

BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION

Applicant/Agent: Jim Tosti
Windward Real Estate
7981-168th Ave. #118
Redmond, WA 98052

Agent: John Semrau, P.E.
Semrau Engineering
2118 Riverside Dr. #208
Mount Vernon, WA 98273

Requests/File Nos: Preliminary Plat for *David Welts Subdivision* -- PL96-0058
Variance (road standards) -- PL10-0025
Forest Conversion -- PL10-0118

Location/Parcels: Located at the end of Sinnes Road northeast of Conway, within a portion of Sec. 16, T33N, R4E, W.M. Parcel #s P16701, P16707, P16689

Vesting/Zoning: The application is vested to the Skagit County codes in effect on February 7, 1996. The zoning designation under which the project is vested is Residential Reserve (minimum lot size 1 acre).

Summary of Proposal: (1) plat --to subdivide 83-acres to create 59 single-family residential lots on about 65 acres, critical area tracts on about 10 acres, and dedicated roadway and water tank sites on about 8 acres. (2) variance -- to reduce roadway widths at four locales, (3) conversion -- to convert the land to residential use after harvest of timber under a Forest Practices permit.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) issued on May13, 2010. No appeals

Public Hearing: December 8, 2010. Applicant was represented by Thomas Moser, Attorney at Law. Four members of the public testified. Planning and Development Services recommended approval.

Recommendation: Approval, subject to conditions

FINDINGS OF FACT

1. Jim Tosti (for Windward Real Estate Services, Inc) seeks approval of a preliminary plat, a road standards variance and a forest conversion. The development is called the David Welts Subdivision.

2. The project site is located east of 20184 Sinnes Road at the end of the road. The property lies about two miles northeast of Conway just north of Hermway Heights, within a portion of Sec. 16, T33N, R4E, W.M. Access is via Sinnes Road off of Bulson Road.

3. The property consists of approximately 83 acres of undeveloped forest land. It is bordered on the southeast by Lake Sixteen. A short segment of Bulson Creek, including a waterfall, is located in the southwest corner of the property. The site generally slopes down to the southwest and southeast from a ridge near the center. The property includes areas of steep slopes and relatively level benches. There are several delineated wetlands and small tributary streams.

4. The majority of the property was logged within the last 15 years. Vegetation on-site is dominated by shrubs and young trees with the exception of the eastern end of the property. The area within 100 feet of the shore of Lake Sixteen consists of mature 2d and 3d growth forest.

5. The applicant proposes to harvest approximately 20,000 board feet of timber under a Forest Practices Permit and to convert the property from forest to residential use. However, much of the present vegetation will remain because of limitations on clearing dictated by the use of full dispersion stormwater management.

6. The proposal is to divide the acreage so as to create 59 single-family residential lots ranging in size from 1.00 to 2.40 acres in size. The residential lots will occupy approximately 65.03 acres. The remaining acreage will include two critical area tracts (Tract A and Tract B) totaling 9.86 acres, dedicated roadway areas totaling 9.98 acres, and three water tank sites totaling 0.3 acres. The project will be carried out in three phases.

7. Sinnes Road will be extended eastward through the site to access lots. Four additional roadway areas will feed into Sinnes Road within the project: Limestone Lane, Horizon View Lane, Cattail Lane and an unnamed roadway in northeast portion of the plat. Several other driveway and utility easements are also proposed. The County recommends that all roadways on the site except for Sinnes Road be private roads. Sinnes Road will be dedicated to the public.

8. Daisy Lane currently provides access through the property to the YMCA camp beyond the property. The portion of Daisy Lane which runs along the west shore of Lake Sixteen will be abandoned from Cattail Lane onward. A through roadway connection will be established via Cattail Lane and Sinnes Road to preserve access to the camp. Bollards will be placed at each end of the retired roadway segment to restrict vehicle access and allow pedestrian recreational access only.

9. The applicant will apply for the vacation of the unopened Hermway Heights Road right-of-way crossing Bulson Creek, thereby eliminating the potential connection between Hermway Heights Road and the proposed Limestone Lane within the proposed plat.

10. The overall development idea is to avoid development in critical areas as much as possible. The dictates of road location within the topography, however, will result in some critical area impacts. These impacts will be minimized by locating roads over existing road and railroad grades and by impacting only low-functioning wetlands or areas previously damaged by logging. Buffer averaging will be used and direct wetland impacts will be mitigated by vegetative enhancement within low-functioning areas. Stormwater will be infiltrated within wetland buffers to maintain hydrology and water quality functions. The mitigation plan includes maintenance and monitoring requirements.

11. A 200-foot buffer shall be maintained from the Ordinary High Water Mark (OHWM) of Lake Sixteen, and a 100-foot buffer shall be maintained from the OHWM of Bulson Creek or the top of the adjacent slope. A 50 foot buffer shall be maintained from other regulated wetlands and unnamed Type 5 streams on-site.

