



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

DECISION

FILE NUMBER: PLN2011-00047

APPLICANT: Lakemont Homes, LLC
14410 Bel-Red Road
Bellevue, WA 98007

TYPE OF CASE: Preliminary subdivision (*Benham Ridge*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: December 7, 2012

INTRODUCTION ¹

Lakemont Homes, LLC (Lakemont) seeks preliminary approval of *Benham Ridge*, a 36 lot single-family residential subdivision of an 8.29 acre site zoned R-6.

Benham Ridge Homes, LLC filed a Land Use Application on November 22, 2011, to subdivide the subject property into 38 lots. (Exhibits S-5 ² and S-40 and testimony) Beneficial interest in the project and the subject property subsequently passed to Lakemont, which reduced the number of lots requested to 36. (Testimony) The Sammamish Department of Community Development (the Department) deemed the application to be complete when filed. (Exhibits S-2 and S-5) Lakemont filed an application on August 13, 2012, to formalize the change in applicant. (Exhibit S-1)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² 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 subject property is bisected by NE Inglewood Hill Road with 212th Avenue NE bordering the west side of the north portion of the site and 213th Place NE bordering the east side of the south portion of the site.

The Sammamish Hearing Examiner (Examiner) viewed the subject property on November 26, 2012.

The Examiner convened an open record hearing on November 26, 2012. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit S-7) The open record hearing was continued to and concluded on November 29, 2012.³

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was held on or about net review day 158. (Testimony) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or a letter from the Department explaining why the deadline was not met [SMC 20.05.100(3)]. The Department sent the required letter to the applicant. (Exhibit S-9, p. 1)

The following exhibits were entered into the hearing record during the hearing:

Exhibits S-1 – S-42: As enumerated in the Hearing Clerk's exhibit list

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.

ISSUES

Does the application meet the criteria for preliminary subdivision approval as established within the SMC?

Neighboring property owners are particularly concerned about the effect of the proposal on off-site drainage, on-site wildlife habitat, off-site trees, traffic conditions on NE Inglewood Hill Road, and density.

FINDINGS OF FACT

1. The subject property is a nearly square tract divided by NE Inglewood Hill Road into two parcels. The parcel north of NE Inglewood Hill Road (the Northern Parcel) contains approximately 6.3 acres. The parcel south of NE Inglewood Hill Road (the Southern Parcel) contains approximately 1.9 acres. The Northern Parcel is bordered on its west by 212th Avenue NE; the Southern Parcel is bordered on its east by 213th Place NE. (Exhibits S-3 and S-17)

³ The hearing notice noted the possibility of a continuance to November 29th. (Exhibit S-7) Formal notice was not required as the date, time, and place of the continuance was stated on the record during the November 26th hearing session.

2. The Northern Parcel is surrounded by single-family residential lots of approximately one-quarter acre size. The *Lincolnshire* plat abuts the parcel on the north, the *South Hampton Estates* plat abuts the parcel on the east, and the *Sahalee South* plat abuts the east side of *Lincolnshire* and the north side of *South Hampton Estates*. Non-platted lots fill in the notch at the southeast corner of the parcel. (Exhibits S-3, S-13, S-35, and S-36)

The Southern Parcel is bordered on the west by a private road serving about five single-family residences. A single acreage lot in the *Tiburon Estates* plat borders the south side of the parcel. A large undeveloped area, possibly a protected open space tract, touches the southwest corner of the parcel. (Exhibits S-3 and S-13)

3. The subject property is designated on the City's adopted comprehensive plan R-6 and zoned R-6, residential development at a maximum density of six dwelling units per acre. No other R-6 designated/zoned property exists within two blocks of the subject property: Properties to the southwest, west, north, and east are designated/zoned R-4 (residential with a maximum density of four dwelling units per acre); properties to the south are designated/zoned R-1 (residential with a maximum density of one dwelling unit per acre). The nearest areas also designated/zoned R-6 lie east of 216th Avenue NE. (Exhibits S-9, S-11, and S-12)

The area's zoning pattern was established by King County before Sammamish became an incorporated city in 1999. (Exhibit S-41) The City has subsequently adopted its own comprehensive plan and implementing regulations under the Growth Management Act of 1990, Chapter 36.70A RCW (GMA). The City has left the zoning of the subject property unchanged through that process. (Testimony)

4. The maximum permissible lot yield under the subject property's R-6 zoning, calculated in accordance with procedures spelled out in the SMC, is 40. (Exhibit S-26)
5. The subject property exhibits a gentle to moderate slope from a high point at the northeast corner of the Northern Parcel to a low point at the southwest corner of the Southern Parcel. A shallow swale forms near the mid-point of the Northern Parcel's east property line, runs southwesterly to NE Inglewood Hill Road, and reappears south of NE Inglewood Hill Road as a more steeply sided swale. (Exhibit S-40, Plate 2)
6. Geologically speaking, the site is composed of recessional outwash materials. (Exhibit S-40, p. 3) Exploration of 11 test pits (eight across the Northern Parcel; three across the Southern Parcel) to depths of 10 to 19 feet below grade found gravelly soils throughout. The gravel strata lies right at the surface in the area of the swale; it is capped by up to approximately four feet of silty sand elsewhere

on the property.⁴ The site's gravelly soils have a high capacity for infiltration of stormwater. (Exhibits S-19 and S-40)

7. The subject property is within a Class 3 critical aquifer recharge area (CARA). (Exhibit S-9, p. 3, Finding 13)
8. The site is densely wooded and, except for the informal BMX track mentioned in Footnote 4, is undeveloped. (Exhibit S-13) The most prevalent tree species on site is Douglas fir; other prevalent species are Western hemlock, Western red cedar, Big-leaf maple, and Red alder. (Exhibits S-16 and S-29) The overstory is composed of second growth trees. (Exhibit S-17, p. 2) The trees on the Northern Parcel are, on average, somewhat younger than those on the Southern Parcel. (Testimony)
9. Tract A in *Sahalee South* contains a stormwater detention pond. Off-site drainage from the 216th Avenue NE area flows into that pond as does drainage from *Sahalee South* itself. Discharges from the pond flow across Lots 5 – 7 in *South Hampton Estates* through a drainage easement which terminates along the east line of the Northern Parcel where the on-site swale begins. Flows through that easement infiltrate into the subject property's gravelly soils within about the first 75 feet of the border. The upstream basin tributary to the Northern Parcel covers about 75 acres. (Exhibits S-20, S-24, S-35, and S-36)
10. The swale on the north side of NE Inglewood Hill Road does not contain a stream. The swale on the south side of NE Inglewood Hill Road contains a Type Ns stream (ephemeral, seasonal non-fish-bearing). The stream is tributary to George Davis Creek which flows westerly into Lake Sammamish a short distance south of the subject property. (Exhibits S-8 {pp. 34 and 95}, S-10, S-31, and S-38) The SMC requires a 50 foot protective buffer for Type Ns streams. [SMC 21A.50.330(1)]
11. Lakemont proposes to subdivide the subject property into 36 lots for single-family residential development and 16 tracts.⁵ Thirty-two of the lots and 11 of the tracts will be on the Northern Parcel; the remaining four lots and five tracts will be on the southern parcel. (Exhibit S-3) An early version of the 36 lot plat had 33 lots on the Northern Parcel and three lots on the Southern Parcel. (Exhibit S-31, Figure 2)

The lots on the Northern Parcel will be served by a combination of two public streets (Roads A and B) and four short private access tracts (Tracts B, D, E, and F), each serving two lots. Tracts A, G, and P will provide open space and recreation area. Tract O will provide open space and infiltration of off-site drainage. Tracts H and I will contain rain gardens to infiltrate stormwater runoff from Road B. (Exhibit S-3)

⁴ The silty sand cap explains the existence of minor ponding reported in the central part of the Northern Parcel where neighborhood children have created an informal BMX track. (See Exhibit S-17 {p. 3}.)

