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By K. Witherspoon at 11:13 am, Mar 30, 2022

ATTACHMENT A

BEFORE THE LEWIS COUNTY HEARING EXAMINER

IN RE:) HEARING NO. LP19-0001
DOUGLAS LANE ACRES,) PUBLIC HEARING NO. 21-6-008
Applicant.) FINDINGS OF FACT AND
RECOMMENDATION TO THE
BOARD OF COUNTY
COMMISSIONERS

APPLICANT: Steve and Sarah Johnson
2431 SR 508
Onalaska, Washington 98570

REPRESENTATIVES: Becky Rieger
901 "L" Street
Centralia, Washington 98531

Gunnar Foss
Bluhm & Associates
1068 S. Market Blvd.
Chehalis, Washington 98532

NATURE OF REQUEST: The Applicant requests approval of a nine lot cluster subdivision identified as "Douglas Lane Acres" (the "Subdivision"). The project site includes 67.46 acres. The Applicant proposes to establish nine residential lots, with Lot 1 containing an existing single-family residence together with a 50.87-acre "Natural Resource Area Easement" to allow for a "cluster bonus" on the remaining portion of the property. As a result of the bonus, the number of allowed lots increases from six to nine. The remaining Lots 2 through 9 are residential lots containing one-plus acre each. Additional site improvements include a Class B Public Water System for Lots 2 through 9, individual septic systems and a new private road identified as "Douglas Lane".

LOCATION OF PROPOSAL: 2431 SR 508, Onalaska, Washington, 98570.

SUMMARY OF DECISION: The Hearing Examiner recommends that the proposed subdivision, as modified, be **APPROVED** subject to Staffs proposed conditions of approval.

*Findings of Fact and
Recommendation to the
Board of County Commissioners - I*

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1 **BACKGROUND**

2 The Applicants, Steven and Sarah Johnson, first submitted this subdivision application
3 in November 2019. The site contains approximately 67 acres which, given the site's RDD-10
4 zoning designation, would normally allow subdivision into six residential lots, each having ten
5 or more acres. The application proposes to increase the number of residential lots from six to
6 nine by a means of the allowed bonus for "Clustered Development", Chapter 16.18 LCC. The
7 Clustered Development Ordinance allows a bonus of up to 50% of the allowed lots (in this case,
8 three additional lots) if all of the requirements of the ordinance are satisfied. The most
9 important of these requirements is that at least 75% of the project site must be set aside within a
10 "Natural Resource Easement Area", all of which must be located in one lot.

11 Due to environmental issues and public concerns, review of the application extended
12 over two years and was not completed until late 2021. Once review was complete the matter
13 was scheduled for public hearing before the Hearing Examiner on December 10, 2021. At that
14 hearing County Staff expressed its support of the nine-lot clustered subdivision but also noted
15 that the project, as then configured, would not satisfy all of the requirements of the Clustered
16 Development Ordinance. Most importantly, the application proposed to divide the Natural
17 Resource Easement Area between two lots instead of the required single lot. In addition,
18 several of the proposed lots were configured in a manner that would have them bisected by
19 streams. County Staff recommended that the Hearing Examiner approve the proposed
20 subdivision but on the condition that the lots be reconfigured to place all of the Natural
21 Resource Easement Area on a single lot, and also reduce or minimize stream crossing on
22 individual lots.

23 The Hearing Examiner declined the County's recommendation to approve the
24 subdivision and instead continued the hearing to allow the Applicant to undertake the necessary
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1 reconfiguration of lots in order to confirm that reconfiguration was possible and that the project,
2 as reconfigured, would then satisfy all other requirements for subdivision.

3 In early 2022, the Applicant submitted reconfigured lot layouts to County Staff. As
4 reconfigured, all of the required Natural Resource Easement Area is located within a single lot
5 (Lot 1), while the remaining lots have been redesigned to eliminate/minimize creek crossings.
6 County Staff reviewed the revised layout, determined that it now meets all the requirements for
7 the Clustered Development Ordinance, and recommends approval of the proposed subdivision.

8 Once County Staff review of the revised application was completed the matter was re-
9 noted before the Hearing Examiner for a second public hearing on March 18, 2022. County
10 Staff submitted a Supplemental Staff Report in which it analyzes the revised design, concludes
11 that the application meets all County land use regulations, and recommends approval of the
12 clustered subdivision subject to a lengthy list of conditions.

13 There has been, and remains, a significant amount of public opposition to the application
14 from nearby landowners. Among other concerns, opponents believe that the project may impact
15 wetlands; that the Class B Public Water System for Lots 2 through 9 will have a draw down
16 effect on their wells; that the proposed individual septic systems will pose a public health risk;
17 that the project is not in keeping with the rural quality of surrounding properties; and that the
18 project will interfere with the enjoyment and value of adjoining properties.

19 **FIRST PUBLIC HEARING**

20 The initial public hearing commenced at 9:00 a.m. on December 10, 2021. Due to
21 ongoing restrictions imposed as a result of the COVID pandemic the hearing was conducted
22 remotely using the Zoom platform, with the County Staff serving as the hearing host. The
23 County appeared through Karen Witherspoon, Senior Project Planner, and was represented by
24 Amber Smith of the Lewis County Prosecuting Attorney's Office. The Applicants appeared
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1 personally and through their representatives, Becky Rieger, Environmental Engineer, and
2 Gunnar Foss, Surveyor. Several members of the public were present and asked to testify. All
3 testimony was taken under oath.

4 In advance of the public hearing County Staff submitted a Staff Report consisting of
5 twenty-seven exhibits with Exhibit 1 (Application Documents) containing numerous additional
6 exhibits, and Exhibit 8 (Public Comments) containing the collective comments received during
7 application review, all of which are found on the County's website. Just prior to the hearing
8 County Staff received an additional public comment from George Burden dated December 8,
9 2021, followed by the Applicant's response also dated December 8, 2021.

10 The hearing began with the testimony of Karen Witherspoon, Senior Project Planner and
11 author of the County's Staff Report. Ms. Witherspoon summarized the findings found in the
12 Staff Report and reiterated the County's position that the subdivision should be approved subject
13 to the conditions found in the Staff Report. Most notably, Ms. Witherspoon acknowledged that
14 the proposed layout of the lots would not satisfy the requirements of the Clustered Development
15 Ordinance, Chapter 16.18 LCC. The ordinance requires that 75% of the project site must be
16 contained within a Natural Resource Easement Area, and that this easement area must be
17 wholly incorporated into a single lot. The proposed subdivision divided the Natural Resource
18 Easement Area between Lots 1 and 2 instead of the required single lot. In addition, Ms.
19 Witherspoon noted that several lots were bisected by streams, and that these stream
20 intersections were environmentally problematic. While acknowledging these difficulties with
21 the application, County Staff recommended project approval but subject to the requirement that
22 the Applicant redesign the lots in a manner that would place all of the required Natural
23 Resource Easement Area in Lot 1 and, secondly, reconfigure proposed Lots 2, 8 and 9 so that
24 on-site streams and their buffers do not bisect these lots.

1 Following Ms. Witherspoon's testimony the Applicant, Steven Johnson, testified. Mr.
2 Johnson explained that he was willing to reconfigure the lots as required by County Staff and
3 asked that the application be approved subject to undertaking the reconfiguration of the lots.
4 Mr. Johnson acknowledged that the application had taken several years due in part to a better
5 understanding of the requirements of the Clustered Development Ordinance and working to
6 comply with its requirements.