12. No residential development is contemplated within the 200 foot strip adjacent to the shore of Lake Sixteen. No residential lots directly abut the lake. The only development activity presently proposed in the lakeside area is the abandonment of Daisy Lane for vehicular use and its conversion to a pedestrian path. In short, the area within Shoreline Management Act jurisdiction will be kept in open space and used for recreational purposes, providing access for members of the plat community to the shore. This limited use will be consistent with the Conservancy designation of the subject shoreline under the local Shoreline Master Program (SMP).

13. The applicant is requesting a variance to reduce the roadway widths in four locations: (1) reduce Cattail Lane right-of-way from 60 feet to 30 feet and dedicate it as a public road; (2) reduce the private roadway between lots Lots 20-24 from 60 feet of right-of-way to 50 feet with a 20 foot paved surface; (3) reduce the private driveway easement for Lots 40-42 to 30 feet wide with a 20-foot wide surface and a paved 12-foot wide surface serving Lot 42; (4) allow a private driveway easement 20 feet wide, with a paved 12-foot wide surface serving Lots 2 and 3.

14. The request for narrower roads responds to recommendations of the County's critical areas staff. The purpose, in general, is to minimize wetland and wetland buffer impacts. No more than four building sites will use any of these roadways. The applicant states that two other land divisions have been allowed to reduce road rights-of-way to 30 feet to minimize the impact on wetlands and buffers. The Staff Report analyzes the road-width request in light of the applicable variance criteria and finds that the request is consistent with those criteria. The Hearing Examiner concurs with the staff analysis and adopts the same. The County does not support making Cattail Lane a public road.

15. The plat application vested prior to the adoption of the County's Critical Areas Ordinance. After Staff review of the application and associated technical reports, conditions for

the protection of critical areas were addressed in this case through the substantive use of the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on May 13, 2010. The MDNS was not appealed. A total of 50 conditions relating to reducing environmental impacts were imposed in conjunction with the MDNS. These conditions are listed among the other recommended conditions of approval at the end of this report.

16. About 400 feet to the west of the proposed plat along Sinnes Road is the site of a former landfill which contains household garbage and farm waste dumped there in former years. It was capped with about 18 inches of granular cover soil when it was closed. The landfill is about two acres in size and located topographically below the proposed plat. Hydrogeologic studies were conducted to assess the impacts of stormwater runoff, hydraulic loading from new stormwater and septic facilities, and the potential for migration of methane gas. The studies concluded, in effect, that the landfill is unlikely to adversely impact the plat and the plat is unlikely to adversely impact conditions at the landfill. Nevertheless, the developer of the plat has agreed to implement a Remedial Action Plan for the landfill, including installation of a new engineered soil cap.

17. Based on a Geologic Hazards Review, several lots were identified as likely to contain insufficient developable area outside of steep slope areas and associated buffers. These lots may be included on the final plat only where lot-specific geologically hazardous site assessments have been provided, by the developer, that demonstrate to the satisfaction of the County that the creation and development of the lots will not pose a hazard to persons, the public or the environment.

18. The proposed method of stormwater disposal is the use of full dispersion where possible, with runoff from the roads routed to dispersion systems for discharge into the site wetlands. Roof and driveway runoff from each lot will be disposed of in lot-specific dispersion systems. Each lot will need a detailed drainage design. Full dispersion requires that at least 65% of the site remain in a forest or native condition. Plans call for slightly more than this percentage to be placed in Forested or Native Condition Retention Areas (FNCRA's). Where dispersion will not work, detention ponds will be provided. Final drainage design will be subject to independent third party review. The final drainage facilities shall be consistent with the Department of Ecology 2005 Stormwater Management Manual for Western Washington. With the system contemplated, expert opinion is that storm water from the development will not increase the likelihood of offsite flooding or otherwise significantly impact adjacent areas

19. Sewage disposal is proposed to be accomplished by on-site septic systems. Preliminary testing indicates that the property is suitable for septic system development. Studies show that water quality in neither Bulson Creek nor Lake Sixteen is likely to be adversely impacted by nitrate loading from septic effluent. Analysis also shows that the plat's development will cause no significant impact to groundwater elevations or flows and no impacts to downstream critical areas or water supplies. Prior to final plat submission, a soil site evaluation for each lot will need to be approved by the Health Department. On-site systems may be located on adjacent lots within dedicated easements.

20. Potable water service to the development shall be provided by Skagit County Public Utility District No. 1. The District has indicated that it has sufficient water supply to provide domestic water to the property. The developer will provide the infrastructure necessary to serve the plat. Adequate fire flow will be required per the Coordinated Water System Plan. The development is located within the boundaries of a Skagit County Fire Protection District.

