “of 0.50 or above shall be rounded up”, those “below 0.50 shall be rounded down.” [SMC 21A.25.070(4)]
11. The adjusted site area is determined by taking the gross site area and subtracting and adding certain specified areas:
 - (2) Existing submerged lands, steep slopes and buffers, Categories 1 – 4 wetlands and buffers, Types S, F, Np, and Ns streams and buffers, and property to be used as a street(s) shall not be credited toward base and maximum density or floor area calculations; provided, that subdivisions or short plats that meet the tree retention standards of SMC 21A.35.210(2), Tree retention requirements, shall be credited 10 percent of the environmentally sensitive areas and associated buffers identified above.
 - (a) The site has accumulated sufficient technique points pursuant to SMC 21A.85.070, preferred low impact development incentives, to allow for inclusion of such areas as set forth in that section; or
 - (b) The site meets the tree retention incentives of SMC 21A.35.220(2), in which case 10 percent of the critical areas and buffers identified above may be included in the site area used for calculating base and maximum density or floor area.

[SMC 21A.25.080(2)¹⁴] Thus, the amount of critical area buffer included on a parcel will affect its maximum potential development yield.

12. Terrene completed a “Density Calculations Worksheet”¹⁵ using a form provided by the Department, making separate calculations for the R-4 and R-6 portions of the subject property. Terrene calculated that the R-4 area had a maximum permissible lot yield of 10.48 (10) lots and that the R-6 portion had a maximum permissible lot yield of 12.78 (13) lots. The total maximum permissible lot yield of both sections was thus calculated to be 23. (Exhibit 9)

It must be noted that the calculation provided no deduction for Type F and Type Np streams and their buffers, although both affect the subject property.

13. There have been several prior attempts to develop all or some of the parcels referred to in this Decision. In 2005, Haluptzok had a wetland delineation prepared for Parcels 9168 and 9170 for a use not specified in this record. (Exhibit 27:B724, § 1.0, ¶ 1)

In 2012 Haluptzok had the delineation on Parcels 9168 and 9170 revisited, hoping to develop two single-family residences, presumably one on each parcel. That review determined that the only building site on the two parcels was one in the southwest corner of Parcel 9168. (Exhibit 27)

In or around 2013-2014 Haluptzok, Holden, Fortmueller, and the owners of Parcels 9257 and 9169 worked with the Pulte Group on a subdivision proposal that would have created 40 lots on Parcels 9167, 9165, 9257, and 9169, with Parcels 9168 and 9170 remaining essentially open space. (Exhibit 1012.2) The City informed them that 223rd Avenue SE would have to be extended through the plat; the owner group objected. (Exhibit 1012)

In early 2016 a group filed a *Big Rock Vista* subdivision application which expired later that year due to inactivity. That application included Parcels 9167, 9165, 9166, 9168, and 9170. (Exhibit 13:B173, 175)

The current application was filed in August, 2016. (Exhibit 2)

In December, 2016, a *Big Rock Vista* plan labelling Parcels 9257 and 9169 as “Future Development” was submitted to the City. (Exhibit 1013, p. 3)

¹⁴ This code section is confusingly drafted. The opening paragraph seems to suggest that a developer who meets the basic, minimum tree retention requirements of SMC 21A.35.210(2) automatically earns the 10% bonus, while subsection (b) indicates that one must meet the tree retention incentive requirements of SMC 21A.35.220(2) in order to earn the 10% bonus. It seems incomprehensible that the City Council would have intended to award a bonus for simply complying with the minimum requirements. Therefore, the Examiner will interpret this section as requiring fulfillment of the incentive requirement to earn the bonus.

¹⁵ “Density” is somewhat of a misnomer. The worksheet actually calculates maximum permissible dwelling unit yield, not density.

