

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision ) LSS2007-0003  
Application by )  
)  
*Alice Vander Giessen* ) FINDINGS OF FACT, CONCLUSIONS  
*"Dairy Lane Long Subdivision"* ) LAW, AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: Alice Vander Giessen is requesting Preliminary Long Subdivision approval for the proposed creation of a seven lot single-family residential subdivision on approximately 14.32 acres.

Decision: The requested preliminary approval is hereby granted subject to the conditions set forth in the Staff Report, Exhibit #2 of the Hearing Examiner file, attached hereto and incorporated herein.

**SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

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

**I.**

Applicant: Alice Vander Giessen

Agent/Representative: Jaime White

Site Location/Address: Bylsma Road

Legal Description: A portion of the NW ¼ of the SW ¼ of Sec 32, T40N, R3E W. M.

Assessor's Parcel Number: 400332 065237

Zoning: Rural Two Acres (R2A)

Comprehensive Plan: Rural

Subarea: Lynden – Nooksack Valley

Number of Lots: Seven single-family lots

Total Acreage: Approximately 14.32 acres

Roads: Private Road

Water Supply: Six connections from the Pole Road Water Association and one existing connection from Skookum Chuck Water Association.

Sewage Disposal: On site septic systems

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Lynden School District

Topography: The site is described as mostly flat pasture area.

Vegetation: Vegetation consists mostly of pasture grass areas.

Adjacent Land Uses: North: Agricultural  
East: Residential  
South: Residential  
West: Agricultural

Utilities Easements: Necessary utility easements will be established prior to recording the final plat.

Variations: No variations requested

SEPA Review: Determination of Non-significance issued August 24, 2011.

Authorizing Ordinances:

Revised Code of Washington Chapter 58.17  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 21, Subdivision Regulations  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11  
Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Critical Areas Ordinance, Chapter 16.16  
Whatcom County Code Chapter 15, Building Code  
Whatcom County Code Chapter 12.08, Development Standards

Pursuant to the *Revised Code of Washington (RCW) 58.17.110*, in order to approve a preliminary

long subdivision, Whatcom County must find that appropriate provisions are made for the public health, safety, and general welfare, 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 shall consider all other relevant facts including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and the public use and interest will be served by the platting of such subdivision.

Legal Notices:           Posted – October 12, 2011  
                                  Mailed – October 6, 2011  
                                  Published – April 30, 2008 and October 13, 2011

Hearing Date: October 26, 2011

Parties of Record:

Alice Vander Giessen  
552 East Wiser Lake Road  
Lynden, WA 98264

Jaime White  
Whatcom Land Use Consultants  
PO Box 30696  
Bellingham, WA 98228

Amy Keenan  
Planning and Development Services

Mary White  
Division of Engineering

Exhibits:

- 1       Land Use Application
  - 1-1    Supplemental Application
  - 1-2    Project Description
  - 1-3    Project Contact Information
  - 1-4    Lot of Record Determination
  - 1-5    Chicago Title – Plat Certificate and Property Owner labels
  - 1-6    Proposed CC&Rs
  - 1-7    Soils Log Approval – Email from Kyle Dodd, Health Department
  - 1-8    PDS Case Activities for LDP
  - 1-9    On-Site Sewage System Application
  - 1-10   Preliminary Stormwater Report, March 7, 2007, WEB Engineering, LTD.
  - 1-11   Road Right-of-Way Easement and Name Proposal