21. A traffic impact analysis shows that the impact of increased traffic generated by the development will not cause the level of service to deteriorate at the intersection of SR-534 and Bulson Road. Existing Bulson Road and Sinnes Road will be widened approximately two feet within the right-of-way (with the exception of the crossing of Bulson Creek and its associated wetland). With proposed improvements, the road system in the area will be adequate to handle transportation impacts. The Washington State Department of Transportation reviewed the traffic analysis for the project and concluded that no traffic mitigation is required as a result of the development. There are no established transit stops in the vicinity of the plat.

22. The developer will enter a voluntary mitigation agreement with Skagit County Parks to provide a fee in lieu of land or facilities to offset impacts on parks and recreation facilities. A fee of \$100 per lot shall be paid prior to the issuance of individual building permits.

23. The proposal is located within the Conway School District. There are no schools within walking distance of the project site. The applicant has agreed that payment of the appropriate District impact fee (currently \$1,092) shall be made for each approved lot.

24. The application for the subject preliminary plat was filed on February 7, 1996. On December 5, 1998, the County advised counsel for the property owner that the plat application vested at the time of submittal. On July 13, 2004, PDS issued an Administrative Interpretation concluding that there is no expiration of the right to proceed with the processing of the application. That interpretation was not appealed. The Residential Reserve zoning in effect on February 7, 1996 had a minimum lot size of 1.00 acre.

25. The proposal will not be radically different from development in the surrounding area. The lot size is similar to some of the lots within Hermway Heights immediately to the south and some of the lots around Lake Sixteen.

26. In winter trumpeter swans use Lake Sixteen as a stop in their annual migration. There is a potential that activity at the proposed development will disturb them. However, because there will be no residences within 200 feet of the shore and shoreline use will be limited to low-impact pedestrian activities, this potential will to some degree be mitigated. There are already a number of homes near the lake but their presence does not seem to have discouraged the swans.

27. The project will stimulate employment during its development and will provide additional housing for the public. Adequate public services are available to accommodate the impacts of the development. The project is not contrary to the public interest.

28. Numerous comment letters were received on this proposal and four members of the public testified at the public hearing. The principal concerns expressed were about the density allowed by vesting, non-compliance with growth management objectives, feasibility of public water supply, traffic impacts, stormwater and septic impacts, damage to wetlands and buffers, effect on trumpeter swans using Lake Sixteen, land stability issues and landfill remediation. The Examiner is persuaded that the applicant has adequately responded to all of the concerns raised.

29. To be sure, the development of this plat at the density sought would not be allowed under today's regulations implementing the Growth Management Act. But the whole point of the vesting doctrine is to immunize developers from the impacts of changes in the law made effective during the period of permit application review. Here the time frame between the date of vesting and the date of decision on the permit has been unusually protracted. There are, of course, reasons for this -- a long saga of moratoria, uncertainties created by litigation, and mortality. Yet, no clear legal basis for disregarding the vesting rule in this case has been briefed or otherwise argued to the Examiner. It may be that the failure to appeal the 2004 administrative interpretation forecloses arguments that would otherwise exist.

30. It should be noted that the developer here, while relying on vesting for density, has come a considerable distance toward accommodating his development to current requirements. He is bearing the cost of remediation of an existing landfill. He has effectively agreed to the imposition of contemporary critical areas regulations. He has opted for low impact development in managing stormwater, radically limiting the amount of the site that can be removed from the natural condition.

31. There are adequate conditions to assure the ongoing maintenance of open space, private roads, drainage facilities and any other project features in common ownership.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050((1) (c) (i) (B)). This is a Level III application which requires a public hearing before the Hearing Examiner and a recommendation for final decision. The final decision is to be made by the Board of County Commissioners.

2. What constitutes a completed application is a local determination. RCW 58.17.033(2). The determination of completeness made here was not appealed and therefore represents a final determination.

3. Under the vesting doctrine and RCW 58.17.033(1), the proposed preliminary plat is vested to the local regulations in effect on February 7, 1996. These were "pre-growth-management" regulations which were not subsequently invalidated. See *Skagit Surveyors v. Friends of Skagit County*, 135 Wn. 2d, 542, 958 P.2d 962 (1998).

4. The minimum lot size of 1 acre for the Rural Residential zone which was in effect on February 7, 1996 applies via vesting to the subject application. SCC 14.02.050. The density of the proposal is therefore consistent with the applicable zoning law.

5. Because the development is vested to prior Rural Residential zoning, the conversion of the property from forest land to residential use is lawful. Therefore the conversion application (#PL10-0118) should be approved. However, the conversion makes applicable the procedural requirements of the State Environmental Policy Act (SEPA).

6. Vesting does not apply to the substantive use of SEPA. RCW 58.17.033(3). Accordingly the conditions imposed through the MDNS were validly imposed. Considering the conditions imposed, the development's impacts will be below the level of "significance."

7. The requirements of the State Environmental Policy Act (SEPA) have been met. The MDNS was not appealed.

8. Access provided to the proposed lots is adequate. The road-width reductions sought were applied for on January 27, 2010, at the request of critical areas staff and are consistent with the environmental protection conditions ultimately imposed through the MDNS. The variance is subject to current regulations and meets the presently effective criteria for the approval of variances. SCC 14.10.030(2).

