

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: PLN2011-00049

APPELLANTS: Chestnut Estates Neighbors
C/o Glenn J. Amster
Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
gamster@kantortaylor.com

Walter T. Pereyra
C/o J. Richard Aramburu
Aramburu & Eustis, LLP
720 Third Avenue, Suite 2000
Seattle, WA 98104
rick@aramburu-eustis.com

Friends of Pine Lake
ATTN: Ilene Stahl
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Sammamish, WA 98075
etiliacos@att.net

William E. Buchan, Inc.
C/o Duana Koloušková
Johns Monroe Mitsunaga Koloušková, PLLC
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RESPONDENT: City of Sammamish
C/o Kim Adams Pratt
Kenyon Disend, PLLC
11 Front Street South
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APPLICANT: William E. Buchan, Inc.
C/o Duana Koloušková
Johns Monroe Mitsunaga Koloušková, PLLC
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TYPE OF CASE: Consolidated: 1) Application for preliminary subdivision approval (*Chestnut Estates West*); 2) Application for alteration of the recorded plat of *Chestnut Estates*, formerly known as *Chestnut Lane*; 3) Three appeals from the State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) for the *Chestnut Estates West* application; and 4) Two appeals from the approval of an Interim Public Works Standards (PWS) Variation for the *Chestnut Estates West* application

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: Friends' SEPA Appeal Dismissed (Moot)
Neighbors' SEPA Appeal Granted in Part and Dismissed in Part (Moot)
Pereyra SEPA Appeal Granted in Part and Dismissed in Part (Moot)
Buchan PWS Appeal Dismissed (Moot)
Neighbors' PWS Appeal Granted in Part and Dismissed in Part (Moot)
Chestnut Estates Plat Alteration Denied
Chestnut Estates West Preliminary Subdivision Denied

DATE OF DECISION: July 14, 2015

INTRODUCTION ¹

William E. Buchan, Inc. (Buchan ²) seeks preliminary approval to subdivide approximately 85.5 acres zoned R-1 into 30 clustered lots together with open space tracts and areas reserved for future development (*Chestnut Estates West*). In addition, Buchan seeks to alter the abutting recorded plat of *Chestnut Estates* ³ to

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Buchan has changed its corporate name since the applications were filed: It used to be known as William Buchan Homes, Inc. (See, e.g.: Exhibits S-204, S-212, *et al.*) The shorthand reference "Buchan" is used throughout this Decision to refer to any of Buchan's corporate identities.

³ Early in its development history, *Chestnut Estates* was known as *Chestnut Lane*. (E.g.: Exhibit A-218, Attachment A) For convenience, it will be referred to throughout this Decision by its current name, *Chestnut Estates*.

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incorporate its Tracts K, M, and N into *Chestnut Estates West* and to convert its Tracts D and E (part only) into public right-of-way to access the 30 proposed lots. (Cf. Exhibit S-211.a with Exhibit A-223 ⁴)

Buchan filed a Base Land Use Application for preliminary subdivision approval on December 9, 2011, and amended it on December 23, 2011, to include the plat alteration request. (Exhibit S-204) The Sammamish Department of Community Development (the Department) deemed the application to be complete on December 23, 2011. (Exhibit S-205)

Five administrative/quasi-judicial appeals were filed in the above-entitled matter: Chestnut Estates Neighbors' (Neighbors') December 23, 2014, appeal from the SEPA DNS for *Chestnut Estates West* (Exhibit A-202); Neighbors' December 23, 2014, appeal from the approval of a street Variation granted by the Department of Public Works (Public Works) pursuant to the PWS to allow the substandard streets within *Chestnut Estates* to serve as access for *Chestnut Estates West* (Exhibit A-203); Walter T. Pereyra's (Pereyra's) December 24, 2014, appeal from the DNS (Exhibit A-205); Buchan's December 26, 2014, appeal from conditions Public Works imposed on the approval of the street Variation pursuant to the PWS to allow the substandard streets within *Chestnut Estates* to serve as access for *Chestnut Estates West* (Exhibit A-206); and Friends of Pine Lake's (Friends') December 29, 2014, appeal from the DNS (Exhibit A-207).

The two applications and the five appeals were consolidated for hearing and decision making.

The subject property is located on the west side of *Chestnut Estates*, generally in an undeveloped area on the western edge of the Sammamish Plateau lying between East Lake Sammamish Parkway SE on the west, the alignment of SE 8th Street on the north, 212th Avenue SE on the east, and the alignment of SE 12th Street on the south. The *Chestnut Estates West* site has no frontage on any dedicated public right-of-way.

The Sammamish Hearing Examiner (Examiner) viewed the subject property on January 22, 2015.

The Examiner convened a consolidated open record hearing on April 22, 2015; the hearing concluded on June 30, 2015, after 86 hours of hearing over 12 days (April 22, 23, 24, 27, and 29; May 19, 21, and 26; and June 8, 9, 24, and 30). The Department gave notice of the opening hearing date as required by the

⁴ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

The City numbered each page of most of its "S" exhibits (Similar to "Bates" numbering.), including those where the original document was paginated. The two sets of page numbers do not always agree. Wherever available, the Examiner will use the exhibit page numbers assigned by the City rather than the original document page numbers.

The record contains numerous exhibit duplications. The Examiner generally will not include duplicate citations in this Decision. The choice of which copy to cite will generally be based upon Examiner convenience or simplicity. No substantive meaning is intended by any such choices.

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Sammamish Municipal Code (SMC). (Exhibit S-242) The date, time, and place of continuances were announced at the close of each day's session, thus obviating the need for additional, formal public notice.

Subsection 20.05.100(1) SMC requires that decisions on preliminary subdivisions be issued within 120 net review days after the application is found to be complete. The open record hearing was convened on or about net review day 210. (Exhibit S-203, p. 13, Finding 73; Maxim testimony) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(3)]. Finding 73 in Exhibit S-203 contains the required explanation.

The principal parties agreed at the close of the hearing to give the Examiner up to 20 working days in which to issue this Decision. The Examiner has not used any of the additional time: The Examiner has issued this Decision within 10 working days of the close of the open record hearing as called for by SMC 20.10.240(1).

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c) and Exhibit A-212, the Examiner entered the following administrative exhibits into the hearing record:

- Exhibit A-201: SEPA DNS for *Chestnut Estates West*, issued December 5, 2014
- Exhibit A-202: Neighbors' appeal of the SEPA DNS, filed December 23, 2014
- Exhibit A-203: Neighbors' appeal of the PWS Variation(s), filed December 23, 2014
- Exhibit A-204: E-mail, Maxim to Hachey, December 23, 2014 (requesting a prehearing conference)
- Exhibit A-205: Pereyra's appeal of the SEPA DNS, filed December 24, 2014
- Exhibit A-206: Buchan's appeal of the PWS Variation(s), filed December 26, 2014
- Exhibit A-206.1: Notice of Street Variation Approval, issued December 5, 2014
- Exhibit A-206.2: Public Works Approval of Variation Requests, letter dated December 5, 2014
- Exhibit A-207: Friends' appeal of the SEPA DNS, filed December 29, 2014
- Exhibit A-208: Letter, Examiner to Principal Parties, December 30, 2014 (Scheduling)
- Exhibit A-209: Notice of Prehearing Conference, issued December 31, 2014
- Exhibit A-210: Letter, Aramburu to Examiner, dated January 7, 2015 (Notice of intent to file motions)
- Exhibit A-211: Letter, Sand to Examiner and Parties, dated January 12, 2015 (Motion for partial dismissals and clarifications)
- Exhibit A-212: Order Memorializing a Prehearing Conference, issued January 16, 2015
- Exhibit A-213: Letter, Koloušková to Maxim, October 29, 2014, received by Examiner January 21, 2015
- Exhibit A-214: Letter, Hermansen (CORE) to Maxim, October 30, 2014, received by Examiner January 21, 2015
- Exhibit S-211.a: *Chestnut Estates West* plat set (Sheets 1 – 18, last revised 10/30/14), received by Examiner January 21, 2015
- Exhibit A-216: Tract X Exhibit, 1 November 2014, received by Examiner January 21, 2015

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- Exhibit A-217: Letter, Sand to Examiner, received January 26, 2015 (Supplementing Exhibit A-211)
- Exhibit A-218: Pereyra Motion to Dismiss *Chestnut Estates West-II* Plat Alteration Request for Chestnut Estates Plat, with Attachments A – F, filed January 26, 2015
- Exhibit A-219: Pereyra Motion to Dismiss *Chestnut Estates West-II* Plat Application, with Exhibits 1 – 7, filed January 26, 2015
- Exhibit A-220: Chestnut Estates Neighbors' Joinder in Pereyra Motions to Dismiss, with Exhibit A, filed January 26, 2015
- Exhibit A-221: Friends of Pine Lake Joins the Walter Pereyra Motion to Dismiss, filed January 26, 2015
- Exhibit A-222: E-mail, Examiner to Principal Parties, January 28, 2015 (requesting copy of recorded plat of *Chestnut Estates*)
- Exhibit A-223: Recorded plat of *Chestnut Estates* (9 sheets; recorded April 29, 2010)
- Exhibit A-224: Friends' Response to Exhibit A-211, received February 9, 2015
- Exhibit A-225: Neighbors' Clarification of Claims, filed February 9, 2015
- Exhibit A-226: Buchan's Response to City's Motion, filed February 9, 2015 (with Exhibits B-201 and B-202)
- Exhibit A-227: Buchan's Response to Pereyra Motion to Dismiss Plat Alteration Application, filed February 9, 2015 (with Exhibits B-203 – B-206)
- Exhibit A-228: Buchan's Response to Pereyra Motion to Dismiss Plat Application, filed February 9, 2015 (with Exhibits B-207 – B-209)
- Exhibit A-229: Pereyra's Response to City Motion, filed February 9, 2015
- Exhibit A-230: City's Response to Pereyra Motion to Dismiss Plat Alteration Application, filed February 9, 2015 (with Exhibit S-201)
- Exhibit A-231: City's Response to Pereyra Motion to Dismiss Plat Application, filed February 9, 2015)
- Exhibit A-232: Declaration of Evan Maxim, filed February 9, 2015
- Exhibit A-233: Neighbors' Reply, filed February 19, 2015
- Exhibit A-234: City's reply, filed February 19, 2015
- Exhibit A-235: Pereyra's Reply *re* Pereyra Motion to Dismiss Plat Alteration Application, filed February 19, 2015
- Exhibit A-236: Declaration of Erica Tiliacos *re* Pereyra Motion to Dismiss Plat Alteration Application, with Attachments 1 – 6, filed February 19, 2015
- Exhibit A-237: Pereyra's Reply *re* Pereyra Motion to Dismiss Plat Application, with Attachments A and B, filed February 19, 2015
- Exhibit A-238: Interlocutory Order Granting in Part Respondent's Motion for Partial Dismissal and Clarification of the PWS Appeals, issued February 20, 2015
- Exhibit A-239: Interlocutory Order Granting in Part Respondent's Motion for Partial Dismissal and Clarification of the SEPA Appeals, issued February 20, 2015
- Exhibit A-240: Interlocutory Order Denying Appellant's Motion to Dismiss the Plat Alteration Application, issued February 20, 2015

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- Exhibit A-241: Interlocutory Order Denying Appellant's Motion to Dismiss the Plat Application, issued February 20, 2015
- Exhibit A-242: Appellant Walter T. Pereyra's Request for Issuance of Subpoena, filed April 3, 2015
- Exhibit A-243.1: E-mail, Hearing Examiner to Principal Parties, April 6, 2015 at 8:49 A.M. (Issuance of Subpoena)
- Exhibit A-243.2: Subpoena for Production of Documents, issued April 6, 2015
- Exhibit A-244: Buchan's Request for reconsideration of Subpoena, filed April 6, 2015 at 3:12 P.M.
- Exhibit A-245: E-mail, Hearing Examiner to Principal Parties, April 6, 2015 at 5:55 P.M. (Opportunity to comment on Buchan Request)
- Exhibit A-246: E-mail, Koloušková to Hearing Examiner, April 7, 2015, at 11:59 A.M., with Attachments A-246.A and A-246.B (Comments on Request)
- Exhibit A-247: E-mail, Aramburu to Hearing Examiner, April 7, 2015 at 12:52 P.M. (Comments on Request)
- Exhibit A-248.1: E-mail, Hearing Examiner to Principal Parties, April 7, 2015 at 4:53 P.M. (Issuance of Revised Subpoena)
- Exhibit A-248.2: Revised Subpoena for Production of Documents, issued April 7, 2015
- Exhibit A-249.1: E-mail, Aramburu to Hearing Examiner, April 7, 2015 at 6:24 P.M., forwarding Cohoe to Hearing Examiner E-mail, April 7, 2015 at 11:57 A.M. (with attachment) which had not previously been received by the Examiner
- Exhibit A-249.2: Response to Buchan's Objection, received April 7, 2015 at 6:24 P.M. (with two attachments)
- Exhibit A-250: Photographs submitted at hearing by Usha Kishinchandani
- Exhibit A-251: *Chestnut Estates* street photographs submitted at hearing by Thomas Peterson
- Exhibit A-252: Letter, Samuel Rodabough to Hearing Examiner, April 22, 2015