⁵ The original application by Benham Ridge Homes, LLC contemplated a 38 lot subdivision. (E.g., see Exhibit 32)

The four lots on the southern parcel will be served by a short private road (Tract K). Tracts J and N will provide open space. Tract M will protect the Type Ns stream and will be set aside as an environmentally sensitive area. Tract L will contain the infiltration pond for the site's runoff. (Exhibit S-3)

The proposed average lot size is 5,522 square feet (SF). (Exhibit S-3)

12. The City has adopted tree retention requirements. [SMC 21A.35.210 - .240] New subdivisions must retain at least 25% of all "significant" trees ⁶ located outside of protected sensitive areas [SMC 21A.35.210(2)(a)] and essentially all significant trees located within protected environmentally sensitive areas [SMC 21A.35.210(2)(b)] There is a proviso associated with the retention requirement: "trees retained within environmentally sensitive areas and associated buffers may be counted for up to 50 percent of the tree retention requirement in subsection (2)(a) of this section." [SMC 21A.35.210(2)(b)] Further, up to 50% of the trees to be retained may be replaced by new trees upon approval by the Department; replacement ratios range from 4:1 to 8:1 depending upon the size of the tree to be replaced. [SMC 21A.35.210(6) and .240(1)(c)]

The regulations include criteria for selecting which trees to retain on a development site:

- (a) Trees located within healthy, vegetated groups and stands rather than as isolated trees scattered throughout the site;
- (b) Trees that have a reasonable chance of survival once the site is developed;
- (c) Trees that will not pose a threat to persons or property;
- (d) Trees that can be incorporated into required landscaping or can be used to screen the site from adjacent properties;
- (e) Trees adjacent to open space, sensitive area buffers or sensitive area tracts;
- (f) Trees having a significant land stability function; or
- (g) Trees that meet the definition of heritage tree.

[SMC 21A.35.210(5)]

13. The subject property contains 990 significant trees of which 27 are dead. The number of live significant trees is 963. (Exhibits S-3 {Sheet 3 of 6} and S-16) Pursuant to SMC 21A.35.210(2)(a), 230 (25% of 921) significant trees outside of sensitive areas and the 42 significant trees within sensitive areas tracts must be retained. Pursuant to the proviso in SMC 21A.35.210(2)(b), the 42 trees within the sensitive areas may count towards the 230 tree total.

Lakemont proposes to retain 191 significant trees outside environmentally sensitive areas plus the 42 trees within Tract M, for a total of 233 significant trees retained. The retained trees are in Tracts A, J,

⁶ The SMC defines a "significant tree" as either a coniferous tree with a diameter at breast height (DBH) of 8" or more or a deciduous tree with a DBH of 12" or more. [SMC 21A.15.1333]

L, M, O, and P together with a handful of trees on the rear portions of Proposed Lots 24 – 26 and 33 - 36. (Exhibit S-3, Sheet 3 of 6)

14. NE Inglewood Hill Road is a designated minor arterial with a posted speed limit of 35 mph in the vicinity of the subject property. NE Inglewood Hill Road links East lake Sammamish Parkway with 228th Avenue NE. (Exhibit S-33, p. 5; see also Public Works Standards (PWS).15.050(A)) “Minor arterials interconnect with and augment the principal arterial system. Minor arterials connect principal arterials to collector arterials and small generators. ... The design year ADT is approximately 2,500 to 15,000.” [PWS.15.050(B)(2)]

NE Inglewood Hill Road is presently a two-lane street without curbs and gutters in the vicinity of the subject property. (Exhibits S-25 and S-33) Frontage improvements on NE Inglewood Hill Road will include a sidewalk and bike lane on each side and a rain garden along the north side of the street. A two-way left-turn lane (TWLTL) will be constructed across the property’s frontage to facilitate turns into Road A and Tract K. The 212th Avenue NE intersection with NE Inglewood Hill Road will be adjusted to create a nearly 90° intersection angle. (Exhibit S-3, Sheet 2 of 6)

In the twelve years from January 1, 2000, through December 31, 2011, four accidents were reported at the 212th Avenue NE/NE Inglewood Hill Road intersection: two rear-end, one head-on, and one broadside. The broadside occurred under rainy conditions between an east bound vehicle on NE Inglewood Hill Road and a southbound vehicle on 212th Avenue NE making a left turn at NE Inglewood Hill Road. (Exhibit 34)

15. Sight distance is calculated for a “design speed” which is typically 5 mph over the posted speed limit. Two types of sight distance are used in traffic engineering: Entering sight distance and stopping sight distance. Entering sight distance is the distance required for a vehicle on the side street to safely enter the traffic flow on the major street. Stopping site distance is the distance required to safely stop when a low object is seen in the street ahead.

The required entering sight distance for a 40 mph design speed is 470 feet. (Exhibit S-33, p. 24) The available entering sight distance at the Road A and Tract K intersection with NE Inglewood Hill Road will exceed the required 470 feet with completion of the proposed/required frontage improvements. (Exhibit S-33, pp. 24 – 27) The required stopping sight distance for a 40 mph design speed is 325 feet. Stopping sight distance is met at the proposed intersection. (Exhibit S-33, p. 27)

16. Development of the site as proposed contemplates significant grading. The entire site, except for Tracts A, O, and P on the Northern Parcel and Tracts J, M, and N on the Southern Parcel, will be cleared. The tier of lots along the north property line (Proposed Lots 8 – 18) will be cut up to six feet to create flatter building lots. The cut bank will be stabilized with a retaining wall. A retaining wall of up to five feet will be utilized along the north side of Proposed Lot 20 and the east side of Proposed Lots 20 and 21. Estimated cut and fill quantities are 16,850 cubic yards (cy) and 9,300 cy, respectively. (Exhibit S-3, Sheet 3 of 6)

17. The prevailing wind direction in this area is from the south. (Exhibits S-8 {p. 48} and S-15) Mass clearing of the site as proposed will expose trees on adjacent properties, especially those to the north and northeast, to wind from the south. Lakemont's arborist has evaluated the windthrow exposure of trees on the adjacent lots. The arborist recommends that a minimum distance of 12 feet be maintained between any off-site tree and any on-site excavation deeper than two (2) feet. The rockery along the north cut bank includes a meander to provide the recommended 12 foot minimum tree protection. (Exhibits S-3 {Sheet 3 of 6} and S-15)