9. The proposed plat, as conditioned, meets applicable County regulations and complies with general requirements for the approval of plats.

10. The proposed plat, as conditioned, meets the statutory criteria of RCW 58.17.110(2)(a). The public use and interest will be served by the platting of the subdivision.

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

CONDITIONS

Prior to final plat approval the following conditions shall be completed or bonded for:

[SEPA]

1. The applicant shall comply with the conditions set forth in the SEPA threshold determination (MDNS) published on May 11, 2010. Those conditions are as follows:

EARTH

a) Except where superseded by mitigation requirements set forth below, the project shall be consistent with all mitigation recommendations set forth in the Geologically Hazardous Area Assessment report dated September 14, 2006,

and Addendum Report dated March 24, 2009, prepared by GeoEngineers, Inc. and with the additional mitigation recommendations contained in the Geologic Hazards Review report dated July 24, 2008, and Geologic Hazards Report Addendum dated February 15, 2010, prepared by Associated Earth Sciences, Inc. (AESI). In all cases the more restrictive recommendation shall apply.

b) Temporary erosion and sedimentation control shall be provided, including the implementation of appropriate best management practices (BMPs), prior to and throughout project construction.

c) Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to commencing land disturbing activities and prior to the placement of any fill material.

d) The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance, the Department of Ecology 2005 Stormwater Management Manual for Western Washington, and the Stormwater Pollution Prevention Plan prepared by the applicant and approved by the County. Said measures shall remain in place until completion of the project and until permanent stabilization is established.

e) Permanent stabilization using appropriate erosion and sedimentation control BMPs shall be provided and installed prior to completion of construction of plat improvements for the project as a whole or for each phase of the development if project phasing is proposed.

f) The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.

g) A minimum 30-foot setback to all building footings from the top, toe and sides of all areas with slopes greater than 40% shall be provided. Of this area the first 20 feet from the potential hazard area shall be retained as a vegetated buffer. This condition may only be modified if a lot-specific geologically hazardous area site assessment demonstrates to the satisfaction of the County that a reduced setback/buffer will not increase potential risks to human safety or the environment.

h) Project development shall comply with all applicable provisions of the International Building Code, as adopted by Skagit County.

i) An engineered soils compaction report shall be required for all structures or roadways constructed on fill material.

j) Notification shall be included on the face of the final plat identifying all lots that contain areas identified as geologically hazardous areas and/or required setback/buffer areas, including landslide and erosion hazard areas, but not including potential seismic hazard areas.

k) All areas with a slope greater than 40% plus the required setback/buffer shall be identified as Protected Critical Areas (PCAs) on the face of the final plat, excluding those areas where it has been demonstrated to the satisfaction of the County through a geologically hazardous area site assessment that potential hazards have been mitigated to an acceptable level. All PCAs shall be placed within separate lots or tracts with distinct tract numbering or lettering, including those portions of PCAs located within residential lots. The square footage of all PCAs shall be shown on the face of the final plat.

l) Prior to or concurrent with final plat approval, a Protected Critical Area easement approved by the county shall be recorded with the Skagit County Auditor's office identifying the areas designated as PCAs and specifying the limitations on development applicable to such areas.

m) Prior to final plat approval, the outer limits of all on-site PCAs shall be marked using signage or fencing approved by the County. Maintenance of approved signage or fencing shall be the responsibility of the property owner.

n) Prior to commencing any land disturbing activities on a specific lot, proposed clearing limits not exceeding the outer edges of all on-site PCAs shall be marked in the field as required by the County.

o) Lots identified in the AESI Geologic Hazards Review report as likely containing insufficient developable area outside of steep slope areas and associated buffers shall only be included on the final plat where a lot-specific geologically hazardous site assessment has been provided by the developer that demonstrates to the satisfaction of the County that the creation and development of the lot will not pose a hazard to person, the public or the environment. This includes proposed Lots 1, 42, 46 and 49.

p) A Note shall be included on the face of the final plat identifying all lots that contain geologically hazardous area PCAs stating that inclusion of such lots on the final plat does not guarantee that the lots are developable and that the developer acknowledges and understands that development of such lots may not be possible based on the results of a geologically hazardous site areas assessment. Any such lot that is found to contain insufficient developable area to allow development, including building area, area for on-site sewage disposal system and reserve area, and area necessary to accommodate on-site stormwater management facilities, shall only be developed in conjunction with development of an adjacent lot where sufficient development area is available.

AIR

q) Dust suppression shall be provided during construction.

r) The developer shall comply with applicable Northwest Clean Air Agency requirements.