- 1-12 Preliminary Traffic Analysis
  - 1-13 Fire/School Concurrency Letter
  - 1-14 Letter of Completeness, April 25, 2008
  - 1-15 Public Water Availability Notification
  - 1-16 ESA Checklist – Potential Impact Area
  - 1-17 Northwest Surveying Cover Letter for Map Revisions, March 30, 2007
  - 1-18 Whatcom land Use Consulting, Cover Letter for Application submittal, March 26, 2007
  - 1-19 Customer Receipt
  - 1-20 Email from Amy Keenan dated July 29, 2008 re: hold
  - 1-21 PDS Hearing Examiner Checklist, October 12, 2011
- 2 Staff Report, October 12, 2011
  - 3 Agency Comments
  - 4 Public Comments
  - 5 Maps: Zoning, Vicinity, Aerial, Topography
  - 6 Site Plan
  - 7 SEPA, DNS, August 24, 2011, with Checklist
  - 8 Wetland Delineation, Northwest Ecological Services, December 2006
  - 9 Legal Notice of Application, April 30, 2008
  - 10 Certificate of Mailing Notice of Public Hearing, October 6, 2011
  - 11 Certificate of Posting Notice of Public Hearing, October 12, 2011
  - 12 Legal Notice of Public Hearing, October 13, 2011
  - 13 Staff Memo, October 26, 2011, re: Additional Condition with attachment:  
13-1 revised site plan

## II.

The proposed 7-lot subdivision was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in a Staff Report, entered into the Hearing Examiner file as Exhibit #2, dated October 12, 2011, 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.

There was no public comment on this proposal at the public hearing. No County agency objected to the granting of Preliminary Long Subdivision approval. The Applicant has indicated no objection to any of the conditions proposed in the Staff Report, Exhibit #2, dated October 12, 2011.

A revised site plan [Exhibit 13-1] was submitted at the public hearing showing a portion of a building [referred to as the lean to] that is located within the proposed access and utility easement. Staff requested, and the Applicant agreed, to the addition of a Condition of Approval requiring that the portion of the building [lean to] located within the 30-foot access and utility easement be removed prior to Final Plat Approval. The Hearing Examiner concurs with Staff's request.

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or inaccurate or failed to properly support preliminary approval.

The Hearing Examiner hereby adopts by this reference the Findings of Fact and Conclusions of Law reached by the Technical Review Committee in the Staff Report, Exhibit #2, a copy of which is attached hereto and incorporated herein by this reference.

IV.

Based on these Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following decision:

**DECISION**

Preliminary Long Subdivision Approval is hereby granted to Alice Vander Giessen, granting preliminary approval for a 7-lot single-family residential subdivision, "Dairy Lane Plat," to be located on Assessor's Parcel No. 400332 065237, Bylsma Road, Lynden, Washington, subject to the following conditions:

**A. Planning Division**

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
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.
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 a final plat is submitted in proper form for final plat approval within seven years of the date of preliminary subdivision approval per RCW 58.17.140. This expiration date may be extended pursuant to WCC 21.05.030(5).
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 permits prior to construction.
7. The following Right-to-Farm note shall be placed on the mylar:
 

**RIGHT TO FARM COVENANT**  
 THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AGRICULTURE OR RURAL DISTRICT. THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS LONG SUBDIVISION 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 SAID AGRICULTURAL LANDS WHICH OCCURS IN THE NORMAL COURSE OF THEIR ESTABLISHED USE. UPON SALE OF EACH LOT, THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE COUNTY AUDITORS OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.
8. The following Flood Hazard Note shall be placed on the mylar:
 

**FLOOD HAZARD NOTE:**  
 LOTS WITHIN THIS [SHORT PLAT/LONG PLAT/BINDING SITE PLAN] ARE LOCATED IN A FEMA DESIGNATED FLOOD HAZARD ZONE. ANY DEVELOPMENT WITHIN A DESIGNATED FLOOD HAZARD ZONE IS SUBJECT TO THE WHATCOM COUNTY CODE (WCC) TITLE 17 PURSUANT TO ORDINANCE (ORD 1996-050 EXH A) AND TITLE 16.16.400 (ORD 2005-068) UNLESS FUTURE CHANGES TO WHATCOM COUNTY CODE DICTATE OTHERWISE.
9. The Applicant shall remove that portion of the building [lean to] located within the 30-foot access and utility easement prior to final plat approval.

**B. Health Department**

1. The Applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated August 12, 2011, unless modified by that Department

or appealed to the appropriate agency.