One tree on Tax Parcel 1240100047 has a drip line which extends some 17 feet into the east side of Proposed Lot 22.⁷ While no grading is proposed in that area, the arborist notes that foundation excavation could occur within the tree's dripline. The arborist notes that if excavation were to occur within 12 feet of the base of the tree, the tree could become hazardous. (Exhibit S-15, unnumbered p. 2)

With the exception of that one off-site tree, the arborist concludes that the proposal "will not create [an] unacceptable level of perceived risk of failure." (Exhibit S-15, unnumbered p. 5) The arborist has also included a number of recommendations to minimize impact to off-site trees. (Exhibit S-15, unnumbered pp. 4 and 5)

18. The record contains evidence that appropriate provisions have been made for:
- A. Open space. The proposed plan includes six open space/recreation tracts: Tracts A, G, J, N, O, and P. Together they total 1.47 acres. (Exhibit S-3, Sheet 1 of 6)
 - B. Drainage ways. Because of the high infiltration capacity of the on-site gravels, Lakemont proposes to infiltrate stormwater runoff. Non-pollution generating surfaces on each lot (roofs, patios, etc.) will be infiltrated on individual lots. Runoff from pollution-generating surfaces (driveways, streets, etc.) will be conveyed to one of several rain gardens along interior streets, NE Inglewood Hill Road, and/or 212th Avenue NE or to an infiltration pond in Tract L within the Southern Parcel. Emergency overflow from that facility will travel overland into the nearby Type Ns stream. (Exhibits S-3 {Sheet 4 of 6} and S-20)

The runoff from the *Sahalee South* detention pond will be allowed to infiltrate into the site's gravels just as it does now. Tract O has been sized to encompass the area where that infiltration occurs. A catch basin will be provided at the southwest corner of Tract O (about five feet lower than the east edge of the subject property) to collect any water that has not infiltrated by that point. That water will bypass the subdivision's stormwater system: It will pass under the internal street and be discharged into a bottomless culvert (thus allowing for

⁷ Exhibit 15 refers to this as Lot 23. The lot number difference is the result of Tract O having been created from what had been Proposed Lot 20 after the report was written, thus shifting the lot numbers in the southeast corner of the plat. (The earlier version of the plat is depicted on Fig. 2 in Exhibit S-33.)

further infiltration) which will convey the water to Tract P where it can flow through the swale to the culvert beneath NE Inglewood Hill Road and thence into the Type Ns stream. The by-pass system has been designed to allow maximum infiltration potential and to avoid any back-up of runoff onto the lots to the east. (Exhibit S3 {Sheet 4 of 6} and testimony)

- C. Streets and roads. DPW has reviewed and approved the proposed public and private streets within *Benham Ridge*. (Exhibit S-9)
- D. Alleys. The proposed design does not utilize alleys. (Exhibit S-3)
- E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit S-3)
- F. Transit stops. The record contains no request for transit stops.
- G. Potable water supply. The Sammamish Plateau Water & Sewer District (SPWSD) issued a Certificate of Water Availability for the 38-lot version of *Benham Ridge* on November 21, 2011. One day later the preliminary subdivision application was filed, thus fulfilling the Certificate's requirement that an application be filed within one year of issuance of the Certificate. (Exhibit 27) In addition, Lakemont has now entered into a Developer Agreement with SPWSD for water service. (Testimony)
- H. Sanitary wastes. The SPWSD issued a Certificate of Sewer Availability for the 38-lot version of *Benham Ridge* on November 21, 2011. The Certificate indicates that a lift station will be required. One day later the preliminary subdivision application was filed, thus fulfilling the Certificate's requirement that an application be filed within one year of issuance of the Certificate. (Exhibit 27) In addition, Lakemont has now entered into a Developer Agreement with SPWSD for sewer service. (Testimony)

The proposed preliminary plat includes a sewer lift station in the southeast corner of Tract P, just north of NE Inglewood Hill Road. (Exhibit S-3, Sheet 4 of 6) The lift station has been sited to comply with SPWSD requirements. (Testimony)

- I. Parks and recreation. The SMC requires that the subdivision include 0.32 acres of active recreation area within the subdivision. The proposal provides 0.50 acres divided between Tracts A and G. (Exhibit S-3, Sheet 1 of 6 and Sheet L1.0) In addition, the developer will have to pay a park impact fee pursuant to Chapter 14A.20 SMC.⁸ (Exhibit S-9, p. 5)
- J. Playgrounds. See Finding 18.I, above.

⁸ Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

- K. Schools and schoolgrounds. Lots within *Benham Ridge* are subject to Chapter 21A.105 SMC which imposes school impact fees on new single family dwelling units to fund school system improvements needed to serve new development.⁹ (Exhibit S-9, p. 5)
- L. Safe walking conditions for students who only walk to and from school. The subject property is within the attendance areas for Margaret Mead Elementary, Inglewood Middle, and Eastlake High Schools. Middle and high school students will be bussed to their schools; the bus stops are within one block of the subject property. Elementary school students will have to walk to their school. (Exhibits S-9 {pp. 4 and 5} and S-30)

Margaret Mead Elementary School is located on 216th Avenue NE well to the north of the subject property. (Testimony) A sidewalk exists along 216th Avenue NE north of NE 8th Street, but no sidewalk exists between the subject property and that location. Lakemont proposes to construct a five foot wide paved pedestrian path along the north side of NE Inglewood Hill Road from the end of its frontage sidewalk to NE 8th Street and to stripe a five foot wide pedestrian path on existing pavement along NE 8th Street to 216th Avenue NE. (Exhibit S-3, Sheet 6 of 6)

19. The adopted comprehensive plan contains many policies regarding environmental protection. The City has adopted Chapter 21A.50 SMC, Environmentally Critical Areas, to implement many of those policies. Chapter 21A.50 SMC regulates treatment of erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, fish and wildlife habitat conservation areas, wildlife habitat corridors, streams, and lakes/ponds. [SMC 21A.50.220 - .355]
20. The record contains a dispute as to whether the fish and wildlife habitat provisions of SMC 21A.50.325 apply to *Benham Ridge*. The Department testified that SMC 21A.50.325 applies but that the site is not used by any protected species. (Testimony)

Lakemont's environmental consultant performed on-site inspections during which some evidence of current or past use by pileated woodpeckers was observed. The pileated woodpecker is a candidate species, not a listed species. The consultant found "some foraging habitat and limited nesting opportunities due to the relative young age and good health of the trees on site." (Exhibit S-18, p. 5) The consultant concluded that "primary association habitat" for the pileated woodpecker may exist within the George Davis Creek ravine, but that the subject "property provides some habitat potential for pileated woodpeckers, but does not necessarily satisfy the characteristics of primary association habitat, as described in available literature." (Exhibit S-18, p. 3)

That notwithstanding, the consultant provided recommendations to retain two on-site snags that may have been/are being used by pileated woodpeckers and to create better pileated woodpecker habitat

⁹ Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

within the site's open spaces than presently exists on the subject property. (Exhibit S-18, pp. 4 and 5) Those recommendations mesh with the open space tracts as included in the current plat design.