WATER

s) A final mitigation plan consistent with mitigation proposed by the applicant and with all additional mitigation requirements set forth in the Mitigated Determination of Nonsignificance and those established through the preliminary plat approval process shall be provided to the County for review and approval prior to commencing land disturbing activities.

t) Except as identified in the Critical Areas Study and Conceptual Mitigation report dated July 24, 2006, and the mitigation plan dated September 25, 2009, prepared by Gribble Environmental Consulting Company and subsequently modified and set forth in the final mitigation plan approved by the County, the following buffers shall be maintained throughout the development: 200-foot buffer from the ordinary high water mark (OHWM) of Lake 16; 100-foot buffer from the OHWM of Bulson Creek or to the top of the adjacent slope, whichever is greater; 50-foot buffer from the delineated edge of all on-site wetlands (excluding Lake 16, addressed above); and 50-foot buffer from the OHWM of all Type 5 waters (unnamed streams).

u) Mitigation for all impacts to wetlands, streams, wetland buffers and stream buffers shall be provided consistent with the conceptual mitigation plan and as subsequently modified and set forth in the final mitigation plan once approved by the County. Mitigation shall be completed prior to final plat approval unless the developer has provided bonding or other form of surety acceptable to the County to accommodate mitigation planting during the appropriate time of year as set forth in the final mitigation plan.

v) Prior to commencing land disturbing activities associated with construction of required plat improvements, clearing limits shall be marked in the field to avoid potential adverse impacts to critical areas during construction.

w) All required wetlands, wetland buffers, streams and stream buffers shall be identified on the face of the final plat as Protected Critical Areas (PCAs). All PCAs shall be placed within separate lots or tracts with distinct tract numbering or lettering, including those portions of PCAs located within residential lots. The square footage of all PCAs shall be shown on the face of the final plat.

x) Prior to or concurrent with final plat approval, a Protected Critical Area easement approved by the County shall be recorded with the Skagit County Auditor's office identifying the areas designated as a PCAs and specifying the limitations on development applicable to such areas.

y) Prior to final plat approval, the outer limits of all PCAs shall be permanently

marked using signage or fencing approved by the County. Maintenance of approved signage or fencing shall be the responsibility of the property owner.

z) Prior to commencing any land disturbing activities on a specific lot, proposed clearing limits not exceeding the outer edges of all on-site PCAs shall be marked in the field as required by the County to avoid adverse impacts to critical areas during construction.

aa) A minimum 10-foot setback from the outer edges of all wetland and stream PCAs to all structures requiring building permit approval shall be maintained. A Note stating this requirement shall be included on the face of the final plat.

bb) All required permits from state and federal agencies shall be obtained and copies of such permits and approvals shall be provided to the County prior to the beginning of construction of plat improvements.

cc) As proposed by the applicant, prior to the recording of phase 3 of the subdivision, that portion of Daisy Lane located adjacent to Lake 16 shall be relocated outside of the immediate shoreline area to the maximum extent practicable.

dd) As proposed by the applicant, prior to the recording of phase 3 of the subdivision, the retired roadway segment shall be converted to a pedestrian trail to provide pedestrian access to Lake 16. Bollards approved by the County shall be installed at appropriate locations to limit access by motorized vehicles.

ee) Washington State WAC's 173-201A and 173-200 shall be complied with, as required to address surface water quality issues and ground water issues. Best management practices shall be utilized to prevent interference and/or degradation of water quality.

ff) A Construction Stormwater General Permit (NPDES) will be required by the Department of Ecology (WSDOE) for this project. The developer shall obtain the NPDES permit as required by law.

gg) As proposed by the applicant, stormwater management facilities necessary to serve the development shall be designed and constructed consistent with the Department of Ecology 2005 Stormwater Management Manual for Western Washington.

PLANTS AND ANIMALS

hh) Wetland and stream mitigation shall be provided consistent with the final mitigation plan once approved by the County. Mitigation shall be completed prior to final plat approval unless the developer has provided bonding or other form of surety acceptable to the County to accommodate mitigation planting during the appropriate time of year as set forth in the final mitigation plan.

ENERGY AND NATURAL RESOURCES

None

ENVIRONMENTAL HEALTH

ii) Prior to final plat approval the applicant shall provide a soil site evaluation for each lot to be reviewed and accepted by the County Health Department demonstrating that each lot contains available lot area, soils and other conditions suitable for development of an on-site sewage disposal system, including 100% reserve area, that conforms to SCC 12.05 and WAC 246-272A. The above site evaluations may address on-site sewage disposal systems proposed to be located wholly or in part on adjacent lots within dedicated easements shown on the face of the plat.

jj) All lots included in preliminary plat approval for which the soil site evaluation does not show that lot conditions are suitable for the development of an on-site sewage disposal system, including where proposed to be located on adjacent lots within easements, shall not be included on the final plat. The lot area shall be incorporated into adjacent lots prior to final plat approval.

kk) In conjunction with construction of the road section located immediately adjacent to and north of the Sinnes Road Landfill, a stormwater interceptor swale or equivalent system designed to reduce the quantity of stormwater entering the landfill and approved by the County shall be constructed.

ll) Any stormwater detention pond located down-gradient from the Sinnes Road Landfill constructed in conjunction with development of the road system serving the development shall be lined with impermeable material to limit the entry of groundwater potentially containing stormwater impacted by the landfill.

mm) The mitigation recommendations provided in the Hydrogeologic Site Assessment Report dated May 15, 2007, prepared by GeoEngineers, Inc., shall be implemented and/or recorded on the face of the final plat, as appropriate.