7 Following Mr. Johnson's testimony his environmental consultant, Becky Rieger, testified
8 in reference to wetland issues as well as septic system issues. During project review Ms. Rieger
9 had presented a report in which she concluded that there is no wetland habitat present on the site
10 (Exhibit 1). This report and its conclusions were challenged by opponents who advised the
11 County of an earlier Wetlands Report prepared by Charles Hampton in 2012 in which Mr.
12 Hampton had concluded that the project site does "contain some low grade Class III and IV
13 wetlands . . . ". In her testimony Ms. Rieger explained the discrepancy between these two
14 reports and their conclusions. She noted that Mr. Hampton's report was only examining
15 potential wetlands within a proposed homesite and that, with respect to that homesite, no
16 wetlands were found. His additional statement that the site does "contain some low grade Class
17 III and IV wetlands" was not based upon any actual testing but was merely a casual observation
18 as, again, Mr. Hampton was not evaluating the entire site but only the proposed homesite. In
19 contrast, Ms. Rieger's evaluation involved actual testing of the entire project site. This testing
20 found no identifiable wetlands.

21 Ms. Rieger notes that there are two Type N streams coursing through the project which
22 will require 75-foot buffers for buildings and 100-foot setbacks for septic. With respect to the
23 proposed septic systems, Ms. Rieger explained that perk holes had been dug on three locations
24 for each proposed lot and that all lots were found to have suitable soils sufficient for designed
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1 septic systems. Ms. Rieger concluded that the project, as conditioned, would not have any
2 adverse health impacts to the public.

3 Following Ms. Rieger's testimony the Applicant's Surveyor, Gunnar Foss, testified
4 briefly and confirmed that he could prepare a revised lot layout by January 15, 2022.

5 Following the Applicant's testimony, George and Julie Burden testified in opposition.
6 Mr. and Mrs. Burden had provided earlier written opposition (along with other nearby
7 landowners) and their testimony was consistent with their earlier written comments. Julie
8 Burden explained that her biggest concern is the well water requirements for the project and the
9 potential impact of the project's Class B Public Water System on surrounding wells. She notes
10 that her own well had to be drilled to 340 feet and that it now experiences sediment and rust,
11 perhaps due to the recent drilling of other nearby wells. She notes that all surrounding wells are
12 at least 200 feet or lower due to the difficulty of finding suitable groundwater. She fears that
13 the Class B Public Water System will impose a further drawdown on the local groundwater and
14 cause an undue burden to adjoining property owners.

15 Mrs. Burden added that her family had grazed cattle on the site while also operating a
16 log mill and that from these personal experiences she believed the area to contain wetlands.
17 Mrs. Burden concluded her testimony by noting that the surrounding properties are all view
18 properties with much of their value derived from their views. She believes that the project is
19 likely to impair these views and, therefore, property values.

20 Following Julie Burden's testimony, George Burden testified regarding similar concerns.
21 Among other things, Mr. Burden is concerned about proper buffers for critical areas and that
22 streams and other environmentally sensitive areas are protected from development, roads,
23 waterline crossings, and other improvements. He also questions whether the sites are
24 sufficiently large enough to provide the necessary individual septic systems. Mr. Burden
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1 concluded by noting that it would not be possible to confirm that all environmental protections
2 are met until the lots have been reconfigured and their exact boundaries known.

3 Following public testimony, Ms. Witherspoon responded to several public comments.
4 She noted that the existing well for Lot 1 is a shared well and that its shared use has been
5 reviewed and approved. The new well for the Group B Public Water System has also been
6 conditionally approved. In response to some questions about the private road, Ms. Witherspoon
7 noted that it will provide fire access as well as the necessary turnaround for public emergency
8 vehicles. As to concerns over septic systems, she notes that these will be individual systems,
9 not a community system, and that they must be setback from critical areas, will be sized
10 according to the size of the house, and that each one will be permitted individually. Ms.
11 Witherspoon added that the redesign of the lots will require a reexamination of perk holes to
12 ensure that each redesigned lot has been properly evaluated.

13 Following Ms. Witherspoon's testimony, Mr. Johnson provided his own response. He
14 explained that he cares about his neighbor's concerns and values a sense of community. He then
15 reiterated Ms. Rieger's comments regarding the earlier wetlands investigation done by Mr.
16 Hampton and that it was limited to a proposed house location and not the entire development.
17 As to Ms. Burden's concerns over property values, Mr. Johnson explained that his plan is to
18 build higher end custom homes which should ensure the value of neighboring properties.

19 At the conclusion of all testimony the Hearing Examiner announced his unwillingness to
20 recommend a decision without seeing a reconfigured lot layout meeting all of the requirements
21 of the Clustered Development Ordinance. The hearing was therefore adjourned and the
22 Applicant was given a deadline of early January 2022 to submit a revised subdivision map to
23 then be reviewed by County Staff or an anticipated continuation of the public hearing in March
24 2022.

1 Sometime after the first public hearing, County Staff discovered that the recording
2 system had failed to activate during the hearing and that the testimony presented by all parties
3 had not been recorded and preserved. This problem was brought to the attention of the Hearing
4 Examiner who concluded that the hearing would not need to be re-held as the various witnesses
5 had all earlier provided written testimony and that their oral testimony was largely a reiteration
6 of their earlier written evidence already included in the record, as supplemented by the Hearing
7 Examiner's notes taken during the hearing.

8 **SECOND PUBLIC HEARING**

9 As directed by the Hearing Examiner, the Applicant submitted a revised lot layout and
10 new subdivision map by early January 2022. The revised layout was then reviewed by County
11 Staff resulting in a Supplemental Staff Report dated March 2, 2022. The public hearing was
12 resumed on Friday, March 18, 2022, at 9:00 a.m. As with the first public hearing, the hearing
13 was conducted remotely utilizing the Zoom platform with County Staff serving as the hearing
14 host. The County appeared again through Karen Witherspoon and was represented by Amber
15 Smith of the Prosecuting Attorney's Office. The Applicants, Steven and Sarah Johnson,
16 appeared personally. Their consultants were not present for the supplemental hearing. Several
17 members of the public were present including George and Julie Burden who again testified. All
18 testimony was taken under oath.

19 In advance of the public hearing County Staff submitted their Supplemental Staff Report
20 dated March 2, 2022, containing eleven supplemental exhibits (Supplemental Exhibits 1
21 through 11) together with other supplemental materials, all of which are found on the County's
22 website. In addition, just prior to the hearing, County Staff received additional public
23 comments from George and Julie Burden via email dated March 12, 2022. No additional
24 exhibits were presented.

1 The renewed hearing began with Ms. Witherspoon's testimony. She confirmed that the
2 revised lot layout now incorporates all of the required Natural Resource Easement Area into
3 proposed Lot 1. The Natural Resource Easement Area consists of at least 75% of the total
4 project site thereby qualifying for the clustered development bonus of three additional lots. The
5 revised layout also reconfigures the lots so as to avoid stream crossings.

6 Ms. Witherspoon explained that the reconfigured lots needed to be reexamined for septic
7 systems as the earlier perk test sites were not consistent with the redesigned lots. As a result,
8 new soil tests were undertaken on proposed Lots 5 and 6 and were found to meet basic
9 requirements for designed septic systems.

10 With respect to concerns over wetlands, Ms. Witherspoon explained that the Wetlands
11 Report prepared by Ms. Rieger had not only been carefully examined by County Staff but by
12 the Department of Ecology as well. Ecology confirmed that the report was acceptable and
13 agreed with its findings.

14 Ms. Witherspoon noted that there had been public concerns that the on-site streams may
15 be fish bearing even though they have been designated as non-fish bearing. This question was
16 posed to the Department of Fish and Wildlife (WDFW) who confirmed that the streams are
17 deemed non-fish bearing.

18 With respect to the proposed Class B Public Water System for Lots 2 through 9, Ms.
19 Witherspoon explained that this system had been carefully examined by the County's water
20 expert, Sue Kennedy, who found that it satisfies all public health requirements. Even so, the
21 system will be subject to its own additional regulations on top of those imposed on the
22 subdivision.

