SUMMARY OF APPLICATION AND DECISION

APPLICATION: The applicants seek to subdivide Assessor’s parcel #R32902-343-4790, located at 4330 Clyde Road, Langley, Washington, into two (2) parcels. Because this property was the subject of a recent short plat, long plat approval is required for this proposed subdivision.

DECISION: Preliminary long plat approval is granted to the proposed subdivision subject to conditions.

FINDINGS OF FACT

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 on January 18, 2007.

I.

PRELIMINARY INFORMATION

Applicant: Gerald & Robin Koeller

Property Location: South side of Clyde Road in the NE ¼ of Section 2, Township 29N., Range 3E, W.M. Assessor’s Parcel No. R32902-343-4790.

Applicable Ordinances, Statutes and Regulations: Island County Comprehensive Plan, Chapter 17.03 ICC, Chapter 16.06 ICC, Chapter 11.05 ICC,

SEPA: A Determination of Non-Significance was issued by Island County on November 15, 2006.

Publication: South Whidbey Record – January 3, 2007
Mailing of Notice to Applicant: December 12, 2006

Sign Posted: August 21, 2006

Mailing of Staff Report: January 8, 2007

Date of Application: August 1, 2006

Hearing Date: January 18, 2007

Exhibit Log:

1. Staff report
2. Pre-Application Conference Application dated 2/2/06
3. Memorandum to PRE 902/06 Koeller
4. Memo dated 2/21/06 from Elaine Graham, Island County Health Department, to Gerald & Robin Koeller
5. Memo dated 2/22/06 from John Bertrand, Development Coordinator, to Andrew Hicks, Island County Planning & Community Development
6. Pre-Application Meeting Sign in Sheet dated 2/23/06
7. Ltr dated 2/23/06 form Andrew Hicks, to Jerry Koeller
8. Land Development Permit Application dated 8/1/06
9. Short Plat Map dated 8/1/06
10. Environmental Checklist dated 8/1/06
11. Declaration of covenants, conditions and restrictions dated as received 8/1/06
12. Ltr dated as received 8/1/06 from Jack Richardson, Cable Tool Well Drilling Co.
13. Ltr dated as received 8/1/06 from Rick Hill, Director of Public Works, City of Langley, to Jerry Koeller
14. Certificate of Transportation Concurrency dated as received 8/1/06
15. Quit Claim Deed dated as received 8/1/06
16. Site Registration dated as received 8/1/06
17. Permit to Construct a Sewage Disposal System dated as received 8/1/06
18. Application for Access to County Road Right of Way dated as received 8/1/06
19. Request for comment sheet dated 8/11/06
20. Quarter Section Map
21. Notice of Complete Application dated 8/11/06
22. Email from Alice Schisel, Planning Official, City of Langley, to Andrew Hicks
23. Email dated 8/16/06 from Aneta Hupfauer, Island County Health Department, to Andrew Hicks and Thatcher and Morrison
24. Affidavit of Mailing public notice to contract person dated 8/18/06
25. Affidavit of Mailing public notice to property owners within 300 feet of parcel dated 8/18/06
26. Affidavit of Posting the Public Notice sign dated 8/21/06
27. Memo dated 8/29/06 from Aneta Hupfauer, to Andrew Hicks
28. Memo dated 9/1/06 from John Bertrand, Development Coordinator, to Andrew Hicks
29. Ltr dated 9/5/06 from Audrey Chew, to Andrew Hicks
30. Email dated 9/14/06 from Joan Fanning, to Andrew Hicks
31. Notice of republication dated 9/22/06
32. Affidavit of Posting the Public Notice sign dated 9/28/06
33. Affidavit of Mailing the public notice to contact person dated 9/29/06
34. Affidavit of Mailing the public notice to property owners within 300 feet of the parcel dated 9/29/06
35. Island County Notice of Application with SEPA Republish dated 10/4/06
36. Affidavit of Publication/Republish dated 10/4/06
37. Ltr dated 10/17/06 from Paul Fishman & Joan Fanning, to Andrew Hicks
38. Final SEPA Threshold Determination dated 11/15/06
39. Ltr dated 12/7/06 from Cindy White, Island County Planning & Community Development, to Property owner
40. Ltr dated 12/12/06 from Pam Dill, Island County Planning & Community Development, to Gerald & Robin Koeller
41. Documents submitted at hearing by Paul Fishman
42. Declaration of covenants, conditions and restrictions, recorded 10/9/03