21. The wildlife habitat corridor provisions of SMC 21A.50.327 do not apply to the *Benham Ridge* site. Habitat corridor regulations apply "along the designated wildlife habitat network". [SMC 21A.50.327] Neither the subject property nor the George Davis Creek ravine are part of a designated wildlife corridor. (Exhibit S-38)
22. Subsection 14.15.020(6) SMC requires that trip generation rates published by the Institute of Transportation Engineers (ITE) be used in predicting traffic volumes associated with proposed developments. The ITE rates for single-family detached housing are 9.57 trips per house on an average weekday (AWDT), 0.75 trips per house during the average weekday A.M. peak hour, and 1.01 trips per house during the average weekday P.M. peak hour.¹⁰ (Exhibit S-33, p. 14, Table 5)

Given those rates, the trip generation prediction for *Benham Ridge* is 345 AWDT, 27 A.M. peak hour, and 36 P.M. peak hour. (Exhibit S-33, p. 14, Table 5)

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 concurrency certificate is issued.

A TIA was prepared and submitted. (Exhibit S-33) On December 19, 2011, DPW issued a Certificate of Concurrency for the prior 38 lot version of *Benham Ridge*.¹¹ (Exhibit S-32)

¹⁰ The A.M. and P.M. peak hours are the single hour in the morning and afternoon, respectively, during which the highest volumes of traffic are traveling on the local street system. (See SMC 14.05.010(20).) The "peak hour" does not represent the entire morning or afternoon "rush hour" unless the rush hour happens to last less than one hour. As everyone who lives in this region knows from personal experience, the morning and afternoon weekday rush hour each lasts much longer than one hour. Thus, the "peak hour" represents the single hour with the highest traffic volume within the entire "rush hour." (Official notice)

The objection of some hearing participants that the ITE rates are too low for Sammamish is misplaced. The concern is based on the belief that most Sammamish households have more than one vehicle and that most households have two wage earners. From that they assume that at least two trips must occur from each house during the peak hour in the morning and the evening: Two workers leaving for work and returning home after work. The problem with that position is that it fails to account for differing work hours and travel patterns. If, hypothetically speaking, the A.M. peak hour happened to occur between 8 and 9 A.M., then a family member who got to work before or left for work after that hour would not count in the peak hour total. They would be counted in the previous or subsequent hour, but he/she would not count in the peak hour.

Ultimately, this objection is irrelevant anyway: The SMC mandates use of the ITE rates unless the applicant wants to try to prove that some other rate is more appropriate. [SMC 14.15.020(6)] Staff has no authority to force a different rate on an applicant.

¹¹ If a 38 lot subdivision is concurrent, then a subdivision with two less lots is intuitively concurrent.

The developer will be required to pay transportation impact fees under Chapter 14.20 SMC.¹² As of April, 2012, the fee was \$14,853.95 per single-family residence. (Exhibit S-33, p. 28)

24. Sammamish's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Benham Ridge* on October 4, 2012. (Exhibit S-6) The DNS was not appealed. (Exhibit S-9, p. 4)
25. The Department has analyzed the *Benham Ridge* proposal, finds it to be in compliance with applicable standards and requirements, and recommends approval subject to a number of conditions. (Exhibit S-9) The Department made the following corrections to its report during the open record hearing: (Testimony)
 - A. Page 1, Proposal, ¶2. The net review clock stood at 133 days when the Department's report was issued. The net review clock stood at 158 days as of the first hearing day.
 - B. Page 2, Findings, ¶5. The original application was filed on November 22, 2011, not October 7, 2011.
26. In response to questions from the Examiner, the Department offered the following clarifications/corrections to its recommended conditions of approval contained in Exhibit S-9: (Testimony)
 - A. Page 7, Decision/Recommended Conditions of Approval, ¶1. The correct exhibit number for the design requirements document is 21, not 8.
 - B. Page 8, Recommended Condition 4. The required path is intended to lead towards Margaret Mead Elementary School.
 - C. Page 9, Recommended Condition 14. The sight distance triangle requirement should apply to the Road A and 212th Avenue NE intersections with NE Inglewood Hill Road.
 - D. Page 10, Recommended Condition 36. The word "Signal" is a typographical error. It should be "Sight".
 - E. Page 10, Recommended Condition 32. The tests required under this condition are infiltration tests.
 - F. Page 10, Recommended Condition 34. The portion of the storm drain system that should be subject to this condition is only the culvert beneath NE Inglewood Hill Road.

¹² Such fees do not vest. Thus, a development is subject to fee changes that happen before the fee is paid.

- G. Page 11, Recommended Condition 54. The text of this recommended condition should be enclosed in quotation marks.
27. Lakemont agrees to accept the conditions as recommended by the Department with one addition: Lakemont offered an additional condition relating to preservation of a sight distance triangle at the 212th Avenue NE/NE Inglewood Hill Road intersection. (Exhibit S-42) The Department requested two changes to the proposed wording; Lakemont agreed to both changes: (Testimony)
- A. The second sentence should begin with the words “At a minimum,”.
- B. The number “five (5)” near the end of the second sentence should be “ten (10)”.
28. Substantial public interest in and negative reaction to *Benham Ridge* has existed since the application was filed. Initially, a number of neighbors believed that the swale on the Northern Parcel contained a stream which should have been preserved/protected. Now that the evidence shows that clearly not to be the case, major areas of concern/opposition are loss of wildlife and wildlife habitat, loss of privacy, windthrow potential increase, loss of privately installed landscaping within the 212th Avenue NE right-of-way, increased traffic volumes on area streets, poor safety conditions at the 212th Avenue NE/NE Inglewood Hill Road intersection, excessive density for the area, fear that the development will back-up stormwater flows originating upslope of the site, fear of adverse impact on adjacent on-site sewage disposal systems, and construction noise. One neighbor also opined that 212th Avenue NE is not a safe walking route to Margaret Mead Elementary School. (212th Avenue NE is not part of the proposed walking route to be provided by the developer.) Associated with the windthrow concern was a suggestion that a vegetated buffer be left along the entire north property line. (Exhibits S-8, S-22, and S-23 and testimony)
29. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ¹³

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

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]

¹³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 November 22, 2011.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

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 neighbors' concerns are not founded on actionable bases. All evidence indicates that *Benham Ridge* complies with those regulations enacted by the City against which preliminary subdivision applications are to be evaluated. The Conclusions of Law which follow will demonstrate that compliance.
2. Because of the significant interest in this application, the Conclusions of Law will be grouped by general topic. A basic exposition of the controlling review framework will be followed by discussion of the major issues of concern to the neighbors. Compliance with the specific criteria for approval will then follow with discussion of conditions of approval concluding the analysis.
3. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
4. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

Review Framework

5. One of the legal premises underlying the land use planning and regulatory system in Washington State is that decisions on individual applications must be based upon adopted ordinances and policies rather than upon the personal preferences or "general fears" of those who may currently live in the neighborhood of the property under consideration. [*Department of Corrections v. Kennewick*, 86 Wn. App. 521, 937 P.2d 1119 (1997); *Indian Trail Prop. Ass'n. v. Spokane*, 76 Wn. App. 430, 439, 886 P.2d 209 (1994); *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d. 985 (1990); *Woodcrest Investments v. Skagit County*, 39 Wn. App. 622, 628, 694 P.2d 705 (1985)] The evaluation of the *Benham Ridge* application must, therefore, be based upon officially adopted City ordinances, plans and policies as well as legally accepted principles.