Pursuant to RoP 224(d) and Exhibit A-212, the Respondent Department pre-filed Exhibits S-201 through S-239 and provided an index list of those exhibits. The Department subsequently pre-filed a copy of Sammamish Ordinance No. O2013-350 and assigned it exhibit number S-240. The Examiner assigned Exhibit number S-241 to the Department's Prehearing Brief. None of the other principal parties objected to entry of those exhibits. The Examiner entered all of the Department's pre-filed exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from the Department as follows:

- Exhibit S-240.a: Chapter 21A.50 SMC ("clean" "vested-to" version)
- Exhibit S-242: Notice of Public Hearing documentation
- Exhibit S-243: Figure 1: Bridge schematic – footings, submitted by Byers
- Exhibit S-244: Figure 2: Bridge schematic - piles, submitted by Byers
- Exhibit S-245: Figure 3: Bridge schematic – wing walls, submitted by Byers
- Exhibit S-246: Byers' bridge sketches made during testimony
- Exhibit S-247: Byers' LID sketches made during testimony

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- Exhibit S-248: Byers' drainage pond sketches made during testimony
- Exhibit S-249: Letter, Johnston to Nelson, September 6, 2006
- Exhibit S-250: List of Recommended Revised & New Conditions for Chestnut Estates West
- Exhibit S-251: Revised tree retention calculations
- Exhibit S-252a: E-mail string, Frkuska-Nelson, September 21, 2012 & October 8, 2012
- Exhibit S-252b: E-mail string, Frkuska-Maxim, December 8, 2012 – January 2, 2013
- Exhibit S-253: Area zoning map
- Exhibit S-254: *Chestnut Estates* – Wetland Buffer Mitigation Year 3 Monitoring report, October 14, 2014
- Exhibit S-255: 150' Lot Shift Exhibit (2 sheets); 0' Lot Shift Exhibit (2 sheets), dated May 2013
- Exhibit S-256: *Chestnut Lane* Road and Storm Drainage Profiles: As-Built, Sheet 21 of 30
- Exhibit S-257: How to Meet Ecology's Construction Stormwater General Permit Requirements: A Guide for Construction Sites, Ecology Pub. #99-37, Revised March 2010

Pursuant to RoP 224(e) and Exhibit A-212, Appellant Neighbors pre-filed exhibits N-201 through N-213 and provided an index list of those exhibits. The Examiner assigned exhibit number N-214 to Neighbors' Joinder in Pereyra's Prehearing Brief. None of the other principal parties objected to entry of those exhibits. The Examiner entered all of Neighbors' pre-filed exhibits into the hearing record.

Pursuant to RoP 224(e) and Exhibit A-212, Appellant Pereyra pre-filed exhibits P-201 through P-227 and P-229 through P-239 and provided an index list of those exhibits. (Pereyra did not use exhibit number P-228.) The Examiner assigned Exhibit number P-240 to Pereyra's Prehearing Brief. None of the other principal parties objected to entry of those exhibits. The Examiner entered all of Pereyra's pre-filed exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Appellant Pereyra as follows:

- Exhibit P-241: Excerpt from City of Sammamish stormwater management program web page
- Exhibit P-242: Statutory Warranty Deed, Hovnanian-Heller, Recording # 20010813000808
- Exhibit P-243: Statutory Warranty Deed, Angel-Reynolds, Recording # 9401203051
- Exhibit P-244: Letter, Zagars to Reynolds, May 20, 2015 (Traffic Concurrency Approval)
- Exhibit P-245: Easement, Recording # 6292163

Pursuant to RoP 224(e) and Exhibit A-212, Appellant Friends pre-filed exhibits F-201 through F-230 and provided an index list of those exhibits. Friends filed three additional exhibits when it filed its prehearing brief:

- Exhibit F-231: An annotated site map
- Exhibit F-232: E-mail string between Friends and Kathy Curry of the City, March 20, 2015
- Exhibit F-233: 2005 settlement agreement between Friends et al. and the City

The Examiner assigned Exhibit number F-234 to Friends' Prehearing Brief. None of the other principal parties objected to entry of those exhibits. The Examiner entered all of Friends' pre-filed exhibits into the

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hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Appellant Friends as follows:

Exhibit F-235: Aerial photograph, Tract K

Pursuant to RoP 224(e) and Exhibit A-212, Applicant/Appellant Buchan pre-filed exhibits B-201 through B-264 and provided an index list of those exhibits. The Examiner assigned Exhibit number B-265 to Buchan's Prehearing Brief. Respondent Department objected to entry of Exhibits B-201, B-217, B-221, B-242, and B-247. After entertaining brief oral argument on the objections, the Examiner overruled the objections and entered all of Buchan's pre-filed exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Applicant/Appellant Buchan as follows:

Exhibit B-266:	Vincent J. Geglia Resume
Exhibit B-267:	List of Traffic Impact Analyses prepared by Traffex in City of Sammamish
Exhibit B-268:	Letter, Geglia to Nelson, May 15, 2015
Exhibit B-269:	Letter, Hobbs to Nelson, May 13, 2015
Exhibit B-270:	King County 1993 Road Standards (5 page excerpt); Olympic Foundry, Inc., Thru Curb Frame and Grate schematic
Exhibit B-271:	Options for parking in <i>Chestnut Estates</i> , annotated aerial photograph
Exhibit B-272:	Sunday Creek bridge (NOT ENTERED: objection filed; withdrawn prior to ruling on objection)
Exhibit B-273:	USFS South Snoqualmie bridge (NOT ENTERED: objection filed; withdrawn prior to ruling on objection)
Exhibit B-274:	Revised Sheet P01
Exhibit B-275:	Statutory Warranty Deed, Reynolds to Ralou Farm, LLC, January 16, 2004
Exhibit B-276:	Real Estate Excise Tax Affidavit, Reynolds to Ralou Farm, LLC, January 21, 2004
Exhibit B-277:	Section 5.3.1.1 Design Criteria excerpt, 2009 King County Surface Water Design Manual
Exhibit B-278:	Section 6.2.4 Facility Liners excerpt, 2009 King County Surface Water Design Manual
Exhibit B-279:	Buchan recommended changes to conditions, submitted June 30, 2015

The Deputy City Clerk has the record copy of all exhibit index lists and exhibits.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

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MOTIONS ⁵

Three pre-hearing motions were submitted pursuant to an agreed schedule (See Exhibit A-212.): Respondent City of Sammamish's (City's) Motion to Strike and/or Clarify certain portions of the Friends, Pereyra, and Neighbors SEPA appeals and certain portions of the Neighbors and Buchan PWS appeals (Exhibits A-211 and A-217); Appellant Pereyra's Motion to Dismiss the application for plat alteration (Exhibit A-218); and Appellant Pereyra's Motion to Dismiss the *Chestnut Estates West* plat application (Exhibit A-219). Neighbors and Friends joined in the Pereyra Motions. (Exhibits A-220 and A-221) Responses and replies were submitted. (Exhibits A-224 – A-237)

On February 20, 2015, the Examiner issued four Interlocutory Orders. One Order addressed the City's Motion to Strike and/or Clarify certain portions of the Neighbors and Buchan PWS appeals (City's PWS Motion). That Order dismissed Neighbors' PWS Appeal Issue 3 and Buchan's PWS Appeal Issue IV.B, but denied the City's PWS Motion in all other respects. (Exhibit A-238)

One Order addressed the City's Motion to Strike and/or Clarify certain portions of the Friends, Pereyra, and Neighbors SEPA appeals (City SEPA Motion). That Order dismissed Friends SEPA Appeal Issues 1, 2, 5, 6, 8, 11, and 12, dismissed sentences 3, 4, and 5 in Friends SEPA Appeal Issue 7, dismissed Pereyra SEPA Appeal Issues 2.3, 2.5, 2.6, 2.7, and 2.8, but denied the City's SEPA Motion in all other respects. (Exhibit A-239)

One Order addressed Pereyra's Motion to Dismiss the Application for Plat Alteration (the Plat Alteration Motion). That Order denied the Plat Alteration Motion. (Exhibit A-240)

The final Order addressed Pereyra's Motion to Dismiss the Plat Application (the Plat Application Motion). That Order denied the Plat Application Motion. (Exhibit A-241)

Those four Interlocutory Orders are herewith incorporated herein by reference as if set forth in full with the following exception: Conclusion of Law 5 in the Plat Alteration Motion (Exhibit A-240, p. 6) is no longer believed to accurately state the law and is not incorporated herein.

⁵ During the hearing on May 21, 2015, the City orally moved for dismissal of Friends' SEPA Appeal Issue 10 and Neighbors' SEPA Appeal Issue 2. After accepting brief oral argument, the Examiner orally ruled that the City could present the motion at the conclusion of direct testimony by all parties. The City never presented the motion again.

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FINDINGS OF FACT

A. Preface

- A.1. Buchan proposes to subdivide approximately 85.5 acres into 30 clustered lots plus open space tracts, critical areas tracts, and reserved tracts. The 85.5 acre site includes an open space tract (Tract K), a sensitive areas tract (Tract M), and a reserved tract (Tract N) within the recorded *Chestnut Estates* plat, two of which would be mostly converted into new lots and streets. The 85.5 acres also includes approximately 50 acres acquired contingently on which virtually no development would occur. The site is traversed by Ebright, Pine Lake, and Kanim Creeks.
- A.2. The 85.5 acre site is landlocked: It has no frontage on any open, constructed, or maintained public street nor even on any unopened public right-of-way. Therefore, Buchan proposes to use all or part of two other “Reserve” tracts in *Chestnut Estates* (Tracts D and E) as public right-of-way to convert the present SE 8th Place cul-de-sac in *Chestnut Estates* into a through street to provide access to the proposed 30 lots. The extension of SE 8th Place would cross the Ebright Creek ravine by a bridge that Buchan would construct.

Public Works has approved three Variations from the PWS: To reduce the right-of-way and cross-section width of the new streets within *Chestnut Estates West*; to reduce the cross-section width and composition of the access street as it crosses the bridge; and to allow use of the substandard streets within *Chestnut Estates* as access to the new lots, subject to some improvements but without bringing them up to full City standards.

- A.3. Buchan’s proposal has not been well received by current residents in *Chestnut Estates* or by City residents concerned with the well-being of Ebright and Pine Lake Creeks. In short, the three non-applicant appellants (Friends, Neighbors, and Pereyra): Oppose the use of the *Chestnut Estates* streets to serve as access to the new lots; oppose extension of SE 8th Place in *Chestnut Estates* to serve as access to the new lots; oppose construction of a bridge over the Ebright Creek ravine to access the new lots; oppose the proximity to Ebright Creek of the new lots, a stormwater detention facility on the site, and the proposed bridge abutments; and oppose a proposed cross-basin transfer of stormwater from the Ebright Creek basin to the Pine Lake Creek basin. Applicant/Appellant Buchan opposes most of the conditions which Public Works imposed on the PWS variation to allow Buchan to use the substandard streets within *Chestnut Estates* as access to *Chestnut Estates West*.
- A.4. *Chestnut Estates West* is a complex application with complex regulatory, environmental, and access aspects, and with a complex history. Therefore, the Findings of Fact in this Decision are divided into sections by topic: Setting; History; Development Policies and Regulations; Proposal; Public Works Standards Variations; SEPA; Public Comment; and Staff Recommendations.
- A.5. The Department’s Staff Report contains a lengthy and complete description of the site, the proposal, and the staff review process that has gone before. No need exists to repeat that information here. Therefore, Findings 1 – 77 in Exhibit S-203 are incorporated herein by reference as if set forth in

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full, except to the extent of any conflict with the Findings of Fact contained herein. The Findings of Fact herein will focus on matters having a direct bearing on the outcome of the case.

- A.6. The Findings of Fact in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
- A.7. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Setting

- B.1. The property to be subdivided contains approximately 85.5 acres and consists of six King County Assessor Tax Parcels:

Full Parcel Number	Short Parcel Reference	Common Parcel Name	Acreage
0524069034	Parcel 9034	Lester Parcel	15.67
3225069227	Parcel 9227	Hagen Parcel	7.76
1561750460	Parcel 0460	Tract K	8.29
1561750470	Parcel 0470	Tract M	0.79
1561750480	Parcel 0480	Tract N	2.14
0524069033	Parcel 9033	Buchan/Scindia Parcel	50.88
Total Acreage			85.54

(Exhibits S-203, Finding 1; S-211.b; S-238, Sheet 8 of 9; A-242A; testimony) Tracts K, M, and N are within the recorded *Chestnut Estates* plat. (Exhibit S-238, Sheet 8 of 9) Thus, Buchan needs a plat alteration to use those tracts in a fashion not contemplated by the recorded *Chestnut Estates* plat.

In addition, Tracts D (656 square feet (SF)) and E (3,138 SF) in *Chestnut Estates*, although not within the proposed new plat, are also involved in the plat alteration by virtue of the proposed conversion of the SE 8th Place cul-de-sac into a through street across them to reach the common boundary between *Chestnut Estates* and *Chestnut Estates West*. (Exhibits S-238, Sheets 7 and 9 of 9; S-211.a)

- B.2. This case involves, directly or indirectly, a substantial number of parcels, some of which are encumbered by ingress and egress easements. Exhibits N-201 and S-202 collectively provide the most comprehensive mapping and identification of these parcels and easements.

