



## Notice of Hearing Examiner Decision

06/05/2017

To: Interested Parties and Parties of Record

RE: Project Name: SHADOWHAWK - Preliminary Plat  
Applicant: HARADER, SHERI  
53 E SILVER SAGE RD  
TOWNSEND, MT 59644-9687  
Application: P PLAT  
Permit Number: 16 02933

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the aforementioned project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

[http://www.kitsapgov.com/dcd/lu\\_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf](http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf)

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Land Resources NW, LLC [cbpierce@comcast.net](mailto:cbpierce@comcast.net)  
Owner: Harader, Sheri 53 E Silver Sage Rd, Townsend, MT 59644-9687  
Engineer: NL Olson & Associates [wjohnson@nlolson.com](mailto:wjohnson@nlolson.com)  
Surveyor: Orca Land Surveying [ry@orcalsi.com](mailto:ry@orcalsi.com)  
Interested Parties:

Oyloe, Bruce [bruceoyloe@hotmail.com](mailto:bruceoyloe@hotmail.com)  
Uffens, Julie 5668 Central Valley Road NE BREMERTON, WA 98311  
Bower, Angela [angelarae1989@hotmail.com](mailto:angelarae1989@hotmail.com)  
Summercrest HOA [Summercresthoassoc@gmail.com](mailto:Summercresthoassoc@gmail.com)  
Branner, Jason [jpbranner@yahoo.com](mailto:jpbranner@yahoo.com)

Interested Parties (Cont.):

Southwind Custom Homes [southwindch@comcast.net](mailto:southwindch@comcast.net)

Podesta, Greg [podestadodge@gmail.com](mailto:podestadodge@gmail.com)

Sweet, Susie [sweetsusieg62@hotmail.com](mailto:sweetsusieg62@hotmail.com)

Woodward, Sonny [soonywe@johnlscott.com](mailto:soonywe@johnlscott.com)

Kiser, William 109 NE TERI CT BREMERTON, WA 98311

Webb, Ron [1ronwebb@gmail.com](mailto:1ronwebb@gmail.com)

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shadowhawk Preliminary Plat - File No. 16 02933**

**June 5, 2017**

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The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision.

**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicant requests approval of a three-phased Preliminary Plat to subdivide a 7.96-acre parcel into 52 lots with single family detached residential units. Future homes are planned as two-story wood frame construction (30' x 50' approximate footprint with deck), with wood siding, composition roofs, two car garages, and heights up to 35 feet. The roads will be private, with on-street parking spaces and sidewalks, and the plat will include a recreation facility. The Applicant/property owner and site location are as follows.

**Applicant/Property Owner:** Sheri Harader, P.O. Box 65266, Port Ludlow, WA 98365-0266.

**Site Location:** The project is located within Central Kitsap County at the 5800 block of Central Valley Road; the nearest road intersection is north at NE Teri Court (Assessor No. 352501-2-040-2003).

**1.2 Hearing.** An open record public hearing was held on May 11, 2017. The Department of Community Development (DCD) provided sworn testimony addressing plat compliance with code requirements. With the proposed mitigation and conditions, DCD recommended approval. The Applicant also provided sworn testimony through several representatives. The Applicant also addressed plat compliance with code and followed up on neighbor concerns, after public comment.

Numerous neighbors provided sworn testimony and also submitted written comment. A range of concerns were identified, although particular emphasis was given to traffic impacts, stormwater management, and wind throw concerns associated with site clearing. Detail on these issues and neighbor concerns are further addressed below.

Several citizens expressed a need for additional time to review application materials and submit comment. DCD and the Applicant also expressed a need for a limited amount of time to work out language regarding bike lanes/stormwater management.<sup>1</sup> To allow for same, the

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<sup>1</sup> For agreed language, *see* Exhibit 42.

Examiner extended the period allowed to submit written comment by two weeks, until May 25, 2017.

**1.3 Administrative Record.** Prior to the hearing, the Hearing Examiner reviewed Exhibits 1-40 which included the Staff Report.<sup>2</sup> At the hearing, Exhibits 41-46 were proposed for addition, which included a power point, DCD/Applicant materials on proposed plat revisions, a revised site plan, and citizen comment materials. Following the hearing, Exhibits 47-55 were submitted, which included four memos (two from the Applicant; two from DCD), and several additional public comments, including a traffic speed violation report. The Examiner has admitted all exhibits.