2. Water service connections to each proposed lot must be installed, inspected and approved by the Pole Road Water Association prior to final plat approval.

**C. Natural Resources Division / Critical Areas Administrator**

1. The Applicant shall comply with all of the conditions of the Critical Areas Administrator in the memo dated June 9, 2011, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
2. Prior to final approval per WCC265(C), the critical areas and required buffer located on the site shall be protected using one of the following mechanisms:
  - a. Placed in a separate tract or tracts owned in common by all lots within a subdivision;
  - b. Covered by a protective easement, or public or private land trust dedication; or
  - c. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.
3. The Conservation Easement or other protective covenant must be recorded prior to or at the time of mylar recording.
4. In addition, Native Growth Protection Easement signs must installed prior to final approval in the locations indicated on the attached site plan.

**D. Building Division**

1. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated August 30, 2011 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
2. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the International Building Code (IBC), Section 105.2 regarding nonexempt structures.
3. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
5. Nonexempt structures may include fences, retaining walls, concrete vaults and other poured-in-place concrete structures, some retention/detention structures, bridges and permanent signs and the like.

### **E. Fire Marshal**

1. The Applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated May 6, 2008 unless modified by the Deputy Fire Marshal or appealed to the appropriate agency.
2. Fire flow required. Fire flow shall be a minimum 500 gpm delivered at 20 psi. Hydrants shall be located within 600 feet of all building areas.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

### **F. Public Works – Engineering Division**

1. The Applicant shall comply with the conditions of the Whatcom County Engineering Division in the memo dated August 1, 2011 unless modified by the Engineering Division or appealed to the appropriate agency.
2. All development shall comply with Whatcom County Development Standards.
3. Sight distance at all access road intersections shall meet Whatcom County Development Standards.
4. A preliminary traffic analysis has been submitted and reviewed by the county.
5. Proposed lot No. 7 has an existing house with existing access (provide copy of easement) to E. Wisser Lake Road. Remove existing access from proposed lot 7 to Dairy Lane (proposed private interior road) and replant area with vegetation prior to plat recording.
6. The project site fronts Bylsma Road, a county rural minor access road. Six of the seven proposed lots access Bylsma Road.
7. Applicant is proposing a rural private road, which the county agrees, to serve six of the seven lots. Min. road standard required is 18 ft. wide gravel/crushed rock, per drawing 505.E-1 of Ch. 5 Whatcom County Road Standards, with a paved apron at Bylsma Road. Engineered road construction plans to be submitted for county Engineering Services review. Applicant will need to comply with the criteria in Chapter 5 Road Standards section 505.E., Private Roads and Streets.
8. The project frontage along Bylsma Road is approximately 668 ft. The last traffic count on Bylsma Rd. was 68 ADT counted in 2007. The estimated trip generation of this project on Bylsma Rd. is 60 ADT. The traffic impact mitigation is to reestablish the min. 3 ft. wide



gravel/crushed rock shoulders both sides of Bylsma Rd. between the plat access road and E. Wisner Lake Road.

9. All signing (road name, stop sign, dead end) shall be installed per MUTCD standards at the developer's expense.
10. An Engineered Stormwater Design Report that addresses conveyance, detention, and water quality measures by a Washington State licensed civil engineer will need to be submitted prior to any construction onsite for approval by Whatcom County Engineering.
11. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
12. A Revocable Encroachment Permit will be obtained for work within the county right of way.
13. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
14. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar.  
[WAC 332-130-050(1)(b)]
15. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for address assignment. Address fee assignment shall be paid prior to recording.
16. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction. As-built stormwater plans and a letter of certification from the licensed design engineer or a licensed surveyor must be submitted to the County Engineer.
17. Developer shall provide a plat layout to the post office to get approved mailbox location(s). The location and use of mailboxes shall not interfere with county road traffic.

