

July 7, 2016

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
Facsimile (206) 296-0198
hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **PLAT140002**
Proposed ordinance no.: **2016-0216**

SEQUOYAH VISTA
Preliminary Plat Application

Location: East of 32nd Avenue S between S 360th Street and S 356th Street,
Federal Way

Applicant: Orca Homes LLC
represented by **Robert Dubabin**
12411 NE 80th Way
Kirkland, WA 98033
Telephone: (425) 322-3325
Email: bob@cascadeyarns.com

King County: Department of Permitting and Environmental Review
represented by **Kimberly Claussen**
35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0329
Email: kimberly.claussen@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to conditions
Examiner's Decision:	Approve subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened: June 28, 2016
 Hearing Closed: June 28, 2016

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 Hearing Examiner’s Office.

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

FINDINGS:

1. General Information:

Owner/Developer: Orca Homes LLC
 Attn: Robert Dunbabin
 12411 NE 80th Way
 Kirkland, WA 98033
 (206) 574-0440

Engineer: ESM Consulting Engineers
 33400 8th Avenue S, Suite 205
 Federal Way, WA 98003
 (253) 838-6113

STR: 27-21-04
 Location: The site is located east of 32nd Avenue S between S 356th Street and S 360th Street, Auburn

Tax Parcels 4045700675 (3412 S 360th Street, Auburn) and 4045700602

Zoning: R-4
 Acreage: 4.3 acres
 Number of Lots: 25
 Density: Approximately 5.8 units per acre
 Lot Size: Average ranges from approximately 3,400-6,000 square feet
 Proposed Use: Single Family Detached Dwellings

Sewage Disposal: Lakehaven Utility District
 Water Supply: Lakehaven Utility District
 Fire District: South King County Fire and Rescue
 School District: Federal Way #210
 Date of Application: February 14, 2014
 Application Completeness Date: March 20, 2014

2. Except as modified herein, the facts set forth in the Department of Permitting and Environmental Review (DPER) reports to the Examiner and the DPER and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. DPER issued a Mitigated Determination of Nonsignificance (MDNS) for the proposal on March 11, 2016 with an April 4, 2016 appeal deadline. Exhibit 5. No appeal was filed.
4. At the June 28, 2016, hearing, the Examiner received testimony from neighbors of the proposed plat regarding drainage; traffic; walking conditions for school-aged children who walk to school; school capacity; density; the effect of the property's being located with the City of Federal Way's Potential Annexation Area; the desire for a four-way stop at the intersection of S 356th Street and 32nd Avenue S; a proposed retaining wall on the west side of Road A extending from S 360th Street to approximately the south side of proposed Lot 6; notice; questions about the meaning of various terms including entering site distance and joint use driveways; and questions about process. The Hearing Examiner allowed the Applicant, DPER, and KCDOT to respond to testimony and answer questions posed.

Safe Walking Conditions. School-aged children will walk to Lakeland Elementary School and Sequoyah Middle School and be bused to Todd Beamer High School in the Federal Way School District. March 5, 2014 Letter from Federal Way Public Schools to DPER and February 24 Request for School Information Preliminary Plats, both contained in Exhibit 1. The Applicant's consultant, ESM Consulting Engineers, LLC, prepared a school walkway analysis. Exhibit 17.

School-aged children walking to Lakeland Elementary School would follow the sidewalks on Road A (located on the east side of Road A along its entire length and on the west side of Road A adjacent to proposed lots 19–25 and the storm drainage/open space tract) to S 356th Street where they would walk along the paved shoulder on the south side of S 356th Street to the intersection of S 356th Street and with 32nd Avenue S. The MDNS requires the Applicant to install a crosswalk across S 356th Street in the vicinity of its intersection with 32nd Avenue S. The children would cross S 356th Street using the crosswalk and then follow a sidewalk on the north side of S 356th Street and west side of 32nd Avenue S to reach the elementary school.

Sequoyah Middle School is located directly to the south of the proposed plat across S 360th Street. Condition 10.B below requires the Applicant to improve the project's frontage on the north side of S 360th Street frontage at a minimum to the urban collector arterial standard, including a 5-foot sidewalk. See Exhibit 7, Sheet PP-03. The MDNS requires the Applicant to install a crosswalk across S 360th Street. School-aged children walking to Sequoyah Middle School would follow the sidewalks on Road A to the sidewalk the Applicant will install along its frontage on S 360th Street and then use the crosswalk to cross S 360th Street to reach the middle school.