14. The *Big Rock Vista* proposal which is now before the Examiner places 22 lots within Parcels 9167 and 9165, the five acre R-4 zoned portion of the site, thus more than doubling its calculated maximum permissible lot yield. (Exhibit 7) Terrene argues that such a density transfer is permissible essentially as a matter of right; the Department argues that it is permissible only if the site is one lot, split by a zoning boundary. (Exhibits 1; 40; 2019; and testimony) Hi-Lo has filed a BLA application which, in its current iteration, would combine Parcels 9167, 9165, 9170, and the Parcel 9166 Panhandle into one single parcel, connected by the 15-foot width at the east end of the panhandle. (Exhibit 54)
15. The proposed plat would extend Lancaster Way SE (aka 223rd Avenue SE) southerly for about 150 feet at which point a 90° intersection would mark the start of internal Road A, an approximate 460-foot long, public cul-de-sac. (Exhibit 7:B145) Surface water runoff is proposed to be collected and conveyed to an underground detention vault, partly beneath the cul-de-sac bulb and partly within the standard 150-foot buffer of Ebright Creek. Terrene proposes to reduce the buffer width to 75 feet. The preliminary plan envisions discharge of detained water via a dispersion system near the edge of the reduced width stream buffer. (Exhibit 7:B147) Sewage would be collected and piped via gravity flow beneath the 223rd Easement dirt road to a pump station located within Parcel 9170 on the east side of the 223rd Easement road. The sewer main would come within about 50 feet of Ebright Creek; the pump station would be about 100 feet from the creek. Sewage would then be pumped uphill to the east, passing through wetland buffers, to a manhole in the *Redford Ranch* area. (Exhibit 7:B146, 148) The City is requiring Terrene to dedicate 30 feet of right-of-way along the east edge of Parcels 9167 and 9165; no right-of-way dedication has been required from Parcel 9170. Terrene plans to construct a “soft surface” trail southerly within the to-be-dedicated right-of-way and on southerly within the east half of the 223rd Easement. (Such a trail would require widening the current road bed, such as it is, because the dirt road is too narrow to safely serve as a one-lane road and a 5-foot wide trail.) Terrene proposes to construct a branch of that trail westerly over the Parcel 9166 Panhandle and Parcel 9165 to the west property line to provide access to Parcel 9019. (Exhibit 7:B145, 146)
16. The proposal reduces the width of the Ebright Creek buffer on Parcel 9165 by 50% (on an areal basis, by much more than 50% because of the geometry of the corner of the parcel), reduces the Wetland A buffer on Parcels 9167 and 9165 by nearly 50%, eliminates about 1,575 square feet (“SF”) of Ebright Creek/Wetland D1/D2 buffer for the sewage pump station, and temporarily affects portions of the Wetland C and D1/D2 buffers for construction of the force main. A total of 25,206 SF of standard buffer is proposed to be removed. To compensate for that reduction, Terrene proposes to protect 25,661 SF of native upland forest between the Wetlands E and C buffers, east of the Type Np stream buffer on the east side of the 223rd Easement road. (Exhibit 2020) Terrene proposes these changes under the buffer averaging provisions of Chapter 21A.50 SMC. (Exhibit 25:B551 – 558)
17. On August 30, 2016, Terrene filed an application with PW seeking three “variations” from PWS requirements: PWS.15.050 to reduce the width of the Road A right-of-way and street section; PWS.15.050 to extend the maximum permissible length of a cul-de-sac from 600 feet to 2,850 feet;

and PWS.15.100 to relieve the developer from having to upgrade off-site, substandard streets that provide access to the subdivision. (Exhibit 23)

On February 2, 2017, PW advised Terrene that a cul-de-sac length variation would be necessary only if the length of Road A (measured from where it would intersect the extension of Lancaster Way SE-223rd Avenue SE) exceeded 600 feet. PW advised Terrene that it would consider Lancaster Way SE-223rd Avenue SE to be only a temporary dead-end pending “an eventual extension to connect through”. (Exhibit 15.2:B247, ¶ 4)

Based upon that advice, on March 28, 2017, Terrene resubmitted its PWS variation request, eliminating therefrom the cul-de-sac length request. (Exhibit 24:B525 – 536)