No land comprising any part of a proposed binding site plan, subdivision or short subdivision to be established henceforth per this decision shall be sold, leased or offered for sale or lease until such binding site plan or subdivision has been approved as provided by Whatcom County Code Title 21, and in the case of a subdivision, until the final plat thereof has been filed for record with the Whatcom County Auditor, except as provided in Section 21.20.130.6. Any person so selling, leasing or offering for sale any such lot, tract or portion thereof shall be guilty of a gross misdemeanor, and subject to a fine of not more than five thousand dollars (\$5,000.00) or imprisonment for not more than ninety (90) days, or both.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 2<sup>nd</sup> day of November 2011.



\_\_\_\_\_  
Michael Bobbink, Whatcom County Hearing Examiner

WHATCOM COUNTY  
Planning & Development Services  
5280 Northwest Drive,  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



J.E. "Sam" Ryan  
Director

EXHIBIT  
# 2

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

October 12, 2011

The application of **Alice Vander Giessen** for a Long Subdivision (Dairy Lane Long Subdivision) | LSS2007-00003  
| FINDINGS, CONCLUSIONS, AND  
| RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The project consists of a seven lot residential subdivision on approximately 14.32 acres.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, subject to the attached conditions.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant: Alice Vander Giessen  
552 East Wiser Lake Road  
Lynden, WA 98264

Agent/  
Representative: Jaime White  
Whatcom Land Use Consultants  
PO Box 30696  
Bellingham, WA 98228

Site  
Location/Address: Bylsma Road

Legal Description: A portion of the Northwest quarter of the Southwest quarter of Section 32, Township 40 North, Range 3 East Willamette Meridian.

Assessor's Parcel  
Number: 400332 065237

Zoning: Rural 2

Comprehensive  
Plan: Rural

Subarea: Lynden – Nooksack Valley

Number of Lots: Seven single family lots

Total Acreage: Approximately 14.32 acres

Roads: Private Road

Water Supply: Six connections from the Pole Road Water Association and one existing connection from Skookum Chuck Water Association.

Sewage Disposal: On site septic systems

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Lynden School District

Topography: The site is described as mostly flat pasture area.

Vegetation: Vegetation consists mostly of pasture grass areas.

Adjacent Land Uses: North: Agricultural  
East: Residential  
South: Residential  
West: Agricultural

Utilities Easements: Necessary utility easements will be established prior to recording the final plat.

Variances: No variances requested

SEPA Review: Determination of Non-significance issued August 24, 2011.

**B. AUTHORIZING ORDINANCES:**

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

**III. SITE DESCRIPTION**

The subject property is an approximately 14.32-acre site, and is located on Bylsma Road, north of the intersection of Bylsma and East Wiser Lake Roads.

The site is bordered on the west side by Bylsma Road. The majority of the site is vegetated with grasses and some treed areas. There are two wetlands located on-site and an offsite stream. A small portion of the lot is within the 100 year flood plain of the Nooksack River. Property surrounding the site is zoned Rural (R(2)) and Agriculture (AG) with some single-family residential home sites and large agricultural fields.

**IV. PROJECT PROPOSAL**

The Dairy Lane Long Subdivision proposes to subdivide a 14.32 acre parcel into seven single family residential lots in the Rural (R(2)) zone. The residential lots range from 1.80 acres to 1.98 acres (net). Access to the site will be provided with a private road through the plat off Bylsma Road. Public water for six of the lots will be from the Pole Road Water Association. Water to the existing home site will continue to be served by Skookum Chuck Water Association. All lots will have individual on-site septic systems.

A boundary line adjustment (EXE2008-00012) was approved in 2008 for Assessor's parcel number 400332 065237 and as such is considered a legal lot of record pursuant to WCC 20.97.220.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on April 30, 2008. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received several written comments. A summary of the comments and a response follows:

- Concerns regarding water service

The applicant has submitted verification of public water availability from the Pole Road Water Association for 6 new connections, and verification of public water from Skookum Chuck Water Association for the existing residence, lot #7. The Whatcom County Health Department has recommended approval of this long subdivision.

