

**WHATCOM COUNTY HEARING EXAMINER**

**re:** The application of **Glen and Alice Dykstra** for a Preliminary Long Subdivision

“River Ridge Estates Long Subdivision”

LSS2018-0002

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicants are requesting Preliminary Long Subdivision Approval to subdivide seven clustered lots with one reserve tract with a residential building site on approximately 70.5 acres in the Rural [R5A] and Agricultural [AG] zoning districts. The lots will be served by public water and individual onsite sewage systems [OSS].

Decision: The Hearing Examiner grants Preliminary Long Subdivision Approval, subject to the conditions recommended herein.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

**FINDINGS OF FACT**

**I.**

Applicants: Glen and Alice Dykstra

Site Location/Address: 6992 Mission Road, Nooksack, Washington

Assessor's Parcel Numbers: 390406 224061

Zoning: Rural [R5A] & Agricultural [AG]

Comprehensive Plan: Rural & Agricultural

Number of Lots: Seven residential lots and one buildable reserve tract

Total Acreage: Approximately 70.5 acres

Roads: Private Roads

Water Supply: Joe Louie Water Association

Sewage Disposal: On-Site Septic Systems

Fire Protection: Whatcom County Fire District No.1

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Nooksack Valley School District

Topography: Mostly flat with sloping to the east towards the Nooksack River

Vegetation: Vegetation consists mostly of grass and crops.

Adjacent Land Uses:

North:	Agriculture
East:	Nooksack River
South:	Single-family Residential/Agriculture
West:	Single-family Residential

Utilities Easements: Necessary utility easements will be established prior to recording of Final Plat.

Variances: No variances requested

SEPA Review: Determination of Non-significance, issued May 15, 2020

Authorizing Ordinances

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,  
 Revised Code of Washington Chapter [RCW] 36.70B, Local Project Review  
 RCW 58.17, Plats & Subdivisions  
 Whatcom County Comprehensive Land Use Plan

Whatcom County Code Chapter [WCC] 2.11, Hearing Examiner  
WCC 2.33, Permit Review Procedures [repealed ordinance 2018-032]  
WCC 12.08, Development Standards  
WCC 15, Building Code  
WCC 16.08, Whatcom County Environmental Policy Administration  
WCC 16.16, Critical Areas  
WCC Title 20, Official Whatcom County Zoning Ordinance  
WCC Title 21, Subdivision Regulations  
WCC Title 22, Land Use and Development Procedures  
WCC Title 24, Health Regulations

Legal Notices:           Posted – Notice of Public Hearing, July 30, 2020  
                                  Mailed – Notice of Public Hearing, July 27, 2020  
                                  Published – Notice of Public Hearing, July 30, 2020

Hearing Date:           August 12, 2020

Parties of Record

Glen and Alice Dykstra  
1027 Ten Mile Road  
Everson, WA 98247

Jaime White  
Whatcom Land Use Consulting, LLC  
220 West Champion Street, Suite 270  
Bellingham, WA 98225

Laura Vandervort  
Public Works, Engineer

Charles Sullivan, Planner II  
Planning and Development Services

Exhibit List

1. Site plan amended with trial
2. Application
3. CAO prelim approval
4. Civil Plans
5. Contact information
6. Critical areas assessment
7. Declaration of CCRS
8. Fire Marshal's Office Memo
9. Fire Concurrency

10. IDP application
11. Mailing labels and surrounding parcel info
12. Preliminary stormwater proposal
13. Preliminary traffic concurrency
14. Project narrative
15. PWES memo
16. Receipt
17. School district concurrency
18. Shoreline memo approval
19. Site Plan
20. Water service information
21. Sept DNS distribution packet
22. Staff Report
23. E-mail public comments of Dana DeVries, dated 8/11/20

## II.

The project area consists of a 70.5-acre parcel that is split zoned in both the Agricultural [AG] and Rural [R5A]. The parcel contains 40.6 gross acres within the Rural zone with 30.34 acres within the Agricultural zone. The parcel currently is used for agriculture. The Nooksack River borders the property to the east and a large portion of the property is within the shoreline jurisdiction and the flood hazard area. The River Ridge Estates Cluster Subdivision proposal includes seven clustered residential building lots and one reserve tract with a residential building site for a total of eight single-family residential units. All seven clustered residential lots will be located within the Rural portion of the property.