Consistent with the request of the Federal Way School District, each of the crosswalks will be thermoplastic and will have bush-button activated LED flashing lights on both sides of the crosswalk. Exhibits 5 and 18.

5. School Capacity. The School District expressed no concern about its ability to accommodate students from the proposed plat. As explained in Condition 13 below, lots within the proposed plat will be subject to Chapter 21A.43m which imposes impact fees to fund school system improvements. The purpose of school impact fees is to ensure that adequate public school facilities and improvements are available to serve new development. KCC 21A.43.010.A.
6. Drainage. Stormwater from the proposed plat was the subject of considerable analysis. See Exhibits 9-14.

Stormwater from the site currently flows north and west ultimately ending up in Lake Killarney. The Applicant was unable to obtain all of the required drainage releases to allow it to discharge storm water to the west to Lake Killarney in its traditional downstream course. LaBrie Testimony.

It then explored discharging stormwater to the north to the S 356th Street public right-of-way to the bend where it turns to 32nd Avenue S. From that point, it would have to cross private property (parcels 2821040183 and 2821049002) to reach Lake Killarney, also requiring drainage releases, which the Applicant was not able to obtain. Exhibit 13. LaBrie Testimony.

The Applicant was able to obtain a drainage release from the owner of parcel 2821049061 located to the southwest of the proposed plat on the south side of S 360th Street. Exhibits 14.b (covenant) and 23 (location of parcel).

The stormwater vault for the proposed plat, which will be located at the north end of the proposed plat site, will treat and retain all of the stormwater from the developed plat site. Up to the 10-year storm for the pre-development forested condition will flow to the north to S 356th Street where it follows the current drainage path to Lake Killarney. While this discharge will cross parcels 2821040183 and 2821049002, it will not increase current flows. Beyond the 10-year storm, stormwater backs up in the plat's stormwater system up to the 100- year storm. At the point at which the volume exceeds the 100-year storm, it will flow to the south to the existing system in S 360th Street and across parcel 2821049061 to the creek labeled "Unnamed Creek Tributary to Lake Killarney" on Exhibit 23. LaBrie and Bartenhagen Testimony.

This solution requires a drainage adjustment, which the County granted. Exhibit 14.a.

Mr. McCabe, owner of property to the west of the proposed plat, testified that the project site currently drains onto his property. As explained in this Finding, storm water from the proposed plat is not proposed to be discharged to the McCabe property.

7. Retaining wall. Mr. McCabe also expressed concerns regarding the height of the proposed retaining wall on the south side of Road A.

He testified that the elevation of S 360th Street is 11 feet higher than the southernmost portion of his property. Thus, he concluded that the retaining wall would need to be 11 feet tall. The Applicant explained that the property on which the proposed plat is located is above the elevation of S 360th Street and the property will be graded down to meet that elevation. As shown by the contours on Sheet PP – 01 of Exhibit 7, the southeast corner of the McCabe property is 430 feet. Road A will be at 436 feet, resulting in the need for a retaining wall which is 6 feet high. LaBrie Testimony.

8. Notice. The Examiner explained to those in attendance that the hearing held on June 28 constitutes the hearing for the proposed plat and that much of the time between the notices they received and the hearing appears to have been spent addressing resolution of drainage. DPER explained that, in addition to the Notice of Application, DPER provided notice of both the SEPA determination and of the hearing to property owners within 500 feet of the proposed plat. DPER sends the Staff Report to those who requested additional information.

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

DECISION:

The preliminary plat Sequoyah Vista, is approved subject to the following conditions of approval.

1. Compliance with all platting provisions of Title 19A of the 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. A. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall be the larger of the minimum dimensional requirements of the R-4 zone classification or those shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Permitting and Environmental Review (DPER).