HEARING TESTIMONY

Andrew Hicks
Island County Planning & Community Development
PO Box 5000
Coupeville WA 98239

Robin & Gerald Koeller
4935 Fireweed Place
Langley WA 98260

Paul Fishman
4740 Latona NE
Seattle WA

John Bertrand
Island County Planning & Community Development
PO Box 5000
Coupeville WA 98239

II.

Gerald & Robin Koeller seek preliminary plat approval for the proposed subdivision of an approximately six (6) acre parcel into two (2) residential lots. The property is zoned Rural Residential and is within the Sandy Point Residential Area of More Intensive Development (RAID). The base density for this RAID is two (2) dwelling units per acre. The density resulting from this subdivision would be approximately one (1) dwelling unit per three (3) acres.
III.

Island County Planning & Community Development has recommended approval of the proposed subdivision in a staff report and recommendation admitted into the Hearing Examiner’s file as Exhibit #1. A copy of the staff report and recommendation is attached hereto and incorporated herein by this reference.

Staff has recommended approval of the proposed subdivision subject to 16 conditions. The applicant has indicated that the factual findings set forth in the staff report are accurate and that the applicant has no objection to any of the requested conditions of approval.

The County received a couple of written comments from members of the public. An adjoining property owner, Paul Fishman, raised concerns about the proposal at the public hearing.

The Hearing Examiner concludes that the factual findings set forth in the staff report are supported by the record as a whole and hereby adopts those findings as Hearing Examiner Findings of Fact herein.

All County agencies with jurisdiction have recommended approval of the subdivision subject to conditions.

IV.

Mr. Paul Fishman, owner of the property located directly south of the Koeller property raised three concerns about the proposal. Mr. Fishman’s first concern was about potential well building within a view easement over the subject property in favor of Mr. Fishman’s property. A copy of an applicable Declaration of Covenants, Conditions and Restrictions regarding the Koeller property and Mr. Fishman’s property was admitted into the Hearing Examiner file as Exhibit 42. There is a view easement across the Koeller property for the benefit of Mr. Fishman’s property. This view easement imposes a height limit on structures and plantings to 15 feet above a benchmark on the north property line of the Fishman property. Mr. Fishman expressed concern that a well house which could violate the height restriction was being proposed by the Koeller’s within the view easement area. The Koeller’s indicated at the hearing that they were not proposing any structure which would violate the view easement and were willing to have the view easement included as a condition of approval for this short plat. The Hearing Examiner will include the restrictions of the view easement as a condition of approval thereby alleviating Mr. Fishman’s concerns in this regard.

Mr. Fishman’s second issue was regarding the width of the easement from Clyde Road to his property. This easement will serve both of the lots now being created by the Koeller’s and three (3) lots recently created on the Fishman property. Mr.
Fishman points out that since the easement road will be serving five (5) lots that the Island County Code requires it to be 40 feet in width. The proposed easement is 30 feet in width; Mr. Fishman felt that the County should require the 40 foot wide easement in accordance with the requirements of ICC 11.01.

John Bertrand, Development Coordinator for Island County Public Works, addressed the easement road issue. Mr. Bertrand indicated that there is a drainfield easement which abuts the 30 foot wide easement in the southwest portion of the Koeller property. He indicated that because of the drainfield easement Public Works approve of a modification of the easement road width requirements on the request of the Koeller's. Based on this request Public Works required a 40 foot wide easement along the newly created lot which abuts Clyde Road and a 30 foot wide easement thereafter.

There is nothing in the record which would indicate that the modification of the easement width will have an adverse impact on any of the affected property owners or on the public.

Mr. Fishman’s third issue concerned the width of the easement road where it abuts Clyde Road. He pointed out that the easement granted is 55 feet in width where the easement enters Clyde Road. He indicated concern because drawings submitted with the application did not show this width. Public Works indicated that although they would not require a 55 foot wide easement where it abuts Clyde Road that in fact an easement of that width does exist at that point and would not be affected by this short plat.