On April 20, 2017, PW approved the two requested PWS variations. (Exhibit 24:B521 – 524) The street section PW approved for Road A matches the standard street section called for under the current 2016 PWS. In approving the waiver of the off-site street improvement requirements, PW concluded that the extent of improvement that would be required (nearly a half mile) was disproportionate to the proposed subdivision. (*Ibid.*) The 2016 PWS does not require improvement to substandard off-site streets like the PWS does.¹⁶ [Official notice]

18. “Streets and highways are most effectively classified by their function, according to the character of the service they are intended to provide.” [Public Works Standards (PWS).15.050.A, ¶ 1] Section PWS.15.050.A lists a number of City arterials “to assist the developer in determining the classification of a particular street. ... If a street or portion of a street is not listed, ... the Public Works Department [shall] determine the correct street classification.” [PWS.15.050.A, ¶ 6] 212th and 218th Avenues SE, and SE 4th, 8th, and 20th Streets are all listed in the PWS as Collector Arterials.

“Collector arterials distribute trips from principal and minor arterials to the ultimate destination ... Design year ADT [Average Daily Traffic] is approximately 2,500 to 15,000. ...” [PWS.15.050.B.3]

19. “The local street system consists of local access and minor access streets. [PWS.15.050.B.4] “Local feeder streets serve as primary access to the development from the adjacent street system. They distribute traffic from local or minor streets in residential neighborhoods and channel it to the arterial system. ... Typical ADT may range from about 400 to 1,500. Abutting residences are oriented away from the feeder.” [PWS.15.050.B.4.a] “[Minor access streets] are typically internal subdivision streets providing circulation within the subdivision or between subdivisions. Service to through-traffic is deliberately discouraged. Minor access streets can never be a higher classification. Typical ADT may range from about 300 to 1,000.” [PWS.15.050.B.4.b; emphasis added] Lancaster Way SE and 223rd Avenue SE would be currently considered part of the local street system.

¹⁶ 2016 PWS.1.2.A.3 provides that “If a newer version of the PWS is published after a project is vested, either the newer version of the PWS in its entirety or the older version in its entirety may be used.” The record is silent as to why Terrene did not employ this provision to have *Big Rock Vista* be subject to the 2016 PWS (which would have eliminated the need for all the variations).

20. Subsection 14.15.020(6) SMC requires that “standard trip generation rates, such as those reported by the Institute of Transportation Engineers” (“ITE”) shall be used in predicting traffic volumes associated with proposed developments. ITE publishes a manual containing trip generation rates for a wide variety of land uses. The data that forms the basis for the ITE Manual are studies of trip generation from all across the U.S. For most land use categories, including single-family residential, the ITE Manual provides an average trip generation rate (a simple average of the rate found in each of the studies in that particular data set) and a regression equation (an algebraic formula that allows one to best predict the number of trips based on the number of residences). PW historically uses the ITE average for single-family detached housing. (Testimony) Appellants’ traffic expert contends that the regression equation is the more accurate measure. (Exhibit 1005)
21. Terrene’s traffic expert prepared a Traffic Impact Analysis (“TIA”) using the ITE Manual’s average single-family residence trip generation rate. He calculated that the 21 net new residences would generate an additional 199 ADT onto Lancaster Way SE and the area’s street system. After adding in a background growth factor specified by PW and “pipeline projects” also specified by PW, he concluded that all affected intersections in the area would function at an acceptable level of service. (Exhibit 31)

The Appellants’ traffic expert believes that all of Terrene’s expert’s predictions are low because the ITE Manual average does not accurately reflect actual trip generation rates in the area. (Exhibit 1005)