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DPER prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

B. The applicant shall provide the TDR certificate with the submittal of the engineering plans and the final plat. If the TDR certificate cannot be obtained, the applicant shall redesign the plat to contain the number of lots based upon the allowable density. This will result in the reconfiguration and loss of lots.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Design and Construction Standards established and adopted by Ordinance No. 15753, as amended (2007 KCRD&CS).
5. 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.
6. The drainage facilities shall meet the requirements of the 2009 King County Surface Water Design Manual (2009 KCSWDM). The site is subject to the conservation flow control and basic water quality requirements of the 2009 KCSWDM.
7. A Drainage Adjustment VARD15-0005 is approved for this development. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans.
8. Per the drainage adjustment (VARD15-0005), off-site improvements maybe required near or within critical areas and/or buffers (i.e. Lake Killarney, Lake Killarney outfall stream/East Fork of Hylebos Creek, etc.). Engineering plans shall be routed to DPER Critical Areas Staff for review, prior to engineering plan approval.
9. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2009 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMPs for site development.

The required BMPs shall also be shown on the individual residential building permit applications upon submittal of the permits. The individual building permit applications shall also include the required covenants, easements, notes and other details to implement the BMP design.
10. The proposed subdivision shall comply with the 2007 KCRD&CS and 2009 KCSWDM, including the following requirements:

- A. Internal road shall be improved at a minimum to the urban subaccess street standard. Road A shall be improved to the urban half-street subaccess standard (from approximately stations 10+25 to 16+50 and 21+60 to 22+70).
 - B. FRONTAGE: S 356th Street frontage shall be improved at a minimum to the urban subcollector standard, on the south side.
 - C. FRONTAGE: the S 360th Street frontage shall be improved at a minimum to the urban collector arterial standard on the north side, including adequate R/W dedication for the improvement.
 - D. Joint Use Driveway (JUD) tracts shall be improved to the joint use driveway standard per Section 3.01 of the 2007 KCRD&CS. Notes regarding ownership and maintenance of the joint use driveways shall be shown on the final plat.
 - E. The slope immediately east of the site, along the north side of S 360th Street, shall be maintained and any encumbering vegetation that limits the required 500-foot sight distance shall be removed. This work shall be accomplished as necessary to maintain the required sight lines. Any work/clearing outside of right-of-way will require temporary construction easements.
 - F. No parking shall be permitted on the half street, unless otherwise approved by the King County Fire Marshal.
 - G. The current site plan depicts a retaining wall on the southwest portion of Road A, and a curve radius on the adjacent parcel #4045700682. Construction easement(s) are required prior to or concurrent with engineering plan submittal.
 - H. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.12 of the 2007 KCRD&CS.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
12. 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 the 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.
13. 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 impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in

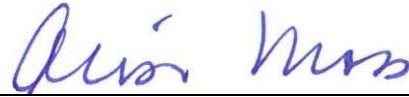
effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

14. A homeowners' association or other workable organization satisfactory to DPER shall be established and shall provide for the ownership and continued maintenance of the recreation tract. An easement shall be provided to King County over the recreation tract for maintenance of the storm water facilities.
15. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - A. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DPER and King County Parks prior to or concurrent with the submittal of engineering plans. The plans must include additional recreation facilities per KCC 21A.14.180E, fencing and landscaping along the road perimeter to alleviate potential conflicts between users of recreation tract and vehicles.
 - B. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
16. Street trees shall be provided as follows (per KCRD&CS 5.03 and K.C.C. 21A.16.050):
 - A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. 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 2007 KCRD&CS, 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 DPER 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 DPER prior to engineering plan approval.
 - G. The applicant shall contact Metro Transit Planning at (206) 553-3000 to determine if S 356th Street and/or S 360th Street are on a bus route. If so, 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 DPER has completed a second inspection and determined that the trees have been kept healthy and thriving.
17. To implement K.C.C. 16.82.156 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of K.C.C. 16.82.156. No clearing of the subject property is permitted until the final tree retention plan is approved by DPER. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 16.82.156. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 16.82.156).
- A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C.16.82.156. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)
18. 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.
- A. The applicant shall install crosswalks from the development across S 360th Street to Sequoyah Middle School and across S 356th Street, in the vicinity of the curve from 34th Avenue S to S 356th Street. The thermoplastic crosswalks shall be installed across S 360th Street and S 356th Street with LED flashing lights on both sides of the crosswalks with the LED lights being push-button activated. (RCW 58.17.110)
 - B. Off-site improvements: The ultimate locations of the off-site crosswalks shall be determined by the King County Department of Transportation. Paved pedestrian walkways shall be required to these crosswalks, unless otherwise approved by King County Department of Transportation.

- C. The location and design for the crosswalks and off-site improvements shall be reviewed and approved by the King County Department of Transportation.
19. A boundary line adjustment (BLA) or deed shall be provided for the right-of-way for Road A from Lakehaven Utility District, in addition to construction easements, prior to or concurrent to engineering plan submittal.