**1.4 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application, consistent with WAC 197-11-355.<sup>3</sup> A Mitigated Determination of Non-Significance (MDNS) was issued<sup>4</sup> and not appealed. SEPA comments from neighbors raised concerns with potential traffic impacts, stormwater control, and tree safety concerns. MDNS mitigation requirements include:

Conditions:

1. The proposal will be conditioned for stormwater control pursuant to KCC Title 12 (Stormwater Management). On-site infiltration is proposed. Impacts to Mosher Creek for system overflow will be reviewed in future phases, should infiltration prove infeasible.
2. Due to the presence of steep slopes on the property and unclassified drainage conveyance systems, the proposal will be conditioned to follow all recommendations of the geotechnical report per KCC Title 19.400 and 19.700.

Mitigation Measures:

1. The stormwater design plans to detain and infiltrate stormwater through innovative stormwater techniques. Should the designs change upon future permitting or phasing of the Site Development Activity Permit (Final Plat designs), a revised SEPA Decision may be issued by the SEPA Responsible Official.
2. A tree safety analysis has been performed by the Applicant through a certified risk assessment report prepared by Katy Bigelow. Design efforts will implement recommendations of this report to assess on-site tree safety and the safety of the residents of Madrona Heights, located to the west of the plat. The 20-foot Madrona Heights-required buffer may have potential wind throw impacts

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<sup>2</sup> After the public hearing, the Applicant requested that two sentences be deleted from the Staff Report on DCD's note that it may change its analysis based upon new information. *See* Exhibit 48. The Examiner does not edit staff reports. A staff report is not a final decision, but provides information, analysis, and potentially recommendations, just as Applicant comment or public comment does.

<sup>3</sup> Exhibit 15. Comment was raised requesting MDNS re-issuance. As the MDNS was not appealed, the Examiner lacks authority to remand or alter that decision. However, the MDNS conditions do become conditions of the plat, so are noted in this decision.

<sup>4</sup> Exhibit 28.

by this development. Further tree safety analyses will be provided by additional risk assessment.

**1.5 Public Notice.** The Preliminary Plat was properly noticed, with both mailing and publication occurring for the notice of application and public hearing.<sup>5</sup> No issues were raised on non-compliance with any specific code required notice provisions. However, there was public comment expressing concerns about time lags in receiving information about and understanding the full nature of the proposal. In light of these concerns, and as several citizens at the hearing expressed a desire for additional time to further review files materials and submit comment, the Examiner kept the record open for two additional weeks. Also, in light of comments regarding questions for the Applicant, the Examiner encouraged the Applicant to discuss the proposal with neighbors during the extension period.

**1.6 Prior Public Comment.** Prior to the hearing, DCD received written comment from three adjacent property owners who have concerns about the project proposal.<sup>6</sup>

Ms. Uffens expressed concerns with how the multi-phased project for 52 homes will change the neighborhood's residential character through construction noise impacts, added population growth, and wildlife loss. She would prefer the neighborhood remain rural.

Mr. and Ms. Oyloe expressed concerns with the quantity of the cut and fill of 35,000 cubic yards of material on the property and resulting impacts to native topography. They also had concerns with how the development will impact the 15-foot native vegetation buffer along the Madrona Heights plat, at the southern boundary of the subdivision. They would like to see something similar along the property line incorporated into the development. They had concerns with impacts from land clearing, including increasing wind throw risks, and effects to the 17 trees on their property. Additional concerns include impacts to wildlife, inadequate overflow parking, traffic safety, lack of storm drainage bypass analysis, and impacts associated with project intensity on the neighborhood.

Mr. Branner identified concerns about the MDNS conditions. Also, he expressed concerns with how adjacent property owners will participate in the tree safety analysis, how the additional vehicle trips associated with the plat will affect traffic safety, and impacts to Mosher Creek and abutting property owners from the proposed infiltration of storm drainage.

**1.7 Agency Comment.** Agency comment was received regarding regulatory compliance, as further described below. As long as applicable requirements are met, there were no objections to approval.

**1.8 Zoning/Plan Designations.** The Comprehensive Plan designation is Urban Low-Density Residential<sup>7</sup> and the Zoning designation is Urban Low Residential.<sup>8</sup> This zone is designed to:

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<sup>5</sup> Exhibits 15 and 33.

<sup>6</sup> Exhibits 16, 17, 20 and 29.

<sup>7</sup> Exhibit 36.

<sup>8</sup> Exhibit 34.