6. The role of a comprehensive plan in development review is different now than it was before enactment of the Growth Management Act, Chapter 36.70A RCW, in 1990 and the Local Project Review Act, Chapter 36.70B RCW, in 1995. The Local Project Review Act establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include subdivisions. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030, emphasis added] Thus, state law holds that a comprehensive plan is applicable during project review only where development regulations have not been adopted to address a particular topic. The regulatory assumption is that plans set a framework for subsequent regulations which serve to control development actions.

7. The state Supreme Court has also addressed this issue. In *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] the Court ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive

plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor.

[*Mount Vernon* at 873-74, citations omitted]

8. Another applicable general principal is that a developer cannot be required to correct existing problems. A developer can be required to mitigate impacts caused by a proposed development. A developer may also be required to mitigate those situations where the proposed development will exacerbate an existing problem. To be legally supportable, a mitigation requirement must have a rational nexus to a problem created or exacerbated by the proposed development and the amount of mitigation required must be roughly proportional to the impact caused by the development.

Specific Neighborhood Concerns

9. Like it or not, the reality is that the subject property has been designated and zoned for residential development at up to six dwelling units per acre since before Sammamish became a city in 1999. The City Council has done nothing in the intervening years to change that zoning. The land owner has a reasonable, legally protected expectation to be able to develop the subject property in accordance with the zoning and other development regulations which apply to the property. It is way too late now to seek to change the zoning to something of lesser density.
10. Zoning a site for development at six dwelling units per acre necessarily implies a conversion of the site from wildlife habitat to human habitat. That trade-off is implicit in urban development. Sammamish is a city and its plans and regulations envision substantial areas of urban density development. The subject property is one such area. Sammamish's policies may speak to preservation of certain natural characteristics of the area, but implementation of those policies depends upon the regulations adopted by the City Council. The adopted tree retention and environmentally critical areas regulations serve to determine which parts of the city's landscape will be preserved from urban development and to what extent they will be preserved.
11. The 36 lots proposed here are four less than the maximum allowed under existing zoning.
12. The City has adopted tree retention regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan tree retention policies is, therefore, not permissible.
13. The adopted tree retention regulations do not require retention of all trees, or even most trees on a development site. The regulations require, "to the extent feasible," that trees to be retained shall be in groups rather than scattered about a site, be safe and sound trees, be used as screening, be adjacent to critical areas and open space, and be beneficial in land stabilization. [SMC 21A.35.210(5)] Land stabilization is not an important issue here as the site exhibits only rather gentle slopes and its gravelly soils are not particularly erosion prone.

Lakemont has followed the requirements in selecting areas in which to preserve trees. The trees to be retained are predominantly in a few open space tracts, some of which are located adjacent to environmentally sensitive areas, others of which are located along NE Inglewood Hill Road and will serve to screen the development from view from that arterial.

14. The tree retention regulations do not explicitly address the effect of tree removal on trees on adjacent properties. Rather, the emphasis is on protection of trees to be retained on the development site.

Lakemont has retained an arborist who has evaluated whether the proposed clearing will exacerbate the windthrow danger on adjacent lots. (Exhibit S-15) That evaluation concludes that no significant increased danger will be created. The arborist admits that no guarantees can be given; every homeowner who has a large tree on their property can understand that limitation.

Application of the arborist's recommendations would serve the public use and interest and would help protect public safety. The arborist's recommendations need to be added as required conditions of development.

15. The City has adopted drainage control regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan drainage policies is, therefore, not permissible.

The evidence demonstrates compliance with the adopted stormwater control regulations with respect to runoff generated on the subject property.

16. The evidence also demonstrates that off-site drainage has been accommodated by the proposed plan. The neighbors must first realize that Lakemont cannot be required to do anything to the existing upslope drainage system: *Benham Ridge* contributes absolutely no stormwater to that system. Lakemont can be required to receive upslope flows in their naturally occurring location without backing them up.

The evidence demonstrates that the existing off-site flows should be fully infiltrated within the bounds of proposed Tract O, a tract which was added to the design during the review process specifically to preserve the existing infiltration area. If the flows are not fully infiltrated within Tract O, the drainage plan includes a catch basin to collect excess water and a bottomless culvert to transport it to the culvert running beneath NE Inglewood Hill Road and thence into the Type Ns stream south of NE Inglewood Hill Road. That route replicates the natural flow pattern and route. The bottomless culvert will facilitate additional infiltration during transit of excess flows. The evidence indicates that Lakemont has made reasonable and appropriate provisions to handle the off-site stormwater flows.

17. The City has adopted traffic impact regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan traffic impact policies is, therefore, not permissible.
18. NE Inglewood Hill Road is a designated minor arterial street. Minor arterial streets are intended to carry large volumes of traffic from one area to another. Because NE Inglewood Hill Road is a designated arterial, the neighbors should expect widening and similar improvements as time goes along. The widening required as a part of *Benham Ridge*'s frontage improvements is an indication of things to come.
19. The plans indicate that no curb cuts are proposed from Proposed Lots 4 – 8 onto 212th Avenue NE. Assuming from that that no vehicular access to 2112th Avenue NE will be taken, one could conclude that *Benham Ridge* will not exacerbate conditions on 212th Avenue NE. The same holds true for 213th Place NE where no residential lots even abut the street. That notwithstanding, Lakemont's frontage improvements will include some realignment of the 212th Avenue NE/NE Inglewood Hill Road intersection which will serve to slightly improve sight distance at that intersection. Since *Benham Ridge* will not be adding traffic to the intersection leg with less than ideal sight distance, nothing more can be legally required.
20. A similar conclusion applies regarding the suggestion that at least the western portion of the center median be foregone in favor of an extension of the proposed TWLTL: Since *Benham Ridge* will not be adding traffic to the leg of the intersection that would arguably benefit from the refuge lane that would be created by such an extension, Lakemont cannot be required to provide the extended center lane.

Even if it could be required (which it can't), the available evidence suggests that such an extension might create turning movement conflicts between vehicles turning east out of 212th Avenue NE and vehicles turning left from NE Inglewood Hill Road into Road A. That possible conflict would have to be carefully evaluated before any requirement for a refuge lane could be required.

The neighbors may wish to ask Lakemont and DPW if they would at least consider the feasibility of a refuge lane when developing the plans for the proposed TWLTL.
21. The preceding conclusion is predicated on the absence of curb cuts onto 212th Avenue NE. The recommended conditions prohibit direct vehicular access onto 212th Avenue NE and NE Inglewood Hill Road. (Exhibit S-9, Recommended Condition 57) Since the preceding conclusion is predicated on the absence of such access, that condition is fully justified.
22. The City has adopted wildlife habitat regulations to implement whatever policies the comprehensive plan contains on that subject. Consideration of comprehensive plan wildlife habitat policies is, therefore, not permissible.

