

November 8, 2000

**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;

- A. SEPA THRESHOLD DETERMINATION APPEAL**
- B. PROPOSED PRELIMINARY PLAT**

SUBJECT: Department of Development and Environmental Services File No. **L99P0011**

BOLLMAN PLAT
Preliminary Plat Application and
SEPA Threshold Determination Appeal

Location: 1887 – 148th Avenue Southeast, Renton

Applicants: Lynn Bollman and Mimi Castle, Owners
represented by **Jim Jaeger**
Jaeger Engineering
9419 South 204th Place
Kent, WA 98031
Telephone: (253) 850-0934
Facsimile: (253) 850-0155

Appellants: Billie Andrew, Jeff and Cyndy Bell, Duane and Sue Smalley,
represented by **Jeff Bell**
14630 SE 188yh Place
Renton, Wa 98058
Telephone: (425) 228-2848
Facsimile: (206) 748-0343

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Fereshteh Dehkordi, Current Planning Section
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7173
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation: Approve the plat, subject to conditions.
Deny the appeal.

Department's Final Recommendation: Approve the plat, subject to conditions.
Deny the appeal.

Examiner's Decision: Approve the plat, subject to conditions.
Deny the appeal.

PRELIMINARY MATTERS:

Application or petition submitted: May 13, 1999

Complete application: June 11, 1999

EXAMINER PROCEEDINGS:

Hearing Opened: October 20, 2000

Hearing Closed: October 20, 2000

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.

ISSUES/TOPICS ADDRESSED:

- Intersection spacing standards
- Easements (private)
- Dedication of right-of-way
- Road variance
- Road standards
- Traffic safety
- Drainage
- Trees

SUMMARY:

Grants preliminary plat approval to 8.43 acre parcel for 34 lots classified R6-PSO. Denies SEPA threshold determination appeal regarding access road location and alignment.

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

FINDINGS:

1. **General Information.**

Owner/Developer:	Lynn Bollman P. O. Box 6011 Kent, WA 98064 (425) 430-9247
Engineer:	Jaeger Engineering 9419 S. 204 th Place Kent, WA 98031 (253) 850-0934
STR:	SE ¼ 34-23-5
Location:	18827 – 148 th Avenue SE, Renton
Zoning:	R6-PSO (6 dwelling units per acre)
Acreage:	8.43 acres
Number of Lots:	34
Density:	Approximately 4 DU/Acre
Typical Lot Size:	5,000 square feet
Proposed Use:	Detached single-family residences
Sewage Disposal:	Soos Creek Water & Sewer District
Water Supply:	Soos Creek Water & Sewer District
Fire District:	King County Fire District #40
School District:	Kent School District # 415
Complete Application Date:	June 11, 1999

2. **Proposal.** Lynn Bollman and Mimi Castle (hereinafter, the “Applicant”) propose to subdivide the subject 8.43 acre parcel into 34 single-family residential building lots. With a proposed density of 4.03 dwelling units per acre (and a typical lot size of 5,000 square feet), the proposed development density will fall within the range authorized by the R6-PSO zoning classification.

The proposed Southeast 188th Way (subcollector) will provide access to all of the lots. Several of the proposed lots will obtain access to proposed Southeast 188th Way via private access tracts, some to be shared as “joint-use driveways.” Roads will be constructed with urban improvements in accordance with the 1993 King County Road Standards.

3. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat, subject to the 21 conditions of final plat approval stated on pages 8 through 13 of the Department’s preliminary report to the Examiner, dated October 20, 2000, (Exhibit No. 2)

with only one modification. That modification concerns Recommended Condition No. 9.f, which requires urban subcollector standard improvements to proposed 146th Avenue Southeast. Responding to the Applicant's concern that this recommendation may ultimately require acquisition of right-of-way that cannot be acquired, the Department agrees to new Condition No. 9.f. language that could exempt the Applicant from acquiring return radius right-of-way at the proposed 146th/188th Way intersection.

Page 1 of the Department's preliminary report (Exhibit No 2) contains two errors which the Department corrected on record. First, the address of the subject property is 18827 – 148th Avenue Southeast, not the address otherwise indicated in the Department's report. Second, the subject property is located within the Kent School District, and not the school district otherwise indicated in the Department's report.

4. **Applicant's Response.** The Applicant accepts the Department's recommendation as described in Finding No. 3, preceding.