- A. *Chestnut Estates*. *Chestnut Estates* is an approximate 35 acre single-family residential subdivision created from three acreage parcels. The eastern portion was two ten-acre parcels, the northern one owned by the Beeler/Martinez family (Beeler), the southern one owned by Buchan. The western 15-acre parcel was owned by Beeler. The Ebright Creek ravine basically separates the western 15 acres from the eastern 20 acres. The eastern 20 acres border the west side of 212th Avenue SE. (Exhibits S-212 and S-238)

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In or around 1997, Beeler and Buchan joined forces to propose the subdivision which became *Chestnut Estates*. In accordance with the King County code to which it was vested (the City did not become incorporated until 1999), the property was zoned R-1 (one lot per acre) and clustering was required in new subdivisions such that 50% of the subdivision site was to remain as open space. (Exhibits S-212; P-229; Nelson testimony)

Beeler and Buchan initially proposed that 33 of the allowed lots be clustered on the flatter portion of the site east of the Ebright Creek ravine with the remaining two lots to be located in the south central portion of the area west of the ravine. The concept was that Beeler would retain those two lots for family use and would access them via a private bridge over the Ebright Creek ravine and an easement across the Lester Parcel (which Beeler then owned; see Finding of Fact B.2.B, below). The bridge proposal met with substantial resistance; King County determined that it would require an application for and receipt of a Reasonable Use Exception. (Exhibit S-212; Nelson testimony)

The City of Sammamish became incorporated in 1999. Although still vested to King County regulations, decision making responsibility for the application shifted to the then City Hearing Examiner (Examiner Dufford). (Exhibit S-212; testimony)

By November, 2000, Beeler and Buchan had dropped the bridge proposal and moved the two western lots into the cluster on the eastern 20 acres, the flatter part of the assemblage, with most of the remainder of the property being set aside as critical areas tracts or open space. The area of the two former western lots became “Reserve” Tract N. (Exhibits P-230; S-238)

After years of hearings, court-ordered remand, and reconsideration, *Chestnut Estates* received preliminary approval on December 3, 2004. (Exhibits S-212; S-213; B-228) The “principal road on-site” was required to “be improved as an urban sub-access street” and the remainder of the streets were required to be built as “urban minor access” streets.⁶ (Exhibit S-212, p. 46, Condition 81(5); see also Condition 81(8))

Other than the area devoted to lots, streets, and a stormwater detention pond, Examiner Dufford stated “[t]he rest will be in open space, recreation, and reserve tracts.” (Exhibit S-212, p. 17, Finding of Fact 64) Examiner Dufford concluded that no code provision “would preclude locating a substantial portion of the open space in the landlocked property on the

⁶ Buchan testified that Examiner Dufford required that SE 8th Place be narrowed in order to comply with an Examiner Dufford condition requiring reduction of impervious surfaces. (Nelson testimony) The Examiner can find nothing in any of Examiner Dufford’s three Decisions to support that assertion. Conditions 81(5) and 81(8) in the initial Decision required compliance with the standards as just stated. (Exhibit S-212, pp. 46 and 48) Examiner Dufford’s Decision on Remand added Condition 80(G) regarding runoff reduction, but nothing in that condition suggests or requires reduction of street cross sections. While Examiner Dufford’s Order on Motion for Reconsideration made changes to Condition 80(G), those changes did not mention street width reduction. (Exhibit B-228, p. 2)

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west side of the [Ebright Creek] ravine.” (Exhibit S-212, p. 35, Conclusion of Law 21) Examiner Dufford noted that Tract K “will be adjacent to the wildlife corridor and will preserve some additional wildlife habitat.” (Exhibit S-212, p. 35, Conclusion of Law 22) Condition 81(19), not changed during subsequent proceedings, required establishment of a homeowner’s association “that provides for the ownership and continued maintenance of the recreation areas, open space areas and sensitive area tract(s) or applicant may dedicate recreation tract to City of Sammamish.” (Exhibit S-212, p. 52)

In or around 2007 Buchan became sole owner of the *Chestnut Estates* property and preliminary subdivision rights. (Nelson testimony) The Interlocutory Order on the Plat Alteration Motion (Exhibit A-240, previously incorporated herein by reference) contains a summary of the history of *Chestnut Estates* beginning in 2008. That information will not be repeated.

Buchan began construction of the subdivision’s infrastructure in 2007 – 2008. As built, all but two of the 35 lots were served by a public street system. The main entrance street, SE 8th Street, was constructed 24 feet wide with rolled curbs and sidewalks on both sides, but no planter strips, within a 36 foot wide right-of-way. The street serving the western lots (SE 8th Place) was constructed as a 22 foot wide cul-de-sac with rolled curbs and a sidewalk only on its north side within a 34 foot wide right-of-way. The remaining two lots shared a private access easement at the end of the cul-de-sac. Construction of homes within *Chestnut Estates* is still underway. (Exhibits S-212; S-213; S-238; N-211; N-212; N-213; Nelson testimony)

The plat created a 4.13 acre sensitive area and buffer tract (Tract C) to protect the Ebright Creek ravine; a 4.46 acre wetland protection tract in the middle of the eastern part of the plat (Tract H); a 1.02 acre storm water pond tract (Tract G) abutting the west side of Tract H; a 0.34 acre recreation tract (Tract I) abutting the east side of Tract H; two very small (less than 0.10 acres combined) “Reserved” tracts at the end of the cul-de-sac (Tracts D and E); and 35 lots on the remainder of the eastern portion of the site.⁷ (Exhibit S-238) The 11.2 acres west of Tract C was divided into three tracts: Tract K (8.29 acres of open space), Tract M (0.79 acres of sensitive area protection), and Tract N (2.14 acres “reserved”).⁸ (Exhibit S-238)

When *Chestnut Estates* was recorded, Buchan retained for itself ownership of Tracts D, E, K, M, and N. (Exhibit S-238, p. 3)

⁷ Even though the recorded plat contains 35 lots, the *Chestnut Estates* community consists of 38 single-family residences: Buchan incorporated a two-lot short subdivision and a separate “exception” parcel into the community when it was built. (Nelson testimony)

⁸ Although denoted as “Reserved,” the record in this proceeding indicates that Beeler/Buchan had relied on that acreage to obtain the 35 lot yield on the eastern portion of the site. (Exhibit S-212, p. 34, Conclusion of Law 15)

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Tract K is encumbered by a 15 foot wide Sammamish Plateau Water and Sewer District (SPWSD) sewer and access easement. (See Finding of Fact B.2.M, below.)

- B. Lester Parcel. The approximate 15 acre Lester Parcel abuts the south side of *Chestnut Estates* Tracts C, K, and N. It was owned by Beeler during the processing of *Chestnut Estates*. Buchan purchased it in 2006. The Lester Parcel is also identified as Tax Parcel 9034. (Exhibits S-202; S-211.a, Sheet P03; Nelson testimony)

The Lester Parcel is encumbered by the 15 foot wide SPWSD sewer and access easement. (See Finding of Fact B.2.M, below.)

- C. Pedrizetti Parcel. The 10+/- acre Pedrizetti (aka Ralou Farms) Parcel abuts the south side of the Lester Parcel. The Pedrizetti Parcel is also identified as Tax Parcel 9055. Pedrizetti has no current interest in developing the Pedrizetti Parcel. (Exhibits S-202; S-233; N-201; B-257; testimony)
- D. Heller Parcels. The three 10+/- acre Heller parcels are stacked to the south of the Pedrizetti Parcel. The Heller Parcels are also identified as Tax Parcels 9056, 9057, and 9003. Heller has approached the City about the possibility of developing the Heller Parcels. (Exhibits S-202; N-201; Maxim testimony)

The easterly 30 feet of the Heller and Pedrizetti Parcels are encumbered by a roadway and utility easement (the Heller-Pedrizetti Easement) which runs the entire length of those four parcels. At the northeast corner of the Pedrizetti Parcel, the easement makes a 90° turn to the east and, bordering the south side of King County Short Plat 476105 (See Finding of Fact B.2.J, below.), extends easterly to 212th Avenue SE. The east-west segment of the Heller-Pedrizetti Easement is commonly referred to as SE 12th Street; the north-south segment of the Heller-Pedrizetti Easement is commonly referred to as 208th Avenue SE. The Heller-Pedrizetti Easement is subject to a requirement that “at such time as ... any other municipal government shall accept said roadway as a public road,” the owners will dedicate it. (Exhibits S-202; P-245; F-201)

- E. Scindia Parcels. Scindia, a Washington corporation, at one time owned three parcels comprising 74.31 acres abutting the west side of Tracts K and M in *Chestnut Estates* and the Lester, Pedrizetti, and Heller Parcels. In or around June, 2011, Buchan entered into a Purchase & Sale Agreement (P&SA) with Scindia to purchase those 74.31 acres. (Exhibit B-256 (part only)) In July of that year Buchan and Scindia entered into an Addendum to the P&SA. The Addendum, among other things, required Buchan to pursue a Boundary Line Adjustment (BLA) and reconvey to Scindia two of the adjusted lots (lots 1 and 2; aka BLA Lots B and C). It further allowed Buchan to use Lot 3 (aka BLA Lot A) for lot yield calculation for *Chestnut Estates West* to the extent allowed by the City, but required Buchan to reconvey to Scindia after final plat approval of *Chestnut Estates West* any portion of Lot 3

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which “the City does not require be owned and/or maintained by either a homeowner’s association ... or some other third party entity responsible for maintenance and protection of open space.” (Exhibits S-217, p. 4; P-208)

Buchan sought and obtained approval of the BLA which resulted in a 50.88 acre Lot A (Tax Parcel 9033), 7.07 acre Lot B (Tax Parcel 9117), and 16.36 acre Lot C (Tax Parcel 9118). The BLA was recorded in October, 2011. (Exhibits S-202; P-222; N-201) BLA Lot A is hereinafter referred to as the Buchan/Scindia Parcel.

The northern portion of the Buchan/Scindia Parcel is encumbered by the 15 foot wide SPWSD sewer easement. (See Finding of Fact B.2.M, below.)

- F. Turner Parcel. The Turner Parcel, with frontage on the south end of 200th Avenue SE, contains approximately five acres and is located on the north side of the “elbow” in the Buchan/Scindia Parcel. It is bordered on the east and south by the Buchan/Scindia Parcel. The Turner Parcel is Lot 3 in King County Short Subdivision 976007, recorded in June, 1977. The Turner Parcel is also identified as Tax Parcel 9093. (Exhibits S-202; N-201; P-239; F-219; Turner testimony)
- G. Reynolds Parcel. The Reynolds Parcel also contains about five acres. It is one parcel removed to the north of the Turner Parcel, located on the east side of 200th Avenue SE at the current terminus of the SE 8th Street right-of-way providing access to East Lake Sammamish Parkway (ELSP).⁹ The Reynolds Parcel is Lot 1 in King County Short Subdivision 976007. (Exhibits N-201, P-239; F-219)

The Reynolds Parcel is encumbered by several easements. Most of the north 30 feet of the Parcel is encumbered by an ingress, egress, and utility easement (Easement 5516918), essentially an easterly extension of SE 8th Street. Reynolds historically has opposed opening SE 8th Street across his property. The 15 foot wide SPWSD sanitary sewer and access easement (See Finding of Fact B.2.M, below.) cuts across the northeast corner of the Reynolds Parcel. A 30 foot wide ingress and egress easement benefitting BLA Lots A, B, and C overlies the sewer easement. Buchan has obtained a construction easement from Reynolds along the same alignment. (Exhibits S-202; S-232; B-258 (part); Nelson testimony)

Reynolds is in the process of short subdividing his parcel. (Exhibit P-244; Maxim testimony)

⁹ Unfortunately (at least from the perspective of ease of street name reference), two SE 8th Streets are involved in this case: The one to the west of the Buchan/Scindia Parcel that abuts the Reynolds Parcel and provides access west to the ELSP and the one at the east end of *Chestnut Estates* providing access to 212th Avenue SE. They are not connected.

