

**NOTICE OF DECISION**

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** David Lindsey  
20479 Comet Lane  
Mount Vernon, WA 98274

**Project Engineer,  
Contractor:** Fred Poyner III, P.E., L.S. BYK Construction, Inc.  
Cascade Surveying & 133 W. State Street, Ste. 101  
Engineering, Inc. Sedro, Woolley, WA 98284  
P. O. Box 326  
Arlington, WA 98223

**Request:** Conservation and Reserve Development (CaRD) Land  
Division (PL18-0467)

**Location:** Along Lake Sixteen Road, north and east of 21260 Lake Sixteen  
Road, Mount Vernon, within a portion of Secs. 16 and 21, T33N,  
R4E, W.M. Parcel Nos: P126144, P16640, P16642, P17100,  
P17026, P17076

**Land Use Designations:** Rural Reserve (RRv) and Rural Intermediate (RI) zones

**Summary of Proposal:** Preliminary plat for creation of 19 single family residential lots  
on approximately 96 acres. Lots will range in size from .41 to  
1.19 acres in size, with the remaining acreage placed in open  
space.

**Public Hearing:** August 28, 2019. Testimony by Planning and Development  
Services (PDS) staff, project engineer, contractor, and five  
members of the public.

**Decision/Date:** The application is approved, subject to conditions.  
September 23, 2019

**Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10  
days of this decision. Appeal is to the Board of County  
Commissioners by filing with PDS within 14 days of this decision,  
or decision on reconsideration if applicable.

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. David Lindsey (applicant) seeks approval of the subdivision of 96+ acres along Lake Sixteen Road, southwest of the lake and north of State Route 534. The proposal will create 19 residential lots and several tracts, leaving about 82.5 acres in open space. The development will be a Conservation and Reserve Development (CaRD).

2. The property lies within a portion of Secs. 16 and 21, T33N, R4E, W.M. The parcel numbers are P126144, P16640, P16642, P17100, P17026 and P17076. Lake Sixteen borders the extreme northeast portion of the site.

3. The site is located within the Rural Reserve (RRv) and Rural Intermediate (RI) zoning. The adjacent properties generally contain single family residences on a mixture of lot sizes ranging from .17 acres in the Idlewood plat along the lake to 30 acres on uplands.

4. The project site generally slopes to the west away from Lake Sixteen. The acreage is currently undeveloped. It includes an approximately one-acre wetland. The remainder is generally undeveloped, forested or recently harvested forest. Logging and reforestation occurred in 2014 under Forest Practice Application #2811833.

5. Access to the proposed lots will be via Lake Sixteen Road and State Route 534. All but two of the lots are clustered on uplands between the state highway and the lake. These 17 southerly lots (all a half acre or less in size) will be accessed from Lake Sixteen Road by proposed Elderberry Court and Huckleberry Trail. Bulson Creek runs through the property between the southerly lots and the two northerly ones.

6. The two larger northerly lots will be near the lake, but setback 150 feet from the Ordinary High Water Mark. They are the only lots within 200 feet of Lake Sixteen (shoreline jurisdiction). A cul-de-sac turnaround just below these lots will be placed at the end of Lake Sixteen Road.

7. The Notice of Development Application was published on September 27, 2018. Sixteen public comments were received. All expressed concerns about increased traffic and safety on Lake Sixteen Road. Gibson Traffic Consultants responded to these comments by a memo dated April 24, 2019.

8. Gibson's response was based on 2018 data on actual vehicle trips and projected daily trip generation for the 19 new proposed homes. The projected trips used higher trip generation rates for urban/suburban homes rather than rates for a rural setting like Lake Sixteen Road. Using this higher generation rate, the future volume on Lake Sixteen road was predicted to be below 400 vehicles per day.

9. Gibson's staff conducted field measurements of Lake Sixteen Road and determined that the narrowest portion is 18 feet wide just north of SR 534. Along the proposed development's frontage, the pavement width is 21 feet. According to AASHTO, an 18-foot

travel way with a design speed between 15-40 miles per hour is sufficient for up to 400 vehicles per day. Gibson concluded that no capacity improvements to the roadway are needed to accommodate the development based on AASHTO criteria.