During the course of hearing, the Applicant's representative questioned Recommended Condition No. 14.b, which requires a 50-foot wide minimum buffer around a Class 2 wetland. The Applicant's representative noted that an abutting proposed plat identifies this wetland as a Class 3 wetland, requiring only 25 feet of buffer width. The Department responded that the wetland has been reviewed and confirmed as a Class 2 wetland by the Department's wetland scientist and that the abutting plat proposal is at a significantly earlier stage of review. The Department fully expects the wetland designation in the neighboring plat to be upgraded to the same standard as the proposed Bollman Plat when review of that neighboring plat is completed. The Applicant did not reassert this concern at the conclusion of the hearing when asked for a final response to the Department's final recommendation.

5. **SEPA Threshold Determination Appeal.** On July 24, 2000, Jeff Bell, *et al.*, (the "Appellants")¹ filed timely appeal from the DDES threshold determination. On June 20, 2000, the Department published its determination that an Environmental Impact Statement would not be required provided that the development comply with applicable regulations and, provided further, that the developer provide a split-rail or similar fence approved by DDES, to be installed along the edge of the sensitive area tract prior to final plat approval in order to reduce disturbance within the wetland and associated protective buffer area.

The SEPA appeal focuses first and primarily on the proposed placement of Southeast 188th Way. The Appellants argue that the placement of this street adjacent to, and parallel to, an abutting joint-use driveway serving four lots, poses substantial safety risks to pedestrians and motorists. Secondly, the SEPA threshold determination appeal argues that the proposed placement of Southeast 188th Way poses substantial risks to the environment, particularly regarding aesthetics, water table, drainage and noise. The following findings are relevant:

- a. Proposed 188th Southeast Way will abut the easternmost 340 feet (scaled from Exhibit No. 7) of the north boundary of the subject property. A single lane joint-use driveway,

¹ Duane E. Smalley, Susan M. Smalley, Billie Andrew, Jeff Bell and Cyndy Bell.

shared by the Appellants' three developed lots, is located roughly 20 feet north from that same property line. It is the proximity of the proposed street and the existing driveway to which the Appellants object.

- b. On February 7, 2000, Ronald J. Paananen, P.E., King County Road Engineer, approved the Applicant's request for variance from King County Road Standards (KCRS) Section 2.10.B regarding intersection spacing. KCRS Section 2.10.B requires that intersections along a neighborhood collector be spaced at least 150 feet apart; along any lesser street classification, 100 feet apart. This standard applies to spacing between adjacent intersecting streets, whether crossing or T-connecting. One-hundred forty-eighth Avenue Southeast is classified as a "neighborhood collector." Because the joint-use driveway shared by the Appellant serves three homes (plus one undeveloped lot), it is considered a "street" by Roads Division, pursuant to KCRS standards and definitions.
- c. Based upon the language contained in KCC 20.24.070/.080, the Examiner ruled in pre-hearing conference that he had no jurisdiction over the County Road Engineer's variance decision. This ruling was based upon two characteristics of these code provisions which establish the Examiner's authority. First, the Examiner historically has indeed had such authority with respect to both subdivisions and short subdivisions. However, the legislative land use reforms of 1994 specifically *removed* the Examiner's authority with respect to reviewing KCRS variance decisions relating to formal subdivisions. Second, the 1994 land use review reforms left the Examiner's authority to review small short subdivision KCRS variance decisions *remaining intact*, thereby indicating clear legislative intent.
- d. Finding No. 5.c, preceding, notwithstanding, the Examiner ruled that SEPA authority pre-empts road variance decisions when significant adverse impact can be proved. The Examiner ruled further that two circumstances in this case constituted "unusual circumstances" which trigger expanded SEPA review pursuant to KCC 20.44.080.C. First, two parallel roads constitute such an unusual circumstance. Second, granting a variance from KCRS creates an unusual circumstance. No party objected to or contested the rulings described here in Finding Nos. 5.c and 5.d.
- e. There are no driveways or intersections on the east side of 148th Avenue Southeast. Further, none may be expected because that side of the road is located within Lake Young's watershed property. There are speed reduction bumps located on 148th Avenue Southeast which provide for slower traffic speeds in this location. Testimony from Roads Division confirms that these "traffic calming" devices have achieved their intended purpose. The King County Roads Division review engineer indicated in her report to the County Road Engineer that "there is exceptional sight distance, both entering and stopping in both directions." Christopher Brown, P.E., confirms this finding. Exhibit No. 23.
- f. The hearing record contains a variety of assertions and possibilities regarding the relationship of the northerly abutting properties (owned by the Appellants) to the proposed new Bollman street (proposed 188th Way).