22. In 2014, the then Deputy City Manager, now the City Manager, told an agent of the Pulte group that a through connection between Lancaster Way SE and SE 20th Street via 223rd Avenue SE would be a requirement of the development that Pulte was then considering. (Exhibit 1012.1) (See Finding of Fact 13, ¶ 3) In May, 2016, the Department advised Hi-Lo that a connection between Lancaster Way SE and 223rd Avenue SE would be required with *Big Rock Vista*. (Exhibit 1016, p. 1) In January, 2017, PW advised Terrene that right-of-way dedication for a future road connection between Lancaster Way SE and 223rd Avenue SE would be required. (Exhibit 44:B904) PW reiterated that requirement in April, 2017. (Exhibit 45:B914) On January 16, 2018, a City consultant presented City Council with an update of the Transportation Master Plan and Concurrency Policy. That presentation included a slide which specifically depicted a Lancaster Way SE – 223rd Avenue SE connection. (Exhibits 1020.5 and .6)

The City Engineer testified during the open record hearing that such a connection was the City’s goal. He stated that Lancaster Way SE was to be a through street, a position which allows PW to consider that only Road A is a cul-de-sac. He further stated that the City could require Terrene to complete more of the 223rd Avenue SE connection, but that the City could not require Terrene to build the street through the wetlands: The City would have to be the entity to push 223rd Avenue SE through the Ebright Creek headwaters wetlands. (Testimony)

Terrene's TIA analyses the effect on traffic conditions of NOT making a through connection, but it does not analyze the impact of making the connection. (Exhibit 31:B805)

The current parking area for Big Rock Park is a row of perpendicular stalls along the south edge of SE 8th Street, east of 218th Avenue SE, with back-out parking directly onto SE 8th Street. (Exhibit 14.4:B203)

23. The City has adopted a Transportation Concurrency Management system to implement the transportation level of service policies within its comprehensive plan. [Chapter 14.15 SMC] Under Chapter 14.15 SMC, an applicant prepares and submits a transportation impact analysis ("TIA") which is reviewed by the Department of Public Works ("DPW"). If the TIA demonstrates compliance with established levels of service, a CoC is issued.

On February 2, 2016, PW issued a CoC for a prior version of the *Big Rock Vista* application. (Exhibit 32) That CoC expired when the earlier application was declared abandoned by the Department for failure to timely submit materials required by the City. On January 31, 2018, PW issued a new CoC to Terrene for the current version of *Big Rock Vista*, (Exhibit 59)

24. Whether the wildlife habitat corridor provisions of SMC 21A.50.327 apply to *Big Rock Vista* is disputed, mainly because the SMC language regarding such corridors is complex.

On development proposal sites that contain Type F or Np streams and/or wetlands with a high habitat score greater than or equal to eight, that are also located within 200 feet of an on-site or off-site Type F or Np stream and/or wetland with a high habitat score greater than or equal to eight, a fish and wildlife habitat corridor shall be set aside and protected ...

[SMC 21A.50.327] The requirement to protect a fish and wildlife habitat corridor applies if two conditions are met: A development site exhibits certain characteristics; and those characteristics are located within 200 feet of similar characteristics either on- or off-site. The precursor characteristics are a Type F or Np stream or a wetland with a habitat score of eight or more. Thus, if a development site has a Type F stream, or a Type Np stream, or a wetland with a habitat score of eight or more, we have to see if similar features exist within 200 feet of the feature(s) on the development site, either on- or off-site. If there are such features within 200 feet of the feature(s) on the development site, then a corridor must be preserved to connect those features. The requirements for the corridor are spelled out in SMC 21A.50.327(1) – (11).

25. The subject property contains a Type Np stream; the upper end of a Type F stream is also located on-site. No on-site wetlands have a habitat score of eight or more.

A wetland with a habitat score of eight or more (Wetland A) is located off-site within 200 feet of the Type Np stream. Further, a Type F stream (Ebright Creek) is located off-site within 200 feet of the on-site Type Np stream.

Therefore, the wildlife habitat corridor provisions of SMC 21A.50.327 apply to *Big Rock Vista*.