23 Ms. Witherspoon concluded her testimony by recommending approval of the
24 reconfigured subdivision on the basis that it meets all County requirements and that approval is
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1 conditioned on the approximately 45 conditions found at pages 7 through 11 of the
2 Supplemental Staff Report.

3 Following Ms. Witherspoon's testimony Mr. Johnson testified very briefly and merely
4 confirmed that he is in agreement with all conditions requested by County Staff.

5 After Mr. Johnson's testimony George and Julie Burden again testified in opposition.
6 Mr. Burden noted that the supplemental septic design report prepared by Ms. Rieger
7 (Supplemental Exhibit 4) declares that it is evaluating the site for "seven lots to be served by an
8 on-site waste water system". This statement suggests that Ms. Rieger did not evaluate the site
9 for all of the proposed lots. Mr. Burden also expressed concern that the private road system
10 (Douglas Lane) appears to take much of the developable area on Lots 7 through 9 and therefore
11 questions whether there is enough remaining area on these lots for the necessary septic systems
12 coupled with home locations.

13 Following Mr. Burden, Julie Burden testified as to the same concerns and also sought
14 clarification as to where the well log reports for the Class B Public Water System could be
15 found. This question led to a lengthy discussion among County Staff and the suggestion that
16 Mrs. Burden may want to contact the County Environmental Health Office to obtain the well
17 logs or, separately, that they can be obtained through the Department of Ecology.

18 Following Mrs. Burden's testimony, Karen Witherspoon responded to several of Mr.
19 Burden's concerns. As to the impact of the private road on the developable portion of Lots 7
20 through 9, Ms. Witherspoon responded that the layout had been reviewed by Environmental
21 Health and that it had concluded there was adequate area on these lots for the necessary septic
22 systems, recognizing that each landowner would then need to design and locate a house
23 consistent with the septic system. Ms. Witherspoon also confirmed that the reference to "seven
24 lots" in Ms. Rieger's Supplemental Septic Design Report is clearly a typographical error as the
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1 report itself references all of the proposed lots. Ms. Witherspoon then reiterated the County's
2 position that the application should be approved subject to the lengthy list of proposed
3 conditions. This concluded all testimony.

4 Accordingly, I make the following:

5 **FINDINGS OF FACT**

6 **General Findings**

7 1. Any Findings of Fact contained in the foregoing Background or Public Hearing
8 Sections are incorporated herein by reference and adopted by the Hearing Examiner as Findings
9 of Fact.

10 2. The Applicant seeks approval of a reconfigured cluster development subdivision
11 that would subdivide 67.46 acres into nine residential lots. Lot 1 would continue to be provide
12 water from an existing (shared) well while the remaining Lots 2 through 9 would receive water
13 from a Class B Public Water System. Lots 2 through 9 would be provided access via a private
14 road (Douglas Lane) connecting the project to Green Lane, a private road, and ultimately to
15 Highway 508. Each lot would have its own private septic system.

16 3. The proposed subdivision was originally configured as shown on maps attached
17 to the original Staff Report (the "Original Design").

18 4. As explained in the Public Hearing Section, the originally proposed lot layout
19 was found to not comply with the requirements of the Clustered Development Ordinance,
20 Chapter 16.18 LCC and a new subdivision layout was presented as identified in attachments to
21 the Supplemental Staff Report (the "Revised Design").

22 5. The project has a street address of 2431 SR 508, Onalaska, Washington. It is
23 located within the Rural Development District-10 Acre (RDD-10) zoning designation. All
24 surrounding properties are also zoned RDD-10. Surrounding development consists primarily of
25 rural residential properties and agricultural activities.

*Findings of Fact and
Recommendation to the
Board of County Commissioners - 11*

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1 6. The project site is partially developed with an existing single-family residence
2 having its own access to SR 508. The existing residence is located within proposed Lot 1 which
3 will also include the Natural Resource Easement Area as well as the Class B Public Water
4 System providing water to Lots 2 through 9.

5 7. The site is relatively flat except for steeper slopes in the northwest corner. All
6 proposed development is located well away from the steep slopes and any erosion hazard areas.

7 8. The existing residence on proposed Lot 1 has its own driveway connecting it to
8 SR 508. The remaining Lots 2 through 9 will have a common private road (Douglas Lane) as
9 indicated on the Revised Design maps. Douglas Lane will allow these lots to gain access to
10 Green Lane, which, in turn, will provide access to SR 508. None of the proposed Lots 2
11 through 9 will have direct access to SR 508.

12 Findings Relating to Public Notice and Meetings

13 9. Notice of the first public hearing before the Hearing Examiner was published on
14 November 16, 2021, in The Chronicle, mailed to property owners within 500 feet of the subject
15 property and to the Applicant on October 7, 2021, and posted by County Staff at the property's
16 location on October 8, 2021.

17 10. Notice of the second public hearing was published on January 25, 2022, in the
18 Chronicle, mailed to property owners within 500 feet of the subject property as well as to any
19 persons submitting previous comments, and the Applicant on January 18, 2022, and posted by
20 at the property's location by County Staff on January 20, 2022.

21 Findings Relating to SEPA Compliance

22 11. The County, acting as lead agency, issued a Determination of Non-Significance
23 (DNS) on April 13, 2021. The DNS was published in The Chronicle, mailed to surrounding
24 property owners within 500 feet on April 9, 2021, and posted on-site. County Staff received
25 comments from three members of the public, a form letter separately signed by nine members of

1 the public, and six agency or department responses. The public comments/form letter expressed
2 concerns regarding wetlands, stream protection, water quality and quantity issues, protection of
3 the area aquifer, impact on adjoining property values, worries about urban development and
4 privacy, and potential increase in crime (Exhibit 8, Public Comments). Staff considered all
5 comments from the public and agencies and concluded that the DNS should be maintained.
6 Staff did, however, consider the public and agency comments when proposing conditions of
7 project approval. The SEPA Determination was not appealed and is now final.

8 Findings Relating to the Natural Environment

9 12. The Initial Staff Report, at pages 3 and 4, contains Findings relating to the
10 natural environment.

11 Surface Water

12 13. As noted in the Staff Report, there are two mapped non-fish (Type N) streams
13 located on the project site.

14 14. Each stream has a 75-foot buffer. Both the streams and their buffers are
15 identified on the preliminary plat drawing.

16 15. Members of the public have expressed the belief that one or both the the streams
17 are fish bearing streams.

18 16. In response to these public concerns, County Staff submitted the question to the
19 Washington Department of Fish and Wildlife (WDFW) who confirmed that the two streams are
20 deemed non-fish bearing. The Hearing Examiner adopts this Finding as his own.

21 17. The Original Design proposed that several lots (Lots 2, 8 and 9) would be
22 intersected by a stream. County Staff objected to this proposed layout and required the
23 Applicant to reconfigure the lots to eliminate stream intersections.

24 18. The Revised Design has reconfigured Lots 2, 8 and 9 to avoid stream
25 intersections as identified on the revised map.

1 19. In addition to the 75-foot stream buffer, there is a 100-foot setback for septic
2 systems.

3 20. The Applicant's Wetland Report concludes that there is adequate buildable area
4 on each of the proposed lots outside of all setbacks and critical area buffers without the need for
5 buffer averaging, critical area variance, or a setback variance (Exhibit 1, Supplemental
6 Exhibit 4). The Report, as amended, concludes that proposed Lots 2 through 9 will each have
7 suitable soil depth of 16 to 26 inches in proposed drainfield locations, and that each lot will be
8 suitable for a mound system to serve the proposed residence at the location.