- The Applicant could connect the existing (Appellants’) driveways to the new proposed Bollman street, at no expense to the Appellants. The Appellants reject this option, insisting that it would leave them the substantial cost of relocating/connecting to utilities. The hearing record contains no evidence that such connection/relocation of utilities would be necessary. In fact, the hearing record contains sharp disagreement regarding this notion.
 - The northerly abutting properties could grant half of the required street right-of-way to the Applicant in exchange for a variety of landscaping and utility improvements. This option would obviously benefit the future development potential of Appellant Bell’s property. However, both he and the other Appellants reject this option as well. The Applicant expressed willingness to explore this possibility.
 - The KCRS variance review record suggests that at least some of the Appellants at some time agreed to have their driveways connected to the proposed Bollman street. The hearing record suggests, however, that finding may be inaccurate. Certainly, at this preliminary plat/SEPA hearing, the Appellants reject that proposal, even though it would solve the very safety issues that they assert.
 - The Appellants, particularly Appellant Billie Andrew, argues that the existing house on the Bollman property should be destroyed in order to allow the street to be moved southward away from the existing Appellants’ driveway. The Applicant has reviewed that option (which conceivably could achieve two lots instead of one) and found it to be not economically feasible or reasonable.
- g. Some trees along the north property line of the Bollman property will be removed in order to construct the new street. Appellants express concern that this will result in a loss of privacy, bird habitat, and the possible necessity to remove additional trees located on the Appellants’ properties.
- h. The Appellants indicate that the roadside ditch along 148th Street is “not adequate during a heavy rain.” Recommended Condition No. 7 requires final plat approval consistent King County Code Section 9.04 Drainage Standards and the King County Surface Water Design Manual. Recommended Condition No. 7.g requires a final drainage analysis to evaluate the requirements for off-site bypass consistent with the Drainage Manual. Recommended No. 7.g requires the Applicant to provide “any required storm facilities or meet the applicable exemptions for run-off control specified by the Drainage Manual” and states further, “If determined necessary by the Applicant’s engineer, an interceptor trench shall be installed in the eastern portion of the site to reduce the amount of shallow groundwater which may flow across the north property line.”
- i. The record contains the testimony, and evidence offered by, two transportation experts—in addition to the Departmental representatives. They disagree. The one hired by the Appellants suggests that the confusion resulting from locating an urban standard public

street adjacent to a private one lane street will result in traffic hazards to the users of those facilities and to passers-by on 148th Street. The other, retained by the Applicant, disagrees, arguing that there is an obvious hierarchy of right-of-way. This hierarchy is contained in law². However, more importantly, he argues, the hierarchy is intuitively obvious to all drivers; that is, it is obvious to drivers that a full section public street has right-of-way over a narrow private drive.

- j. The intersection will operate at Level Of Service (LOS) “A”. There will be no noteworthy delay entering or leaving the site. Exhibit No. 23.
6. **Department Preliminary Plat Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated October 20, 2000 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.
7. **Standard of Review.** Section D of the Division’s (date) preliminary report to the King County Hearing Examiner (exhibit no. 2) cites the scope and standard of review to be considered by the Examiner. The Division’s summary is correct and will be used here. In addition, the following review standards apply:
- a. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.
- b. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to “substantial weight”. Having reviewed this “substantial weight” rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency “negative threshold determination” is whether the action is “clearly erroneous”. Consequently, the administrative decision should be modified or reversed if it is:
- . . . clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.
8. Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

² RCW 46.61.205; RCW 46.61.180.

CONCLUSIONS:

1. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.
2. As noted in Finding No. 7, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, Appellant Bell, *et al* has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Department's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed.
3. The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Department's determination. See, particularly, Finding No. 4, following.

The issues raised by the Appellant are valid reasons for concern. However, they do not approach the magnitude requisite for a determination of significance. With good sight distance, with low traffic volumes, and with traffic regulated by statute (reinforced by on-the-ground circumstances described in Finding No. 5.i) there is no reason to assume significant hazard will be imposed on the access intersections as a consequence of the Bollman Plat. The changes in habitat and tree canopy system do not approach the magnitude requisite to determine "significant adverse impact." The courts have ruled that to find significant adverse impact, the impact must be "more than moderate." Such a conclusion cannot be drawn from the facts of record.