LAND AND SHORELINE USE

nn) No residential lots created through the subdivision shall have frontage directly onto Lake 16.

AESTHETICS

oo) Operations, maintenance and construction shall comply with WAC 173-60 and SCC 14.16.840 for noise and vibration thresholds.

LIGHT AND GLARE

None.

RECREATION

pp) As proposed by the applicant, all of the frontage onto Lake 16 shall be placed in separate, non-residential tracts that shall be dedicated to the lot owners or lot owners' association.

HISTORIC AND CULTURAL RESOURCES

qq) 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 Archaeology 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 applicable state and federal laws.

TRANSPORTATION

rr) Existing segments of the full length of Bulson Road and Sinnes Road from State Route 534 to the proposed development shall be improved to the following standard: 24-foot wide paved surface with chip-seal overlay and striping as specified by County Public Works. The only exception to this requirement is at the crossing over Bulson Creek, where the roadway shall be widened to the maximum extent available within the limitations posed by the existing culverted crossing, existing wetlands and their associated buffers. As proposed by the applicant, the above-specified roadway improvements to Sinnes Road shall be completed prior to the recording of phase 1 of the subdivision, and the above-specified improvements to Bulson Road shall be completed prior to the recording of phase 2 of the subdivision. The above improvements shall be provided within existing county rights-of-way, and the applicant shall not be required to obtain or acquire additional public right-of-way to satisfy this condition.

ss) The road section for the proposed extension of Sinnes Road within the development shall include a minimum six-foot wide gravel shoulder on both sides of the roadway to accommodate pedestrian circulation. The only exceptions to this requirements are the following: 1) at stream and wetland crossings, mini-

mum 4-foot wide gravel shoulder shall be provided in conjunction with installation of a guardrail; and 2) at locations where thickened edge curb is utilized, a minimum 4.5-foot wide gravel should shall be provided.

PUBLIC SERVICES

tt) Project development shall comply with Fire Code standards adopted by Skagit County.

uu) Potable water service to the development shall be provided by Public Utility District No. 1 of Skagit County consistent with District requirements in place at the time of installation.

GENERAL

vv) The project is limited to those activities described in the SEPA checklist and supporting documents. Significant deviation from the proposal may require additional review and approval by Skagit County Planning and Development Services.

ww) The project shall comply with noise, vibration, and light/glare limitations as established under SCC 14.16.840.

xx) Skidder tractor, cat and/or shovel yarding shall be prohibited at times of high soil moisture. Skidding shall stop if soil rutting exceeds 10 inches in depth.

[SHORELINES AND CRITICAL AREAS]

2. The portion of the site that is within 200 feet of the ordinary high water mark of Lake Sixteen is designated Conservancy under the Skagit County Shoreline Management Master Program, and development and other activities within this area shall only be allowed where consistent with the policies and regulations set forth in the Master Program for the Conservancy Shoreline Environment.

3. The following Note shall be include on the face of the final plat:

Development within 200 feet of the ordinary high water mark of Lake Sixteen or within associated wetlands shall be subject to the provisions of the Skagit County Shoreline Management Master Program and the Shoreline Management Act, RCW 90.58.

[PUBLIC WORKS]

4. The driveways within easements must be constructed prior to final plat approval.

5. A Grading permit is required for the 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.

6. All drainage designs and construction plans must receive Skagit County Public Works approval prior to any construction activity.

7. Prior to final plat approval of any phase, an independent, third party review of the applicant's proposed drainage design and drainage analysis calculations shall be completed for the entire project and submitted to Skagit County Public Works for evaluation. The third party reviewer shall be a qualified, licensed professional engineer, and shall be selected from the Skagit County Public Works consultant roster. All costs associated with the third party review, including County staff time for evaluation of the review, shall be the sole responsibility of the applicant. The independent review shall include a consistency analysis of the proposed drainage design and associated calculations with the Department of Ecology 2005 Stormwater Management Manual, Chapter 14.32 Skagit County Code, and basic engineering principles. The consistency analysis shall conclude with a determination of whether or not the designs and calculations as proposed will function according to basic engineering principles and comply with the Department of Ecology Stormwater Management Manual and Chapter 14.32 SCC. Final plat approval for each phase will not be granted if drainage designs and/or calculations are not found to be compliant with the above requirements for the entire development.