9 21. County Staff concurs with the conclusions of the report. The Hearing Examiner
10 adopts these Findings as his own.

11 Vegetation and Wildlife

12 22. The Staff Report, at page 4, contains Findings relating to the vegetation on-site
13 as well as known wildlife in the area. The site is generally covered in grass, some tree cover
14 and has historically been used for the grazing of cattle. There are no threatened or endangered
15 species known to exist on or near the site. The Hearing Examiner adopts these Findings.

16 Sensitive Areas

17 23. There are no mapped 100-year floodplains, floodways, critical aquifer recharge
18 areas, landslide hazard areas, volcanic hazard areas, designated airport zones or mapped areas of
19 high arsenic levels on the site.

20 24. The site is located outside of any shoreline jurisdictional areas.

21 25. As earlier noted, there are mapped erosion hazard areas and steep slopes in the
22 northwest corner but no development is proposed near these areas.

23 26. The County GIS layer indicates mapped wetlands and mapped hydric soils
24 within the site (Exhibit 16).

1 27. The Applicant provided a Wetland Determination from a qualified wetland
2 specialist, Becky Rieger, of Environmental Design, LLC. Her report, dated August 14, 2020,
3 finds that there are no regulated wetlands within the proposed subdivision (Exhibit 1).

4 28. Members of the public have objected to the findings of the Wetland Report and
5 have brought to the County's attention an earlier Wetland Report prepared by Charles Hampton,
6 dated November 7, 2012 (Public Comments). In his report, Mr. Hampton explains that he was
7 asked to examine the area proposed for a building site to determine if wetlands existed in that
8 portion of the property. Mr. Hampton's report states:

9 "On November 3, 2012, I reviewed the above subject site and based on my field
10 studies I have found this parcel does have jurisdictional wetlands but none will be
11 impacted. This determination was conducted for development of a single-family
12 residence. While the 65.95 acres does contain some low grade Class III and IV
wetlands, I did not complete a full delineation of these areas due to negative
impact of them. . . ."

13 29. Ms. Rieger responded to this earlier report by letter dated June 8, 2021
14 (Exhibit 17). Her response states:

15 "A previous wetland report was conducted in 2012 and that report mainly focused
16 on the house construction. The report completed by Environmental Design
17 focused on the proposed development and since the wetlands mapped in the 2012
report are over 300 feet away, they were not of concern."

18 30. In her testimony during the public hearing, Ms. Rieger confirms that her
19 investigation as to possible wetlands was more extensive than Mr. Hampton's, and that his
20 comments about the possibility of wetlands existing on-site were not based upon actual testing
21 that confirmed such wetlands. In contrast, her investigation was of the entire site and concluded
22 that no jurisdictional wetlands exist on-site.

23 31. County Staff has reviewed Ms. Rieger's Wetland Report and has also submitted
24 it to the Department of Ecology for additional review. Both County Staff and Ecology conclude
25 that the Wetlands Report is acceptable. The Hearing Examiner adopts these Findings.

1 Transportation/Traffic

2 32. The Original Staff Report, at page 5, contains Findings relating to the project's
3 proposed transportation plans and expected traffic.

4 33. The current site has an existing access point via State Route 508. This existing
5 driveway will continue to serve Lot 1 but will not provide access to the remaining lots.

6 34. Washington State Department of Transportation (WSDOT) will not allow the
7 Applicant to have direct access to SR 508 for the remaining Lots 2 through 9. As a result, a
8 private lane is proposed (Douglas Lane) serving the remaining Lots 2 through 9. It will connect
9 to an existing private road, Green Lane, which will then provide access to SR 508.

10 35. WSDOT has advised that they will not require any improvements to SR 508 or
11 Green Lane as conditions of approval.

12 36. The Staff Report finds that the proposed Douglas Lane is of sufficient width for
13 the proposed use by eight lots. Chapter 12.60 LCC. Final road construction will require a Road
14 Review application, Stormwater Review application and Grading application.

15 37. The Building Official/Fire Marshal requires that the private road include fire
16 apparatus turnaround consistent with the International Fire Code as well as the private road
17 access standards found in Chapter 12.60 LCC. Subject to these requirements, the Lewis County
18 Fire District #1 has submitted an Adequate Facilities Memo indicating that they have the
19 capacity and are willing to serve the development via the proposed private road.

20 Findings Relating to Public Facilities and
21 Services - Chapter 17.130 LCC

22 Potable Water

23 38. There is an existing well currently providing potable water to the residence
24 located on proposed Lot 1. This well is a shared well providing water to both the residence and
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1 an accessory dwelling unit. The project proposes that this existing well will continue to serve
2 Lot 1 but will not provide water to the remaining Lots 2 through 9.

3 39. Lots 2 through 9 will be provided potable water by means of a new Group B
4 Public Water System.

5 40. Lewis County Public Health and Social Services (Public Health) has reviewed
6 the proposed Group B Public Water System and has approved its use by letter dated July 16,
7 2021 (Exhibit 23). As set forth in Public Health's letter of approval, the Applicant must satisfy
8 several final requirements including certification by the Design Engineer; installation of all
9 system components; construction of water lines to all properties; and establishment of
10 easements, service meters and well improvements. Once established, the system must meet
11 requirements of Chapter 8.55 LCC including ongoing management by an approved Satellite
12 Management Agency.

13 41. Nearby landowners have expressed a common concern that the proposed Group
14 B Public Water System will negatively impact their existing wells. Neighbors have noted that
15 they have had to drill their wells to a depth of several hundred feet in order to obtain stable
16 water sources and, even then, their water supply appears to be affected by new wells in the area.

17 42. Despite these concerns about water impacts, nearby landowners have not
18 demonstrated that the new Group B Public Water System will impact their wells as they fear.
19 While there is some intuitive reasoning to their concerns, no actual proof has been submitted of
20 a causal relationship.

21 43. Neither County Staff nor the Department of Health have expressed concerns
22 about the proposed Group B Public Water System.

23 44. Group B Public Water Systems are carefully regulated under State and local law
24 and require management by a Satellite Management Agency with routine testing for water
25 quality. In addition, Group B Public Water Systems provide greater restraint on individual

1 water use. The proposed Group B Public Water System is therefore likely to result in less water
2 demand than what would have occurred if the property had been divided into ten-acre lots with
3 each lot having its own well.

4 Wastewater

5 45. The existing residence on proposed Lot 1 has an existing septic system serving
6 both it and the accessory dwelling unit. This existing system will remain in place.

7 46. Proposed Lots 2 through 9 will have individual septic systems. Each must be
8 designed by a professional engineer or licensed septic designer.

9 47. Three perk test holes had been dug on each of the originally proposed Lots 2
10 through 9 to confirm their suitability for designed septic systems. That site and soil evaluation,
11 conducted by Environmental Design, LLC on November 4, 2019, concluded that each of the
12 originally proposed Lots 2 through 9 had suitable soil depths of 16 to 26 inches in proposed
13 drain field locations, and that each lot was suitable for a mound system to serve a residence.

14 48. The required redesign of Lots 2 through 9 resulted in their boundaries being
15 shifted such that the original test perk holes no longer aligned with the proposed lots. This
16 required additional soil tests for revised Lots 5 and 6.

17 49. By supplemental report dated January 14, 2022, Environmental Design
18 undertook a supplemental site and soil evaluation, with new test holes on Lots 5 and 6. The
19 supplemental evaluation again confirmed that all proposed lots have suitable soil depth of 16 to
20 20 inches and proposed drain field locations and are all suitable for a mound system
21 (Supplemental Exhibit 4).