26. Sammamish's SEPA Responsible Official issued a threshold DNS for *Big Rock Vista* on August 22, 2017. (Exhibit 46) The Appellants timely appealed issuance of the DNS. (Exhibit 9007.1)
27. The SEPA appeal raises six issues: That the City failed to consider the impact of connecting Lancaster Way SE to 223rd Avenue SE; that such a street connection would cause significant volume increases in the area; that the development would have noise, congestion, and aesthetic impacts to Big Rock Park; that placing stormwater control facilities within the Ebright Creek buffer would harm the creek and adjacent wetlands; that the proposed sewer lift station would significantly harm Ebright Creek, area wetlands, and erosion hazard areas; and that the proposed density transfer would conflict with the SMC and would serve to increase impacts. (Exhibit 9007.1)
28. The Department recommends approval of *Big Rock Vista* subject to a number of conditions. (Exhibit 1:B32 – 34) Terrene proposed an additional condition which would require the developer to delineate a pedestrian walkway along the edge of Lancaster Way SE from the Road A intersection to the intersection of 218th Avenue SE/SE 8th Street, specifically for use by school children. (Exhibit 2022)
29. The record contains a number of public comments. One group of comments is from the underlying owners of/investors in the development as well as owners of abutting lots who support the development because of expected financial gains. (Exhibits 14.21; 55; 56; 60)

Another group of comments comes from residents along 223rd Avenue SE who uniformly oppose the development for a variety of reasons. (Exhibits 14.1, .7, .8, .10 - .18; 1020)

A third group of comments comes from LRHOA which opposes placing 21 new homes at the end of Lancaster Way SE and also opposes making Lancaster Way SE a through street. (Exhibit 14.4 (three letters))

30. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

¹⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Authority

A preliminary subdivision is a Type 3 land use application. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

(1) 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; and

(2) The public use and interest will be served by the platting of such subdivision and dedication.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on August 30, 2016.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The SMC's land use regulations are, by and large, framed as either minimums that must be met or exceeded, or maximums that may not be exceeded. For example, the density/yield calculations establish a "maximum density," an upper limit, for a proposed development, they do not guarantee a specific yield. [SMC 21A.25.070 *et seq.*]

Wetland and stream buffer widths are stated as "standard buffers." [SMC 21A.50.290(2) and .330(1)] The code then states that buffer averaging and buffer reduction "may be" allowed. [SMC 21A.50.290(7) and (9) and .330(4) and (6)] The word "may" establishes discretion, it does not guarantee that either averaging or reduction will be allowed, nor does it guarantee an amount that will be allowed. The code states that buffer width may not be "reduced to less than 50 percent of the standard buffer width" through either averaging or reduction. [SMC 21A.50.290(7)(c) and (9) and .330(4)(c) and (6)] The code does not guarantee that 50% reduction will be allowed in all cases, it simply says there can never be more than 50% reduction. For buffer reduction, the code provides actions which allow reduction of "up to" a certain percentage of the standard buffer in exchange for certain actions. [SMC 21A.50.290(9)(a) – (c) and .330(6)(a) – (i)] Again, the code does not guarantee approval of the maximum reduction. And finally, the code provides for situations in which the City may require increased buffer widths. [SMC 21A.50.290(8) and .330(5)]

2. The City Council's declaration of Ebright Creek as one of four streams of "special significance" to the City is not a meaningless gesture as some in this proceeding would have one believe. Ebright Creek is one of the most important Kokanee streams in the area. The City is working to preserve Kokanee habitat. This is not a stream that one would want to consciously deprive of its protective buffer.

Yet, that is exactly what has been proposed here: Reducing Ebright Creek's buffer by the maximum 50% solely to achieve a higher yield on Parcels 9167 and 9165. To add insult to injury, the 75 feet that is to be removed from the buffer is a moderately steep slope composed of erosion hazard soils which is proposed to be dug up to allow installation of a stormwater detention vault. According to the preliminary drainage plans (Exhibit 7:B147), the final slope within that 75-foot band will be over-steepened: It will be steeper than the current slope, thus increasing erosion potential. Having placed the detention vault so close to the edge of the reduced buffer, the only discharge option is to disperse flows almost immediately adjacent to the remaining buffer. This does not represent good stewardship of Ebright Creek.