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- H. Hagen Parcel. The approximate eight (8) acre Hagen Parcel is the northerly acreage in the *Chestnut Estates West* application. It is also identified as Tax Parcel 9227. (Exhibits S-202; S-211.a, Sheet P02) Buchan purchased the Hagen Parcel in 2011. (Nelson testimony)
 - I. *Greenbrier*. *Greenbrier* is a 58-lot, single-family residential subdivision which borders the north side of *Chestnut Estates*. As a result of problems with *Greenbrier's* stormwater detention facilities, they have yet to be accepted by the City. (Exhibit B-235; testimony)
 - J. King County Short Plat 476105. This four-lot short subdivision abuts the entire south boundary of *Chestnut Estates*. It was recorded in 1976. The south 30 feet of the easterly three lots in the short subdivision is encumbered by an ingress, egress, and utility easement that benefits the four short subdivision lots. The easement does not encumber the fourth lot, which abuts most of the east side of the Lester Parcel. That easement is subject to a condition requiring the owners to dedicate it for public right-of-way use when demanded by the local government. No road has ever been built within that easement. Actual access for those four lots appears to be over the east-west segment of the Heller-Pedrizetti Easement (SE 12th Street). (Exhibit S-202; Maxim testimony)
 - K. *The Crossings at Pine Lake*. *The Crossings at Pine Lake* is a single-family residential subdivision, located just east of Creekside Elementary School, which is served by SE 16th Street from 212th Avenue SE. The public street system in the subdivision terminates at its northwest corner with a half-street section abutting the north property line. (Exhibits N-201; S-214; S-216.b, p. 33; F-201; Maxim testimony)
 - L. Ebright Creek Park. Ebright Creek Park is a City park of 10+ acres located on the west side of 212th Avenue SE approximately mid-way between *Chestnut Estates* and *The Crossings at Pine Lake*. (Exhibit S-214)
 - M. A 15 foot wide sanitary sewer and access easement benefitting the SPWSD extends from SE 8th Street across the northeast corner of the Reynolds Parcel, meanders upslope across the Buchan/Scindia Parcel, and then makes a sharp turn to the south across Tract K and the Lester Parcel. The SPWSD maintains a sewer trunk line within that easement. (Exhibit S-202; testimony)
- B.3. The six parcels which comprise the *Chestnut Estates West* application lie on a relatively broad finger ridge which trends northwesterly along the western edge of the Sammamish Plateau. The eastern edge of the site drops steeply into the Ebright Creek ravine; the western portion of the site (the Buchan/Scindia Parcel) drops nearly as steeply in a very dissected, irregular fashion toward the relatively narrow plain which borders the east side of Lake Sammamish. The Pine Lake Creek and Kanim Creek ravines cross the Buchan/Scindia Parcel. (Exhibit S-211.a, Sheet P11)

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The high point of the site is at elevation 376 at a point on the south property line approximately 420 feet west of the Lester Parcel's southeast corner. (Exhibit S-211.a, Sheet P03) The low point is most likely along the west edge of the Buchan/Scindia Parcel where Kanim Creek exits the property.¹⁰ (Exhibit S-211.a, Sheet P11; and testimony)

- B.4. The central portion of the Hagen and Lester Parcels and Tracts K, M, and N, being on the spine of the ridge, exhibit relatively mild slopes towards the north, west, and east. From south to north, the site drops about 44 feet over a distance of about 1,400 feet – a 3% slope. Increasing slope gradients are encountered both to the east and west the closer one gets to the Ebright Creek ravine and the western edge of the parcels. (Exhibit S-211.a, Sheet P01)

Slopes in the portion of the Ebright Creek ravine which traverses the *Chestnut Estates West* site generally exceed 40%. See Finding of Fact B.5.A, below, for a detailed description of the Ebright Creek ravine.

Slopes along the western portion of the Hagen and Lester Parcels and Tracts K and M are generally not as steep. In that portion of the site, the steepest slopes occur in the western tail of the Hagen Parcel: A 90 foot drop over 200 feet for a slope of 45%. Slopes elsewhere along that area are on the order of 20% or less. (Exhibit S-211.a, Sheet P01)

The Buchan/Scindia Parcel exhibits an expansive area of very steep, irregular slopes. Slopes of 30% or greater are common throughout the parcel; slopes of 40% or more are not uncommon on that parcel. The hillside immediately west of the Lester Parcel drops over 160 feet at a typical slope of around 40%. Only very small portions of the Buchan/Scindia Parcel exhibit slopes of less than 15%. (Exhibit S-211.a, Sheets P08 and P11)

- B.5. The site is crossed by three creeks: Ebright Creek, Pine Lake Creek, and Kanim Creek. The City has declared Ebright and Pine Lake Creeks to be “streams of special significance”. [SMC 21A.15.1240(1)(b)(ii) and (iii)]

- A. Ebright Creek is an approximately 2.25 mile long stream which originates in a series of wetlands located to the east of 212th Avenue SE, southeast of the *Chestnut Estates West* site. Ebright Creek flows generally northwest until turning west to empty into Lake Sammamish. Ebright Creek crosses the Lester Parcel, *Chestnut Estates*, and the Hagen Parcel from south to north. (Exhibit S-211.a, Sheet P11)

¹⁰

It is not realistically possible to determine elevations within most of the Buchan/Scindia Parcel from Sheet P11 as the contours are tightly packed and not labeled; the contour interval is not even stated on the sheet.

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Ebright Creek passes through relatively gentle terrain from its headwaters at RM 2.25 downstream to about RM 0.95.¹¹ At that point it enters a ravine which deepens as the stream flows north. It leaves the ravine at about RM 0.30 and flows westerly over relatively flat terrain until reaching the lake shoreline. Bed and bank erosion are experienced in the upper and mid-reaches of the creek. (Exhibits P-201, pp. 76 and 77; P-227, pp. C20 – C22; and F-201)

The Ebright Creek ravine varies in depth and steepness of its side slopes as it passes through the *Chestnut Estates West* site; the lip of the ravine is generally higher on the west side of the ravine. Where the ravine enters the *Chestnut Estates West* site near the southeast corner of the Lester Parcel, the west side of the ravine is about 30 feet deep with a 67% slope; the east side of the ravine at that location is about 26 feet deep with a 58% slope. (Calculated from S-211.a, Sheet P03) Near the north end of the Lester Parcel (opposite the SE 8th Place cul-de-sac in *Chestnut Estates*) the west side of the ravine is about 50 feet deep with a 71% slope; the east side of the ravine at that location is about 48 feet deep with an 87% slope. (Calculated from S-211.a, Sheet P03) Near the north end of the Hagen Parcel the west side of the ravine is about 80 feet deep with a 66% slope; the east side of the ravine at that location is about 74 feet deep with a 57% slope. (Calculated from S-211.a, Sheet P02)

Ebright Creek is one of the major tributaries to Lake Sammamish from the Sammamish Plateau. Ebright Creek is a Type F (perennial, fish-bearing) stream.¹² It is home to Coho, sockeye, and Kokanee salmon and to resident cutthroat trout. (Exhibits S-207, pp. 656 – 658; S-231; P-201, p. 76; P-231; F-210; F-211; B-237)

Examiner Dufford provided an extensive description of Ebright Creek and its resources which is incorporated herein by reference as if set forth in full. (Exhibit S-212, p. 10, Finding of Fact 15 and pp. 14 – 16, Findings of Fact 39 – 55)

- B. Pine Lake Creek is an approximately three mile long stream which originates at Pine Lake, south and east of the *Chestnut Estates West* site. Like Ebright Creek, it flows generally northwest before emptying into Lake Sammamish. Also like Ebright Creek, it passes through a ravine on its path off the Plateau. Pine Lake Creek flows from south to northwest across the “pinched” narrow portion of the Buchan/Scindia Parcel. Upstream of the Buchan/Scindia Parcel, Pine Lake Creek flows through a 90 – 100 foot deep ravine with side slopes approaching 100%. (Exhibits P-201; P-227, pp. C-23 – C-27; S-211.a, Sheet P11; F-201)

¹¹ Distances along a linear water course are usually expressed in River Miles (RM), beginning at RM 0.0 at the mouth and going upstream to the headwaters.

¹² There is some evidence in the record that a portion of the reach through the *Chestnut Estates West* site flows underground, at least at some times of the year. (Exhibit S-215.b, p. 18; testimony)

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Pine Lake Creek is also one of the major tributaries to Lake Sammamish from the Plateau. Pine Lake Creek is a Type F (perennial, fish-bearing) stream. It is accessible to anadromous fish, including Kokanee salmon, to approximately RM 0.60. (Exhibits S-207, pp. 656 – 658; P-201, pp. 77 and 78)

- C. Kanim Creek, a tributary to Pine Lake Creek, is a lesser stream. It is used by anadromous fish to approximately RM 1.80. Kanim Creek crosses the southwest portion of the Buchan/Scindia Parcel in a steep-sided ravine. (Exhibits S-211.a, Sheet P11; P-201, p. 78; P-227, pp. C-27 – C-29; F-201)

- B.6. Kokanee are native to the Lake Sammamish and Lake Washington watersheds, but are currently only found in Lake Sammamish and a few of its tributaries, including Ebright and Pine Lake Creeks. (Exhibits S-207, pp. 656 – 658; F-208; F-209)

Extensive work is underway to reverse the declining numbers of Kokanee in the Lake Sammamish system. This effort is spearheaded by the Kokanee Work Group (KWG), a consortium of local governments (including Sammamish), state agencies, Indian tribes, community groups, and fisheries advocates. The major emphasis is on restoring and preserving spawning habitat in tributary streams. Ebright Creek is one of the four primary spawning streams for Kokanee. Two restoration projects have been identified upstream of the *Chestnut Estates West* site: Replacing the culvert at SE 12th Street and “preventing or minimizing bank stabilization and upstream slopes”. (Exhibits S-207, pp. 656 – 658; F-210, quote from p. 10; F-211, pp. 26 and 27)

Pine Lake Creek is also one of the four primary Kokanee spawning streams, although currently used less than Ebright Creek. The reach above the ELSP historically supported Kokanee spawning. Habitat protection and improvement is required to restore greater spawning numbers. (Exhibit F-210; F-211, pp. 26 and 27)

- B.7. The *Chestnut Estates West* site is presently undeveloped and densely forested. The two exceptions to that characterization are the SPWSD easement, which has no tree cover, and the westerly end of the Hagen Parcel, which is only sparsely wooded. (Exhibits S-214; S-215.b, p. 33)
- B.8. Site soils are predominantly of the Alderwood, Kitsap, and Ragnar series. Site geology is primarily glacial till: A shallow layer of weathered till overlying compact, unweathered till. Infiltration of collected stormwater is not feasible due to the slow infiltration rate of unweathered till. (Exhibit S-218.a)
- B.9. The *Chestnut Estates West* site contains a number of wetlands, most of which have been delineated. The exception to that statement is the central portion of the Buchan/Scindia Parcel (generally in the area of Proposed Tracts X.a and X.b) where, at Buchan’s direction, its consultants did not perform a detailed delineation. No wetlands are on the part of the site where lots are proposed. (Exhibit S-215.b; testimony)

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C. History

- C.1. On September 26, 2011, Buchan held a pre-application meeting with City staff to discuss the *Chestnut Estates West* proposal. (Exhibit B-248) Buchan submitted an application for a 29-lot subdivision on December 9, 2011, and amended it to a 30-lot proposal on or about December 15, 2011. (Exhibits B-259; B-246)
- C.2. The relationship between Buchan and City staff during the review of *Chestnut Estates West* was fraught with controversy and tension. Buchan described the process as going on for years “with various degrees of intensity”. (Nelson testimony)

Beginning with its earliest review comment letter on the project, City staff sought to convince Buchan to shift the proposed lots to the west (a 150 foot shift was suggested) to better protect the sensitive Ebright Creek corridor and to better balance environmental protection of the three streams which crossed the site. (Exhibit P-211) Buchan rejected that initial request. (Exhibit B-207) Similar requests and responses occurred in 2013. (Exhibits P-212; B-241 (May 10, 2013 document); P-213)

In January, 2014, Buchan suggested that instead of shifting the lots to the west, all drainage from impervious surfaces that would normally be collected, detained, and discharged into Ebright Creek be “transferred” into the Pine Lake Creek basin (a “cross-basin transfer”). (Exhibit B-241 (January 30, 2014 document) City staff basically abandoned the lot shift effort and accepted the cross-basin transfer in lieu of the shift in or around May, 2014. (Exhibit B-241 (May 30, 2014 document)

- C.3. City staff also accepted Buchan’s request to reduce the Ebright Creek ravine buffer from 50 to 15 feet. (Exhibits S-203, p. 9, Finding 46; S-218.a; S-218.b; S-218.c)

D. Development Policies and Regulations

- D.1. The *Chestnut Estates West* site is located within an area designated as “R-1,” single-family residential at one dwelling unit per acre (clustered), on the City’s adopted Comprehensive Plan. (Exhibit S-223) The Comprehensive Plan designates wildlife corridors along Ebright and Pine Lake Creeks. (Exhibit S-216) The related Parks Plan identifies a “Commons Corridor” trail alignment which flows generally from the East Lake Sammamish Trail through the center of the City to the East Sammamish Greenway Corridor along the east edge of the City. The “Commons Corridor” generally passes through the area of *Chestnut Estates West*. [Comprehensive Plan, Figures 7.1 and 7.3; Park Plan, p. 51; see also Exhibit S-225] The Park Plan also depicts a “shared use soft surface” trail between Ebright Creek Park, located along 212th Avenue SE to the southeast of *Chestnut Estates West*, and the SPWSD sewer easement traversing the slope to SE 8th Street. That trail route passes directly through the *Chestnut Estates West* site. [Park Plan, Fig. E.1]
- D.2. The *Chestnut Estates West* site is zoned R-1. (Exhibit S-253) Subdivisions in the R-1 zone must follow certain special requirements:

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All subdivisions and short subdivisions in the R-1 zone shall be required to be clustered away from critical areas or the axis of designated corridors such as urban separators or the wildlife habitat network to the extent possible and a permanent open space tract that includes at least 50 percent of the site shall be created. Open space tracts shall meet the provisions of SMC 21A.30.030.

[SMC 21A.25.030(13) ¹³]

(1) Any open space resulting from lot clustering shall not be altered or disturbed except as specified on recorded documents creating the open space. Such open spaces may be retained under ownership by the subdivider, conveyed to residents of the development, or conveyed to a third party. When access to the open space is provided, the access shall be located in a separate tract; and

(2) In the R-1 zone, open space tracts created by clustering required by SMC 21A.25.030 shall be located and configured to create urban separators and greenbelts as required by the interim comprehensive plan, to connect and increase protective buffers for environmentally sensitive areas as defined in SMC 21A.15.1065, to connect and protect wildlife habitat corridors designated by the interim comprehensive plan, and to connect existing or planned public parks or trails. The City may require open space tracts created under this subsection to be dedicated to the City, an appropriate managing public agency, or qualifying private entity such as a nature conservancy.