4. In addition, the following conclusions apply:
 - a. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of nonsignificance. Rather, the Appellant differs with the Department's assessment of impacts or the probability of potentially adverse impacts. Speculation with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.
 - b. Although the Appellant argues that the information on which the Department based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous.
 - c. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. Both DDES and King County Department of Transportation have been aware of these issues and have investigated (and reinvestigated) them, but have arrived at conclusions which differ from the Appellant's. The Department, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination

of non-significance. The Department's judgement in this case, as provided by statute and case law, must be given substantial weight.

- d. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Department's decision is not clearly erroneous and is supported by the evidence.
5. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
6. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
7. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
8. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

SEPA DECISION:

The appeal is DENIED.

PRELIMINARY PLAT DECISION:

The proposed plat of Bollman, Department of Development and Environmental Services File No. L99P0011, as described in Exhibit No. 7 of this hearing record, is GRANTED PRELIMINARY APPROVAL; *subject* to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6-PSOD zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is

larger except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.

4. The Applicant must obtain final approval from the King County Health Department for properly abandoning any existing septic system or water well.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The Applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as when on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file.”
 - d. Storm water facilities shall be designed using the KCRS Level 2 flow control standard. The size of the proposed drainage tracts may have to increase to accommodate the required detention

storage volumes and water quality facilities. All runoff control facilities shall be located in a separate tract and dedicated to King County unless portions of the drainage tract are used for recreation space in accordance with KCC 21A.14.180.

- e. Water quality facilities shall be provided using the basic water quality treatment standards as specified in the drainage manual. The site is located within a mapped sole source aquifer area, which may require special designs for water quality ponds or infiltration facilities. The final drainage plans shall address any applicable requirements for pond liners as specified in Section 6.2.4 of the drainage manual.
 - f. The final drainage analysis shall evaluate the requirements for off-site bypass as outlined in the drainage manual on page 1-36. As determined necessary by King County, drainage easements shall be required to convey existing or potential future surface water through the project.
 - g. The preliminary plat map does not show a drainage tract in the eastern portion of the site. During final drainage review, the Applicant shall provide any required storm water facilities or meet the applicable exemptions from runoff control as specified by the drainage manual. If determined necessary by the Applicant's engineer, an interceptor trench shall be installed in the eastern portion of the site to reduce the amount of shallow groundwater which may flow across the north property line.
 - h. Several wetlands are located on the property; therefore, a floodplain analysis shall be performed as specified by Special Requirement No. 2 in the drainage manual. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat.
8. Due to soil conditions and topographic slopes on the site, a grading plan shall be submitted to address site construction for roads, utilities, and building sites. A geotechnical report shall be submitted with the plans to address requirements for site development, earthwork, erosion and drainage control. The grading plans shall delineate locations within the site, which are defined as erosion hazard areas per King County Code 21A.24.200. The applicable development standards as outlined in the code, including requirements for seasonal construction, shall be shown on the final construction plans.
 9. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:

- a. During preliminary review the Applicant submitted a road variance application (File No. L99V0373), regarding intersection spacing at the project entrance. The variance received approval by the County Road Engineer on February 7, 2000. If the Applicant reaches an agreement with property owners along the north property line, the proposed driveway connections onto SE 188th Way shall be shown on the final engineering plans.
- b. 148th Avenue SE shall be improved along the frontage of the plat as an urban neighborhood collector street with vertical curbs. The Applicant shall demonstrate that the existing right-of-way width meets County road standards and is sufficient to accommodate the improvements. The final curb location shall align properly with the recently installed frontage improvements for the Fairhaven subdivision.
- c. SE 188th Way shall be improved as an urban subcollector. A temporary cul-de-sac shall be provided at the western terminus. If road construction for SE 188th requires off-site slope easements along the south property line, the Applicant shall secure permission from the applicable property owner prior to engineering plan approval. Any required road easements shall be recorded prior to or concurrent with the final plat.
- d. Tracts F and H shall be improved as private joint use driveways, which serve a maximum of two lots. The serving lots shall have undivided ownership of the tract and be responsible for maintenance. As specified in KCRS 3.01C, improvements shall include an 18 foot paved surface and a minimum tract width of 20 feet. Drainage control shall include a curb or thickened edge on one side. Tract H shall include an easement granted to King County for access and maintenance of the drainage facilities within Tract A.
- e. Tract G shall be improved as a private access tract serving proposed lots 30-34. These lots shall have undivided ownership of the tract and be responsible for its maintenance. Improvements shall conform to KCRS 2.03 for urban minor access roads, which include 22 feet of paving. The minimum tract width shall be 26 feet with a maximum length of 150 feet.
- f. 146th Avenue SE shall be improved to urban subcollector standards. A road barricade shall be provided at the southern terminus as specified in KCRS 5.07. Based upon the availability of sufficient right-of-way at reasonable cost, the Department may modify return radius design requirements.
- g. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS.
- h. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
- i. There shall be no direct vehicular access to or from 148th Ave. SE from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.