Stream buffer averaging may be approved if five conditions are met. [SMC 21A.50.330(4)(a) – (e)] The way the code section is structured, all five have to be met. Conformance with SMC 21A.50.330(4)(a) is doubtful, conformance with SMC 21A.50.330(4)(b) is not met. The problem with the off-setting buffer proposed by Terrene is that it is not really an Ebright Creek buffer addition. It is essentially extra forest across a road and between required wetland buffers. While preserving an even greater proportion of Parcel 9170 from potential development may well be laudable, the area being added does little to provide increased protection to Ebright Creek, nor does it off-set the loss of 50% of the width of the buffer on Parcel 9165.

The Examiner concludes that the current proposal does not comply with stream buffer requirements for Ebright Creek and, therefore, cannot be approved.

3. Terrene suggests that it can cluster all lots allowed on the entirety of the property on Parcels 9167 and 9165 without complying with the density transfer provisions of SMC 21A.25.210. Terrene points to the *Conner-Jarvis* subdivision for support. (See Exhibits 2014 – 2017.) Terrene correctly notes that the *Conner-Jarvis* site exhibited split zoning – part was zoned R-4, part was zoned R-6. Terrene then notes that density transfer was not used. Terrene is again correct: Density transfer was not implemented - because it was not required.

The residential lots in the *Conner-Jarvis* subdivision were grouped into three "pods." Careful comparison of the *Conner-Jarvis* area zoning map (Exhibit 2015) and preliminary plat (Exhibit 2016) reveals that the lots in each pod were fully contained within a single zone; no lots straddled a zoning boundary. The number of lots in each pod fell within the limit allowed by the zoning of that pod. No density transfer occurred.

4. The situation here is quite different: Terrene proposes to shift the 12 lots theoretically possible on Parcel 9170¹⁸ entirely onto Parcels 9167 and 9165, thus more than doubling the number of lots on the R-4 zoned portion of the site. The graphic submitted by Terrene purporting to show that 12 lots could be placed on Parcel 9170 wipes out the Type Np stream buffer for three of the lots, wipes out Wetland B, D1, and D2 buffers and part of the Ebright Creek buffer for five of the lots, and requires a crossing of the Wetland D1 buffer to reach three of the lots. (Exhibit 2008) The Examiner finds the 2012 wetland delineation update to provide a more reliable indication of the development potential of Parcel 9170.

5. In order for density transfer to be considered, “a lot [must be] divided by a zone boundary”. None of the four current lots are divided by a zone boundary: Parcels 9167, 9165, and Parcel 9166 Panhandle are all zoned R-4; Parcel 9170 is zoned R-6. The proposed BLA as depicted by Exhibit 54 would merge all of the above into one single parcel, connected solely by the 15-foot width of the east end of the Parcel 9166 Panhandle. Assuming that the Department found that application approvable, the density transfer provisions of SMC 21A.25.210(2) would come into play. The following hypothetical analysis assumes that event to have occurred.

Subsection (2)(a) does not apply as the proposed density shift is from the higher to the lower density area.