8. All areas approved in conjunction with the use of Full Dispersion that are proposed for designation as Forested or Native Condition Retention Areas shall be shown on the face of the final plat and marked in the field prior to final plat approval as required by the Skagit County Public Works Department. After final plat approval, the FNCRA's shall not be altered or adjusted without the approval of Skagit County based on the review of a new engineered drainage plan meeting the requirements of the Department of Ecology Stormwater Management Manual in effect at the time of the alteration request. An alteration of any FNCRA and associated building envelope pursuant to this condition will not be considered a plat alteration.

9. Lot corners must be set prior to final plat approval.

10. All plat roads require centerline monumentation prior to final plat approval.

11. All existing and proposed easements must be shown on the final plat.

12. Maintenance and restoration surety or "bond" is required for public plat roads. See Section 14.02 of the Skagit County Road Standards.

13. As-built plans for all public plat roads shall be submitted and accepted by Skagit County Public Works prior to final plat approval.

14. 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.

15. As required by Section 12 of the Skagit County Road Standards, the project engineer must certify that all roadway and drainage improvements have been constructed in accordance with the approved construction plans.

16. The applicant must provide a right-of-way deed or appropriate dedication for new County road rights-of-way, including new rights-of-way located outside of the plat area.

17. The applicant must provide a Maintenance Plan for all stormwater and drainage conveyance systems showing that the stormwater and drainage facilities will be properly operated and maintained. Such plan shall be reviewed and approved by Public Works and recorded prior to final plat approval.

18. The following note must be shown on the face of the plat:

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

19. Road name signs must be installed in accordance with Skagit County Road Standards.

20. The applicant shall submit lot closures that correspond with the face of the plat prior to final plat approval.

21. All roadways covered by the variance request shall remain private.

[PLANNING]

22. The applicant shall show compliance with vested SCC 14.12.120 & 14.12.130, as well as Chapter 58.17 RCW, prior to final approval.

23. All standard plat notes and appropriate departmental signoffs are required.

24. Once address ranges are assigned, they will be forwarded to the Project Engineer and shall be shown on the face of the final plat map. This shall not take place until all road construction is completed (finalized within each phase area proposed for final plat approval) and a road number has been assigned.

25. 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 the Assessor's Office prior to recording the land division.

26. The applicant shall provide appropriate mechanisms for the long-term management and maintenance of open spaces, drainage facilities, private roads and other common facilities.

27. Copies of any proposed covenants, homeowners association agreements and/or maintenance agreements shall be provided to Skagit County Planning and Development Services for review prior to final plat approval.

28. The applicable final plat application fees shall be required at the time of submittal of each phase. All other accrued review fees shall be paid prior to final plat approval of each phase.

29. A set of stamped envelopes addressed to all neighboring property owners within 300 feet of the subject property (with appropriate postage) shall be provided by the applicant with the final plat submittal for each phase.

30. A note shall be included on the face of the final plat stating that a voluntary mitigation agreement for payments to offset impacts on County parks and recreation facilities has been entered into in the amount of \$100 per lot. If necessary, these payments shall be addressed in CC&R's. Such payments shall be made prior to the issuance of individual building permits.

31. A note shall be included on the face of the final plat stating that a fee for the impact of the development on schools shall be required prior to the issuance of individual building permits. The note shall state that the fee will be in the amount required by the Conway School District at the time that payment is made. If necessary, these payments shall be addressed in CC&R's.

32. The development shall be completed in a maximum of three (3) phases, substantially in conformance with the phasing plan submitted by the applicant. Except as otherwise provided in the MDNS, all critical area mitigation work for the entire subdivision shall be completed within phase 1. All road, utility and other infrastructure improvements located within a particular phase area or necessary to support future development of lots within that phase area, shall be completed to the satisfaction of the County prior to final plat approval of that phase area.

33. The following additional notes shall be shown on the face of the final plat

- All private roads, easements, community utilities and properties shall be owned and maintained by a separate corporate entity or by the owners of property served by the facility and shall be kept in good repair. Adequate provisions shall be made for appropriate pro-rata contributions for such maintenance by any future land divisions that will also use the same private roads or facilities.
- This parcel lies within an area or within 500 feet of an area designated as natural resource lands in Skagit County. A variety of natural resource land commercial activities occur or may occur in the area that may not be compatible with non-resource uses and may be inconvenient or cause cause discomfort to area residents. This may arise from the use of chemicals, or from spraying, pruning, harvesting, or mineral extraction

with associated activities, which generate traffic, dust, smoke, noise and odor. Skagit County has established resource management operations as a priority use on designated natural resource lands, and area residents should be prepared to accept such incompatibilities, inconveniences, or discomfort from normal, necessary natural resource land operations when performed in compliance with best management practices and local, State and Federal law. In the case of mineral lands, application might be made for mining-related activities including extraction, washing, crushing, stockpiling, blasting, transporting and recycling of minerals. In addition, greater setbacks than typical may be required from the resource area, consistent with SCC 14.16.810. Contact the Skagit County Planning and Permit Center for details.