The Application was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in the Staff Report, dated July 29, 2020, prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Committee recommended Preliminary Long Subdivision Approval, subject to conditions.

### **III.**

The Applicant's Representative indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the proposal at the public hearing.

The Findings of Fact in the Staff Report are hereby adopted, through this reference, by the Hearing Examiner as the Findings of Fact herein.

### **IV.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

## **CONCLUSIONS OF LAW**

### **I.**

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Review Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or failed to properly support the approval of the Preliminary Long Subdivision. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated July 29, 2020, a copy of which is attached hereto and incorporated herein by this reference.

The Hearing Examiner concurs with the Technical Review Committee that, subject to the proposed Conditions of Approval, the project will comply with the applicable Whatcom County and Washington State regulations and is in the general public interest, health and welfare. Consequently, the Preliminary Subdivision Approval to the Applicants for the River Ridge Estates Cluster Subdivision and associated infrastructure to subdivide seven clustered residential lots and one reserve tract with a residential building site located within the R5A Zoning District, should be granted.

## II.

Based on these Findings of Fact and Conclusions of Law, the following decision is hereby issued:

### **DECISION**

*The Hearing Examiner hereby grants Preliminary Approval of the proposed River Ridge Estates Preliminary Long Subdivision for seven clustered residential lots and one reserve tract with a residential building site located within the R5A Zoning District, to be located on Assessor's Parcel No. 390406 224061, addressed as 6992 Mission Road, Nooksack, Washington, subject to the following conditions:*

#### **Current Planning Division**

1. The use and location on the site as shown on the site plans, dated August 2019, and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the two phases of the final plat are submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The Applicant shall obtain all necessary Federal, State and local permits prior to construction.

7. The rear and/or side setbacks for habitable and non-habitable structures for lots 1-7 shall be as stated by WCC 20.80.210(5)(b) or as required by WCC 16.16.265(D) whichever is more restrictive.
8. Lots 1- 7 shall have the 100-foot setback for habitable and 30-foot setback for non-habitable structures from the eastern property line as well as any additional setbacks required by WCC 16.16.265(D).
9. The following right-to-farm note shall be placed on the face of the plat:

**RIGHT-TO-FARM COVENANT:** (THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AN AGRICULTURE OR RURAL DISTRICT.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS SHORT PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON. THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE WHATCOM COUNTY AUDITOR'S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

10. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC [20.97.344](#). The reserve area shall be protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown 75 percent (WCC 20.36.253).
11. An Agriculture Protection Overlay (APO) Cluster and Reserve Area Note will be provided at check-print review and shall be placed on the face of the plat.
12. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

### **Health Department**

13. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated July 28, 2020, unless modified by that Department or appealed to the appropriate agency.

14. Approved Water Availability Forms are required prior to final Plat approval.

### **Critical Areas**

15. Prior to final approval, applicant shall complete the USFWS self-assessment (<https://www.fws.gov/pacific/eagle>) to determine whether a USFWS bald eagle permit is needed. Submit a copy of the completed assessment.
16. Prior to final approval, all known critical areas shall be placed in a protective conservation easement. The draft conservation easement and recordable site plan shall be routed to the critical areas administrator for signing PRIOR to recording at the Whatcom County Auditor's office. Applicant may draft their own, or, Whatcom County's conservation easement document can be found online at: <http://whatcomcounty.us/DocumentCenter/View/2191/Conservation-Easement-PDF>
17. Submitted checkprints should have the following DRAFT note placed on the plat, which may be amended prior to final approval:

**CRITICAL AREAS ORDINANCE (CAO) NOTE:** LOTS 1-7 OF THIS LONG PLAT HAS BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2017-077 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR, AUDITOR'S FILE N O. \_\_\_\_\_ FOR THE CRITICAL AREAS AND ASSOCIATED BUFFERS. ANY FUTURE DEVELOPMENT ON LOT 8 OR THE AGRICULTURAL TRACT SHALL RECEIVE FURTHER CRITICAL AREAS REVIEW.

