December 31, 2002

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L01CG338**

ASCENSION PROPERTIES, LLC
SEPA Threshold Determination Appeal

Location: SE 65th Place between SE Cougar Mountain Drive and SE 64th Way

Appellant: Cougar Mountain Residents Association, r*epresented by*
Melissa S. Arias
Michael W. Gendler, PLLC
Attorneys at Law
Fourth and Pike Building
1424 Fourth Avenue, Suite 1015
Seattle, WA 98101
Telephone: (206) 621-8868
Facsimile: (206) 621-0512

Applicant: Ascension Properties LLC, *represented by*
Brian E. Lawler, Attorney
Lawler Burroughs & Baker, P.C.
4750 Wells Fargo Center
999 Third Avenue
Seattle, WA 98104
Telephone: (206) 464-1000
Facsimile: (206) 682-3584

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Angelica Velazquez
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7136
Facsimile: (206) 296-6613

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part, deny in part

EXAMINER PROCEEDINGS:

Hearing Opened:	December 19, 2002
Hearing Closed:	December 19, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Ascension Properties, LLC, has filed a grading permit application to log approximately 20 acres of a 28-acre property located in the R-1 zone on the north slope of Cougar Mountain. As stated in the Applicant's environmental checklist, the primary purpose of the logging operation is to "remove all red alder and necessary conifer trees to recover timber value and clear the views from the property." The western half of the property, constrained by steep slopes and stream and wetland areas that will be set aside in sensitive areas tracts, will not be logged. Although the Applicant has been somewhat coy about its ultimate intentions, it is obvious from the clearing plan, the residential zoning and the panoramic views which this property possesses that the purpose of this selective logging is to prepare the property for urban residential development. The site mapping suggests that the net buildable area for the property will yield approximately 20 residential lots under the current R-1 zoning.

2. A determination of nonsignificance under SEPA was issued for the Ascension clearing permit application on August 19, 2002. A timely appeal of this threshold determination was filed by the residents living directly east of the proposal site, calling themselves the Cougar Mountain Residents Association. A pre-hearing conference was held on November 6, 2002, and a pre-hearing order issued on November 19, 2002. The public hearing on this appeal was held on December 19, 2002.

3. As stated in the environmental checklist and elaborated at the appeal hearing, the Applicant's proposal for selective logging includes retention of understory vegetation and accumulation of slash on the property, avoidance of logging at the southwest corner of the property between the steep slope area and Cougar Mountain Park, monitoring of logging operations and logging truck hauling, and restoration of the gravel access road along Southeast 65th Place after completion of timber operations.

4. One of the primary concerns of the Appellants is over the potential for logging truck use to damage the gravel roadway along Southeast 65th Place which traverses the Ascension property

before providing the sole road access to the Appellants' residential parcels. This narrow, winding gravel road lies within a public right-of-way but is privately maintained by the Appellants. According to the Appellants' testimony, the maintenance requirements for Southeast 65th Place entail the yearly placement and grading of new gravel on the roadway. The Appellants' fear is that logging truck usage comprising approximately 108 round trip truck hauls will compress the roadway and break down the road edge. The Appellants also have safety concerns arising out of the narrowness of the roadway and its inability to accommodate two-way traffic, its lack of pedestrian facilities, and sight impediments created by its winding character.

5. There is no question that the Appellants' concerns over logging truck traffic and its impact on the condition of the Southeast 65th Place roadway are legitimate. These are concerns, however, that both the Applicant and DDES staff have addressed. Staff"s traffic provisions are summarized within the draft grading permit conditions that appear as Exhibit no. 17, in which requirements for traffic warning signs, flaggers and pilots cars, maintenance of roadway accessibility and restoration of Southeast 65th Place after completion of logging are spelled out.

6. The conditions that characterize Southeast 65th Place are also related to the drainage issues raised by the Appellants. As described by Appellant Peter Frame, during large rain storms the roadside ditch located south of Southeast 65th Place just east of the Ascension property line overflows. The culverts beneath the roadway also clog and overflow and, in some instances, the road surface itself overtops and floods. Such flooding events appear to occur on almost an annual basis, burdening the Appellants with the responsibility of manually clearing the system so that road access to their homes can be restored. Their concern is that site logging, even with understory retention, will increase flows into this already overburdened ditch and culvert system and thereby increase flooding impacts. A further contention is that the operation of skidders and loaders in the logging operation may result in erosion and sedimentation and increase silt-laden flows to the onsite streams which empty eventually into Lake Sammamish. The Appellants also argue that the County's annual rainfall estimates for the Cougar Mountain north slope are significantly understated and have described homeowners' association and water association measurement records showing an annual rainfall in this vicinity of about 66 inches, well above the approximately 50 inches a year described in the Surface Water Design Manual isopluvial maps.