- Critical Areas

A wetland delineation has been submitted to Planning and Development Services (PDS) with the application materials. It has been determined, by critical areas staff, that based on a review of the wetland delineation and a site inspection by critical areas staff to verify the delineation, that the proposed subdivision will avoid impacts to the critical areas and buffers.

- Zoning

The zoning for the proposed project is R2A, meaning one residential single-family unit per two acres. The applicant has over 14 acres of property allowing a total of seven single-family residential lots. Although the property is currently in use as a dairy farm the zoning allows a subdivision with a density of one single family residential unit per two acres.

- Transportation

Access for the lots 1 through 6 of the subdivision is proposed to be from a 30-foot access off Bylsma Road. Only lot 7 will continue to gain access from the existing easement of East Wisner Lake Road. Whatcom County does look at traffic impacts; however, this project was determined not to impact the transportation and is exempt from completing a traffic concurrency evaluation.

Notice of SEPA Threshold Determination: The Notice of Decision for the Determination of Non-Significance (DNS) for this project was issued on August 24, 2011. The notice was also sent to state and local agencies, and Parties of Record for the project.

The environmental checklist was reviewed by county staff and was forwarded to additional local and state agencies. The SEPA determination was not appealed. During the public comment period for the DNS, the County received two written comments.

- The Washington State Department of Ecology Water Quality Specialists also commented regarding stormwater and impacts to water quality. The applicants have been notified and will be required to obtain all permits necessary prior to physical development of the site.
- Washington State Department of Ecology Water Master submitted a letter on August 22, 2011 regarding water resources and the groundwater exemption. This subdivision will be supplied water by the Pole Road Water Association. There is no need for a groundwater exemption.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on August 24, 2011 and no appeals were filed.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Roads and Bridges (WCC Chapter 12.08)**

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

Project proposal is a seven lot long subdivision with no accessory dwelling units. Lots 1 to 6 are to access a new rural private road with lot 2 also having a direct access to Bylsma Road. Lot 7 has an existing access to E. Wisner Lake Road and will not be using the new rural private road. Engineering staff reviewed the proposal and submitted a memo dated August 1, 2011 with conditions of approval.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 12.08.*

## **B. Building Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Chief Plans Examiner submitted a memo dated August 30, 2011 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The Whatcom County Fire Marshal submitted a memo dated May 6, 2008 with conditions of approval for this proposal. The Fire Marshal had no additional comments at this time.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

## **C. Critical Areas (Title 16)**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The following wetland reports were submitted and reviewed:

- Wetland Delineation from Northwest Ecological Services, LLC. dated December 2006.

A critical areas technical administrator reviewed and approved the wetland report on May 14, 2009. One wetland and a stream with an associated wetland exist on site. Please see the following table for the type and buffer widths for each wetland.



### Critical Areas Categories and Buffers

Wetland	Category	Buffer Width
Wetland 'A'	IV	40 feet
Wetland 'B'	IV	40 feet
Stream	Non-fish bearing	50 feet

Wetland 'A' is a 30,089 square foot wetland of which a small portion is located in the northwest corner of the property. The majority of the wetland extends offsite. Wetland 'B' is a small 12,611 square foot wetland located in the central and eastern portion of the site. There is also an unnamed non-fish bearing stream located on the northern portion of the site.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.*

#### D. Flood Hazard Area (WCC Title 17)

WCC Title 17 contains standards that regulate development within a flood hazard area as established in WCC 17.04.050. The subject property is within a flood hazard zone. The following standards apply to subdivisions within a flood hazard area:

- All subdivision proposals shall be consistent with the need to minimize flood damage.
- All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems or private on site sewage system and private wells located and constructed to minimize flood damage.
- All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less). (Ord. 96-050 Exh A; Ord. 87-25 (part)).