Subsection (2)(b) contains six requirements, all of which would have to be met in order for density transfer to be approved. Subsection (2)(b)(i) does not apply as no part of the subject property is zoned R-12 or R-18. Subsection (2)(b)(ii) would be met either because neither the R-4 nor the R-6 zone establishes a minimum density [SMC 21A.25.030(A)] or because the transfer would be maintaining the 22-lot calculated yield. Compliance with subsection (2)(b)(iii) is dubious: The sewer and water lines are proposed to run south within the 223rd Easement to the current north end of 223rd Avenue SE. The number of lots transferred onto Parcels 9167 and 9165 would not reduce those utility lines at all. Therefore, utility efficiency would not result from the transfer. Subsection (2)(b)(iv) would not be met. Putting 22 lots in an area designated for 10 lots forces the stormwater detention vault to be placed where the Ebright Creek buffer is supposed to be. 50% of the Ebright Creek buffer would be lost. That would be a significant impact to the R-4 zoned parcels. Subsection (2)(b)(v) would not be met. Putting 22 lots in an area designated for 10 lots forces the stormwater detention vault to be placed where the Ebright Creek buffer is supposed to be. 50% of the Ebright Creek buffer would be lost. That would be a significant impact to the site’s environmentally significant areas. Whether subsection (2)(b)(vi) would be met seems to be very much a judgmental question. The transfer would place far more small lots in close proximity to the large, acreage lots in *Lancaster Ridge* than would be likely without the transfer. That certainly would be perceived as adverse by *Lancaster Ridge* homeowners. The Appellants’ consultant suggested that heat radiating off a rockery retaining wall along the west edge of Parcels 9167 and 9165 would harm the

¹⁸ The calculation that Parcel 9170 can be subdivided into 12 lots is questionable: The 2012 wetland delineation update concluded that there was no acceptable building lot anywhere on Parcel 9170.

vegetation on the adjoining property. The record contains no evidence to support that proposition. The Examiner would need to see more evidence before agreeing with that proposition.

As currently proposed, the density transfer would not meet all applicable approval criteria and, therefore, could not be approved.

6. The general rule is that draft documents may not be relied upon in rendering a land use entitlement decision. The Examiner follows that general rule. But here we have a unique situation: Everyone from the City Manager to the City Engineer to staff-level project reviewers have told the various applicants that Lancaster Way SE has to be connected to 223rd Avenue SE. PW has relied on that position to reach the conclusion that Road A will be only a 460-foot cul-de-sac, not a 460-foot addition to a 2,200-plus foot long cul-de-sac. Given the nature of the area streets, the direct back-out Big Rock Park parking onto SE 8th Street (Exhibit 1005, p. 7), the existence of Ebright Creek (which would have to be crossed), the Type Np stream (which it would appear would have to be completely relocated), and the Ebright Creek headwater wetlands (which would have to be substantially filled), an adequate SEPA analysis for *Big Rock Vista* must evaluate the impacts and issues associated with the presumed through-street connection. Given the City's oft-stated views, such a connection cannot be considered remote or speculative. *Big Rock Vista* would be a major step in achieving that end result.
7. For the reasons set forth above, *Big Rock Vista* as currently configured cannot be approved. The appropriate action is to Return the Application for Modification.
8. The appeals are project specific: The situations which gave rise to them would likely be different if a modified application were to be submitted in the future. Therefore, they are moot at this time and will be Dismissed without Prejudice (to indicate that the dismissals are not because of a defect in the appeals).
9. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

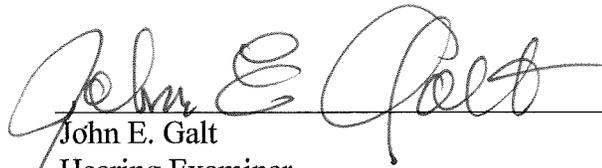
DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner:

- A. **RETURNS** to the Applicant **FOR MODIFICATION** the *Big Rock Vista* preliminary subdivision application;
- B. **DISMISSES WITHOUT PREJUDICE** the PWS Variations appeal filed by Lancaster Ridge Homeowners Association; and

C. **DISMISSES WITHOUT PREJUDICE** the SEPA appeal filed by Lancaster Ridge Homeowners Association, 223rd Neighbors, and Walter T. Pereyra.

Decision issued February 26, 2018.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁹

Richard Aramburu, unsworn counsel
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Andrew Zagars
David Pyle
Sarah Spear Cooke
Laura Bartenhagen
Christopher Wright

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

¹⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

HEARING EXAMINER DECISION
RE: PSUB2016-00276 (*Big Rock Vista*)
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NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."