7. The County staff has not required a drainage analysis to be performed for this permit application. Mr. Touma, the Applicant's drainage engineer, performed a preliminary drainage study last summer, but such study has neither been submitted to County staff nor to this hearing record. The exemption of the proposal from drainage review requirements appears to be predicated on an assumption that the project will create negligible amounts of new impervious surface and, therefore, does not trigger a formal drainage review. Nonetheless, Mr. Touma has proposed creating 100-foot dispersion buffers along both the northern and eastern boundaries of the site consisting of undisturbed native vegetation. His belief, unsupported by any technical analysis, is that such buffers will intercept any offsite overland flows and allow them to disperse and infiltrate.

8. Reviewing the record as a whole, and in particular considering the new information provided at Exhibit no. 7 within the Applicant's revised harvest plan, it appears that the County's preliminary drainage determination may be inaccurate. While the Applicant's checklist estimated that for the total site area development would result in a 2% impervious coverage (approximately 24,000 square feet), staff's assumption appears to have been that this surface

would consist primarily of the restoration of existing logging roads and therefore would not qualify as new impervious surface. The new harvest plan, however, details three new landings proposed to be graveled as staging areas for the logging operations—areas which were not shown on the original harvest plan. These three staging areas will create 15,450 square feet of new graveled surface, an impervious area well in excess of drainage study thresholds. Thus, even if one hypothesizes that resurfacing the old gravel logging roads on this site will not increase their impervious nature, the new impervious surfaces created by the landings alone are sufficient to trigger drainage review under the Surface Water Design Manual.

9. Moreover, it appears that the roadside ditches and culverts that currently service Southeast 65th Place are already undersized for the quantity of flows that pass through the system. While selective timber harvesting will not vastly increase surface water flows off the logged areas, no one has argued that no increase will occur, which leads to the conclusion that the already overtaxed drainage facilities described by the Appellants will experience at least some increased flows and more frequent flooding.

10. Although the rate of runoff from the Ascension property may increase after logging, retention of slash and understory vegetation argues against the probability of there being many areas of newly exposed soils. Therefore, a significant increase in erosion and sedimentation within such flows is not a likely occurrence, and concerns expressed by the Appellants over increased phosphorous loading at Lake Sammamish (more than three miles downstream) appear to be unsubstantiated. Even so, in order to reduce this risk to a minimum, the Applicant's representation that logging will be limited to the dry season should be incorporated as a permit requirement.

11. The Ascension property lies directly adjacent to a large natural area located within Cougar Mountain County Park, and accordingly the proposal site is visited by a variety of wildlife. Area residents testified to having seen on the Ascension property deer, black bear, bobcat, coyote, porcupines, and various raptors. No one has reported, however, the use of the Ascension site as habitat for federal or state listed species. While the property also does not contain a mapped wildlife corridor identified in the County Comprehensive Plan, the presence of along the western half of the property that will be retained in their natural state will provide an undisturbed corridor route.

The Applicant's wildlife study compares the loss of a mature hardwood and conifer mixed forest to a replacement habitat consisting of a grass forb early succession environment characterized by an increase in habitat edges. Based on this characterization, the Applicant's wildlife biologist has posited no significant loss in habitat value. We find this description to be somewhat misleading in that the clear fate of this property is for urban residential development consistent with its R-1 zoning. A more accurate and useful wildlife study would have based its comparison on the ultimate residential development of the property.

13. The Appellants have also raised aesthetic impacts as an issue within this appeal. They point out that the Ascension property is an elevated hillside that will be visible from the I-90 corridor and contend that clearing the hillside will create a visual eyesore. Appellants also suggested that the loss of trees within the neighborhood would create an additional aesthetic impact, even though it is obvious from the topography that the territorial views of value are all oriented down slope

from the Applicant's project toward Lake Sammamish to the north and the Issaquah valley and the Cascade foothills to the east.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.

2. In conjunction with the SEPA statute and regulations, KCC 20.24.080B confers upon the Hearing Examiner broad authority to impose such conditions, modifications and restrictions on the appeal decision as may be required to make it compatible with the environment and carry out applicable statutes, regulations, codes, plans and policies. This authority supplements the SEPA appeal standards and allows specific conditions of mitigation to be imposed or modified, independent of whether the determination of non-significance is found overall to be clearly erroneous.

3. As emphasized by the Applicant, SEPA has undergone a substantial alteration since the enactment of the Growth Management Act pursuant to which local jurisdictions have been given the option to determine that the necessary requirements for environmental analysis, protection and mitigation have been adequately provided within the jurisdiction's adopted development regulations. King County has exercised this option under KCC 20.44.080C for proposals located within the Urban Growth Area. For such proposals, compliance with the development standards listed at KCC chapters 21A.12 through 21A.28 is deemed to "normally constitute adequate mitigation of the impacts of new development." In the Urban Area, therefore, site or project-specific SEPA mitigation is only warranted for environmental impacts not described within the development regulations listed at KCC 20.44.080C or if unusual circumstances apply to the site or to the proposal.