23. The preponderance of the technical evidence supports a conclusion that the pileated woodpecker, a candidate species, does not have a primary association with the wildlife habitat on the subject property. Yes, pileated woodpeckers have apparently been seen on the subject property. But the trees on the subject property are not prime pileated woodpecker habitat due to their young age and good health. The site may be used for foraging, but that does not constitute primary association.

The above conclusion then leads to a conclusion that the requirements of SMC 21A.50.325 don't apply. Nevertheless, Lakemont, at the urging of the Department which does believe that primary association habitat exists on the subject property, commissioned a study to see what could be done to encourage pileated woodpecker use of the subject property. That study identified a number of steps that could be taken. Those steps are compatible with the plat design. Compliance with those steps will be tantamount to compliance with SMC 21A.50.325.

24. The notion that the subject property is an extension of the George Davis Creek ravine's wooded wildlife habitat corridor is visually logical: The site is wooded and is contiguous with the creek corridor. (Exhibit S-8, p. 34)

That fact, however, does not mean that the site is part of a designated wildlife corridor subject to regulation under SMC 21A.50.327. The regulations in that section apply only to officially designated wildlife corridors. As clearly indicated on Exhibit S-38, neither the George Davis Creek ravine nor the subject property are part of an officially designated wildlife corridor. Therefore, those regulations cannot be applied to *Benham Ridge*.

Required Conclusions

25. Section 20.10.200 SMC sets forth general requirements applicable to all Examiner decisions. The requirement to find compliance with the comprehensive plan is constrained by the legal principles set forth in preceding Conclusions of Law. The preponderance of the evidence indicates compliance with all applicable regulations.
26. Under SMC 20.10.220(1), the City is required to determine if "appropriate provisions" are present in the subdivision application for a whole host of topical areas. The courts, generally speaking, do not allow a municipality unbridled discretion in determining what is "appropriate". Rather, courts generally hold that in order to preserve the substantive due process rights of all the parties, decisions must be based upon officially adopted ordinances and policies. Application of that concept to the items enumerated in SMC 20.10.220(1) leads to the position that "appropriate provisions" are present in any given topical area if the proposal meets the requirements of adopted law and policy relating to that area. Common sense must be used where there are no guiding adopted policies.
27. The preponderance of the evidence demonstrates compliance with all applicable regulations addressing the subjects listed in SMC 20.10.220(1).

28. There must be some criteria by which to judge whether a proposed subdivision serves “the public health, safety, and general welfare” and furthers the “public use and interest”. The content of adopted City policies and regulations form reasonable criteria. *Benham Ridge* meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety, and welfare and furthers the public use and interest.¹⁴
29. Here, again, the preponderance of the evidence demonstrates compliance with all applicable regulations. Thus, it must be concluded that *Benham Ridge* would serve the public health, safety, and general welfare and further the public use and interest.

Recommended Conditions

30. The recommended conditions of approval as set forth in Exhibit S-9 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:

- A. The Department has several staffers who are assigned to handle development applications such as preliminary subdivisions. That notwithstanding, the conditions recommended by the Department on preliminary subdivision applications should be consistent except where unique facts of each application require unique conditions. In other words, recommended conditions should depend upon the facts of each case, not upon the identity of the staffer handling the application.

Four preliminary subdivision applications have come to hearing and received approval in 2012 prior to *Benham Ridge: Brauerwood Estates*, PLN2011-00026, April 4, 2012; *Stirling Manor*, PLN2011-00040, May 4, 2012; *Plateau Landing*, PLN2011-00041, October 17, 2012; and *Laurel Hill, Div. IV*, PLN2012-00011, November 2, 2012. By and large the recommended conditions in all four of those cases followed a common pattern and contained common elements. Two of those cases, *Stirling Manor* and *Laurel Hill, Div. IV*, involved the same principals who are involved in *Benham Ridge*.

Wherever it can be reasonably accomplished, the Examiner will alter the recommended conditions to bring them more into line with standard conditions found in previous preliminary subdivision cases.

- B. Recommended Condition 4. The first sentence in this condition lacks adequate specificity: It does not say to where the required walkway is to go. In addition, the condition does not spell out what type of walkway is required. Lakemont has submitted a specific proposal. (Exhibit

¹⁴ It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even if some believe that the adopted standards are deficient, there is no basis in this case to conclude that compliance with those standards is not sufficient: the application is vested to the standards which existed when it was deemed complete regardless of any subsequent changes. New standards would apply to new applications but not to applications in process.

S-3, Sheet 6 of 6) Agency and public review has been based upon that submittal. The condition should reference the submitted plan. That shortcoming will be corrected.

- C. Recommended Condition 14. This recommended condition also lacks sufficient specificity: It fails to specify to which NE Inglewood Hill Road intersections it applies. Staff testified that the intent was to have the condition apply to the 212th Avenue NE and Road A intersections. But the requirement for adequate sight distance applies at all intersections with NE Inglewood Hill Road within or affected by the plat. That would include the Tract K intersection. (The “on both sides of the road” phrase in the recommended condition arguably was intended to make the condition apply to both Road A and Tract K.) But equally important, it would not include the 212th Avenue NE or 213th Place NE intersections because *Benham Ridge* is not adding traffic to those side streets.

However, Lakemont has offered, through Exhibit S-42, to provide the required PWS sight distance triangle on the east side of the 212th Avenue NE/NE Inglewood Hill Road intersection. The condition will be clarified.

- D. Recommended Condition 26. The typographical error in this condition will be corrected and specificity will be improved by indicating what the required “letter” must contain.
- E. Recommended Condition 32. This condition’s specificity will be improved by identifying the nature of the required “performance tests”.
- F. Recommended Conditions 33 and 34. With the clarification of what Recommended Condition 34 is to apply to as stated by staff during the hearing, these two conditions are now virtually identical. They will be combined. This condition’s specificity will also be improved by delimiting the location where the work is to be performed.
- G. Recommended Condition 39. The verbiage regarding tree removal in this condition is not as clear as has been analogous verbiage in previous Departmental recommendations. The recommended language will be replaced with that found in the *Laurel Hill, Div. IV* Decision.
- H. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1 – 8, 11 - 14, 16, 17, 20 – 32, 39 – 44, 47, 50, 51, 54, and 57 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
31. Protection of sight distance triangles is required by two City regulations. The Development Code requires preservation of clear sight lines from 42” to eight feet above street grade within a triangular area at each intersection whose legs are 15 feet long measured along the intersecting right-of-way lines. [SMC 21A.25.220]

The PWS has a requirement which essentially formalizes the entering sight distance measurement. For a stop sign controlled intersection with a street having a 35 mph speed limit, the PWS requires preservation of a clear area between three and 10 feet above street grade within a triangle whose leg along the main street is 470 feet long and whose leg along the centerline of the side street extends 10 feet back of the edge of pavement line (extended) of the main street. [PWS.15.180 and Fig. 02-30]

The text of Exhibit S-42, as amended during the hearing, essentially recites the PWS standard. It then continues on to notify the Homeowners Association through text on the face of the final plat that it is responsible for maintaining this clear area at the southeast corner of the 212th Avenue NE/NE Inglewood Hill Road intersection.