[SMC 21A.30.030, emphasis added ¹⁴]

D.3. The *Chestnut Estates West* application is vested to the version of Chapter 21A.50 SMC, Environmentally Critical Areas (ECA), that was in effect in 2011. ¹⁵ Those portions of Chapter 21A.50 SMC which are particularly relevant to this Decision are Sections .135 (impact avoidance), .190 (critical area tracts), .210 (building setbacks), .220 (erosion hazards), .225 (erosion hazards near sensitive water bodies), .260 (landslide hazards), .327 (wildlife habitat corridors), and .330 - .350 (streams).

D.4. The ECA regulations require developers to “consider[] and subsequently ... implement the following sequential measures, which appear in order of preference, to avoid, minimize, and mitigate impacts to environmentally critical areas and associated buffers”. [SMC 21A.50.135(1)]

¹³ Last amended in 2010, prior to the *Chestnut Estates West* vesting date.

¹⁴ Not amended since adoption in 1999.

¹⁵ Exhibit S-240 is a copy of Ordinance No. O2013-350 which, *inter alia*, significantly amended Chapter 21A.50 SMC. Exhibit S-240a is a “clean” version of Chapter 21A.50 SMC as it existed in 2011. All citations to Chapter 21A.50 SMC in this Decision, unless otherwise expressly noted, are to the 2011 version of the regulation.

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The first preferred step is avoidance, “by not taking a certain action, or redesigning the proposal to eliminate the impact.” [SMC 21A.50.135(1)(a)]

In determining the extent to which the proposal should be redesigned to avoid the impact, the [decision maker] may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified modifications to the proposal.

[*Ibid.*]

After avoidance comes minimization by limiting the impact [21A.50.135(1)(b)], restoration of a disturbed area [21A.50.135(1)(c)], minimization through plantings, etc. [21A.50.135(1)(d)], reducing by maintenance activities [21A.50.135(1)(e)], compensation by enhancement [21A.50.135(1)(f)], and, lastly, monitoring required mitigation with remedial action as necessary [21A.50.135(1)(g)].

- D.5. Critical areas and their required buffers must be protected by being placed in one or more critical area tracts. The existence of those tracts must be recorded against the title of all affected parcels. [SMC 21A.50.190(1)] Ownership of critical area tracts is to be held “in an undivided interest by each owner of a building lot within the development”, or by “an incorporated homeowners’ association”, or “other legal entity” that can be responsible for the tract’s preservation, “or dedicated to the City of Sammamish, at the City’s discretion.” [SMC 21A.50.190(2), emphasis added]

“[B]uildings and other structures shall be set back a distance of 15 feet from the edges of a critical area buffer.” [SMC 21A.50.210]

- D.6. “Erosion hazard areas,” by definition, are “areas in the City underlain by soils that are subject to severe erosion when disturbed.” [SMC 21A.15.415] The definition includes a list of eight soil types which, when they occur on slopes of 15% or steeper are, by definition, considered to constitute erosion hazard areas. Among the eight soil classes are Alderwood, Kitsap, and Ragnar soils.

Development work that would disturb an erosion hazard area is only allowed between May 1 and September 30 each year, with a few exceptions. [SMC 21A.50.220(1)] Temporary erosion control plans are required before the start of work. [SMC 21A.50.220(2)] Subdivisions “on sites with erosion hazard areas” must retain existing vegetation on all building lots until building permits have been obtained or restore removed vegetation [SMC 21A.50.220(3)(a) and (b)] Clearing of lots is not allowed unless “part of a large-scale grading plan”. [SMC 21A.50.220(c)] If erosion from a development site “poses a significant risk of damage to downstream receiving waters,” the developer “shall be required to provide regular monitoring of surface water discharge from the site.” [SMC 21A.50.220(4)]

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City maps identify the Ebright, Pine Lake, and Kanim Creek ravines as erosion hazard areas. (Exhibit F-222) Given the site's soil types, all portions of the site exhibiting slopes of 15% or more are, by definition, erosion hazard areas.

- D.7. The requirements of the Erosion Hazards Near Sensitive Water Bodies – Special District Overlay (EHNSWB Overlay) “shall be applied, in addition to all applicable requirements of [Chapter 21A.50 SMC], to development proposals located within the [designated EHNSWB Overlay]”. [SMC 21A.50.225(3)] (The EHNSWB Overlay used to be known as the SO-190 Overlay.)

The Department is required to “maintain a map of the boundaries of the [EHNSWB Overlay] district.” [SMC 21A.50.225(2)] All of the *Chestnut Estates West* site except for the western end of the Buchan/Scindia parcel lies within the designated EHNSWB overlay zone. (Exhibits S-219; F-201; B-234)

The EHNSWB Overlay requires establishment of a “no-disturbance area ... on the sloped portion” of any site within the EHNSWB Overlay district. The “no-disturbance area” is to extend from “the first obvious break in slope” at the top to the lower extent of areas designated as erosion or landslide hazard areas. Precise location of “no-disturbance areas” requires field verification. [SMC 21A.50.225(3)(a)] The extent of the no-disturbance zone on the *Chestnut Estates West* site and immediately surrounding area is generally depicted on Exhibit S-211.a at Sheet P13.¹⁶

“Land clearing or development” is not allowed within the “no-disturbance area” except for landscaping on existing residential lots, utility corridors using existing rights-of-way to serve existing development, construction of utility corridors identified within an adopted utility comprehensive plan, “streets providing sole access to buildable property”, or facilities within public parks. [SMC 21A.50.225(3)(b)(i)] When clearing or development is allowed within a “no-disturbance area” under one or more of the preceding situations, a report must be prepared to show that the work will not “subject the area to risk of landslide or erosion and that the purpose of the no-disturbance area is not compromised in any way”, clearing is to be mitigated and monitored, disturbance must be minimized, and clearing must be otherwise consistent with Chapter 21A.50 SMC. [SMC 21A.50.225(3)(b)(ii)]

Where land to be subdivided drains naturally to/through a “no-disturbance area,” infiltration of development runoff is required “unless this requirement precludes a proposed subdivision ... from achieving 75 percent of the maximum net density as identified in Chapter 21A.25 SMC.” [SMC 21A.50.225(3)(c)] In that case, the development must retain runoff on site and transport it to a “central drainage system.” [*Ibid.*] In order of preference: all runoff must be infiltrated if the site is

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Since, by definition, the “no-disturbance zone” starts at the very top of the slope and extends down to the very bottom of the slope, areas within that range which flatten out somewhat would still be within the “no-disturbance zone.” Exhibit S-211.a, Sheet P12, actually depicts slopes exceeding 15%. The “holes” or gaps in that depiction may represent areas of less than 15% slope on the hillside, but those “holes” are still “no-disturbance zones.”

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underlain by granular soils; downspouts must be infiltrated if possible and all other runoff must be “detained on site using the most restrictive flow control standard”; or detain and release flows without “creat[ing] point discharges in or upstream of the no-disturbance or landslide hazard areas.” [SMC 21A.50.225(3)(c)(i) – (iii)]

Special requirements apply to proposed subdivisions where runoff from events up to the 100-year storm cannot be infiltrated on site. First, “at least 25 percent shall remain undisturbed and set aside in an open space tract The open space tract shall be located adjacent to any required critical area tracts and shall be designed to maximize the amount of separation between the critical area and the proposed development.” [SMC 21A.50.225(3)(e), emphasis added] Second, “no more than 35 percent of the gross site area shall be covered by impervious surfaces.” [SMC 21A.50.225(3)(f)]

The above standards may be modified if a study “demonstrates that the proposed development substantially increases water quality by showing” that “[w]ater quality on site is improved”, that downstream channels will not be subject “to increased risk of landslide or erosion; and” that the project “will not subject the nearest sensitive water body to additional erosion hazards.” [SMC 21A.50.225(3)(h)]

- D.8. “Landslide hazard areas” are, by definition, “those areas ... subject to risk of mass movement” [SMC 21A.15.680] Any area which exhibits slopes steeper than 15%, which has a hillside “intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment”, and which has springs or groundwater seepage” is a landslide hazard area. [*Ibid.*] Also, all areas with slopes of 40% or steeper for at least a vertical height of 10 feet (unless composed of solid rock or legally man-made) are by definition landslide hazard areas. [*Ibid.*] The extent of slopes exceeding 15% on the *Chestnut Estates West* site and immediately surrounding area is depicted on Exhibit S-211.a at Sheet P12. The extent of slopes exceeding 40% on the *Chestnut Estates West* site and immediately surrounding area is depicted on Exhibit S-211.a at Sheet P11.

A 50 foot wide buffer must be established around landslide hazard areas. [SMC 21A.50.260(1)] “The buffer may be reduced to a minimum of 15 feet” if “the City determines that the reduction will adequately protect the proposed development and other properties, the critical area and other critical areas off-site.” [SMC 21A.50.260(2)] Generally speaking, no vegetation can be removed from a landslide hazard area and its associated buffer. [SMC 21A.50.260(3)] Surface water conveyances, trails, and utility corridors may be installed through areas of greater than 40% slope. [SMC 21A.50.260(5)(a)] Alteration of slopes of less than 40% may be allowed if slope stability will not be decreased and appropriate mitigation is employed to protect from landslides. [SMC 21A.50.260(5)(b)] Developments that will create more than 2,000 SF of impervious surface must attempt to infiltrate runoff, using much the same preference sequence as applies to EHNSWB Overlay areas. [SMC 21A.50.260(6)]

City maps identify the Ebright, Pine Lake, and Kanim Creek ravines as Landslide Hazard Areas. (Exhibit F-222)

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- D.9. New subdivisions are required to preserve wildlife habitat corridors through either “a contiguous permanent open space tract” or conservation easements on individual lots. [SMC 21A.50.327(1)(a)] The corridor shall maintain “a width, wherever possible, of 300 feet.” [SMC 21A.50.327(2)(b)] The corridor should connect isolated critical areas on the site and connect with wildlife habitat corridors on adjacent parcels. [SMC 21A.50.327(3)] A management plan for the corridor must be prepared (unless the corridor is established through a conservation easement) and must be recorded with homeowners’ association documents. [SMC 21A.50.327(5)] Clearing within the corridor is generally not allowed. [SMC 21A.50.327(6)]
- D.10. Type F streams must be protected by a 150 foot buffer. [SMC 21A.50.330(1)] Buffer averaging may be allowed. [SMC 21A.50.330(4)] “Increased buffer widths shall be required by the City when necessary to protect streams, critical drainage areas, critical fish and wildlife habitat, landslide or erosion hazard areas contiguous to streams, ...” [SMC 21A.50.330(5)] New stream crossings may be allowed through a stream buffer if it is shown that “their implementation will pose no harm to the stream habitat ...”. [SMC 21A.50.340(7)(a)]
- D.11. “Trail easements, or tracts, of sufficient width and length consistent with the dimensional standards as defined below, shall be provided by all developments, except for single detached residential permits, when such developments are located on properties that include trail corridors shown within an adopted City parks or trails plan.” [21A.30.200] “The width of the ... trail corridor ... should be designed consistent with AASHTO standards for public multi-use paved trails ... and with U.S. Forest Service standards ... if unpaved. Cleared areas shall be the minimum necessary consistent with the standards and requirements in the SMC.” [SMC 21A.30.210(3)]

E. Proposal

- E.1. Buchan has calculated the requested lot yield by using the standard SMC formula with an extra subtraction of an area equal to the area of Tracts K and M in *Chestnut Estates* and adding in the bonus allowed by code for extra tree retention. (Exhibit S-211.b)
- E.2. The plat layout envisions a street extending southwest off the *Chestnut Estates* cul-de-sac which would cross the Ebright Creek ravine on a bridge. The interior street system would essentially form a loop more or less centered on the ridge through the site. A stub would be provided to the Pedrizetti Parcel near the center of that parcel’s north boundary. At the City’s request, a 60 foot wide right-of-way would be created over the SPWSD sewer easement to the west edge of the Buchan/Scindia Parcel. Storm water runoff from the western development area would be routed to a Detention Pond located just east of the SPWSD easement (Tract L). Storm water runoff from the eastern developed area would be routed to a detention pond located at the northeast corner of the developed area. After detention, that water would be routed to the pond in Tract L. The discharge from both ponds would then flow through a surface mounted pipe to a dispersion area in the Pine Lake Creek basin located some 160 feet lower on the western slope of the Buchan/Scindia Parcel. “Replacement” open space for *Chestnut Estates*’ Tract K would be provided in three separate areas in the northern portion of the

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developed area. Required tree retention would occur primarily within the Buchan/Scindia Parcel. Buchan plans to leave trees on the rear lots of the central group of lots, but does not plan to protect those trees under the tree retention requirements. Substantial cut and fill is proposed over most of the developed area, removing most of the weathered till in the development area and with fill depths of 10 – 12 feet near the Ebright Creek ravine reduced-width buffer. (Exhibits S-211.a, Sheet P06; S-228; S-229)

F. Public Works Standards Variations

F.1. On December 5, 2014, the City Engineer ¹⁷ approved three Variations from the PWS for *Chestnut Estates West*. ¹⁸ The first Variation allowed SE 8th Place and SE 8th Street in *Chestnut Estates* to serve as access to *Chestnut Estates West* although they do not meet current City standards; the second Variation reduced the standard local street section for the Ebright Creek bridge crossing; and the third Variation reduced the standard local street section for all interior streets in *Chestnut Estates West*. (Exhibit A-206.2)

Neighbors appealed approval of the first Variation; Buchan appealed the conditions imposed on approval of the first Variation. (Exhibits A-203 and A-206, respectively) Neither of the other two Variations were challenged. Therefore, this Decision will focus solely on the first Variation which will be referred to hereinafter as the SE 8th Variation.