10. As to safety, stopping sight distances at several locations along the road were evaluated. The proposed access locations were shown to meet required AASHTO safe stopping sight distances. For the latest six full years, collision data for Lake Sixteen Road, as well as the intersection of Lake Sixteen Road at SR-534, do not show any reported collisions.

11. A waiver of Forest Practices Act moratorium relating to the project site was granted on November 1, 2017. The waiver (PL17-0272) followed a Wetland Site Assessment which concluded that on the 28 acre area subject to timber harvest, direct impacts to critical areas have been avoided. The entire harvest area, including the area contiguous to the wetland was replanted with native conifers following harvest activities.

12. A checklist pursuant to the State Environmental Policy Act (SEPA) was submitted on July 25, 2017, with the request for waiver of the Forest Practices Act moratorium. Based on the checklist, a Mitigated Determination of Non-Significance (MDNS) was issued on September 26, 2017.

13. The MDNS contained eleven mitigation measures, as follows:

1. Temporary erosion-sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall be maintained and remain in place until completion of the project.
2. The applicant shall comply with Northwest Clean Air Agency requirements.
3. The applicant shall comply with the provisions of the Skagit County Stormwater Management Ordinance, SCC 14.32, as it relates to increased runoff from additional impervious surfaces.
4. The applicant shall comply with Fire Code Standards.
5. An engineered soils compaction report shall be required for all structures placed on fill material.
6. The applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).
7. The land division proposal shall comply with **all** applicable requirements of SCC 14.16. and SCC 14.18. Most notably, SCC 14.16.830 Landscaping, SCC 14.16.840 Performance standards, and SCC 14.16.850 General provisions.

8. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Bellingham Field Office at (360) 715-5200 to determine if an NPDES permit is required.

9. Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff's office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall only continue when in conformance with applicable state and federal laws.

10. A level 1 traffic analysis shall be completed to the satisfaction of Skagit County Public Works for the subdivision proposal, consistent with Skagit County Road Standards. In the event the analysis indicates that the subdivision will generate more than 50 vehicle trips during the peak hour, the level 1 traffic analysis shall be expanded to a level 2.

11. The applicant shall be responsible for ensuring that all development activities do not encroach into wetlands and the 112.5-foot buffers. Any impact to the wetlands or associated buffers from development activities shall be immediately restored.

14. In addition to the Traffic Impact Analysis and Wetland Site Assessment, professionally prepared reports relating to the proposed CaRD include: (a) a nitrogen loading assessment, (b) soil/site evaluations for septic systems, (c) a drainage report, (d) a stormwater pollution prevention plan, and (e) a critical areas report for the northerly area near the lake.

15. The application was circulated to County departments and reviewed for inclusion of all the preliminary plat requirements of SCC 14,18.100. Departmental comments were reflected in conditions of approval.

16. The approximately 82.5 acres of open space will include Protected Critical Area (PCA) easements for delineated streams, wetlands and their associated buffers. The portion not in PCA status will be designated with the appropriate CaRD open space designation.

17. A professionally designed drainage system will use a combination of detention, biofiltration and dispersion to insure that runoff does not exceed pre-developed rates. Biofiltration swales and sheet flow dispersion will provide adequate treatment for runoff.

18. The access streets serving the development will be constructed to County standards and portions of Lake Sixteen Road may need to be upgraded.

19. Potable water will be supplied by the Skagit County Public Utility District. The District has indicated that it has sufficient supply to furnish the development.

20. Individual on-site septic systems will be used for the lots since sewer service has not yet been provided to the area. Soil site evaluations have been submitted and approved.

21. The developer will be required provide for the payment of fees to offset impacts of the development on County parks and recreation facilities.

22. The proposed development is within the Conway School District. If applicable at the time of development, mitigation of impacts on schools will be accomplished by requiring lot owners to contribute fees in the amount included in the school's Capital Facilities Plan at the time of building permit issuance.

23. The proposal meets the density requirements of the County Code for development as a CaRD land division. It is located within the boundaries of a fire protection district. Assuming the proposed infrastructure development occurs, adequate public services will be provided.