[R]ecognize, maintain, and encourage urban low density residential areas by including a full range of urban services and facilities that are adequate at the time of development. This zone is also intended to create cost-efficient residential areas which are capable of allowing the provision of community services in a more economical manner.<sup>9</sup>

It provides for minimum/maximum densities of 5-9 dwelling units per acre, with a minimum lot area of 2,400 square feet. Project net densities are calculated at 6.52 dwelling units per acre, and minimum lot size requirements are met. In addition, the following code provisions apply:

- Minimum Lot Width: 40 feet
- Minimum Lot Depth: 60 feet
- Maximum Height: 35 feet
- Setbacks: Range between 5 and 20 feet

**1.9 Surrounding Land Use and Zoning.** Except for properties across Central Valley Road NE zoned Urban Restricted, the majority of the surrounding properties are zoned Urban Low Residential. Single family homes located within subdivisions along the north and east property lines are known as Madrona Heights and The Woods, respectively. Single family homes west and south of the proposed subdivision are located on unplatted land.

**1.10 Physical Characteristics.** The rectangular property is on Central Valley Road's east side, within the Tracyton area. A wetland consultant performed a wetland inventory and did not identify any wetlands on the site. The property is within the Mosher Creek drainage basin and is near the headwaters to a tributary to Mosher Creek.

The site slopes generally east to west, with slopes mostly between 5 - 20%. The property slopes up gradually from Central Valley Road NW; about a quarter of the way up the property the slopes become increasingly steep to a top of a ridge. The Soil Survey of Kitsap County classifies the soils as within the Alderwood series, ranging 0 to 30% slopes. The soils are moderately deep, moderately well-drained soils formed in glacial till and located on broad uplands. The property is located within a Category I Aquifer Recharge Area (1 - 5 year travel zone). Pursuant to Chapter 19.600 Aquifer Recharge Areas, the proposed plat is an allowed use and does not require analysis for potential threat to groundwater contamination.

The property is composed of upland forest dominated by a relatively even-aged stand of conifer trees. Per a request by Staff, the Applicant's arborist performed a Level-1 assessment of the development site to evaluate the existing tree stands, and performed a risk assessment for wind throw of trees within the buffer in the abutting plat of Madrona Heights to the north. The arborist found that the property contains a mixture of mainly first and second growth native tree species with dense underbrush. Douglas fir and Western Red Cedar mostly dominate the development site. The arborist identified multiple areas for trees to remain and two areas along the north property line near the center where there are trees affected by root rot. The arborist found as follows:

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<sup>9</sup> KCC 17.200.010.

Few of the homes in the development to the north are vegetated with mature native trees. Most are in good to very good condition. Some undeveloped strips of vegetation and mature trees stand between lots 12 and 13. It is my opinion that most are windfirm now and would be minimally affected in the event of large scale clearing south of them, in the primary prevailing wind direction. The exception to this is several mature Douglas-fir trees standing near the east property line of lot 12 which could be significantly impacted by clearing and grading activity as shown in the current development plans.

I recommend that the Shadowhawk development design considers the retention of larger trees, or clusters of trees. Furthermore small areas slated for retention such as those noted on the map, particularly on the south side of the project are usually too small to reasonably or safely retain mature trees. Retaining large trees on the south side of the project area is not recommended due to the scope of the clearing and the prevailing wind direction.<sup>10</sup>

The Applicant addressed these recommendations at the hearing. The recommended mitigation is imposed as a condition. After the hearing, the Applicant asked that this condition be removed. However, this condition ensures the arborists' recommendations are adhered to and help to address the neighbor concerns raised on wind throw. It also is consistent with the MDNS, which required the tree safety analysis. A similar issue is present with not requiring tree installation before final plat approval. As DCD notes, there are challenges with ensuring compliance if the Applicant's proposal (made after the hearing), to avoid actual installation with final plat approval and replace it with bonding, were to be implemented. As such, this condition should remain as originally worded.

### **1.11 Utility and Public Services.**

- **Water:** City of Bremerton
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire and Rescue
- **Schools:** Central Kitsap School District No. 401

**1.12 Access and Transportation.** The development site will receive access from Central Valley Road NE, which has a federal functional classification as a minor arterial. The private access road serving the development will function as a local access road and will be approximately 1,100 feet long. The Home Owners Association will be responsible for maintenance of the internal roadway. The private road tract is 37 feet wide with approximately two ten-foot wide travel lanes that provide access to three eight-space diagonal on-street parking islands for each phase. Hammerhead turnaround will be provided for fire trucks. The roadway includes a five-foot sidewalk and curbs on both sides of the roadway. Consistent with the revised site plan, same is necessary to address safety concerns, and reduce pedestrian and vehicle conflicts, due to the project's traffic volumes, and consistent with pedestrian conflict

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<sup>10</sup> Exhibit 23.

concerns raised in public comment at the hearing. Also, consistent with code requirements, rolled curbing is not proposed.