DATED July 7, 2016.



Alison Moss
King County Hearing Examiner *pro tem*

AM/ED

NOTICE OF RIGHT TO APPEAL

A person appeals this Examiner decision by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's decision.

Prior to the close of business (4:30 p.m.) on *August 1, 2016*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *August 1, 2016*, the Examiner's decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *August 1, 2016*, the Examiner will notify all parties and interested persons and provide information about "next steps."

MINUTES OF THE JUNE 28, 2016, HEARING ON DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. PLAT140002, PROPOSED ORDINANCE NO. 2016-0216.

Alison Moss was the Hearing Examiner in this matter. Kim Claussen, Robert Eichelsdoerfer, Nick Gillen, Pat Simmons, Eric LaBrie, Lara Bartenhagen, Casey and Stephanie McCabe, Dianne Macdonald, Alois Hunkeler, Rob Leland, and Sean Reed participated in the hearing.

The following exhibits were offered and entered into the hearing record:

- Exhibit no. 1 Department of Permitting and Environmental Review (DPER) file no. PLAT140002
- Exhibit no. 2 DPER preliminary report, transmitted to the Examiner, dated June 28, 2016
- Exhibit no. 3 Application, submitted February 14, 2014 and completed March 20, 2014
- Exhibit no. 4 State Environmental Policy Act (SEPA) checklist, received February 20, 2014
- Exhibit no. 5 Mitigation determination of non-significance, dated March 11, 2016
- Exhibit no. 6 Affidavit of posting indicating March 28, 2014 as date of posing and March 31, 2014 as the date the affidavit was received by DPER
- Exhibit no. 7 Plat map, received November 17, 2014 (revision)
- Exhibit no. 8 Assessors NW and SW 27-21-04
- Exhibit no. 9 Preliminary Technical Information Report (TIR) by ESM, dated February 14, 2014
- Exhibit no. 10 Revised TIR by ESM, dated August 22, 2014
- Exhibit no. 11 Revised TIR by ESM, dated November 14, 2014
- Exhibit no. 12 Conceptual drainage/road plan by ESM, dated March 28, 2016
- Exhibit no. 13 Development conditions map and S 360th street basin map, dated March 30, 2016
- Exhibit no. 14 Drainage adjust VARD15-0005
 - a. Decision, dated January 19, 2016
 - b. Declaration of covenant, dated September 30, 2015
- Exhibit no. 15 Traffic impact analysis by Health & Associations, dated February 2014
- Exhibit no. 16 Sight distance memo by Health & Associates, dated November 13, 2014
- Exhibit no. 17 Safe walkway by ESM, received January 25, 2016
- Exhibit no. 18 Federal Way School District letter, dated February 12, 2016
- Exhibit no. 19 City of Federal Way
 - a. Letter, dated May 16, 2014
 - b. Email, dated June 1, 2016
- Exhibit no. 20 Geotechnical report by Geo Resources, dated August 2, 2013
- Exhibit no. 21 Lakehaven Utility District letter, dated October 22, 2013
- Exhibit no. 22 Revised DPER recommendation condition #10
- Exhibit no. 23 Plat map of existing S 360th Street basin map

July 7, 2016

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **PLAT140002**
Proposed ordinance no.: **2016-0216**

SEQUOYAH VISTA
Preliminary Plat Application

I, Elizabeth Dang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties of record/interested persons to addresses on record.

DATED July 7, 2016.



Elizabeth Dang
Legislative Secretary

All Parties of Record

Archuleta, Wally

Department of Permitting and Environmental Review

Bartenhagen, Laura

ESM Consulting Engineers LLC mailed paper copy

Carlson, Joanne

Department of Permitting and Environmental Review

Chapin, Becky

City of Federal Way mailed paper copy

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Dodds, E.A.

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Dubabin, Robert

Orca Homes LLC mailed paper copy

Eichelsdoerfer, Robert

Department of Transportation

Gillen, Nick

Department of Permitting and Environmental Review

Goll, Shirley

Department of Permitting and Environmental Review

Herrera, Matthew

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Hunkeler, Alois and Helen

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Leland, Rob and Susan

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Simpson, Kim

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Walker, John-Kathleen

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Wessel, Greg

Department of Permitting and Environmental Review