24. The Staff review finds that the proposed preliminary long CaRD, as conditioned, makes adequate provisions for: a) public health, safety and general welfare, b) open spaces, c) drainage ways, d) streets or roads and public ways, e) potable water supplies, f) sanitary wastes, g) parks and recreation, h) schools and school grounds, (i) public use and interest. The Hearing Examiner concurs with this analysis and adopted the same. The Staff Report is by this reference incorporated herein as though fully set forth.

25. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. It is a Level II application. SCC 14.06.050(b) (vi).

2. The requirements of the State Environmental Policy Act (SEPA) have been met.

3. The proposal, as conditioned, meets the application requirements of SCC 14.18.100.

4. The proposal is consistent with the statutory criteria of RCW 58.17.110(2) for subdivision approval.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## CONDITIONS

The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

1. The address range(s) will be forwarded to Skagit County GIS for review and assignment after preliminary approval has been granted and the road names have been selected. The address range(s) shall be shown on the face of the plat map before final approval. The road names that have been approved are: Elderberry Court, Elderberry Lane and Elderberry Place. Huckleberry is only approved as Huckleberry Court, Huckleberry Place or Huckleberry Way. (There is already one Huckleberry Lane in Skagit County.) The chosen road names from the approved list shall appear on the face of the final plat.

2. The Land Division application number is #PL18-0467 which shall be shown on each page of the map packet prior to final approval.

3. The acreage for each zone shall be added to the face of the plat map (RRv and RI).

4. The final plat map shall be of a scale not less than 100' to the inch on 18" x 24" sheets, with a 2-inch border on the left edge, and ½ inch border on all other sides.

5. In accordance with SCC 14.18.200(4) (d), all lot corners must be set prior to final plat approval.

6. An updated title report will be required with the final plat approval.

7. The applicant shall show compliance with SCC 14,18.200 prior to final approval.

8. If any portion of the parent parcel is in an Open Space taxation program with the Skagit County Assessor's Office, the applicant shall contact them at (360) 416-1780 prior to proceeding with the land division.

9. Per SCC 14.18.310(4), the open space shall be placed in one separate tract and the appropriate Open Space Designation(s) shall be assigned per SCC 14.18.310(5). The open space tract shall be given an identifying number or letter.

10. If the open space is proposed to be shared amongst the proposed 19 residential lots, the applicant shall supply a Homeowners Agreement outlining the details of the ownership, use, and proposed cost sharing of the open space tract. A plat note shall also be provided referencing the document as well as an Auditor's File number cross reference line for recording (i.e. AF# \_\_\_\_\_).

11. The acreages and square footages of each individual tract within the parent open space tract shall be shown on the face of the plat (i.e. wetland tracts, Tract 996, etc.) The applicant shall identify that each of the individual separate tracts are part of an overall open space parent parcel tract (SCC 14.18.310(4) (a)).

12. Per SCC 14.18.330(3), Screening of Cluster Pods is required. Since the property has been recently cleared, a Landscape Plan shall be provided pursuant to SCC 14.16.830 for review and approval. Landscaping shall be installed and completed prior to Final Plat Approval.

13. The exact setbacks for each individual lot shall be determined and documented prior to Final Plat Approval.

14. The exact location of the Floodplain lines (Zone A & C) shall be shown on the face of the plat map.

15. All standard plat notes and appropriate departmental signoffs are required. The applicant shall ensure that there are the appropriate number of acknowledgment blocks for all parties to the land division, and County staff, including the appropriate signature line for the Auditor's Office.

16. At a minimum, the following plat notes shall be shown on the face of the final plat map:

- Plat number and date of approval shall be included in all deeds and contracts.
- Maintenance and construction of roads shall be the responsibility of the homeowners association with the lot owners as members.
- No building permit shall be issued for any residential and/or commercial structures, which are not, at the time of application, determined to be within an officially designated boundary of a Skagit county Fire District.
- A Skagit County Address Range has been applied to the road system in this subdivision. At the time of application for building and/or access, Skagit County GIS will assign individual addresses in accordance with the provisions of Skagit County Code 15.24. Change in location of access may necessitate a change in address. Planning and Development Service should be contacted for specifics.
- Comprehensive Plan/Zoning Designations = Rural Reserve (RRV) and Rural Intermediate (RI).
- Any development within 200 feet of Lake 16 or the associated wetlands will need to comply with the Skagit County Shoreline Management Master Program.