The Hearing Examiner concludes that all of Mr. Fishman’s concerns have been properly addressed by Island County agencies with jurisdiction.

V.

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.

Because of prior short plats this proposed subdivision of an approximately six (6) acre parcel into two (2) lots requires preliminary long plat approval instead of short plat approval. This matter was handled as a Type III application which included a public hearing before the Hearing Examiner on January 18, 2007. Proper notices have been given.

II.
A Declaration of Covenants, Conditions and Restrictions affecting both the Koeller property and the adjoining Fishman property to the south establish a 50 foot building setback, a view easement in favor of Mr. Fishman’s property, and a requirement that the drainfield easements shown on the survey be preserved.

Staff has recommended showing the building setback lines on the Koeller’s proposed short plat and requiring that they be adhered to. The Koeller’s have not objected to this requirement.

The property owner to the south expressed concern about the view easement. The Koeller’s indicated no intention to construct any structure which would violate the view easement and indicated a willingness that it be also included as a condition of approval herein. With the acquiescence of the Koeller’s the Hearing Examiner will include as a condition of approval compliance with the view easement established in favor of Mr. Fishman’s property.

The short plat which created the Koeller property and the Fishman property shows three (3) drainfield easements on the Koeller property. It also shows an easement from Clyde Road which is approximately 55 feet in width along Clyde Road and narrows to 30 feet in width along the Koeller property up to the Fishman property. Two of the drainfield easements abut the edge of the 30 foot access easement. If a wider easement road was required at this point it would encroach on the drainfield easements in violation of the covenants affecting both the Koeller and Fishman property.

III.

ICC 11.01.060 requires private road easements serving five (5) or more lots to be 40 feet in width. The easement proposed for the Koeller short plat will be thirty (30) feet in width for most of its length. Island County Public Works has indicated they would approve of a modification which allowed most of the road easement to be 30 feet in width in order to not encroach upon the drainfield easements. Such modifications are allowed by ICC 11.01.110. Public Works indicates that the applicants requested such a modification and that Public Works approves of it. ICC 11.01.110 allows modification “in cases where unusual topographic conditions, nature of existing construction, unique development design, or similar factors would make adherence to the width … standards of this ordinance undesirable or impractical, the requirements may be modified …”.

Paragraph C. of the modification section allows the Hearing Examiner to approve modifications in any development actions or permits over which the Hearing Examiner has final approval authority. In this case the Hearing Examiner has final approval authority over this proposed subdivision. The Hearing Examiner finds that the location of the drainfields makes adherence to the width standards
both undesirable and impractical and that the proposed 30 foot width of the
 easement along most of the Koeller property would have no adverse impacts on
 other property owners or on the public. The modification of easement road
 widths sought by the Koeller’s should be granted. A 30 foot easement should be
 adequate to serve the existing five (5) lots as well as any future lots created by
 subdivision on either the Koeller property or the Fishman property.

IV.

Subject to the conditions of approval recommended by staff in the staff report,
and as amended by the Hearing Examiner herein the proposed subdivision will
meet all of the applicable requirements of RCW 58.17 and will serve the public
interest and welfare. Subject to the same conditions the proposed short plat will
be consistent with the requirements of the Island County Code, including but not
limited to the applicable requirements of the zoning ordinance, ICC 17.03, the
requirements of Island County Code Title 16, Subdivision, the requirements of
Island County Code Title 11, Land Development Standards, and the
requirements of Island County Code Title 8, Health, Welfare and Sanitation.

The Hearing Examiner should approve the proposed subdivision subject to
conditions.

V.

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

DECISION

Preliminary long plat approval is hereby given to PLP 320/06, an application from
Gerald and Robin Koeller seeking subdivision of Assessor’s Parcel #R32902-
343-4790 into two (2) lots. A requested modification of the easement width to 30
feet along most of the Koeller property is hereby granted as proposed.
Preliminary approval is granted subject to the following conditions:

1. Compliance with Island County Public Works requirements as specified in
   the attached comments and conditions dated September 1, 2006.

2. Compliance with Island County Health Department requirements as
   specified in the attached comments and conditions dated August 29,
   2006.