*The site is located within a flood hazard zone. As conditioned, the short plat meets all flood hazard area requirements.*

#### E. Zoning Code

##### WCC 20.36 Rural Zone Site Requirements

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.36.253, establishes the basic density and lot size requirements for residential development in the Rural zone. Flexibility from these requirements may only be obtained through the planned unit development process. The requirements for the R(2) zoning district are listed in the table below.

**WCC 20.36.253 Rural Site Requirements**

District	Gross Density	Conventional Minimum Lot Size
Rural 2	1 dwelling unit/ 2 acres	2 acres

The site is approximately 14.3 acres in size with a density of one unit per two acres with a total of 7 single family residential units. The applicant is proposing seven conventional single family residential lots. The lots range from 1.80 net acres to 1.98 net acres.

The proposed lots are below the minimum lot size of two acres. The applicants have elected to utilize WCC 20.80.720 which states the following:

**20.80.720 Variances to lot area and width requirements for new subdivisions.**

Minimum building site area and width requirements may be varied in the approval of new subdivisions and short subdivisions by means established in the Whatcom County Subdivision Ordinance; provided, that the gross density of the subdivision shall not exceed that of the applicable zone district; and provided, that no site shall be allowed to differ more than 10 percent in area or in average width from the standard requirement. Such variation in lot size shall not include land of 20 percent or greater slopes, tidelands and water areas and thus shall not be included in calculating the gross density of a site for purposes of determining the number of parcels eligible for the 10 percent lot area or width reduction allowed by this section. (Ord. 2001-063 § 1, 2001; Ord. 87-12, 1987; Ord. 87-11, 1987).

The proposal meets the requirements of WCC 20.80.720 and no lots will below the 1.80 acre (net) condition.

Minimum lot width and depth for residential development in the Rural zone are determined by WCC Section 20.36.254. The requirements for lot width and depth for the R-2 zoning district are listed in the table below.

**WCC 20.36.254 Minimum lot width and depth**

District	Width at Street Line Conventional	Width at Bldg. Line	Minimum Mean Depth
R-2	200'	80'	100'

*The project, as proposed meets the requirements of WCC 20.36.254.*

**WCC 20.36.350 Building setbacks.**

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements).

**WCC 20.36.400 Height limitations.**

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

**WCC 20.36.450 Lot coverage.**

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area.

*Building setbacks, height limitations and lot coverage will be reviewed at the time of building permit review.*

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.32.*

**WCC 20.78 Transportation Concurrency**

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

The proposed development will not result in an "impacted transportation facility" per WCC 20.78.030(5) and therefore, will not require a transportation concurrency evaluation.

*The Technical Review Committee has determined the project is exempt from the requirements of WCC Chapter 20.78.*

**WCC 20.80.212 Concurrency**

WCC Section 20.80.212 states that no subdivision shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

**Water**

Water will be provided for the site with one water connection from the Skookum Chuck Water Association for the existing home site and six water connections from the Pole Road Water Association. For more analysis regarding water see Section VII.I. Health Department of this report.

### **Sewage Disposal**

There is no public sewage disposal available for this site. The applicant is proposing on-site septic systems. For more analysis regarding sewage disposal see Section VII.I. Health Department of this report.

### **Schools**

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

The applicant submitted a will-serve letter for this proposal dated March 7, 2007 from the Lynden School District #504. The school district received notice of the proposal and made no further comments.

### **Fire Protection**

The Fire District has submitted a letter of concurrency for this proposal dated May 11, 2007 stating that the site is located within the service area of Fire District No. 21 and the district will provide fire protection services for this subdivision as conditioned.

The fire district has determined the property is located in an area that receives a rural level of service, which means the district will service the site to the best of its ability given the dependency upon volunteers and its limited resources. The fire district has requested the following notes be placed on the face of the plat:

The subject property is within the boundaries of Whatcom County Fire Protection District No. 21, a combination district that relies upon both volunteers and paid staff to meet the service demands from the District, including fire protection, emergency response, and basic life support transport services.