The proposal includes frontage improvements along Central Valley Road, consisting of curb, gutter and sidewalk and a bike lane. The Applicant has clarified that 26 on-street parking spaces are required, but is providing 28, a conclusion DCD agreed with.<sup>11</sup> The Applicant has prepared a traffic impact analysis report. Engineering staff and Public Works have reviewed the transportation component of the project and issued preliminary approval on May 2, 2017.<sup>12</sup>

Public comment raised concerns about high traffic speeds on Central Valley Road NE, and reference was made to a previous motorcycle fatality on that road. The project will add traffic to that road and provide a new access point. The County described the section as follows:

This section of Central Valley is not listed on the County's segment safety list. Central Valley Road from Vena to 64th St. had a total of four collisions in the past 5 years between 2012 and 2016. All of the collisions were property damage only and involved vehicles leaving the roadway and hitting fixed objects. The fatal collision Mr. Branner speaks of in his e-mail occurred in 2011 at the intersection of Central Valley and Teri Court and involved a left turning motorist that failed to grant the right of way to an oncoming motorcycle.

The location of the planned site access with Central Valley Road must provide sufficient sight distance for the driver on the minor roadway to enter the major roadway without requiring approaching traffic to reduce speed. The engineer determined that adequate intersection sight distance is available at the proposed access location.<sup>13</sup>

The County also evaluated sight distance issues, which is one measure for improving safety. Transportation is a difficult issue to manage, particularly as a population grows. However, with the mitigation outlined, which includes non-motorized transportation facilities, adequate access, and parking, the Applicant has addressed County code requirements.<sup>14</sup>

Public comment also addressed concern with pedestrian access outside the plat, and breaks in sidewalks. DCD noted that work is ongoing on that issue and that ultimately sidewalks in the surrounding area will not have those breaks. With the pedestrian facilities the

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<sup>11</sup> Exhibit 55.

<sup>12</sup> Exhibit 30.

<sup>13</sup> Exhibit 30.

<sup>14</sup> An alternative approach to transportation system design is to construct a highly interconnected street grid, with small block sizes and no dead end streets. This approach facilitates traffic movement, and leads to lower speeds overall. Of course, because all areas are accessible, each area - including each plat - is potentially subjected to greater vehicular movement as cars are allowed to pass through the plat area. But, the advantage is a considerably more accessible and walkable system, which is less prone to gridlock or inappropriate speeds. Systems are probably not designed in this fashion as it requires each area to give up something in exchange to create overall improved functioning. However, such systemic choices are policy questions, and not for the Examiner.

plat will provide, coupled with the ongoing infrastructure improvements, pedestrian access is being addressed consistent with code requirements and the identified safety concerns.

**1.13 Stormwater.** The project is a major new development. Stormwater improvements include bioretention cells with underdrains to collect stormwater runoff from roads and driveways. Rooftop runoff will either be infiltrated or conveyed directly to the conveyance system, and will not discharge into the bioretention cells. A system of pipes and catch basins will convey runoff from the biocell underdrains, overflows, and rooftops to a water quantity pond. The Applicant proposes that the storm system be a public system, with maintenance responsibilities to be assumed by Kitsap County Public Works. Engineering reviewed the project's stormwater element and issued a preliminary approval.<sup>15</sup> At the hearing, the Applicant addressed the highly drained soils at the site, and its proposal for stormwater infiltration. As DCD noted, low impact development practices may be reviewed during the SDAP process to reduce storm drainage runoff.