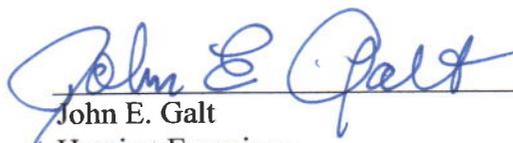
The Examiner normally does not like listing mandatory code requirements as special conditions of permit approval. Since two regulations exist that mandate preservation of sight distance triangles, and since those regulations apply to more locations than the one mentioned in Exhibit S-42, the Examiner declines to impose the condition as proposed.

What is worth placing as text on the face of the final plat is a notice that in those cases where a required sight distance triangle encumbers tracts owned by the Homeowners Association, the Association is legally responsible for preservation of the required clear sight distance.

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 **GRANTS** preliminary subdivision approval for *Benham Ridge* **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued December 7, 2012.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁵

Mike Miller
Barbara Raabe

Emily Arteche
Kevin Hallgrimson

¹⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.

Cheryl Gorder
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Brett Pudistis
David Teesdale
Deborah Frause

Richard Raabe
Marilyn Favre
Tawni Dalziel
Raymond Coglas
Curtis Chin
Kathy Curry

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, nor does filing a request for reconsideration stay the time limit for commencing judicial review. [SMC 20.10.260(3)]

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."

CONDITIONS OF APPROVAL
Benham Ridge
PLN2011-00047

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, the Specific Design Requirements as set forth in hearing Exhibit S-21, and the following special conditions:

1. Exhibit S-3 is the approved preliminary plat (and supporting plans). Revisions to approved preliminary subdivisions are subject to the provisions of SMC 19A.12.040.
2. Pursuant to RCW 58.17.170 the Plator shall comply with all county, state, and federal rules and regulations in effect on November 22, 2011, the vesting date of the subject application. However, if the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision, future development may be subject to updated construction codes, including but not limited to the International Building Code and the International Fire Code, as amended.
3. Pursuant to Chapter 19A.12 SMC, preliminary plat approval shall be null and void if any condition is not satisfied and the final plat is not recorded within the approval period of eighty-four (84) months; provided the Plator may file for an extension as permitted by code.
4. For the purpose of ensuring compliance with all conditions of approval and the standard requirements of the SMC, the Plator shall provide financial guarantees in conformance with Chapter 27A SMC and PWS Section 10.050(K). All improvements required pursuant to the PWS, SMC, or other applicable regulations must be installed and approved, or bonded, as specified for plats in Chapter 19A.16 SMC.
5. The arborist's recommendations for minimizing impact to off-site trees as contained in Exhibit S-15 shall be implemented during development of the subdivision.

Prior to Final Construction Approval:

6. A safe walking path for elementary school children shall be provided as generally depicted on Exhibit 3, Sheet 6 of 6. A safe walking path shall include a 5-foot concrete or porous concrete sidewalk, 5-foot asphalt sidewalk, or path separated from the travel lane. The existing road shoulders shall be maintained. Improvements shall be reviewed and approved under the site development permit, shall be subject to the 2009 King County Surface Water Design Manual, and shall be considered part of the *Benham Ridge* development project.
7. The Plator shall submit the site plan for the future lift station located in Tract P for review and approval by the City.

8. Full street frontage improvements and 7-foot dedication on NE Inglewood Hill Road (3.5-ft on each side of existing right-of-way) shall be provided consistent with a minor arterial standard and in accordance with PWS Table 1 and PWS Figure 01-02. The City Engineer may modify this standard based on engineering judgment during final engineering review.
9. Illumination shall be provided on NE Inglewood Hill Road consistent with the City's standards for average foot candles and uniformity for an arterial road. The City shall be responsible for the maintenance of the lighting located on all arterials and illumination shall be provided on the local roads consistent with the City's standards for average foot candles and uniformity for a local road. Average foot candles and uniformity may be modified based on approved engineer's proposal for pedestrian lighting only on linear road sections. Maintenance and all power costs shall be provided for by the Homeowners Association.
10. Half-street frontage improvements on 212th Avenue NE shall be provided consistent with a local road standard and in accordance with PWS Table 1, PWS Figure 01-05, and City Ordinance 2005-191. The preliminary plat has identified a rain garden to be placed separating the travel lane from the sidewalk. Road dedication shall include all improvements to the back of sidewalk. The City Engineer may modify this standard based on engineering judgment during final engineering review.
11. The internal plat roads serving more than four dwelling units shall be consistent with the local road standards in accordance with PWS Table 1, PWS Figure 01-05, and City Ordinance 2005-191. The City Engineer may modify this standard based on engineering judgment during final engineering review.
12. Asphalt grind and overlay limits shall be approved with the site development permit or associated right-of-way permits.
13. Tracts E and K shall serve no more than four dwelling units and shall be constructed to comply with the private street standard in PWS.15.090.
14. Tracts B, D, and F shall serve no more than two dwelling units and shall, at a minimum, be constructed to comply with the joint use driveway standard in PWS.15.170.
15. The cul-de-sac shall be constructed to comply with PWS.15.120, Figure 01-06, Figure 02-33, and Eastside Fire and Rescue requirements. In the case of conflict among those standards, the more stringent shall take precedence. Eastside Fire and Rescue and Public Works shall review the design details of the cul-de-sac rain garden during final engineering.
16. The required sight distance triangles on NE Inglewood Hill Road shall be shown on the engineering and landscaping plans to ensure a 470-foot entering sight distance to the east at 212th Avenue NE and in both directions at Road A and Tract K.

17. Drainage plans, Technical Information Reports, and analysis shall comply with the 2009 King County Surface Water Design Manual (KCSWDM) and the City of Sammamish Stormwater Management Comprehensive Plan.
18. The project shall be designed and constructed in such a manner as to not affect the natural flow of off-site drainage.
19. Off-site flows entering the site at Tract O shall be attenuated in Tract O and/or conveyed by the stormwater system to be owned by the Homeowners Association. An easement shall be provided to the City of Sammamish for access, inspection, maintenance, and repair.
20. On-site infiltration shall be designed using long term infiltration rates in accordance with the 2005 Stormwater Management Manual for Western Washington.
21. Temporary erosion and sediment control plans shall include clear identification of proposed infiltration areas by fencing. Fencing shall be provided around such areas to limit soil disturbance and compaction by construction vehicles. Sedimentation ponds and interceptor swales shall not be located in areas of proposed infiltration.
22. The Plator shall implement the revised wildlife habitat assessment (Exhibit S-18) as modified: A habitat snag, log, stump, and woody debris plan shall be prepared by the Plator's environmental consultant for City review. This plan shall reflect the proposed location of any snags, logs, stumps, or woody debris that are to be harvested during site development and placed into open space tracts or protected critical areas tracts to enhance habitat for the pileated woodpecker and other wildlife. This plan shall detail the quantity and location of proposed woody habitat features and shall describe proposed methodology for placement of these features that avoids damage to existing native vegetation in these areas.
23. A maximum 4-foot high, split rail or similar type fence shall be installed along the outer boundary of the proposed stream and buffer tract (currently labeled Proposed Tract M). Permanent critical area signage shall be placed on this fencing at an interval of one (1) per lot or every 50 feet, whichever is less. Signs shall be a city approved type designed for high durability. Signs and fencing must be maintained by the Homeowners Association in perpetuity.
24. "No Parking" signs shall be installed in the cul-de-sac.
25. Post address monument signs at driveways/road connection serving Proposed Lots 4 and 5, 7 and 8, 17 and 18, and 22 and 23.
26. "No parking in fire lane" signs shall be installed on one side of Roads A and B; a fire hydrant shall be installed on the non-parking side.