F.2. The introductory page to the PWS includes the following paragraph:

We attempt to achieve maximum uniformity of planning and engineering and construction practices within the City of Sammamish and as applicable as outlined above. These are minimum standards and are intended to assist, but not to substitute for competent work by engineering and design professionals. Special conditions or environmental constraints may require more stringent design than would normally be required under these Standards. It is not the intent of the City to unreasonably limit any innovative effort which could result in a superior project design. A proposed design, which is different from these Public Works Standards, will be evaluated on the basis that the proposed design will produce a comparable or superior result, and in every way adequate for the user, the City, and the public.

[PWS, Introduction page, underlining in original]

F.3. The PWS require that substandard streets from which a new development will take access be brought up to current standards.

¹⁷ A Public Works staffer spoke on behalf of the City Engineer in these proceedings.

¹⁸ The Variation process included multiple requests from Buchan and approvals and withdrawals by Public Works in the prior year. (Exhibits B-222c, B-217, N-209, B-220, B-221, and B-222a, listed chronologically) That historical background is irrelevant and will not be detailed herein.

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All new developments which obtain access from substandard public or private streets shall be required to construct all necessary street improvements to bring any street up to current City standards prior to final approval. Such improvements shall be made from the point of access to the closest intersection of a public street that meets current standards. Street improvements may include but are not limited to curb and gutter, sidewalk, street storm drainage, street lighting, traffic signal modification, relocation or installation, utility relocation, and street widening all per these standards.

[PWS.15.100]

F.4. The PWS includes a classification system for all City streets.

“Streets and highways are most effectively classified by their function, according to the character of the service they are intended to provide.” [PWS.15.050.A, ¶ 1] Section PWS.15.050.A lists a number of City arterials “to assist the developer in determining the classification of a particular street. ... If a street or portion of a street is not listed, ... the Public Works Department [shall] determine the correct street classification.” [PWS.15.050.A, ¶ 6]

“Principal arterials provide service for major traffic movements within the City. ... The design year ADT [Average Daily Traffic] is approximately 5,000 to 30,000 vehicles per day or more. ...” [PWS.15.050.B.1] 228th Avenue SE is classified as a Principal Arterial. [PWS.15.050.A] 228th Avenue SE in the vicinity of *Kampp* is a four-lane street with a center median, turn pockets at major intersections, and curb, gutter and sidewalk on both sides. The posted speed limit is 40 mph. (Exhibit S-14a {p. 6})

“Minor arterials interconnect with and augment the principal arterial system. Minor arterials connect principal arterials to collector arterials and small generators. ... The design year ADT [Average Daily Traffic] is approximately 2,500 to 15,000.” [PWS.15.050.B.2]

“Collector arterials distribute trips from principal and minor arterials to the ultimate destination ... Design year ADT [Average Daily Traffic] is approximately 2,500 to 15,000. ...” [PWS.15.050.B.3] Both SE 20th and SE 24th Streets are classified as Collector Arterials. [PWS.15.050.A] SE 20th Street is a two-lane street west of 228th Avenue SE with curbs, gutters, and bike lanes on both sides and a sidewalk on the north side. The posted speed limit is 30 mph. SE 20th Street presently ends at the west side of 228th Avenue SE. (Exhibit S-14a {p. 6})

“The local street system consists of local access and minor access streets.” [PWS.15.050.B.4] “Local feeder streets serve as primary access to the development from the adjacent street system. They distribute traffic from local or minor streets in residential neighborhoods and channel it to the arterial system. ... Typical ADT may range from about 400 to 1,500. Abutting residences are oriented away

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from the feeder.” [PWS.15.050.B.4.a] “[Minor access streets] are typically internal subdivision streets providing circulation within the subdivision or between subdivisions. Service to through-traffic is deliberately discouraged. Minor access streets can never be a higher classification. Typical ADT may range from about 300 to 1,000.” [PWS.15.050.B.4.b]

- F.5. The PWS’s design standards for “feeder” and “minor access” streets are nearly identical (the differences are immaterial to this case ¹⁹): A 60 foot right-of-way containing two 10 foot travel lanes and an eight foot parking lane, curb and gutter, five foot planter strip, and eight foot sidewalk on each side of the street. [PWS.15.050 { Table 1 } and PWS Fig. 01-05 (both as amended by Ordinance No. O2005-191)] The adopted standard calls for 6” vertical concrete curb and gutters. [PWS.15.270 and PWS.15, Drawing 2-14]
- F.6. Neither SE 8th Place nor SE 8th Street in *Chestnut Estates* meet the standards for feeder or minor access streets: The right-of-way widths are substandard, there are no parking lanes on either side of either street, they have a rolled curb and gutter instead of a vertical curb and gutter, they have no planter strip on either side, and SE 8th Place has a five foot sidewalk on only its north side. (Exhibits N-211; N-212.a; N-213)
- F.7. The City Engineer may approve Variations from the PWS.

Variations to these Standards may be authorized by the City engineer only upon submittal and approval of information, plans, and/or design data by the engineer which indicates that the requested variation is based upon sound engineering judgment, and that requirements for safety, environmental considerations, function, appearance, and maintainability are fully met and the variation is in the best interest of the public. All variations must be approved by the City engineer in writing prior to the start of construction.

[PWS.10.170] The SE 8th Variation was reviewed and approved by the City Engineer under this authority. (Exhibit A-206.2)

- F.8. The City Engineer attached conditions to approval of the SE 8th Variation: All rolled curb was to be replaced with vertical curb and gutter; both sides of the streets were to be provided with sidewalks; all driveway aprons had to be modified to meet ADA standards; and existing street trees had to be maintained or replaced. (Exhibit A-206.2, p. 2)
- F.9. Buchan objected to the conditions and appealed. Buchan argued that the rolled curbs need not be replaced since any parking on the sidewalks that would be deterred by vertical curbs would not be by *Chestnut Estates West* residents, that additional sidewalks would not be used by *Chestnut Estates West* residents, that rolled curb between the pavement and the sidewalk could not be replaced with

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The primary differences are in intersection curb radii and minimum centerline radius. [PWS.15.050, Table 1]

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vertical curb because of geometric differences, that the existing driveways could not be reconstructed to meet ADA standards, and that Buchan had no opportunity to discuss the conditions with the City Engineer prior to issuance of the SE 8th Variation. (Exhibit A-206)

- F.10. As a result of Buchan's appeal, the Staff Report stated that "the City ... concludes that the [SE 8th Variation ... should be modified". (Exhibit S-203, p. 15, Conclusion 5) The Staff made two changes to the conditions: It would allow rolled curbs to remain where driveway aprons would render replacement extremely difficult; and Buchan could provide a wood chip path instead of a concrete sidewalk adjacent to the wetland tract (Tract H) in *Chestnut Estates*. (*Ibid.*)
- F.11. Buchan and Public Works continued to trade objections and compromise suggestions throughout the hearing. (Testimony)

G. SEPA

- G.1. On December 5, 2014, the Department issued a "Determination of Non-significance (DNS) Mitigated with Conditions" for *Chestnut Estates West* (the December DNS). ²⁰ The DNS contains two paragraphs under the heading "Required Mitigation." The first paragraph discusses issues surrounding the X Tracts. The second paragraph reads as follows:

Pursuant to WAC 197-11-350, the city will recommend conditions of approval to the Hearing Examiner that will mitigate the impact to a level such that the SEPA official may issue a Determination of Non Significance. [*sic*] In particular, the city will recommend approval with conditions, such that tracts "X.a, X.b, X.1, X.2, X.3, X.4, X.5, X.7, X.8, X.9, X.10, X.11: are dedicated to the City of Sammamish as open space and environmentally critical area tract(s).

(Exhibit A-201, emphasis added]

- G.2. Although Buchan did not appeal the December DNS, it now objects to dedication to the City of Tracts X.a and X.b. Buchan wants the Examiner to rule that Tracts X.a and X.b are "Reserved for Unknown Purposes." Buchan's intent would be to reconvey those tracts to Scindia, if it would take them. (Nelson testimony)
- G.3. No one knows for sure how much, if any, regulated critical area lies within Tracts X.a and X.b for the simple reason that, at Buchan's request, the Department did not require a detailed survey/study of those areas. The precise boundaries of Tracts X.a and X.b have never been determined. For all intents and purposes, it is impossible to reach Tract X.a without crossing regulated critical areas, both on- and off-site. (Exhibits A-201; S-203; S-215.b; S-224; Maxim testimony)

²⁰

The Department had issued a DNS for *Chestnut Estates West* on August 11, 2014. (Exhibit B-247) The Department withdrew that DNS on October 3, 2014, after it had learned of the reconveyance arrangement between Buchan and Scindia. (Exhibits B-242; S-203, p. 4, Finding 15; S-207, p. 834)

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- G.4. The Department's position, as explained in the December DNS and elsewhere in the record, is that any attempt to provide access to Tract X.a for development would result in significant adverse impacts to the environment because of the multitude of critical areas which surround it. No legal access exists to Tract X.a (and equally probably to Tract X.b); the Department believes that construction of access for development purposes would result in significant adverse impacts to the environment. (Exhibit A-201)
- G.5. The City has adopted the following as bases for imposing mitigation under the authority of SEPA: Comprehensive Plan, basin plans, Title 21A SMC, Shoreline Management Master Plan, 2009 KCSWDM, PWS, and the City's noise ordinance. [SMC 20.15.090(2)]
- G.6. "The City may require open space tracts created" pursuant to the R-1 zone clustering requirement "to be dedicated to the City". [21A.30.030(2)] Critical areas tracts required under Chapter 21A.50 SMC may be required to be "dedicated to the City of Sammamish, at the City's discretion." [SMC 21A.50.190(2)]

H. Public Comment

- H.1 The hearing record contains some 1,100 pages of public comments. (Exhibit S-207) Many of the comments include attachments; many are e-mail strings which repeat prior exchanges; many are simply procedural exchanges (arranging meetings, pick-up of materials, etc.) between and among persons involved with the case; some are duplicates.
- H.2. By volume, the largest number of comments are from the appellants in this proceeding (Friends, Neighbors, and Pereyra), their counsel, or their consultants. (Exhibit S-207, pp. 9 – 127, 129, 130, 136, 137, 200 – 271, 273 – 277, 281 – 304, 306 – 308, 310 – 317, 321 – 412, 437 – 442, 444, 451 – 498, 505 – 542, 545 – 624, 626 – 632, 637, 639 – 644, 646 – 654, 660 – 664, 667 – 719, 723 – 770, 772 – 790, 794 – 800, 828 – 833, 841 – 857, 875 – 947, 957, 960 – 962, 968 – 988, 1000 – 1066, 1072 – 1074, and 1095 – 1102)
- H.3. Several comments are from Scindia agents. (Exhibit S-207, pp. 309, 499 – 504, 543, 544, 834 – 836, and 1081 – 1084) The substantive Scindia comments address its agreement with Buchan regarding Parcel 9033. On August 19, 2014, Scindia advised the Department that it had an agreement with Buchan "whereby units of density from [Scindia's] property were granted to Buchan." Scindia sought assurance from the Department that nothing in the *Chestnut Estates West* proposal would adversely affect Scindia's property. (Exhibit S-207, p. 309; see also p. 835) On August 20, 2014, Scindia told the Department that its property (Parcel 9033) "is to the West of this subdivision. ... The property is currently in the name of [Buchan], but under our agreement the property (Lot 3) will be reconveyed to Scindia." (Exhibit S-207, p. 834)

Scindia "fully supports approval of Buchan's plat, but opposes dedication of any portion of [Parcel 9033]." (Exhibit A-252)

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- H.4. Comments from citizens not identified in the record as being associated with any of the appellants express concern about potential harm to Ebright Creek (Exhibit S-207, pp. 135 (Zilber), 318 (Shugarts), 443 (Fatemie), 720 – 722 (Buehler for Save Lake Sammamish)), adverse effects to Pine Lake Creek from the cross-basin discharge plan (Exhibit S-207, p. 278 (Neir)), loss of the “tranquility” of *Chestnut Estates* if SE 8th Place becomes the access into *Chestnut Estates West* (Exhibit S-207, p. 1077 – 1078 (Zilber)), and traffic impact at the 212th Avenue SE/SE 8th Street intersection (Exhibit S-207, p. 319 (Booher)).
- H.5. Given “the precarious health of the [Kokanee] population, the [KWG] encourages [the City to] provide a high degree of protection for the creeks and the hydrologic processes that unavoidably affect conditions in the creeks.” (Exhibit S-207, p. 657)
- H.6. There was limited public testimony during the hearing. Residents of *Chestnut Estates* voiced their displeasure at the prospect of SE 8th Place becoming a through street. Sight distance limitations along the SE 8th Place-SE 8th Street system were pointed out (and solutions identified by other witnesses). Turner expressed great concern that the Tract L outfall, which would be located up-slope behind his property, would lead to flooding of his property. Buchan’s consultants and City staff were able to assure him that the outfall could be located such that it would not endanger his property. (Testimony)

I. Staff Recommendations

- I.1. The Department recommends approval of Exhibit S-211.a as the *Chestnut Estates West* preliminary plat subject to conditions. (Exhibit S-203) That recommendation is contingent upon the Ebright Creek ravine bridge being sufficiently long that no construction work would have to occur within 15 feet of the lip of the ravine (the so-called 184-foot bridge option).