- A Lot of Record Certification has been issued for all lots includes in this land division. By virtue of recording this land division and issuance of the Lot Certification, all lots therein shall be considered Lots of Record for conveyance and development purposes unless otherwise restricted. See AF# _____.
- 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.
- The Forested or Native Condition Retention Areas (FNCRA) shall not be altered or adjusted without the approval of Skagit County based on the review of a new engineered drainage plan meeting the requirements of the Department of Ecology Stormwater Management Manual in effect at the time of the alteration request. An alteration of any FNCRA and associated building envelope pursuant to this condition will not be considered a plat alteration. To be considered for approval, the altered site plan shall include, at a minimum, the new dimensions and FNCRA percentage per the engineered drainage plan, the location of the new stakes, the legal description, and the parcel number. The approved site plan shall be recorded at the Auditor's Office.

34. The applicant shall comply with requirements of the Washington State Department of Transportation, which may include: (1) submission for review of any plans for future improvements to the intersection of State Route 534 and Bulson Road, and (2) submission of a Developer Agreement for any work within the State right-of-way.

[Environmental Health]

35. All PUD requirements shall be met and accepted by the PUD prior to final plat approval. Installation of the main eight inch (8") line(s) and other water delivery infrastructure shall be accepted by the PUD engineer and the PUD board in writing submitted to Planning and Development Services (PDS). Any side service lines off of the main line to service any lots not

fronted by the main line shall be installed and accepted by the land division engineer in writing submitted to PDS. The plat map shall indicate the side of the road or location within the utility easement of the installed eight inch (8") line. The plat map shall show all utility easements.

36. All water lines shall be stubbed at the property lines for each parcel or appropriately bonded.

37. All lots must receive approved soils evaluations prior to final plat approval.

[HEALTH DEPARTMENT]

38. The applicant shall take all necessary actions to fulfill the developer obligations set forth in Comprehensive Landfill Remediation and Land Division Agreement, Skagit County Contract #C20090278, fully executed on April 20, 2009, including but not limited to, those actions required to be completed prior to final plat approval.

[FIRE MARSHAL]

39. Fire Flow is required per the Coordinated Water System Plan (CWSP) Table 4-3. For residential developments, fire flow of 500 gallons per minute, for a 30-minute duration, with a residual pressure of 20 psi is required. Hydrant spacing is a maximum of 900 feet. This requires a hydrant within 450 feet of each buildable lot.

40. Engineered plans and specifications for the systems to be installed shall be submitted and approved prior to their installation. The systems shall be installed, inspected, tested and approved prior to final plat approval. The Fire Marshal's Office shall inspect the system installation and witness all required tests.

41. If public water is not available in adequate quantity, alternative water storage may be used, as approved by the Fire Marshal's Office.

42. Skagit County Emergency Vehicle Access Standards shall be met for access to each proposed lot. Access within each lot to each proposed building site must also meet these standards as a condition for obtaining a building permit.

[TREASURER]

43. Property taxes for the current year must be paid prior to final approval. The Treasurer may require advanced taxes for the next year.

[OTHER]

44. A nonprofit maintenance corporation or homeowner's association with the lot owners as members shall be established and recorded. The relevant auditor's file number shall be shown on the face of the plat.

45. Operation of equipment, construction activities, and daily operations shall comply with Chapter 173-60 WAC (Maximum Environmental Noise Levels). Noise, light, vibration and ventilation shall be addressed by compliance with SCC 14.16.840.

46. All state and local regulations shall be met, including Chapters 173-201A WAC and 173-200 WAC (surface and ground water quality). Best management practices shall be used to prevent water quality degradation from point or non-point sources or conditions that could lead to such degradation.

47. Prior to final plat approval, the Variance number and date of approval shall be placed on the face of the plat.

48. There will be no access to the subdivision through Hermway Heights Road. Bollards shall be installed at appropriate locations along the retired stretch of Daisy Lane to restrict vehicle access. Unless otherwise approved by Skagit County Public Works, bollards should be placed as follows: a) on the southeast property line (proposed Lot #18); b) to the east/northeast of the proposed Tank #1 site, and c) at the northerly end of the retired stretch of Daisy Lane.

49. Additional measures may be required for final plat approval as a result of review of the submitted final plat.

50. The preliminary plat shall be valid for a period of five (5) years from that date of its approval by the Board of County Commissioners unless the period is extended to seven (7) years by Planning and Development Services after a written request. All project phases shall be completed within the applicable time frame.

RECOMMENDATION

The proposed preliminary plat for the David Welts Subdivision (PL96-0058), the road-width reduction variances sought (PL10-0025), and the forest practices conversion application (PL10-0118) should be approved, subject to the conditions set forth above.

DONE this 11th day of January, 2011.



Wick Dufford, Hearing Examiner

Transmitted: January 11, 2011.