22 50. Nearby property owners have expressed concern that the development's
23 wastewater systems will be harmful to the local environment. Despite these concerns, the
24 proposed wastewater systems will be conducted to highly stringent health standards that are
25

intended to ensure that individual septic systems are safe. Opponents have not demonstrated how systems designed to these stringent standards will be injurious to the public.

Fire/Emergency Services; Schools; Solid Waste

51. The Original Staff Report, at page 6, notes that Adequate Facilities Memos have been provided by Lewis County Sheriff's Office and Lewis County Fire District #11 with respect to the fire/emergency services; from the Onalaska School District #300 with respect to schools; and from LeMay, Inc. with respect to refuse disposal. The Hearing Examiner therefore finds that there are adequate facilities and services for fire/emergency services, schools and solid waste.

Stormwater

52. Lewis County Public Works finds that a Stormwater Permit will be required for the project. Stormwater design will need to be consistent with Chapter 15.45 LCC.

53. Ecology advises that the development will also require a Construction Stormwater General Permit (CSWGP) in addition to the County's Stormwater Permit, and that erosion control measures will be required prior to any ground disturbance.

Findings Relating to Consistency with the Lewis County Comprehensive Plan

54. The project site is designated as "Other Rural Lands (Non-Resource)" in the County Comprehensive Plan.

55. The Staff Report, at page 7, contains Findings relating to the project's consistency with the Comprehensive Plan. Staff finds that the project, as conditioned, is consistent with Policy Rural 1.5; Policy Rural 3.1; Policy Rural 3.2; Policy Rural 9.3; and Policy Rural 9.6 of the Comprehensive Plan. The Hearing Examiner adopts these Findings as his own.

1 Findings Relating to Compliance with the Subdivision Ordinance, Chapter 16.05 LCC

2 56. The Staff Report, at pages 8 through 24, contains Findings relating to the
3 project's compliance with the County's Subdivision Ordinance, Chapter 16.05 LCC.

4 57. A preliminary plat application is to be processed as a Type IV Application.
5 Chapter 16.05 LCC.

6 58. The preliminary plat application has been deemed complete and submitted to all
7 appropriate departments, government agencies, tribal agencies, and the public. The
8 requirements of LCC 16.05.080 have been met.

9 59. Pursuant to LCC 16.05.090, County Staff must consider the recommendations of
10 other agencies including: (1) all departments, agencies, utilities and districts that provided
11 comments or recommendations; (2) the County Engineer/Public Works division; (3) the Lewis
12 County Environmental Health section; (4) the Lewis County Building Official; (5) the Lewis
13 County Fire Marshal; and (6) the administrator.

14 60. The Staff Report, at pages 9 through 15, contains Findings relating to the reports
15 from each of these agencies and County Staff's response to the comments and/or
16 recommendation of each agency. As noted in the Staff Report, project approval has been
17 conditioned on numerous requirements imposed by these various agencies.

18 61. The Hearing Examiner Finds that County Staff has appropriately considered the
19 comments and recommendations of all departments and agencies and have incorporated all
20 conditions suggested by these entities. The Hearing Examiner therefore finds that the
21 requirements of LCC 16.05.090(1-6) have been met.

22 LCC 16.05.100

23 62. Once the application is deemed complete the matter is to be set for a public
24 hearing before the Lewis County Hearing Examiner in accordance with Chapter 2.25 LCC.
25 This requirement has been met.

*Findings of Fact and
Recommendation to the
Board of County Commissioners - 20*

**LEWIS COUNTY HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387**

1 LCC 16.05.120

2 63. Pursuant to LCC 16.05.120(a), the Hearing Examiner shall consider the
3 preliminary plat application for conformance to any adopted comprehensive plan, planning
4 standards, and specifications, including Article VI of Chapter 16.05 LCC as well as other
5 policies and standards of the County.

6 64. County Staff finds that the review of this project is in compliance with this
7 requirement and that the project, as conditioned, is consistent with the County Comprehensive
8 Plan. County Staff further finds that the project, as conditioned, is consistent with all planning
9 standards, specifications, and policies of the County. The Hearing Examiner adopts this
10 Finding.

11 65. Pursuant to LCC 16.05.120(b), the Hearing Examiner must ensure that: (i)
12 appropriate provisions are made for public health, safety, and general welfare and for such open
13 spaces, drainage ways, streets or roads, alleys, or other public ways, transit stops, potable water
14 supplies, sanitary waste, parks and recreation, playgrounds, schools and schoolgrounds, and all
15 other relevant items, including sidewalks and other planning features that assure safe walking
16 conditions for students who walk to and from school. This requirement is similarly found in
17 RCW 58.17.110(2).

18 66. The Staff Report, at pages 16 and 17, contains Findings that the project, as
19 revised and conditioned by County Staff, complies with the Development Regulations and
20 subdivision design standards for public health, safety, general welfare, open spaces, stormwater,
21 roads, potable water supplies, and sanitary waste. County Staff also finds that the application
22 has been designed or conditioned in compliance with County Development Regulations and
23 relevant Comprehensive Plan provisions intended to serve public health, safety and general
24 welfare. The Hearing Examiner has reviewed these Findings and adopts them as his own
25 Findings of Fact.

*Findings of Fact and
Recommendation to the
Board of County Commissioners - 21*

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1 67. County Staff further finds that the proposed subdivision will provide public
2 benefits, including new housing inventory and encouraging clustered development, thereby
3 fulfilling the County's goals and policies set forth in its Comprehensive Plan. All required
4 adequate facilities memos have been provided without the need for modifications or
5 dedications. Lewis County PUD, County Engineer, County Building Official and Fire Marshal,
6 find that the project, as conditioned, makes appropriate provisions for roads and drainage
7 facilities. The Lewis County Public Health & Social Services Department finds that as
8 conditioned, the subdivision makes appropriate provisions for water and septic. County Staff
9 therefore finds that all requirements of LCC 16.05.120(b) have been met. The Hearing
10 Examiner adopts these Findings.

11 68. Pursuant to LCC 16.05.120(c), if the Hearing Examiner finds that the proposed
12 subdivision and dedication make appropriate provisions and that the public use and interest will
13 be served, the Examiner shall recommend approval of the proposed subdivision.

14 69. Staff finds that, after having considered all submitted materials and the
15 comments and recommendations of other departments and agencies, as well as public
16 comments, that the project, as conditioned, makes appropriate provisions for County and Staff
17 regulations, and the public use and interest is served by its approval. No dedication of land is
18 included in the proposed subdivision. The project will result in a Natural Resource Easement
19 Area established on more than 75% of the site. All necessary conditions have been imposed to
20 ensure that the public use and interest will be served. Staff therefore finds that all requirements
21 of LCC 16.05.120(c) have been met and that the Hearing Examiner should recommend approval
22 of the proposed subdivision. The Hearing Examiner has reviewed these Findings, adopts them
23 as his own, and finds that the public use and interest will be served by the proposed subdivision.

1 LCC 16.05.150

2 70. The requirements of LCC 16.05.150 for preparation of the preliminary plat have
3 been satisfied.

4 LCC 16.05.170

5 71. Every proposed subdivisions must conform with the design standards found in
6 Article VI of Chapter 16.05 LCC. Article VI contains development and subdivision design
7 standards listed in LCC 16.05.270-.390.

8 LCC 16.05.270-.390

9 72. LCC 16.05.270 requires that access to the subdivision be by public road. The
10 project site will have access to SR 508 by means of Green Road and then Douglas Road. This
11 requirement has been met.

12 73. LCC 16.05.280 requires that any subdivision streets and roads intended to
13 become part of the County road system shall conform to Lewis County road standards. The
14 proposed roads within this subdivision are intended to be private roads that will instead be
15 constructed to Lewis County road standards for rural design. Chapter 12.60 LCC. This
16 requirement has therefore been met.