Following the hearing, the Applicant requested removal of certain proposed stormwater related conditions. The comment referenced an engineer's memo on groundwater readings, but was otherwise relatively cryptic.<sup>16</sup> DCD responded in detail to the request, explaining the basis for the stormwater conditions and referencing the relevant exhibits.<sup>17</sup> Other than noting a concern regarding seasonally high groundwater had been adequately addressed by the project engineer so could be removed, DCD recommended the stormwater conditions remain as proposed.<sup>18</sup> Given the numerous comments on stormwater and concerns from neighbors due to the increases in impervious surface, coupled with the technical analysis submitted,<sup>19</sup> excepting the groundwater question, the stormwater conditions should remain as proposed.<sup>20</sup>

A question was raised in public comment on whether a Hydraulic Project Approval or HPA would be required for stormwater improvements. HPAs are only required for work in state waters, and the Applicant's engineer believes it is unlikely one would be required. "An HPA is not expected to be necessary, given the lack of a defined stream or swale that aligns with the drainage track on Madrona Heights, and given the overall impact of this site on Mosher Creek compared to the area tributary culvert (see attached Downstream Memo)."<sup>21</sup> But, if work does trigger HPA requirements, they must be followed, as the plat conditions note.

**1.14 Sewer and Water Service.** The Public Works Waste Water Division confirms that sewer service will be available to serve the Preliminary Plat.<sup>22</sup> Based on the previous

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<sup>15</sup> Exhibit 31.

<sup>16</sup> See Exhibits 47 and 48.

<sup>17</sup> Exhibit 50.

<sup>18</sup> See Exhibit 50 and testimony from both the Applicant and DCD.

<sup>19</sup> See e.g., Exhibits 9, 12, 24 and 25.

<sup>20</sup> The Examiner is concerned with the number of stormwater conditions the Applicant proposed removing after the hearing, given the approach limits DCD's and the public's ability to review such revisions. Two stormwater conditions have been either revised or removed, but the changes to these conditions were addressed at the hearing and are supported by the record.

<sup>21</sup> Exhibit 24.

<sup>22</sup> Exhibit 8.

designation, the project proposal is consistent with code requirements for providing an urban level of sanitary sewer service.

**1.15 Schools.** Central Kitsap School District will serve the Shadowhawk subdivision. During review of the Site Development Activity Permit to construct the plat, Kitsap County will coordinate with the school district to determine if special provisions are required for a bus stop on Central Valley Road.

**1.16 Lighting.** Urban residential plats generally include illumination of internal roadways and street lighting at the intersection where private roads intersect with County right-of-way, pursuant to KCC 11.40 Street Lighting. The developer is usually responsible for installing lighting at the County's intersection, which is then conveyed to the County. If desired, the developer and/or Home Owners Association (HOA) install the internal street lighting. The individual property owners are billed through the local purveyor for lighting, with the HOA responsible for maintenance.

**1.17 Fire Protection.** The Fire Marshal's Office has reviewed the project, included conditions of preliminary approval, and forwarded a copy of the plans to Central Kitsap Fire and Rescue No. 1. The Fire Marshal's Office conditioned the project to provide fire flow with fire hydrants not more than 600 feet within the plat.

**1.18 Landscaping.** The Applicant is proposing that the road frontage along Central Valley Road be landscaped with Paper Maple, Tschonoskii Crabapple within the entrance, and Leyland Cypress around the perimeter. The Applicant has supported some landscaping and fencing along the north property line to act as a separation buffer. Depending on the arborist report to address wind throw, the north property line may require less landscaping. Street trees are required to be spaced at a minimum of 25 feet on-center. The development is generally consistent with preliminary landscaping standards for landscaping. A final landscape plan will be required to be submitted with the Site Development Activity Permit that includes additional landscaping on and around parking islands. The final landscape plan must be consistent with KCC Chapter 17.385 and related plat conditions.

**1.19 Central Mail Boxes in Urban Plats.** The County trend has been to move away from traditional rural mail boxes and install clustered mailbox design for improved efficiency, security, and aesthetics. Consistent with KCC 16.24.040(C)(1)(d) Urban Standards, where clustered mailboxes are proposed, clear zone requirements must be met.

**1.20 Parking.** The plat must be consistent with KCC 17.435 Off-Street Parking and Loading. Two off-street parking spaces are required per residential lot and 0.5 per lot for overflow on-street parking. Based on the number of lots, the project will need to include a minimum of 104 off-street spaces and 28 on-street spaces. Off-street parking will be verified at the time of building permit application. The Applicant has documented that the project is consistent with the minimum overflow parking requirements that will be shown on the SDAP site plan. It will need to be demonstrated there is adequate room for driveway back-out movement.