### **Fire Marshal's Office**

18. The Due to lack of fire flow following note shall be added.
19. **FIRE PROTECTION SETBACKS**  
As there are no public or private fire protection facilities available within 600 feet of lots within this plat, all buildings shall be set back at least 20 feet from all side and rear property lines for fire protection purposes. Please note that development regulations may supersede and alter this setback requirement. Additionally, no single-family residences over 4000 square feet in size, or detached storage buildings over 2500 square feet in size will be allowed on the lots without adequate fire protection. The Whatcom County Fire Marshal has the authority to selectively override this restriction in the event adequate fire protection facilities become available as specified by the Fire Code.



20. The fire note is not required if the developer provides fire hydrants that meet WCFMO standards with 600 feet of the center of building sites that provides 500 gallons per minute at a minimum of 20 psi for one hour in duration. Fire permit is required for underground fire lines if installed.
21. Gate permit is required if installed from this office.
22. Access road and turnarounds are required to meet WCFMO standards and WCPW Development Standards.

### **Public Works Engineering Services**

23. All development shall comply with the Whatcom County Development Standards (WCDS).
24. Sight distance at all access road intersections shall meet WCDS.
25. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
26. A private road maintenance agreement shall be included in the CC&R's for the subdivision.
27. County-approved road names are required to be shown on the final plat.
28. A map at 1"=400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
29. The interior private roads shall be passable at all times for emergency and public service vehicle use.
30. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
31. Applicant shall submit an application for a Trail Permit in order to use the unopened County right-of-way within the private road access easement.
32. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way.
33. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.

34. The proposed private road shall be constructed according to WCDS, to include these details:
  - a. paved apron per WCDS drawing 505.E-4
  - b. Fifty-foot minimum access easement width which includes private road section and roadside storm drainage features including swales and infiltration basins,
  - c. plus adjacent ten-foot private utility easement,
  - d. twenty-foot minimum width paved road,
  - e. three-foot gravel shoulders on each side of the road,
  - f. widened road width at the corner according to WCDS drawing 505.I-1,
  - g. 2-1/2" minimum compacted depth HMA,
  - h. 2" minimum compacted depth of crushed surfacing top course,
  - i. 10" minimum compacted depth of aggregate for gravel base or 8" of crushed surfacing base course,
  - j. turnarounds at road ends as shown on the preliminary plans and according to WCDS drawing 505.L-2,
  - k. residential driveway details according to WCDS drawing 505.E-6.
35. A final engineered stormwater design report that meets requirements of the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014 (SWM), must be approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington.
36. The stormwater design report shall account for the total allocated hard surface value, to include the sum of hard surface values for private roads, access apron, and the allocated hard surface values assigned to each lot. The design shall address a minimum hard surface allocation of at least 4,000sf per lot.
37. The Stormwater Maintenance Plan shall be included in the CC&R's for the subdivision.
38. Sediment and erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
39. The developer shall obtain approval from the local U.S. Postal Service Office for the location, style and height of the mailbox(es). Mailbox location, if shared, shall be shown on the final construction plans.
40. Following County approval of the final drawings and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with PWES staff.
41. Applicant shall show on the final plat map all easements and any physical

appurtenances (such as fences or structures that might indicate encroachment, lines of possession, or conflict of title) per current Washington Administrative Code (WAC) 332-130-050(1)(f)(vii).

42. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement (DCGE) for stormwater maintenance purposes. Document shall include an exhibit indicating stormwater features and their locations, define the stormwater features, and provide an operations and maintenance manual. Reference to the recorded DCGE shall be made on the final plat.
43. Following construction, and prior to requesting the final inspection by the County, applicant's engineer to provide certified construction compliance assurance statement.
44. Certified record drawings for all new roads and stormwater systems must be submitted to and approved by the County upon completion of construction.
45. Provision for maintenance of the private stormwater system shall be required as set forth in WCDS, Chapter 2, Section 205.B.11. Prior to Final plat approval a fund will need to be established for the first two years of the stormwater system performance verification and maintenance.
46. Stormwater best management practices shall be listed on the final plat.

#### **F. Shoreline Management**

47. The applicant shall provide public access as shown on the plat as a 10' Trail Easement for possible future connection of the Bay to Baker trail.
48. Any future development of this property within Shoreline Jurisdiction shall comply with the Shoreline Management Program.

#### NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

#### NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 13<sup>th</sup> day of August 2020.



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Rajeev Majumdar, Hearing Examiner *Pro-Tem*