17 74. LCC 16.05.290 requires that all proposed private roads meet the County
18 requirements for location, construction specifications and ownership. County Staff finds that
19 the project, as conditioned, will satisfy all of these requirements. Covenants will be required
20 assuring future maintenance and repair of the private roads. As conditioned, County Staff finds
21 that this requirement has been met. The Hearing Examiner concurs.

22 75. Pursuant to LCC 16.05.300, each lot must be provided with satisfactory access to
23 public roads. Previous Findings have demonstrated that this requirement has been met.

1 76. Pursuant to LCC 16.05.300(2), each lot must have an identifiable building site
2 taken as a rectangle of not less than 1,200 square feet, together with an identifiable feasible
3 drain field area.

4 77. The Staff Report, at page 19, finds that the project, as redesigned and as
5 conditioned, will ensure that each lot will exceed the minimum square footage and minimum
6 dimension requirements for buildable area. In addition, the site and soil evaluation performed
7 by Environmental Design (Supplemental Exhibit 4), finds that each proposed lot will have an
8 identifiable feasible drain field area. Staff therefore finds that all requirements of LCC
9 16.05.300(2) have been met. The Hearing Examiner concurs.

10 78. Pursuant to LCC 16.05.300(3), each subdivision lot must meet certain minimum
11 requirements for size. When the proposed lots are served by individual septic tanks and drain
12 fields, minimum lot sizes must meet the requirements for proper sewage disposal.

13 79. County Staff finds that the project, as revised and as conditioned, meets the
14 requirements for individual on-site sewage disposal while also providing appropriate public
15 water supply. The Hearing Examiner concurs with these Findings.

16 80. LCC 16.05.300(4, 5 and 6) impose certain minimum requirements for width,
17 frontage and reverse frontage. All of these requirements have been met.

18 81. LCC 16.05.300(7) requires that all lots be of compact design; have straight lines
19 to the extent possible and that easements or unusual features shall not bisect lots.

20 82. As noted in the Staff Report at page 20, the Original Design of the lots would
21 have called for several of the proposed lots to be bisected by streams and their buffers. County
22 Staff found that this proposed lot design was inconsistent with the requirements of this
23 ordinance and directed the Applicant to submit a redesign eliminating these problems. As noted
24 in the Supplemental Staff Report at page 3, the lots have been redesigned as requested by
25 County Staff. Proposed Lots 2, 8 and 9 no longer bisect stream buffers while also having

1 sufficient acreage to meet the size requirements demanded by Public Health and Social
2 Services. Staff therefore finds that all requirements of LCC 16.05.300(7) for lot design have
3 been met. The Hearing Examiner concurs.

4 83. LCC 16.05.300(8) imposes certain requirements for lot markers. These
5 requirements have been met.

6 84. LCC 16.05.320 requires that the subdivision be in compliance with the
7 requirements of Chapters 15.15 and 17.145 LCC with respect to setbacks. Staff finds that the
8 requirements of these Chapters for front, side and rear yard setbacks, as well as setbacks for
9 critical area buffers, are all met. The Hearing Examiner concurs.

10 85. LCC 16.05.330 imposes various requirements for easements, including those for
11 public utilities, unusual facilities and water courses. The Staff Report, at page 21, as well as the
12 Supplemental Report at page 3, finds that all requirements for utility easements are met. Staff
13 further finds that all Type N Streams located on the project have been properly identified and
14 their buffers have been established, and Lots 2, 8 and 9 have been reconfigured so as to avoid
15 conflict with these buffers. Staff further finds that stormwater facilities will be appropriately
16 established via easement as shown on the final plat drawing. Staff therefore finds that all
17 requirements for easements as set forth in LCC 16.05.330 have been met. The Hearing
18 Examiner adopts this Finding.

19 86. LCC 16.05.340 imposes various design and construction standards for utilities,
20 including public water supplies, sanitary systems and electrical power and other utilities. Staff
21 finds that the project, a conditioned, satisfies all of these requirements for the design and
22 construction of utilities. The Hearing Examiner concurs.

23 87. LCC 16.05.350 imposes various fire protection standards including fire hydrants
24 if deemed necessary.

1 88. The Staff Report, at page 23, contains Findings that the project will not require
2 either fire hydrants or a second ingress-egress route due to the project's relatively small size.
3 Staff finds that the requirements of LCC 16.05.350 have been met. The Hearing Examiner
4 concurs.

5 89. LCC 16.05.360 imposes various requirements for maintenance agreements to
6 ensure that roads, utility systems and other common improvements are maintained in perpetuity.
7 The Staff Report, at page 23, notes that road maintenance agreements will be imposed on both
8 Douglas Lane and Green Lane. Water line easements, sanitary control area easements, and
9 other water covenants will be imposed as part of the Group B Public Water System. In
10 addition, stormwater facilities will have recorded stormwater maintenance covenants and will
11 be identified on the face of the final plat. Staff therefore finds that the project, as conditioned,
12 will meet all of the requirements of LCC 16.05.360 for maintenance agreements. The Hearing
13 Examiner adopts these Findings.

14 90. LCC 16.05.370 relating to flood protection, does not apply.

15 91. LCC 16.05.380 relating to dedication of land for public uses and open space does
16 not apply.

17 92. LCC 16.05.390 relating to nonresidential subdivisions does not apply.

18 Findings Relating to Chapter 16.18 LCC - Clustered Development

19 93. The subdivision is proposed as a clustered development pursuant to Chapter
20 16.18 LCC.

21 94. Clustered development is encouraged in rural lands where residences are
22 allowed. LCC 16.18.010(1)(a)(ii).

23 95. Where clustered development is allowed, it is encouraged to preserve the open
24 feel of the County's rural lands; promote long-term protection of resource lands; limit the
25 impacts from development on hydrologic patterns, critical areas and habitat; reduce the number

1 of public road access points; and promote more cost-effective and service-efficient development
2 on rural lands. LCC 16.18.010(1).

3 96. The proposed subdivision is located in rural lands where residences are allowed.
4 The project site is therefore an encouraged site for clustered development.

5 97. Pursuant to LCC 16.18.010(1)(b), the proposed subdivision must meet various
6 public health standards. County Staff finds that the proposed subdivision lots, as redesigned
7 and as conditioned, satisfy all requirements of LCC 16.010(1)(b). The Hearing Examiner
8 concurs.

9 98. LCC 16.18.010(1)(c) imposes various lot requirements for clustered
10 development. Among other things, clustered building lots must occur at the same base density
11 as the underlying zoning unless bonus densities are allowed pursuant to LCC 16.18.030.

12 99. The Staff Report, at pages 25 and 26, as well as in the Supplemental Report at
13 page 4, contains extensive Findings with respect to this requirement. As set forth in the Staff
14 Report, the base density for this subdivision would require ten acres per residential lot per its
15 RDD-10 zoning designation. As the subject parcel is 67.47 acres in size, it would normally be
16 allowed six residential lots as its base density.

17 100. The Applicant requests a bonus density be applied, allowing an additional three
18 lots, thus increasing the total lots from six to nine.

19 101. Staff Finds that the subdivision, as conditioned, and subject to receiving the
20 bonus density, will be developed at the same base density as the underlying zoning and
21 therefore meets the requirements of LCC 16.18.010(1)(c). The Hearing Examiner concurs with
22 these Findings.

23 102. LCC 16.18.010(b)(c)(iii) requires that building lots be sited and designed to limit
24 impacts to valuable or unique natural features, including critical areas and prime agricultural
25 soils, and be compatible with the physical constraints of the site to the fullest extent possible.