The subject property will receive a rural level of service from Whatcom County Fire Protection District No. 21.

This note is not typically something shown on the face of the plat and the circumstances may change in the future. Whatcom County is not requiring these notes to be placed on the face of the plat.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

## **F. Subdivision Regulations (Title 21)**

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, 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 the public use and interest will be served by the platting of such subdivision and dedication; and

1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

*The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.*

2. With regard to open space, parks and playgrounds the Technical Review Committee finds the following:

*All of the proposed lots will be between 1.80 and 2.0 acres in size leaving adequate space available on each lot for individual open space and playground needs.*

*The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.*

3. With regard to streets or roads, alleys, other public ways and transit stops, the Technical Review Committee finds the following:

*Lots 1 through 6 of this plat shall be served by the private interior road which accesses off Bylsma Road. Lot 7 will continue to access via an existing 20 foot access and utility easement from East Wiser Lake Road.*

*In summary, the Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.*

4. With regard to drainage Technical Review Committee finds the following:

*The Technical Review Committee has determined that the proposal, as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.*

5. With regard to schools the Technical Review Committee finds the following:

*The Lynden School District was notified of the project and provided a letter of availability; therefore, the Technical Review Committee has determined that the proposal is providing adequately for schools.*

6. With regard to compliance with the relevant polices of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

*The Whatcom County Comprehensive Plan adopted in May of 1997 applied the Rural designation to the subject site. Applicable goals of the Rural designation are as follows:*

Goal 2DD: Retain the Rural character and lifestyle of Whatcom County

Goal 2EE: Ensure that Rural areas are provided with services consistent with the Rural character and that development patterns do not encourage an increased service level or degrade water quality.

Policy 2EE- 2 Allow development in rural areas only when urban services are not required.

*The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.*

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

*As analyzed previously in this report, the Technical Review Committee finds that the project is in compliance with Title 20 and Title 21 and all other land use controls.*

*The Technical Committee has determined that, as conditioned, the project meets the requirements of WCC Title 21.*

## **G. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department submitted a memo dated August 12, 2011 with the following comments.

### **SEWAGE:**

The applicant has demonstrated that there are adequate soils on each lot to support on-site sewage systems (OSS), and OSS permit applications have been conditionally approved.

### **DRINKING WATER:**

The applicant has submitted verification of public water availability from the Pole Road Water Association for 6 new connections, and verification of public water from Skookum Chuck Water Association for the existing residence, lot #7.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.*

## **VIII. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the Long Subdivision application, subject to the following conditions:

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division**

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
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.
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 a final plat is submitted in proper form for final plat approval within seven years of the date of preliminary subdivision approval per RCW 58.17.140. This expiration date may be extended pursuant to WCC 21.05.030(5).
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 permits prior to construction.
7. The following Right-to-Farm note shall be placed on the mylar:

**RIGHT TO FARM COVENANT**

THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AGRICULTURE OR RURAL DISTRICT. THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS LONG SUBDIVISION 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 SAID AGRICULTURAL LANDS WHICH OCCURS IN THE NORMAL COURSE OF THEIR ESTABLISHED USE. UPON SALE OF EACH LOT, THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE COUNTY AUDITORS OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

8. The following Flood Hazard Note shall be placed on the mylar:

**FLOOD HAZARD NOTE:**

LOTS WITHIN THIS [SHORT PLAT/LONG PLAT/BINDING SITE PLAN] ARE LOCATED IN A FEMA DESIGNATED FLOOD HAZARD ZONE. ANY DEVELOPMENT WITHIN A DESIGNATED FLOOD HAZARD ZONE IS SUBJECT TO THE WHATCOM COUNTY CODE (WCC) TITLE 17 PURSUANT TO ORDINANCE (ORD 1996-050 EXH A) AND TITLE 16.16.400 (ORD 2005-068) UNLESS FUTURE CHANGES TO WHATCOM COUNTY CODE DICTATE OTHERWISE.