During the hearing, the Department proposed a number of changes to its list of recommended conditions, in its words, in response to the testimony and concerns heard during the hearing. (Exhibit S-250)

- I.2. Buchan objects to a number of the recommended conditions, especially the requirement for the longer bridge. Buchan wants to be able to have the bridge abutments at the lip of the ravine (the so-called 150-foot bridge option). Buchan offered a number of replacement conditions during the hearing. (Exhibit B-279)

LEGAL FRAMEWORK ²¹

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

SEPA Appeal

The Examiner is charged with adjudicating administrative SEPA appeals “pursuant to the provisions of SMC 20.10.070”. [SMC 20.15.130(1)]

Preliminary Subdivision, Plat Alteration, and Public Works Variation

Preliminary subdivisions and plat alterations are Type 3 land use applications. [SMC 20.05.020, Exhibit A] A Type 3 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Public Works Department’s action on a PWS Variation is subject to the right of appeal to the Hearing Examiner under the provisions of Title 20 SMC. [PWS.10.180] The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

The Examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

SEPA Appeal

SEPA requires that a determination be made as to whether a project would result in “a probable significant, adverse environmental impact” and requires that a “detailed statement” be prepared in conjunction with “major actions significantly affecting the quality of the environment”. [RCW 43.21C.031 and RCW 43.21C.030(c), respectively] The process of determining whether a project would result in such an impact is referred to as the “threshold determination” process. The person making the determination is called the “responsible official”.

²¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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The State rules define “probable” as something which is “likely or reasonably likely to occur” as opposed to events “that merely have a possibility of occurring, but are remote or speculative.” [WAC 197-11-782] The term “significant” “as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.” [WAC 197-11-794, both definitions adopted by reference at SMC 20.15.010(1)]

Preliminary Subdivision

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Additional review criteria for preliminary subdivisions are set forth at SMC 20.10.220:

When the examiner makes a decision regarding an application for a proposed preliminary plat, the decision shall include additional findings as to whether:

- (1) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (2) The public use and interest will be served by the platting of such subdivision and dedication.

Plat Alteration

Plat alterations “may be approved if the proposed alteration is consistent with the required findings of SMC 20.10.200 and 20.10.220.” [SMC 19A.16.070(3)]

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the

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department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on December 23, 2011.

Standard of Review

SEPA Appeal

The clearly erroneous standard is the appropriate test to apply in an appeal of a SEPA threshold determination: the action of the responsible official is not disturbed unless, after reviewing all the evidence in the record, the appellate decision maker is left with the definite conviction that a mistake has been made.

[*Leavitt v. Jefferson Cy.*, 74 Wn. App. 668, 680 (1994)]

The appellant has the burden of proof. State law requires that “[i]n any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a ‘detailed statement’, the decision of the governmental agency shall be accorded substantial weight.” [RCW 43.21C.090] That requirement is echoed in both state rule [WAC 197-11-680(3)(a)(viii)] and municipal code [SMC 20.15.130(1)(b)].

Preliminary Subdivision, Plat Alteration, and Public Works Variation Appeal

The standard of review is preponderance of the evidence. The applicant or appellant, as appropriate, has the burden of proof. [City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

A. Executive Summary

- A.1. The *Chestnut Estates West* subdivision cannot be approved because the *Chestnut Estates* plat alteration on which it relies cannot be approved. That conclusion is based upon the clear and unambiguous language of the SMC. Given that conclusion, the remainder of the issues become moot.
- A.2. City ordinances are subject to the same rules of interpretation and construction as apply to statutes. [*Tahoma Audubon Soc. v. Park Junction Partners*, 128 Wn. App. 671, 116 P.3d 1046 (2005); *Neighbors v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997)] Courts, and by extension quasi-judicial decision makers, “do not construe a statute that is clear and unambiguous on its face. We assume that the legislature means exactly what it says, and we give words their plain and ordinary meaning. Statutes are construed as a whole, to give effect to all language and to harmonize all provisions.” [*Ockerman v. King Cy.*, 102 Wn. App. 212, ___ P.2nd ___ (Div. I, 2000)]; see also:

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Western Petroleum v. Freidt, 127 Wn.2d 420, 424, 899 P.2d 792 (1995), holding that intent is relevant only if ambiguity exists in the language of the code; *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000), holding that clear and unambiguous codes are not subject to judicial construction] Legislative history cannot override an unambiguous code provision. [*Kirtley v. State*, 49 Wn. App. 894, 898, 748 P.2d 1148 (1987)]

- A.3. Moot issues are not normally addressed. “A moot case will be reviewed if its issue is a matter of continuing and substantial interest, it presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public officials.” [*Cathcart v. Snohomish County*, 96 Wn.2d 201, 208, 634 P.2d 853, citations omitted (1981)]

This Decision will address only those moot issues likely to have recurring value in a future application.

- A.4. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
- A.5. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

B. Plat Alteration

- B.1. Approval of the requested plat alteration would violate SMC 21A.30.030(1). The portion of that code section which is dispositive is the first sentence: “Any open space resulting from lot clustering shall not be altered or disturbed except as specified on recorded documents creating the open space.” [Emphasis added]
- B.2. *Chestnut Estates* Tract K is open space: The face of the recorded plat states that “Tract K is an open space tract” (Exhibit S-238, p. 3, Tract Provisions Note 10; see also p. 8 on which Tract K is labelled “Open Space”)
- B.3. Tract K resulted from required clustering of the *Chestnut Estates* lots. (Exhibit S-212, p. 35, Conclusion of Law 21)
- B.4. Tract K was created by recordation of the final plat of *Chestnut Estates*. The document which created Tract K was the final plat. (Exhibit S-238)
- B.5. Nothing within the nine pages of the recorded *Chestnut Estates* final plat (Exhibit S-238) mentions any alternative or future use for Tract K. The full text of Tract Provisions Note 10 reads as follows: “Tract K is an open space tract and is hereby retained by William Buchan Homes Inc., a Washington corporation along with all maintenance responsibilities.” (Exhibit S-238, p. 3) All that says is that Tract K is open space and that Buchan is responsible to maintain the open space; nothing more, nothing less.

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Contrast that language with Tract Provisions Note 12 for Tract N:

Tract N is reserved for future use if and when proposed and as permitted by applicable law. No work or use in said Tract is authorized by this plat. Such work/development/use could be authorized if and only if a separate permit or governmental authorization is permitted under then applicable law. Tract N is hereby retained by William Buchan Homes Inc., a Washington corporation.

(Exhibit S-238, p. 3) The Tract N language unequivocally specifies the prospect of it's possible use for something in the future. Granted, Tract N is not an open space tract, but the language difference is telling.

- B.6. Therefore, Tract K must remain as open space; it cannot be altered. If one were to hold that any aspect of a recorded plat could be altered through the plat alteration process, one would be completely ignoring the clear and unambiguous restrictive language of SMC 21A.30.030(1). Such a reading would render that subsection of the SMC meaningless. Code interpretation should not render code provisions meaningless. Subsection 21A.30.030(1) SMC serves as a restriction on the general ability to alter a recorded plat.
- B.7. A second impediment to conversion of *Chestnut Estates* Tract K into residential lots and streets is presented by SMC 21A.25.030(13):

All subdivisions and short subdivisions in the R-1 zone shall be required to be clustered away from critical areas or the axis of designated corridors such as urban separators or the wildlife habitat network to the extent possible and a permanent open space tract that includes at least 50 percent of the site shall be created. Open space tracts shall meet the provisions of SMC 21A.30.030.

[Emphasis added] The verb “shall” appears in each of the emphasized sentences. Shall is a mandatory verb, not a discretionary verb. The mandate is that 50% of the site must be “permanent” open space and that such open space must meet the requirements of SMC 21A.30.030.

The combination of those two requirements is that the required open space cannot be altered unless the possibility of future alteration is spelled out in/on the document creating the open space. Thus, “permanent” as used here really means “permanent” – unless at the time of its creation the open space is specifically noted as eligible for conversion to something else in the future. The discussion in Conclusion of Law B.6, above, applies equally to this code section.

- B.8. Therefore, under SMC 21A.25.030(13) *Chestnut Estates* Tract K must remain as open space.

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- B.9. Since *Chestnut Estates* Tract K cannot be changed to non-open space, the plat alteration must be denied. Without the plat alteration, the plat cannot be approved.

C. SEPA Appeals

- C.1. The threshold determination in this case is a DNS, not an MDNS: The City only recommended that the Examiner impose a condition on the development; the development was not changed or conditioned before issuance of the MDNS.²² (See Exhibit A-239, p. 3, Footnote 4) Therefore, Neighbors prevail on their SEPA Appeal Issue 3 and Pereyra prevails on his SEPA Appeal Issue 2.9.
- C.2. The remainder of the SEPA appeal issues are moot given the disposition of the plat alteration request. Since any future resubmittal would of necessity be tremendously different than the current proposal, it is almost a certainty that environmental concerns would be equally different. Therefore, moot SEPA issues will not be addressed.
- C.3. The City argued in its opening brief and in its oral closing argument that *Moss v. City of Bellingham* [109 Wn. App. 6, 31 P.3d 703 (2001), review denied 146 Wn.2d 1017 (2002)] is applicable to the situation presented by the DNS appeal in this case. The Examiner respectfully disagrees.

In *Moss*, a project developer submitted to Bellingham an “Environmental Assessment” which included “a number of mitigation measures as part of a revised project proposal.” [*Moss* at 12] The City subsequently issued a DNS which, in part, said that “[t]he proposal would generally take the form described as Alternative 3, Cluster Development, Version C, with mitigation as defined in the Birch Street Residential Subdivision Draft Environmental Assessment.” [*Moss* at 21] That is a different situation than here present: There, Bellingham’s Responsible Official specified within the DNS mitigation measures which would be followed; here, Sammamish’s Responsible Official issued the DNS with nothing more than a promise that the Department would recommend that the Examiner impose certain mitigation measures. The DNS here was issued before any mitigation was certain; the DNS in *Moss* specified the required mitigation. *Chestnut Estates West* was neither “clarified, changed, or conditioned” prior to issuance of the DNS. [WAC 197-11-350(3)] The DNS did not contain an enforceable mitigation measure.

D. PWS Appeals

- D.1. Both PWS Variation appeals relate to only one of the three Variations granted by Public Works: The SE 8th Variation to use the substandard streets within *Chestnut Estates* as access to the proposed development. Only that Variation will be addressed in these Conclusions of Law.

²²

In its prehearing brief, the City “recognizes that perhaps it should have worded its threshold determination more strongly, using the phrase the City ‘shall require’ rather than ‘will recommend’”. (Exhibit S-241, p. 12, ll. 20 – 23) The reality is that it did not do so. The Examiner declines to infer an intent that is neither stated nor clearly implied within the document itself.

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- D.2. Almost by definition, a PWS Variation is a subjective action as there are no specific standards to be applied and the City Engineer is charged with exercising judgment, specifically “sound engineering judgment.” That of necessity means that adjudicating an appeal of a PWS Variation also requires a subjective decision. The action of the City Engineer should be accorded a degree of deference, but not to the extent required by State law in the case of SEPA appeals.
- D.3. The major shortcoming which the Examiner finds in the City Engineer’s evaluation of the SE 8th Variation request is the decision to not consider whether future connections of the *Chestnut Estates West* street system would change the classification of some or all of the subdivision’s streets and thus the classification of SE 8th Place and SE 8th Street in *Chestnut Estates*. If *Chestnut Estates West* were approved as currently designed (which it can’t be for reasons set out above), there can be no question but that its street system would extend either south and/or west at some time in the future to serve currently un- and under-developed parcels.

At the very least, there is every reason to believe that the street system would extend south into the Pedrizetti and Heller Parcels, all of which have relatively moderate terrain (for the most part). That would be another 40+/- lots. Sound engineering judgment requires that such a possibility be included in the evaluation, especially where the *Chestnut Estates West* design includes a street stub to the Pedrizetti property. No apparent consideration was given to the possibility/probability that the classification of some or all of the streets, including SE 8th Place and SE 8th Street in *Chestnut Estates*, might rise under such a circumstance. Once a street system is built, it is very difficult to go back and widen it to serve a new need. (Case in point: SE 8th Place and SE 8th Street in *Chestnut Estates*.) Therefore, a reasonable and thorough evaluation must be made when the streets are first being designed.