4. With respect to potential road damage and traffic hazards resulting from logging truck use of Southeast 65th Place, KCC Chapter 16.82, the County grading code, is not among the regulations listed at KCC 20.44.080C as potentially pre-emptive of site-specific SEPA review. The record demonstrates, however, that the Site Development Services Section has identified and actually considered the road and traffic hazards attendant to the Applicant's proposal and under authority of Chapter 16.82 has crafted conditions of mitigation to avoid or alleviate the hazards identified. These conditions largely mimic the Appellants' requests, and no evidence has been offered that the proposed grading conditions regulating logging truck traffic and requiring road restoration will be inadequate to alleviate the impacts described.

5. KCC 21A.28.050 lists compliance with surface water management requirements as described in the Surface Water Design Manual and KCC Title 9 as adequate mitigation for drainage impacts in the Urban Growth Area. It appears, however, that County staff has concluded, based on inadequate site design information, that the Applicant's proposal will not create the quantity of new impervious surface necessary to trigger drainage review under the Surface Water Design Manual. Based on this erroneous assumption, staff has not applied Surface Water Design

Manual requirements to the Ascension project and has failed to actually consider the drainage impacts of the proposal. As more fully described in the public hearing record, the Ascension proposal includes the creation of more than 10,000 square feet of new impervious area for landings as well as increased runoff flows from logged areas to apparently already inadequate on-site conveyance facilities adjacent to Southeast 65th Place. The record, therefore, suggests a high probability of increased adverse environmental impacts from the proposal on these conveyance facilities and provides no mitigation for such impacts. Accordingly, a condition will be imposed on the proposal that mitigates the adverse drainage impacts so identified.

6. KCC 21A.14.260 provides for the preservation of habitat corridors designated within the wildlife habitat network adopted by the County Comprehensive Plan. The Comprehensive Plan does not show a designated wildlife corridor across the Ascension property, and accordingly, no SEPA substantive authority exists for the establishment of undesignated corridors. Nonetheless, after logging some habitat and potential corridors will remain on the property within the sensitive areas tracts. Undoubtedly, the use of the Ascension property as wildlife habitat will be altered by the logging project and a net loss of habitat will occur when the property is converted into residential use. But, even though the property is used by a wide range of mammals and raptors, no evidence has been introduced that habitat critical for the survival of listed species is located on the property or that use of the Ascension property by larger mammals and raptors constitutes more than incidental passage to and from the adjacent Cougar Mountain park. Thus, no significant adverse environmental impacts to wildlife have been demonstrated.

7. The County has no adopted regulations for the preservation of aesthetic values, and all parties have acknowledged that aesthetic issues contain a large element of subjectivity. In the absence of regulatory guidance, Hearing Examiner cases, mostly dealing with the visual impacts of minor communications facilities, have concluded that for an adverse impact of significance to occur a proposal must be more than merely visible. It must also impact or interfere with a view of particular value. Although the record here contains little in the way of detail, our clear sense is that nearby residences are focused on the panoramic views lying in the opposite direction from the Applicant's property, and that a small patch of selective logging visible to passing traffic from the I-90 corridor will create only a short-term *de minimus* impact.

8. Finally, in addition to imposing a drainage review condition as a mitigation requirement, we conclude that the shifting parameters of the Applicant's proposal require some definition and, accordingly, have added a MDNS condition setting forth some of the key elements of the proposal as described within the checklist and the hearing record.

9. Except for drainage impacts, the SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of the Ascension proposal. The Appellants have not met their burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.

10. If the conditions of mitigation are modified in the manner provided below, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record and assures that there is no probability of significant adverse environmental impacts.

DECISION:

The appeal of the Cougar Mountain Residents Association is GRANTED with respect to drainage impacts, and DENIED in all other respects. The following conditions of mitigation are imposed under authority of SEPA to mitigate the adverse environmental impacts of the Ascension clearing proposal.

ORDER: This order constitutes the final King County mitigated determination of non-significance for the grading permit application for Ascension clearing.

Mitigation under SEPA for this proposal includes the following conditions:

1. The proposal shall conform to the environmental checklist as augmented by the Applicant's hearing testimony and exhibits, as follows:

   A. The vegetative understory within the timber harvest area shall not be removed, and logging slash shall be scattered and retained on site.

   B. No logging shall occur within the southwest corner of the property between the steep slopes area and the sites western boundary.