17. The applicant shall ensure that the plat map shows all existing and proposed easements/restrictions.

18. The applicant shall provide proof that a voluntary mitigation agreement for payments to offset impacts on County parks and recreation facilities has been entered into and shall so note on the face of the plat. If necessary the payments (\$100) per lot shall be addressed in the CC&Rs. The payments shall be made prior to the issuance of individual building permits.

19. The project shall comply with all conditions of the SEPA Threshold Determination (MDNS) issued on September 28, 2017. (See Finding 13 above.)

20. The applicant shall provide copies of any proposed covenants, homeowners association agreements, and/or road maintenance agreements for review prior to final approval. Appropriate plat notes and Auditor's file number cross reference lines shall also be provided.

21. A set of envelopes addressed to all neighboring property owners and occupants within 300 feet of the subject property (with appropriate postage) shall be supplied for final plat approval. A list of the owners and occupants shall also be provided.

22. Any outstanding preliminary plat fees shall be paid within 30 days of the preliminary plat decision.

23. Final plat fees will be assessed at the time of final plat submittal. All outstanding final plat fees shall be paid prior to final plat approval.

24. The plat map must show and label all utility easements on the face of the plat map.

25. All required property taxes shall be paid prior to final approval.

26. Additional review may result in additional conditions of requirements.

27. Approved drainfield sites shall be shown on all lots for final plat approval and shall be accompanied by the proper plat note.

28. The applicant shall call 811 prior to commencing ground work.

29. A note shall be added to the plat indicating the maximum impervious hard surface carrying flow to the stormwater ponds from each lot.

30. The following shall be added as a plat note: "*Future development may be subject to the stormwater management rules in effect at the time of development, and may require additional analysis and flow control to comply with stormwater management rules.*"

31. A fish and wildlife habitat site assessment was received for the proposed development located within 200 feet of Bulson Creek, Bulson Creek tributary, and Lake 16 (SCC 14.24.080, 14.24.530) on July 17, 2019. Once review is complete additional information may be requested.

32. Stream buffers are required to be measured from the ordinary high water mark of the channel (SCC 14.24.530(1)(b)).

33. The wetland site assessment submitted was written specifically for waiver of forest practice moratorium request. It does not address the proposed land division and its potential impacts. Any analysis of the mitigation sequence for the proposed wetland buffer reduction is required (SCC 14.24.2140(3)). If the buffer reduction is approved, a mitigation plan will be required.

34. All regulated critical areas and their associated buffers adjacent to any of the proposed development must be fenced. Permanent buffer edge markers are required. (SCC 14.24.090.)

35. Language must be include on the plat to clearly identify the allowed uses within the maintenance corridors adjacent to the Protected Critical Area easements.

36. A Protected Critical Area easement agreement must be submitted for review.

37. Shoreline jurisdiction extends onto Lots 18 and 19. This must be shown on the plat map and a note must be added regarding compliance with the Shoreline Management Master Program (Chapter 14.26SCC).

38. The applicant shall install eight inch service lines to each lot per PUD requirements and shall install the storage addition as required in the PUD's August 3, 2018 letter (Exhibit 14).

39. The plat map shall show the approximate water line(s) location(s) (---W---) and shall indicate proposed meter locations. The applicant shall submit the land division engineer's written approval of installation for side service line(s) and the PUD board's written acceptance that the line and storage installation meets all PUD requirements, as required in the PUD's August 3, 2018 letter (Exhibit 14).

40. The applicant shall provide plat water supply notes per SCC 12.48.240(3).

41. The plat shall include the Skagit Instream note. Suggested language: *"This development is in a watershed basin, identified by the Washington State Department of Ecology, that has ground water withdrawal restrictions. The Department of Ecology should be contacted for more information."*

42. HG nitrate submittal is under review by the County Hydro-geologist. (SCC 14.24.330(3))

43. The plat shall show proposed and existing septic system locations (Chapter 12.05 SCC). Setbacks shall be maintained per Chapter 12.05 and 12.48 SCC.

44. Per Chapter 173-160 WAC, the applicant shall decommission all wells onsite (SCC 14.24.340(3)(a)(ii)). The applicant shall submit Ecology decommissioning paperwork and a County release letter for each well decommissioned.