Such an evaluation is not speculation. It is prudent forethought about an event that will predictably happen. Without that type of forethought, Public Works could find itself in a position where its functional classification criteria would prevent a previous dead-end from becoming a through street. For example, as the PWS states: “Minor access streets can never be a higher classification.” [PWS.15.050.B.4.b]

- D.4. In the same vein, City staff cannot on the one hand require Buchan to extend a 60 foot right-of-way to the west edge of the Buchan/Scindia Parcel for “an alternate [access] route” into *Chestnut Estates West* and to “allow the City to make a future east-west road connection if additional routes are warranted” (Exhibit S-203, p. 11, Finding 62) and then, as it did in testimony throughout the hearing, declare that such a connection is so remote and speculative that its effect on the existing and proposed street system simply cannot be evaluated now.
- D.5. The notion that a street with 22 feet of pavement is the functional equivalent of a street with 36 feet of pavement is simply not believable. If that were the case, why would the City have any street section wider than 22 feet except for multi-lane arterials?

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The purported equivalency depends entirely upon the premise that on-street parking is either not required or can be always and immediately removed by law enforcement if it happens. If that were true, a 22 foot wide street would provide two 11-foot travel lanes and a 36 foot wide street would provide two 10-foot travel lanes (assuming the other 16 feet consist of two 8-foot parking lanes).

But that notion is simply not believable either. The evidence in this record indicates that drivers will park on the street (or partly on the street and partly on the sidewalk/planter strip). The 22 foot wide street then becomes a one to one-and-a-half lane street wherever parking occurs. Through traffic cannot flow smoothly in such a circumstance. While such a condition is sometimes desirable as a “traffic calming” technique within a neighborhood, one cannot say that such a street is the functional equivalent of a street with two unimpeded lanes.

- D.6. Buchan used a 1993 King County street standard intended to serve 16 or less lots in the design of SE 8th Place in *Chestnut Estates*. The acceptability of that standard was presumably based in large measure on the cul-de-sac design of SE 8th Place – a street which was to go no further. If SE 8th Place had been designed to serve 17 to 50 residences, it would have required 24 feet of pavement under the then King County standard. If it had been designed to serve from 50 to 100 lots, it would have required 28 feet of pavement with curb, gutter, and sidewalks on both sides within a 48 foot wide right-of-way. (Exhibit N-213; Koltonowski testimony)

In hindsight, the evidence is quite persuasive that Buchan likely had an intention (or, at the very least, wanted to preserve the opportunity) to extend SE 8th Place through Tract D to serve development of property on the west side of the Ebright Creek ravine – a lot more development than the two lots that Beeler had envisioned on that side of the ravine when the *Chestnut Estates* process began. By not disclosing that intent, Buchan created what the purchasers of its homes in *Chestnut Estates* see as a “bait and switch” tactic: Sell them on an intimate, exclusive, dead-end neighborhood and then convert it into the entry way to an additional neighborhood of at least 30 more homes. Neighbors’ upset is easily understood.

- D.7. The seemingly constantly changing position of Public Works during the hearing regarding the conditions that should attach to the SE 8th Variation is troubling: It challenges the notion “that requirements for safety, environmental considerations, function, appearance, and maintainability are fully met and the variation is in the best interest of the public” in the Variation as it was initially issued. It would seem from the back-and-forth during the hearing that those factors are a fluid and imprecise concept.
- D.8. Neighbors’ PWS Appeal Issue 2 should be granted because Public Works did not consider future extension of the street system when exercising its “engineering judgment.” Neighbors’ remaining issue should be dismissed as it is effectively moot. Buchan’s PWS appeal should be dismissed because it is moot given the disposition of Neighbors’ Appeal Issue 2.

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- D.9. A brief word in response to Buchan's complaint that it never had the chance to discuss with the City Engineer proposed conditions on the PWS Variations: The City Engineer is under no obligation to negotiate Variation conditions with an applicant before making a decision on a Variation.

E. Preliminary Subdivision

- E.1. *Chestnut Estates West* is, to put it simply, a landlocked parcel: It has no frontage on any public right-of-way, opened or unopened. Buchan could seek a judicial order for a "private way of necessity," but a "private way of necessity" does not contemplate future subdivision of the parcel thusly served. Rather, it simply provides the legal right of ingress and egress for what the parcel may be used for in its current state. [*Jobe v. Weyerhaeuser Co.*, 37 Wn. App. 718, 684 P.2d 719 (1984)]
- E.2. That the *Chestnut Estates West* site is landlocked is, in the final analysis, a hardship created in part by Buchan. Buchan designed *Chestnut Estates* using a true cul-de-sac: SE 8th Place does not abut the outer boundary of the subdivision; it is separated from the boundary by Tract D. Tract D was reserved for future use and retained by Buchan (Exhibit S-238, p. 3, Tract Provisions Note 4), but it was not dedicated as right-of-way. Had Tract D been dedicated as right-of-way, *Chestnut Estates West* would not be landlocked. (And purchasers of residences in *Chestnut Estates* would have known that SE 8th Place was eventually going to serve additional property(ies).)
- E.3. The City has no obligation to bend its rules to make up for Buchan's prior, deliberate actions nor to approve substandard access to a landlocked parcel. As is the case everywhere, development of landlocked parcels must await a coalescing of circumstances that provide legal access for development of the landlocked parcel.
- E.4. The Ebright Creek ravine is the last place in the City where landslide hazard area standards should be relaxed. Ebright Creek holds a special significance to the legislative officials of the City: They have specifically called it out as one of four streams of special significance in the City. (Pine Lake Creek is another of the four.) [SMC 21A.15.1240(1)(b)] Ebright Creek is the major Kokanee stream in the City (and one of the two major Kokanee streams feeding into Lake Sammamish). The Ebright Creek ravine has a history of surficial slides, at least one of which wiped out an entire year's cohort of Kokanee.
- E.5. Subsection 21A.50.260(2) SMC does not require that the minimum 50 foot landslide hazard area buffer established by SMC 21A.50.260(1) be reduced whenever an engineering study says that such a reduction would be geotechnically safe. Subsection (2) says that the standard 50 foot buffer "may be reduced to a minimum of 15 feet" if certain conditions are met. "May" confers discretion, it does not mandate an action. Additionally, the reduction, if granted, may be "to a minimum of 15 feet," it does not have to be reduced to 15 feet in every case where a reduction is granted.

Authority to reduce landslide hazard area buffer width rests with "the City". [SMC 21A.50.260(2)] The Examiner, the City official with authority to render decisions on preliminary subdivisions,

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exercises that authority in the context of such cases. The Department's action serves as a recommendation to the Examiner, not as a final, appealable action for the City.

- E.6. Here, the City has copious reasons to not reduce the landslide hazard area buffer: Ebright Creek is one of four in the City that holds a special significance to the City; Ebright Creek is a very important Kokanee resource; there is a history of surficial slides in the Ebright Creek ravine; the Ebright Creek ravine is a designated wildlife corridor. Why would one reduce the margin of safety in such a situation? While surficial slides may occur naturally, given the sensitivity of the Ebright Creek ravine and the importance of its fishery resource, why would one consciously increase that risk by building closer to the edge of the ravine than normally allowed by code?

The question is not whether geotechnical engineers believe that a bridge can be built within 15 feet of the lip of the ravine without causing a catastrophic failure of the ravine walls (as is often said, an engineer can build almost anything given sufficient resources), the question is whether building that close to the lip of the ravine is consistent with adopted City policies. It is clear that it is not. The Examiner rejects the buffer reduction.

- E.7. On more than one occasion during the hearing, Buchan said that it was relying on the provisions of SMC 21A.50.260(5)(b). That code section does not apply to the area where Buchan desires to bridge the ravine. Subsection 21A.50.260(5)(b) SMC specifically applies where a landslide hazard area is "located on a slope less than 40 percent". [Emphasis added] The degree of slope in the Ebright Creek ravine at the proposed bridge crossing location is nearly double that upper threshold. The section simply doesn't apply.
- E.8. The required 15 foot building setback line has been ignored by Buchan in its "150 foot bridge" alternative. The SMC is clear: The 15 foot building setback applies to both buildings and structures. [SMC 21A.50.210, quoted in Finding of Fact, D.5, above] A structure is "anything permanently constructed in or on the ground, or over the water, excluding fences six feet or less in height, uncovered decks less than 18 inches above grade, uncovered paved areas, and structural or nonstructural fill." [SMC 21A.15.1255] A bridge abutment is a structure. The bridge abutments must, therefore, respect the 15 foot building setback line which would increase the length of the "150 foot bridge."
- E.9. There is another, potentially fatal problem with Buchan's bridge proposal. Subsection 21A.50.260(5)(a)(iv) SMC limits "trimming and pruning of vegetation" within a landslide hazard area on slopes of 40% or more to one and only one purpose: "the creation and maintenance of views". The tree topping and pruning which Buchan admits would be necessary within the Ebright Creek ravine beneath the bridge (either the 150 foot or the 184 foot version) would not be for the purpose of creating views. Therefore, under the clear and unambiguous language of the code, it would not be allowed.

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- E.10. Ebright Creek is a Type F stream. The required standard buffer width for a Type F stream is 150 feet. [SMC 21A.50.330(A)(1)] The City “shall” require an increased buffer width “when necessary to protect streams, critical drainage areas, critical fish and wildlife habitat,” etc. [SMC 21A.50.330(5)] Given the record in this case, it could easily be argued that a wider stream buffer is required along Ebright Creek.
- E.11. Alteration of streams and their buffers is allowed for bridge crossings subject to a number of requirements. [SMC 21A.50.340(7)] Any future proposal to bridge Ebright Creek must demonstrate compliance with those requirements.
- E.12. The City has regulatory authority, “at its discretion,” to require dedication of open space and critical areas tracts to the City. Given the history of what happened with Tract K in *Chestnut Estates*, the City rightly has reason to worry about what would happen with ownership of open space in future developments.
- E.13. The currently proposed open space arrangement does not meet the locational requirements of SMC 21A.30.030(2). According to that code section, open space in clustered subdivisions in the R-1 zone must “connect and increase” sensitive areas buffers, must “connect and protect wildlife habitat corridors”, and must “connect ... planned public parks or trails.”

The arrangement presented here minimizes protection of the Ebright Creek ravine, probably the most sensitive area on the site, while putting most of the open space on the Buchan/Scindia Parcel (Tract X) to the west of the lots. Protection of Pine Lake Creek, Kanim Creek, and the wetlands and slopes in that area is certainly beneficial, but a better balance between “west side” and “east side” protection should be achieved in any future submittal.²³ Depending upon which trail alignment is proposed (the one that follows the street system or the one through Tract E), it may well be that the open space would have no beneficial effect upon the trail.

- E.14. It is unclear whether the trail alignment Parks agreed to is the alignment depicted by Buchan on Exhibit S-211.a. The trail sketch in the Parks E-mail depicts a trail that for the most part does not follow internal streets; the trail on Exhibit S-211.a follows the internal streets. (Cf. Exhibit S-252.b with S-211.a) Since the Park Plan indicates that this would be a “soft surface” trail, the street alignment trail would not seem to fulfill the intended purpose.
- E.15. The final question is: What is the best disposition for the preliminary subdivision application given all of the above. State law says a preliminary subdivision application is subject to one of three decision options: It may be “approved, disapproved, or returned to the applicant for modification or correction”. [RCW 58.17.140(1)]

²³

The evidence demonstrates that City staff argued for just such a shift unsuccessfully from its very first review comments on the proposal.

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Chestnut Estates West cannot be approved for the reasons set forth throughout these Conclusions. If it were returned for corrections, the corrections would amount to an entirely new application because of the removal of Tract K from the proposal; a substantial new design would effectively be a new application with a new vesting date. [SMC 20.05.080(2)] Returning this application would merely require that a tremendous amount of “baggage” (a voluminous hearing record) be dragged along with it. Therefore, the Examiner concludes that the most appropriate disposition is to deny the application.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner

- A. **DISMISSES** Friends’ SEPA Appeal;
- B. **GRANTS IN PART** (Appeal Issue 3) and **DISMISSES IN PART** (Appeal Issues 1 and 2) Neighbors’ SEPA Appeal;
- C. **GRANTS IN PART** (Appeal Issue 2.9) and **DISMISSES IN PART** (Appeal Issues 2.1, 2.2, 2.4, and 2.10) Pereyra’s SEPA Appeal;
- D. **GRANTS IN PART** (Appeal Issue 2) and **DISMISSES IN PART** (Appeal Issue 1) Neighbors’ PWS Appeal;
- E. **DISMISSES** Buchan’s PWS appeal;
- F. **DENIES** the requested *Chestnut Estates* plat alteration; and
- D. **DENIES** the *Chestnut Estates West* preliminary subdivision application.

Decision issued July 14, 2015.

\s\ John E. Galt (Signed original in official file)

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ²⁴

Kari Sand, unsworn counsel
Duana Koloušková, unsworn counsel

Kim Adams Pratt, unsworn counsel
Richard Aramburu, unsworn counsel

²⁴ The official Parties of Record register is maintained by the City’s Hearing Clerk.

HEARING EXAMINER DECISION

RE: PLN2011-00049 (*Chestnut Estates West*)

Preliminary subdivision, plat alteration, and related appeals

July 14, 2015

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Thomas Peterson

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Peter Atkinson

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Derek Booth

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Hans Berge

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Lafe Hermansen

Michael Moody

Greg Johnston

Larry Hobbs

Evan Maxim

Tawni Dalziel

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."
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