   C. A 100-foot wide drainage dispersion buffer as shown in Exhibit no. 7 shall be left undisturbed along the northern and eastern boundaries of the property.

   D. Site preparation and clearing shall be limited to the dry season beginning May 1st and ending September 30th.

2. The proposal shall be subject to drainage review under the 1998 Surface Water Design Manual based on the proposed construction of more than 15,000 square feet of new impervious surfaces for landings. Such review shall include a delineation of areas draining to the on-site ditch and culvert system for Southeast 65th Place, calculation of flows to these facilities based on the best available local rainfall data and an appropriate runoff coefficient for the logged areas, and a determination of the capacity of the existing ditches and culverts to accommodate the flows generated by the proposal. If any enlargement of ditches and/or culverts is required to meet SWD Manual capacity requirements, such enlargements shall be sized to accommodate future flows from residential development constructed at the minimum density stated for the R-1 zone.

ORDERED this 31st day of December, 2002.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 31st day of December, 2002, to the parties and interested persons of record:

Melissa S. Arias
Attorney At Law
1424 Fourth Avenue, #1015
Seattle WA 98101-2217

Chad Armour
Chad Armour, LLC
6500 - 126th Avenue SE
Bellevue WA 98006

Ascension Properties, LLC
812 - 102nd Ave. NE
Bellevue WA 98004-4117

Stephen Barchet
18601 SE 64th Way
Issaquah WA 98027

John Berg
15806 - 60th Ave. W.
Edmonds WA 98026

Steve Bolliger & Candace Smith
18724 SE 65th Pl.
Issaquah WA 98027

Chris Buchsel
18503 SE 64th Way
Issaquah WA 98027-8616

Mize & Kathy Conner
18401 SE 60th St.
Issaquah WA 98027-8699
Bellevue WA 98006-6004

Cougar Mt. Residents Assoc.
Attn: Jo-Ellen Smith
17328 SE Cougar Mt. Dr.

John Dunton
3516 - 258th Avenue SE
Issaquah WA 98029-5702

Peter & Kathy Frame
18601 SE 65th Pl.
Issaquah WA 98027-8607

Gary & Andrea Gordon
18700 SE 65th Pl.
Issaquah WA 98027-8668

King County Parks
Attn: Kevin Brown
2040 - 84th Ave. SE
Mercer Island WA 98040-2222

Brian Lawler
Attorney At Law
4750 Wells Fargo Ctr, 999 Third Ave.
Seattle WA 98104

Scott & Kathleen Marzahl
18616 SE 65th Pl.
Issaquah WA 98027-8607

Gary & Anne Scroggs
18712 SE 65th Pl.
Issaquah WA 98027-8607

Tom Touma
Touma Engineers
6632 South 191st Place, #E-102
Kent WA 98032

Greg Borba
DDES/LUSD
MS OAK-DE-0100

Laura Casey
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Randall Parsons
DDES/LUSD
Engineering Review
MS OAK-DE-0100

Jon Pederson
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Angelica Velasquez
DDES/LUSD
Current Planning
OAK-DE-0100

David Johnson
17371 NE 67th Ct. # 217
Redmond, WA 98052

MINUTES OF THE DECEMBER 19, 2002 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L01CG338.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Angelica Velazquez, Jon Pederson, Randall Parsons and Laura Casey, representing the Department; Brian E. Lawler, representing the Applicant; Michael W. Gendler, representing the Appellant, Peter Frame, David Johnson, Steve Bolliger, John Dunton, John Berg, Chad Armour, and Tom Touma.

The following exhibits were offered and entered into the record:

Exhibit No. 1	DDES Report to the Hearing Examiner
Exhibit No. 2	SEPA Checklist
Exhibit No. 3	Environmental Checklist
Exhibit No. 4	Appeal from Ascension Properties dated September 16, 2002
Exhibit No. 5	Topographical Survey
Exhibit No. 6	Letter to the Hearing Examiner from Greg Borba dated November 14, 2002
Exhibit No. 7	Selective Logging Plan Map prepared by Ascension Properties
Exhibit No. 8	Harvest Plan dated July 31, 2001
Exhibit No. 9	Resume of John C. Dunton
Exhibit No. 10	Photographs
Exhibit No. 11	Resume of Dr. Berg
Exhibit No. 12	Aerial Photograph Dated March, 1995
Exhibit No. 13	Aerial Photograph Dated March, 2000
Exhibit No. 14	Resume of Chad Armour
Exhibit No. 15	Wetland Report from Chad Armour dated June 6, 2001
Exhibit No. 16	Wildlife Habitat Assessment from Chad Armour dated February 5, 2002
Exhibit No. 17	Additional Requirements from DDES

SLS:ms
L01CG338 RPT