1 103. The Staff Report, at page 26, and the Supplemental Report, at page 4, contains
2 Findings relating to this requirement. As noted in these Reports, the building site for Lot 1 has
3 already been established and developed with an existing single-family residence and accessory
4 dwelling unit. These improvements have been located to limit impacts on critical areas. The
5 remaining Lots 2 through 9 have been reconfigured so as to eliminate stream crossings and
6 otherwise minimize impacts to critical areas. Developable areas for these lots have been
7 reconfigured to be located between Type N Stream buffers and the proposed Douglas Lane, all
8 to be located in predominantly grassy areas. Staff therefore finds that the project, as
9 reconfigured and as conditioned, has been designed to limit the impacts to critical areas and is
10 compatible with the physical constraints of the parcel. Staff therefore finds that all
11 requirements of LCC 16.18.010(1)(c)(iii) have been met. The Hearing Examiner concurs.

12 104. LCC 16.18.010(1)(c)(iv) requires setbacks from the exterior boundaries as
13 required by the International Building Code or International Residential Code as well as any
14 applicable critical areas standards. The Staff Report, at page 27, finds that the project, as
15 redesigned and conditioned, shall meet the International Building Code and International
16 Residential Code for future construction and setbacks. All required setbacks for exterior
17 boundaries as well as internal setbacks have been established. Staff finds that the project, as
18 conditioned, meets all requirements of LCC 16.18.010(1)(c)(iv).

19 105. The proposed subdivision is not located adjacent to any lands with a resource
20 designation. The resource setbacks set forth in LCC 16.18.010(1)(c)(iv)(b) do not apply.

21 106. Similarly, the proposed subdivision is not located on land within the Agricultural
22 Resource Land zone. The setbacks imposed by LCC 16.18.010(1)(c)(iv)(c) therefore do not
23 apply.

24 107 The proposed private roads comply with Lewis County road standards. The
25 requirements of LCC 16.18.010(1)(c)(v) are met.

LCC 16.18.020 - Large Lot Remainder Parcel

108. For a project to be a clustered subdivision, there must be a single large lot created which, among other things, contains a contiguous area of open space or resource land that is shaped so as to promote the protection of critical areas, habitat or the long-term use of the area as resource land. This large lot may not be further subdivided for residential use once the full development has been reached unless the zoning regulations have been amended. LCC 16.18.020.

109. The Staff Report, at pages 28 and 29, and the Supplemental Report, at pages 4 and 5, contain extensive Findings relating to the requirements for the large remainder parcel.

110. As originally proposed, the subdivision envisioned two large remainder parcels, Lots 1 and 2. The necessary Natural Resource Easement Area would have been split between these two large lots. County Staff concluded that, as originally proposed, the subdivision design was not in compliance with LCC 16.18.020 as it created two large remainder parcels rather than one. The Applicant was required to redesign the subdivision to satisfy the ordinance's requirements for a single large remainder parcel.

111. As directed, the Applicant redesigned the proposed subdivision so as to create a single large remainder parcel, Lot 1.

112. Redesigned Lot 1 contains the existing single-family residence and accessory dwelling unit, the driveway access point, water and septic locations, the Group B Public Water System well site as well as the well's sanitary control area, access to the well site and proposed utility lines. Outside of all these developable areas, the remainder of Lot 1 consists of a contiguous area for the Natural Resource Easement Area. No further division of Lot 1 will be allowed unless the Development Regulations are amended. As redesigned, County Staff finds that proposed Lot 1 meets all of the requirements of LCC 16.18.020 for the large remainder parcel.

1 LCC 16.18.030 - Density Bonus

2 113. LCC 16.18.030 allows a density bonus for clustered development when the
3 development places a large portion of the large remainder parcel within a natural resource or
4 open space easement that will not be developed with additional homesites in the future. LCC
5 16.18.030(1).

6 114. Where at least 75% of the size of the original parcel is set aside within a Natural
7 Resource Easement Area, the development shall be allowed to construct an additional 50% of
8 the allowed units.

9 115. The Staff Report, at page 30, and the Supplemental Report, at pages 5 and 6,
10 contains extensive Findings relating to the density bonus.

11 116. As noted in the Staff Report, the total parcel contains 67.46 acres. 75% of this
12 area would consist of 50.60 acres. If at least 50.60 acres is set aside within the Natural
13 Resource Easement Area, the project would be allowed a density bonus of 50% of the allowed
14 lots.

15 117. The Natural Resource Easement Area has been calculated to contained 50.87
16 acres. This exceeds the required 50.60 acres needed for at least 75% of the development to be
17 within the Natural Resource Easement Area.

18 118. As at least 75% of the original development parcel will be within the Natural
19 Resource Easement Area, the project qualifies for a bonus density equal to 50% of the allowed
20 lots.

21 119. As noted in earlier Findings, the number of allowed lots based upon the RDD-10
22 zoning designation is six lots. The 50% bonus is therefore three additional bonus lots, or a total
23 of nine lots for the clustered subdivision. Staff therefore finds that the requirements for three
24 bonus lots have been met. The Hearing Examiner adopts this Finding.

1 LCC 16.18.040 - Performance Standards

2 120. Clustered development must also meet the performance standards found in LCC
3 16.18.040. These standards require that the subdivision be designed to preserve large areas of
4 resource land, critical areas, and lands that promote rural character or resource land use.
5 Development must be clustered away from resource lands and critical areas and must provide
6 adequate buffers between clusters, resource lands and critical areas. In addition, the size and
7 density of the built area must prevent the need for urban levels of service.

8 121. The Staff Report, at page 31, and the Supplemental Report, at page 7, contains
9 Findings relating to this requirement. As redesigned, all clustered development is located away
10 from the Type N Streams and protects their required 75-foot buffers. New development areas
11 will not cross the Type N Streams or stream buffers and improves the protection of these critical
12 areas. The total development is relatively minor and will not result in the need for urban level
13 services. Staff therefore finds that the project, as reconfigured and as conditioned, satisfies all
14 of the performance standards found in LCC 16.18.04. The Hearing Examiner adopts these
15 Findings as his own Findings of Fact.

16 Findings Relating to Chapter 17.05 LCC - General Provisions

17 122. Chapter 17.05 LCC imposes various requirements on project review, depending
18 in the type of project. The pending subdivision is a Type IV Application requiring quasi-
19 judicial review within an open record hearing before the Hearing Examiner, resulting in
20 recommendations to the Board of County Commissioners. The Staff Report, at page 32,
21 contains Findings relating to compliance with all requirements for a Type IV permit review.
22 The Hearing Examiner adopts these Findings.

23 Findings Relating to Chapter 17.145 - Supplemental Requirements

24 123. LCC 17.145.020 imposes various setbacks for residential development. As
25 noted in earlier Findings, the requirements of LCC 17.145.020 have been met.

Findings Relating to Chapter 17.150 - Special Conditions

124. Development in rural areas is meant to protect rural character, prevent rural area sprawl and avoid the need for urban services in rural areas. LCC 17.150.010.

125. Any permit issued in rural areas must meet the requirements of LCC 17.150.020(2)(a), prohibiting urban growth in all rural area development except as otherwise allowed under the Growth Management Act. County Staff finds that the project, as reconfigured and as conditioned, establishes an intensity of use compatible with rural land uses and that the requirements of LCC 17.150.020(2)(a) have been met. The Hearing Examiner concurs.

126. In order to meet the objectives of LCC 17.150.020(2)(a), the project must make adequate provision to assure that the development is limited to rural development and rural government services and, further, that the project does not, directly or in concert with growth likely in the area affected, create a demand for urban governmental services or establish a form of "urban growth" that is prohibited outside Urban Growth Areas. LCC 17.150.020(2)(b). The Staff Report, at page 33, finds that the project, as reconfigured and as conditioned, does not meet the definition of "urban growth" and meets the requirements of LCC 17.150.020(2)(b). The Hearing Examiner concurs with these Findings.