3. Prior to final plat approval, all site and off-site improvements required as a
   condition of preliminary approval shall be complete, OR, at the discretion
of the Board of Island County Commissioners by recommendation of the Planning Director and County Engineer shall be bonded for.

4. All utilities installed on-site shall be underground.

5. The following shall appear under “Restrictions” on the final plat map:

   All property boundaries existing prior to this subdivision shall be subject to a fifty (50) foot building setback as shown hereon.

6. The owners of Lot 2, of this long plat, shall comply with the view easement established in Short Plat #309/99, which divided Assessor’s Parcel #R32902-310-4800 into the lot currently owned by the applicant’s herein, the Koeller’s.

7. All proposed development shall comply with the state noise ordinance, air pollution control regulations, water quality standards, and all other pertinent codes and ordinances.

8. Addresses for the proposed lots are as follows:
   1. Lot 1: 4935 Fire Weed Place
   2. Lot 2: 4883 Fire Weed Place

   Pursuant to ICC 14.04, RCW 58.17.280, Ordinance #C-32-96, the addresses must appear on the final short plat map and the following standards for posting the address must be followed:

   The property owner shall post the address in a manner that it can be read from the public or private road accessing the addressed property and provide adequate identification of the addressed property in accordance with the following. Addresses shall be posted on the addressed building, with one-half inch (1/2") channel numerals at least five inches (5") in height, in colors contrasting with the background in such manner and location as to be clearly visible from the road. In instances where the main building’s posted address is not clearly visible from the road, house numbers shall be visibly posted at one location at a height between four feet (4') and eight feet (8') from road level and anywhere within an arc of 30 feet from the point of intersection of the driveway with the access road, with numerals at least three inches (3") high on a contrasting background and visible when traveling in either direction.

9. In addition to the standard final map requirements, the following shall also appear on the face of the final plat:

   A. The complete plat number and existing parcel number must appear at the top right corner of each sheet of the final plat as follows:

      LONG PLAT NO. PLP 320/06R32902-343-4790

   B. The name of the subdivision: Koeller
C. (Approved Private Road Name) **Fire Weed Pl. (Private)**

D. The fifty (50) foot setback to all property lines existing prior to this subdivision.

10. The proposed building envelopes, parking areas, and driveways as shown on the preliminary plat map to be removed from the final plat map.

11. All requirements shall be completed and the Final Plat Mylar must be recorded within five (5) years from the date of this approval.

12. All requirements for Final Subdivision approval required in ICC 16.06.120 & 130, shall be met. The final subdivision shall be consistent with the approved preliminary plat as modified by conditions of preliminary approval listed in this section.

13. The above requirements are subject to change if proposed lots sizes or any other information provided by the applicant or their authorized representatives proves inaccurate.

14. The total of all property taxes for the year in which the plat is to receive final approval and any delinquent assessments for which the property may be liable shall be paid in full to the Island County Treasurer prior to the recording of the final plat.

15. Upon completion of the above requirements, the applicant shall submit:

   A. The original Final Long Plat application and all required materials, along with three copies.
   B. An original, complete Certificate of Title, formatted to meet the Washington State Recording requirements dated no earlier than 30 days prior to submittal.
   C. Four paper copies of the proposed final plat.
   D. A signed and notarized statement by the owner that all conditions of preliminary approval have been met.
   E. Established application fees for a Final Plat application.

   *Note: The information shall be collated into four, separate, identical packages each to include the above listed items.*

16. On the final mylar, ALL certification stamps and signatures must be in permanent black ink.

17. The Island County Auditor will only accept the following for recording:
A. Permanent black ink on linen, photo mylar with a fixed silver halide base and permanent black ink on mylar when the ink is coated with a suitable substance to assume permanent legibility. They will not accept under any circumstance: Diazo mylar, linen with an image produced by a dry electrostatic process, mylars with an image produced by a dry electrostatic process, or taped down edges.

B. Sheet size must be 24 x 18 inches. Borders must be 2 inches on the left edge and ½ inch on the top, bottom, and right edges. If any part of a signature, seal, drawing, or any other mark is located in the required borders, the Auditor’s Office will not accept the plat for recording.

Entered this 26th day of January, 2007, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

PLP

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.