45. Additional staff time spent on this project will result in additional review fees.

46. This proposal is in a watershed a basin identified by Ecology as: 3-Lower Skagit Carpenter.

47. Huckleberry Lane shall be constructed to the County standard, which based on ADT, is a 24-foot wide asphalt road. Elderberry Court will be a private road, and as such it must at a minimum be constructed to a 20-foot wide driving surface. In both cases, the cul-de-sac shall be constructed with a 48-foot radius.

48. All paved long plat roads, whether public or private, require centerline monumentation.

49. Maintenance and restoration surety is required for public plat roads. See Section 14.02 of the road standards manual.

50. Electronic record drawings shall be required for public plat roads.

51. Commercial access permits are required for the new connection points to the County road. Such permits shall be applied for prior to submittal of the grade and fill permit.

52. The applicant shall upgrade portions of Lake Sixteen Road as necessary to bring it up to County standards and to provide proper mitigation. The cul-de-sac at the end of Lake Sixteen Road shall meet County standards and shall be constructed on a 48-foot radius.

53. A grading permit is required for construction of roadway and drainage facilities. The permit application shall include engineered plans consisting of title sheet, plan and profile, erosion control plan, stormwater drainage plan, specifications & details. A preconstruction meeting shall be scheduled with Skagit County Public Works prior to the start of road construction.

54. Prior to starting road construction, and in accordance with Section 12.09 of the Skagit County Road Standards, the applicant must post one or more signs showing the names or business names of both the applicant and the project engineer, as well as contact telephone numbers for each.

55. The construction of the roadway and detention facilities for the subdivision will require certification by the engineer that all items have been built in accordance with the approved construction plans. See Section 12, Skagit County Road Standards.

56. A stop sign and road name sign must be installed on the private road in accordance with Skagit County Road Standards.

57. Where the project abuts Lake Sixteen Road, additional right-of-way will need to be dedicated so as to provide for a 30-foot half width. This shall be shown on the face of the plat.

58. The applicant must provide a road maintenance agreement that includes all users of the private road, Elderberry Court.

59. In accordance with SCC 14.18.200(2)(b)(ix), the following note must be shown on the face of the plat:

*“In no case shall the county accept a dedication or any obligation as to any such road, street, and/or alley until the same and all roads, streets, and/or alleys connecting the same to the full, current County road system have been brought to full County Road Standards and a right-of-way deed has been transferred to and accepted by the County.”*

60. In accordance with SCC 14.18.200(4)(d), the lot corners must be set prior to the final plat approval.

61. The Basis of Bearing must be shown on the plat map.

62. The Title Report indicates that the property is affected by several easements. In accordance with SCC 14.18.100(i)(a)(viii), the layout of existing and proposed easements must be shown on the plat map.

63. The applicant shall submit lot closures that correspond with the face of the plat.

64. A note must be shown on the face of the plat referencing the drainage report and construction plans contained therein.

65. In accordance with SCC 14.32.080(1)(c), the following note must be shown on the face of the plat:

*“All runoff from impervious surfaces, roof drains, and yard drains must be directed so as not to adversely affect adjacent properties.”*

66. The 19 lot CaRD must comply with the Skagit County Coordinated Water System Plan (CWSP) for the required fire flow with hydrants and mains (Table 6-1).

67. Further fire code requirements may apply at the time of building permit applications.

68. WSDOT must review any traffic control plans for the project if SR 534 traffic will be impacted during construction. In addition, if there are significant delays in construction or changes in plan that would influence the traffic study, WSDOT shall be given the opportunity to re-evaluate the project.

69. Although the development lists three (3) phases on the face of the preliminary site plan, no phasing plan or timeline for same has been requested for approval. Therefore, per SCC 14.18.100(6), the preliminary long subdivision approval shall be valid for the time period listed in RCW 58.17.140, as amended. If any condition is not satisfied and the final subdivision is not recorded with the approval period, the preliminary plat approval shall be null and void.

### DECISION

The application for preliminary plat approval for the David Lindsey Long CaRD land division (PL18-0467) is granted, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Transmitted to applicant, staff and interested persons, September 23, 2019.