127. LCC 17.150.030 recognizes the special characteristics of rural development and requires projects to be consistent with these special characteristics. County Staff finds that the project as redesigned and as conditioned, is consistent with the characteristics of rural development and therefore complies with LCC 17.150.030(1). In particular, Staff finds that the subdivision, as redesigned and as conditioned, minimizes any impacts to the overall productivity of any nearby designated long-term resource lands; that the project is appropriate for rural development; that at least 75% of the development is protected within a Natural Resource Easement Area; that development can be accommodated with fire, school and other

1 rural public services without the need to create new facilities to serve the development; and that
2 no commercial development is proposed. Staff therefore finds that all requirements of LCC
3 17.150.030 have been satisfied. The Hearing Examiner concurs and adopts these Findings as
4 his own.

5 **ANALYSIS AND RECOMMENDATIONS**

6 Based upon the foregoing Findings of Fact, the Hearing Examiner provides the
7 following Analysis and Recommendations:

8 1. **Clustered Development.** Lewis County has, by ordinance, expressly declared
9 its preference for clustered development in its rural lands where residences are allowed.
10 Chapter 16.18 LCC. The County recognizes that clustered development will help preserve the
11 open feel of Lewis County rural lands; promote long-term protection of resource lands, limit
12 impacts from development on hydrologic patterns, critical areas and habitat; reduce the number
13 of public road access points and promote cost effective and service efficient development.

14 The County has incentivized clustered development by offering a density bonus
15 allowing for half as many additional lots if at least 75% of the entire parcel is set aside within a
16 Natural Resource Easement Area. As set forth in the Findings, the Applicant has agreed to set
17 aside slightly more than 75% of the entire parcel into a Natural Resource Easement Area, thus
18 qualifying for the density bonus. County Staff finds, and I agree, that the Applicant has met all
19 of the requirements of Chapter 16.18 LCC for a nine lot subdivision.

20 2. **Lot Size.** Application of the clustered development ordinance involves a careful
21 balancing act. On one hand, to achieve the full density bonus the Applicant must set aside at
22 least 75% of the entire parcel for the required Natural Resource Easement Area. On the other
23 hand, the required Natural Resource Easement Area greatly restricts the available area for
24 development, especially when several more lots are allowed because of the density bonus.
25 Here, this balancing results in proposed Lots 2 through 9 being slightly more than one acre each

1 in size. Opponents correctly note that these are relatively small lots when taking into
2 consideration the need for a common road (Douglas Lane); individual septic systems; buffers
3 from creeks and other critical areas; and a proposed homesite. County Staff finds, however, that
4 each of the proposed lots will be sufficiently large enough to meet all of these requirements
5 although some homeowners may need to carefully plan their homesites. Although I understand
6 opponent's concerns about the size of lots, I agree with Staff that they are of sufficient size to
7 meet all requirements.

8 3. **Wetlands.** Lewis County's Critical Areas Ordinances expressly recognize the
9 need to identify wetlands and their buffers and to protect them from the impacts of
10 development. Opponents of this subdivision are concerned that the site may contain wetlands
11 that have not been properly identified and protected. This concern is based upon a Wetlands
12 Evaluation done in 2012 by Charles Hampton in which he suggests that wetlands can be found
13 on the site. Conversely, the Applicant's wetlands specialist, Becky Rieger, concludes that the
14 site does not have any regulated wetlands. While the two reports cannot be fully reconciled, Ms.
15 Rieger's evaluation is clearly the more complete one as it undertakes a wetlands study of the
16 entire property while Mr. Hampton's studied only a small portion (in which he found no
17 wetlands). In addition, Ms. Rieger's evaluation has been found acceptable by both County Staff
18 and the Department of Ecology. I concur with County Staff that the report's findings are
19 acceptable and that there are no unresolved wetlands issues.

20 4. **Potable Water.** No aspect of this project has elicited more public comment and
21 concerns than its proposed Class B Public Water System for Lots 2 through 9. Nearby
22 landowners are concerned that this public water well will have an impact upon their wells. It is
23 difficult to know for certain whether this is a possibility. The connectivity of groundwater
24 sources is, at best, difficult to know and, at worst, impossible to determine. And, even if
25 connectivity was confirmed, other landowners do not have a greater legal claim to this water.

At the same time, however, LCC 16.05.120(b) requires the Hearing Examiner to ensure that appropriate provisions have been made for public health, safety and general welfare. This obligation suggests a responsibility to protect the potable water sources for nearby properties.

The County's Health Department has carefully reviewed the request for the Group B Public Water System and has given its approval subject to stringent use and testing standards. These requirements are in addition to the many conditions imposed by the Planning Department. Subject to all of these requirements, the proposed Group B well has made appropriate provision for public health, safety and general welfare.

It may be helpful to examine an alternate division of the land in which clustered development was not sought. As noted earlier, under the property's RDD-10 zoning the 60+ acres could be divided into six ten-acre tracts. While one of those tracts would include the existing house and its well, the other five lots could each apply for their own exempt well. This would result in five new wells rather than one, and with each entitled to withdraw a similar amount of water as the single Group B well. This alternate form of development would thus have greater impact to the area's groundwater than the proposed clustered development.

5. **Wastewater/Septic Systems.** Proposed Lots 2 through 9 will have individual septic systems. Soil testing has confirmed that each proposed lot has sufficient soils, and soil depth, to accommodate individual designed septic systems. Subdivision approval has been conditioned upon complying with all County regulations relating to these designed systems. Nonetheless, some concern has been expressed that these several septic systems will be harmful to the surrounding critical areas and other properties. I respectfully disagree. The County's regulations of septic systems is stringent and is intended to ensure public health. Septic systems meeting these stringent standards will, by law, ensure the public health, safety and general welfare.

1 6. **General Aesthetics.** Neighboring property owners have an understandable wish
2 that any development not have a negative impact on their own property or its value. Several
3 neighbors have voiced concerns that this subdivision may impact their views or otherwise
4 reduce their property values. But views are not a protected property right under the subdivision
5 laws and, indeed, it would be difficult to ensure protection of all existing views as the County
6 continues to experience population growth.

7 Similarly, neighbors' concerns about property values are based upon their intuition, not
8 demonstrated evidence. Approval cannot be denied merely because others feel that it may have
9 some negative impact without any actual proof.

10 **CONDITIONS OF APPROVAL**

11 It is not uncommon for the Hearing Examiner to impose his own additional conditions of
12 approval to the projects coming before him, especially where public testimony and other new
13 evidence indicates that the conditions suggested by County Staff are inadequate or incomplete.
14 In this case, however, County Staff has submitted an unusually extensive list of proposed
15 conditions which thoroughly regulate the development of this subdivision. Public testimony has
16 not revealed any new or different conditions to impose on a subdivision that is already highly
17 conditioned. I am therefore recommending approval subject to the conditions set forth in the
18 Supplemental Staff Report.

19 **CONCLUSION**

20 As set forth in the Findings of Fact, and further explained in this Analysis Section, I
21 conclude that the proposed subdivision, as reconfigured and as conditioned, ensures that
22 appropriate provisions are made for public health, safety and general welfare and for such open
23 spaces, drainage ways, streets or roads, alleys, or other public ways, transit stops, potable water
24 supplies, sanitary waste, parks and recreation, playgrounds, schools and schoolgrounds, and all
25 other relevant items, including sidewalks and other planning features that assure safe walking

1 conditions for students who walk to and from school. I therefore recommend that the Board of
2 County Commissioners approve the proposed subdivision subject to the conditions
3 recommended by County Staff.

4 DATED this 29 day of March, 2022.

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Mark C. Scheibmeir
Lewis County Hearing Examiner
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