**B. Health Department**

1. The applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated August 12, 2011, unless modified by that Department or appealed to the appropriate agency.



2. Water service connections to each proposed lot must be installed, inspected and approved by the Pole Road Water Association prior to final plat approval.

### **C. Natural Resources Division**

#### 1. Critical Areas Administrator

1. The applicant shall comply with all of the conditions of the Critical Areas Administrator in the memo dated June 9, 2011, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
2. Prior to final approval per WCC265(C), the critical areas and required buffer located on the site shall be protected using one of the following mechanisms:
  - a. Placed in a separate tract or tracts owned in common by all lots within a subdivision;
  - b. Covered by a protective easement, or public or private land trust dedication; or
  - c. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.
3. The Conservation Easement or other protective covenant must be recorded prior to or at the time of mylar recording.
4. In addition, Native Growth Protection Easement signs must installed prior to final approval in the locations indicated on the attached site plan.

### **D. Building Division**

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated August 30, 2011 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
2. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the International Building Code (IBC), Section 105.2 regarding nonexempt structures.
3. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
5. Nonexempt structures may include fences, retaining walls, concrete vaults and

other poured-in-place concrete structures, some retention/detention structures, bridges and permanent signs and the like.

#### **E. Fire Marshal**

1. The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated May 6, 2008 unless modified by the Deputy Fire Marshal or appealed to the appropriate agency.
2. Fire flow required. Fire flow shall be a minimum 500 gpm delivered at 20 psi. Hydrants shall be located within 600 feet of all building areas.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

#### **F. Public Works – Engineering Division**

1. The applicant shall comply with the conditions of the Whatcom County Engineering Division in the memo dated August 1, 2011 unless modified by the Engineering Division or appealed to the appropriate agency.
2. All development shall comply with Whatcom County Development Standards.
3. Sight distance at all access road intersections shall meet Whatcom County Development Standards.
4. A preliminary traffic analysis has been submitted and reviewed by the county.
5. Proposed lot No. 7 has an existing house with existing access (provide copy of easement) to E. Wisner Lake Road. Remove existing access from proposed lot 7 to Dairy Lane (proposed private interior road) and replant area with vegetation prior to plat recording.
6. The project site fronts Bylsma Road, a county rural minor access road. Six of the seven proposed lots access Bylsma Road.
7. Applicant is proposing a rural private road, which the county agrees, to serve six of the seven lots. Min. road standard required is 18 ft. wide gravel/crushed rock, per drawing 505.E-1 of Ch. 5 Whatcom County Road Standards, with a paved apron at Bylsma Road. Engineered road construction plans to be submitted for county Engineering Services review. Applicant will need to comply with the criteria in Chapter 5 Road Standards section 505.E., Private Roads and Streets.

8. The project frontage along Bylsma Road is approximately 668 ft. The last traffic count on Bylsma Rd. was 68 ADT counted in 2007. The estimated trip generation of this project on Bylsma Rd. is 60 ADT. The traffic impact mitigation is to reestablish the min. 3 ft. wide gravel/crushed rock shoulders both sides of Bylsma Rd. between the plat access road and E. Wiser Lake Road.
9. All signing (road name, stop sign, dead end) shall be installed per MUTCD standards at the developer's expense.
10. An Engineered Stormwater Design Report that addresses conveyance, detention, and water quality measures by a Washington State licensed civil engineer will need to be submitted prior to any construction onsite for approval by Whatcom County Engineering.
11. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
12. A Revocable Encroachment Permit will be obtained for work within the county right of way.
13. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
14. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar. [WAC 332-130-050(1)(b)]
15. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for address assignment. Address fee assignment shall be paid prior to recording.
16. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction. As-built stormwater plans and a letter of certification from the licensed design engineer or a licensed surveyor must be submitted to the County Engineer.
17. Developer shall provide a plat layout to the post office to get approved mailbox location(s). The location and use of mailboxes shall not interfere with county road traffic.

Report prepared for the Technical Review Committee by:

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