Conditions to be fulfilled prior to final plat:

27. NE Inglewood Hill Road shall be fully improved with final lift of asphalt, lighting, signage, and channelization.
28. Sight distance on NE Inglewood Hill road shall be verified by a design engineer and a letter report attesting to the adequacy of the available sight distance shall be submitted to the Department of Public Works for review and approval.
29. Half-street frontage improvements on 212th Avenue NE shall be completed, including the final lift of asphalt, signage, and channelization.
30. The safe walking path to Margaret Mead Elementary shall be completed.
31. At a minimum, all stormwater facilities shall be constructed, online, and operational. This includes construction of road ATB, curb, gutter, rain gardens, stormwater conveyance system, water quality treatment systems, and infiltration pond. The final lift of asphalt within the internal plat roads may be bonded except as indicated.
32. All new signs required in the public right-of-way must be installed by the City of Sammamish Public Works Department or at the direction of the City of Sammamish Traffic Engineer. Procurement and installation shall be paid for by the Developer. Contractor shall contact the Public Works Inspector to initiate signage installation a minimum of 6 weeks prior to final plat. Temporary street signs may be required for internal plat roads for emergency vehicle access. No parking signs shall be installed prior to final plat. No parking signs shall be required on all proposed street and private roads with clear widths of 20-feet or less.
33. A licensed surveyor shall survey and stake all storm drain facilities and conveyance lines with associated easements and dedications not located within the public right-of-way. The Public Works Inspector shall inspect and approve locations prior to final plat and easement recording.
34. Full on-site infiltration performance tests shall be conducted and documented by a licensed geotechnical engineer in all infiltration areas. The City shall monitor infiltration tests to ensure adequate performance.
35. The NE Inglewood Hill Road existing culvert between Tracts P and M shall be jetted, cleaned, vactored, and televised to inspect existing conditions. The culvert shall be replaced if conditions warrant as determined by Public Works.
36. All critical areas signs shall be installed.
37. A Public Works performance bond shall be posted consistent with the 2009 King County Surface Water Design Manual.

38. The site shall be stabilized with best management practices for temporary sediment and erosion control.
39. Stream hydrology function shall be maintained. Documentation shall be provided at final plat that demonstrates that the hydrologic function will be maintained for the on-site stream, as well as for the associated off-site, down-stream George Davis Creek stream areas where relevant.

Conditions to appear on the face of the final plat:

40. *“Tracts A, J, M, O, and P are designated as tree retention areas. Retained trees are subject to the tree protection standards of SMC 21A.35.230. Removal of these trees is prohibited unless the tree is removed to prevent imminent danger or hazard to persons or property, subject to a clearing and grading permit approved by the City of Sammamish. Trees removed subject to this provision shall be replaced in compliance with SMC 21A.35.240.”*
41. *“No lot or portion of a lot shall be subdivided and sold, or resold, or its ownership changed or transferred in violation of applicable city, county, state, or federal standards, rules, regulations or laws.”*
42. The developer shall comply with RCW 58.17.280 providing the appropriate “addressing note” with address ranges being on the final plat.
43. *“The proposed subdivision is subject to school impact fees for the Lake Washington School District, consistent with Chapter 21A.105 of the Sammamish Municipal Code. At the time of building permit, the developer shall pay one half of the required school impact fee, together with an administrative fee.”*
44. *“The proposed subdivision is subject to parks impact fees, consistent with Chapter 14A.20 of the Sammamish Municipal Code which shall be paid at the time of building permit issuance together with an administrative fee.”*
45. The Plator shall include a note regarding the payment of traffic impact fees in accordance with Chapter 14A.15 SMC. Specific language related to the payment of the traffic impact fees shall be reviewed and approved by the City prior to final plat approval.
46. *A surface water system development charge shall be paid at the time of building permit issuance for each new residential dwelling unit.”*
47. Any Surface Water Management Facilities required for this subdivision shall be contained within a separate tract of land and shall be dedicated to the City of Sammamish for maintenance and operation. Language to this effect shall be shown on the face of the final plat.
48. *“Maintenance of landscape strips along 212th Avenue NE, 213th Place NE, NE Inglewood Hill Road, and the internal plat roads shall be the responsibility of the Homeowners Association. Under no*

circumstances shall the City bear any maintenance responsibilities for landscaping strips created by the plat.”

49. *“Maintenance of landscaping strips along the stormwater pond perimeter other than the interior pond embankments shall be the responsibility of the Homeowners Association.”*
50. *“Maintenance of the rain gardens along 212th Avenue NE, Tract H, Tract I, and the cul-de-sac island shall be the responsibility of the Homeowners Association.”*
51. *“Preservation of clear sight distances at all intersections required by the sight distance regulations in Chapter 21A.20 SMC and PWS.15.180 shall be the responsibility of the Homeowners Association wherever the required sight distance triangles occur on or cross over property owned by the Homeowners Association. The City also has the right, but not the obligation, to perform needed maintenance within these areas.”*
52. Covenant and easement language pertaining to individual lots and tracts with flow control BMPs shall be shown on the face of the final plat. Public Works shall approve the specific language prior to final plat.
53. Drainage easements consistent with the *2009 King County Surface Water Design Manual* shall be provided through Homeowners Association owned tracts to the City of Sammamish for access, inspection, maintenance, and repair of all off-site stormwater runoff.
54. *“Maintenance of illumination along all local and private roads shall be the responsibility of the Homeowners Association or jointly shared by the owners of the development.”*
55. *“Metal products such as galvanized steel, copper, or zinc shall not be used in all building roofs, flashing, gutters, or downspouts unless they are treated to prevent metal leaching and sealed such that contact with storm water is prevented.”*
56. *“All lots containing or adjacent to infiltration or dispersion trenches/facilities shall be graded such that the flow path is directed away from the building foundation.”*
57. *“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways that are not directed to an approved low impact development facility shall be connected to the permanent storm drain system as shown on the approved plat Clear and Grade permit on file with the City of Sammamish. The connection to the storm system shall be through a perforated stub-out per the 2009 King County Surface Water Design Manual.”*
58. *“All landscaped areas of the plat and individual lots shall include a minimum of 8-inches of composted soil amendment.”*
59. *“No direct driveway access onto 212th Avenue NE or NE Inglewood Hill Road shall be allowed.”*