10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impacts fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
13. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
14. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the Applicant.
 - a. Class 1 wetlands shall have a minimum buffer of 100 feet, measured from the wetland edge.
 - b. Class 2 wetland shall have a minimum buffer of 50 feet, measured from the wetland edge.
 - c. The wetlands and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
 - d. Buffer averaging may be proposed, pursuant to KCC 21A.24.320,--provided the total amount of the buffer area is not reduced and better resource protection is achieved,--subject to review and approval by a DDES Senior Ecologist.
 - e. A minimum building setback line of 15 feet shall be required from the edge of the tract.

- f. Development authorized by this permit or approval may require other state and/or federal permits, including, but not limited to, a Washington State Hydraulics Project Approval (HPA) or a U.S. Army Corps of Engineers 404 or Section 10 permit. If such other permit(s) is/are required, this/these other permits must be issued prior to issuance of this permit or approval. Failure to secure these other permits before beginning work authorized by this permit or approval is a violation of this condition, and may result in suspension or revocation of this permit/approval, and/or pursuing other enforcement actions. Should any other required permit be suspended, revoked or in any way be subjected to other enforcement actions, this permit may be suspended until all defects causing said enforcement actions have been remedied. In addition, the granting of this permit or approval does not authorize the Applicant to violate any provisions of the Endangered Species Act as set forth at 16 U.S.C. § § 1531-1543, including the prohibition on the “take” of threatened or endangered species. “Take” is defined at 16 U.S.C. § § 1532(19).

15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND
SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law. The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children’s play equipment, picnic table[s], benches, etc.).

- a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
17. A homeowner's association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along 148th Ave. SE. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The Applicant shall contact Metro Service Planning at 684-1622 to determine if

148th Ave. SE is on a bus route. If 148th Ave. SE is on a bus route, the street tree plan shall also be reviewed by Metro.

- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
19. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
20. The proposed plat shall comply with the "Special Overlay District" requirements for seasonal clearing restriction, clearing and grading limitations, and significant tree retention.

The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicants shall demonstrate compliance with these items prior to final approval.

21. Split rail or similar fence approved by DDES shall be constructed along the edge of the Sensitive Area Tract prior to final plat approval. Fencing (design and construction) shall be shown on the engineering plans for DDES review and approval. This mitigation is intended to reduce disturbance within the protective buffer and associated wetland.

ORDERED this 8th day of November, 2000.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 8th day of November, 2000, to the following parties and interested persons:

Billie Andrew
14704 SE 188th Place
Renton WA 98058

John E. Andrew
P.O. Box 59386
Renton WA 98058

Jeff and Cyndy Bell
14630 SE 188th Place
Renton WA 98058

Robert Bernstein
507 - 18th Ave. E
Seattle WA 98112

Lynn Bollman
P.O. Box 6011
Kent WA 98064

Chris Brown
9688 Rainier Ave. S.
Seattle WA 98118

Mimi Castle
P.O. Box 6011
Kent WA 98064

Eugene Church
18611 - 148th Avenue SE
Renton WA 98058

Roger Dorstad
Evergreen East Realty
16651 NE 79th Street
Redmond WA 98052

L99P0011-Bollman Plat

17

George W. Drysdale
12714 Valley Avenue E
Sumner WA 98390-1552

Gary Hallberg
18916 - 140th Avenue SE
Renton WA 98058-8017

Susan Harris
14240 SE 188th Way
Renton WA 98058

Janet Humphrey
14720 SE 197th CT
Renton WA 98058

James Jaeger
Jaeger Engineering
9419 South 204th Place
Kent WA 98031

Bob Lainer
16816 NE 124th Street
Redmond WA 98052

Tim Larson
14212 SE 184th Place
Renton WA 98058

Teresa LeMay
Lozier Homes Corp
1203 - 114th Avenue Southeast
Bellevue WA 98004

Linda Matlock
WA State Dept Ecology
PO Box 47696
Olympia WA 98504-7696

Eleanor Moon
King County Executive Horse Council
12230 NE 61st
Kirkland WA 98033

New Home Trends
18912 N Creek Parkway #211
Bothell WA 98011

Duane & Susan Smalley
14714 SE 188th Place
Renton WA 98058-9321

Matthew Smalley
14714 SE 188th Place
Renton WA 98058-9321

Greg Borba
DDES/LUSD
MS OAK-DE-0100
MS OAK-DE-0100

Kim Claussen
DDES/LUSD
Current Planning

Fereshteh Dehkordi
DDES/LUSD
Current Planning
MS OAK-DE-0100

Peter Dye
DDES/LUSD
Engineering Review
MS OAK-DE-0100

Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Kristen Langley
KC Transportation Department
Traffic and Planning Section
MS KSC-TR-0222

Aileen McManus
KCDOT
Roads Division
MS-KSC-TR-0222

Carol Rogers
DDES/LUSD
MS OAK-DE-0100

Larry West
DDES/LUSD
Site Development Services
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before November 22, 2000***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before November 29, 2000***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE OCTOBER 20, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P0011 – BOLLMAN PLAT:

R. S. Titus was the Hearing Examiner in this matter. Participating in this hearing and representing the Department were Fereshteh Dehkordi and Pete Dye. Participating in this hearing and representing the King County Department of Transportation were Aileen McManus, Delite Morris and Ronald Paananen. Participating in this hearing and representing the Applicant were James Jaeger and Mimi Castle. Participating in this hearing and representing the Appellants were Jeff Bell, Billie Andrew and Susan Smalley. Other participants in this hearing were Applicant Witness Christopher Brown and Appellant Witness Robert Bernstein.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File No. L99P0011
- Exhibit No. 2 DDES Preliminary Report to the Hearing Examiner, dated October 20, 2000
- Exhibit No. 3 Application, dated May 13, 1999
- Exhibit No. 4 Environmental Checklist, dated May 13, 1999
- Exhibit No. 5 Mitigated Determination of Non-significance (MDNS), dated June 30, 2000
- Exhibit No. 6 Affidavit of Posting indicating June 22, 1999 as date of posting and June 24, 1999 as the date the affidavit was received by DDES
- Exhibit No. 7 Revised Site Plan, dated September 29, 2000
- Exhibit No. 8 Notice of SEPA Appeal, received by DDES on July 24, 2000
- Exhibit No. 9 Land Use Map (Kroll) page 825E
- Exhibit No. 10 Assessors Maps SE 34-23-5 and 35-23-5
- Exhibit No. 11 Level One Drainage Analysis report by Jim Jaeger, dated May 8, 1999
- Exhibit No. 12 Wetland and Stream Analysis report by B-Twelve Associates, Inc., dated July 28, 1999
- Exhibit No. 13 Soils Report by Jim Jaeger, dated September 13, 2000
- Exhibit No. 14 Road Design Map, dated September 29, 2000
- Exhibit No. 15 Road Variance Decision, dated February 7, 2000
- Exhibit No. 16 Resume of Robert Bernstein, P.E.
- Exhibit No. 17 E-mail communication from Ronald Paananen to Jeff Bell, dated October 19, 2000
- Exhibit No. 18 E-mail communication from Ronald Paananen to Jeff Bell, dated September 25, 2000
- Exhibit No. 19 Letter from Billie Andrew (with attachment) to Hearing Examiner Titus, dated October 9, 2000
- Exhibit No. 20 Written testimony from Susan Smalley, dated October 11, 2000
- Exhibit No. 21 Color copy of two photographs (one page) showing 148th conditions, submitted by Appellant Smalley
- Exhibit No. 22 Letter with attached photographs showing wildlife and vegetation from Ms. Smalley to Examiner's Office, dated September 15, 2000
- Exhibit No. 23 Traffic Impact and Site Access Analysis Report by Christopher Brown, P.E., dated October 6, 2000
- Exhibit No. 24 Letter from Jeff Bell to James Jaeger, dated September 13, 2000
- Exhibit No. 25 Resume of Christopher Brown, P.E.
- Exhibit No. 26 Road Variance letter from Ronald Paananen to James Jaeger, dated July 13, 1999
- Exhibit No. 27 Notice of Application and attachment for DDES File No. L00P0015
- Exhibit No. 28 Letter with attachments from Mimi Castle and Lyle Bollman to Examiner Smith, dated August 24, 2000
- Exhibit No. 29 *EXCLUDED*
- Exhibit No. 30 Site Evaluation Analysis by Bergquist Engineering Services, dated October 13, 1999