**1.21 Urban Standards – KCC 16.24.040.** As addressed below, KCC urban standards requirements are met.

- Access. See above, including section 1.12.
- Public Transit. The neighborhood is served by a Kitsap Transit route.
- Non-Motorized Facilities. No trails are proposed. Public Works has identified a bicycle lane required to be constructed to address the non-motorized plan requirements. With respect to sidewalks, see section 1.12 above.
- Off-Street and On-Street Parking. See section 1.20 above.
- Fire Protection. See section 1.17 above.
- Landscaping Requirements. See section 1.18 above.
- Utilities - Water Supply. The City of Bremerton Water Utility will provide water service. The City of Bremerton serves the incorporated and unincorporated urban growth area for drinking water. The Applicant received a non-binding letter of water availability from the water utility.<sup>23</sup>
- Recreation. The Preliminary Plat will include recreational open space amenities consistent with subdivision standards. The Applicant calculated per code requirements, and will include 0.88 acres of open space that includes the recreation area and area along the perimeter boundary of the plat. The proposal includes play equipment, and as depicted on the revised site plan, the recreation facility will be centrally located within the plat.
- Recreation/Location. At the hearing, the Applicant confirmed its revised site plan centrally locates the recreation facility. However, the Applicant asked the Examiner to consider whether the code requires a centralized location. The code states that the tract shall be "located within the land segregation in a manner that affords good visibility of the tract from roads, sidewalks and the majority of dwellings."<sup>24</sup> DCD testimony and submittals document the consistency of the proposed location with KCC 16.24.040(H) requirements. The Applicant did not propose an alternate location which it demonstrated addressed these code requirements. Thus, the centralized location should be required, as has been proposed. As such, the condition on same should remain as originally worded.

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<sup>23</sup> Exhibit 7.

<sup>24</sup> KCC 16.24.040(H)(3)(c), *see also* sections (3)(f) and (3)(g).

### **1.22 Appropriate Provisions for Facilities and Improvements - KCC 16.04.080.**

As addressed below, appropriate provisions for facilities and improvements have been made consistent with KCC 16.04.080, to ensure the plat serves the public interest.

- Code/Plan Consistency. The project, as conditioned, is consistent with the Comprehensive Plan and County Code. Both provide for attractive urban development adequately supported by urban facilities and services. The Staff Report provided detail on relevant Plan policies, which outline these objectives. No policy or code provision was identified which the project would not be consistent with.
- Adequacy of Access. The Applicant will construct a private road that meets minimum fire access requirements. Vertical curbs are required for designated on-street parking areas. These measures, along with compliance with County transportation requirements, provide for adequate access. *See also* section 1.12 above.
- Safe Walking Conditions. See section 1.12 above, which addresses the provision of sidewalks to ensure safe walking conditions are in place.
- Lot Configuration. Consistent with KCC requirements, the proposed 52 lots run at right angles to the street the lots face. The Applicant has proposed 10 and 20 foot front yard setbacks from the driveway access off the private road.
- Home Owner Associations. Applicable code requirements shall be met. Several conditions are included addressing same. A condition is included for property owner maintenance of certain plat conditions. As addressed at the hearing, although an HOA may take responsibility for such work, such associations can be dissolved over time. This condition was designed to ensure that regardless of whether an HOA takes on these responsibilities, they do remain with the ultimate property owners.

**1.23 Single-Family Subdivision/Development Standards.**<sup>25</sup> The plat meets single-family platting requirements.

- Sidewalk Requirements. See section 1.12 above.
- Public Streets and Connectivity Requirements. The plat includes a private street, which will not be dedicated to the County. There is no opportunity for road connectivity due to topography limitations.
- Utilities Connectivity Requirements for Public Utility Extensions to Abutting or Contiguous Properties. At this time, there is not an opportunity for connectivity, similar to road connectivity discussed above.

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<sup>25</sup> See former KCC 17.382.037.

- Landscaping Requirements. See section 1.18 above.
- Off-Street Parking. See section 1.20 above.

**1.24 Enforcement.** During the hearing, a question was raised on enforcement. This is not an enforcement proceeding, but the plat is required to be constructed consistent with all conditions imposed. The Applicant asked that a standard condition noting that the plat can be revoked due to failure to comply with conditions and relevant laws be removed. However, it is best to be clear up front that plat revocation can occur should plat conditions be violated.

The Applicant also requested that a standard plat condition which requires plat consistency with application materials to be deleted. These are the materials available to the public and Examiner to review in assessing project compliance with County requirements. The Examiner cannot authorize the Applicant to deviate from its public representations as to what is actually being proposed for development. Of course, as the plat has been modified based on DCD review, agency review, and public comment, to the extent there are any conflicts between this decision with submitted materials, this plat decision, including the conditions imposed, governs.

## **2. CONCLUSIONS OF LAW**

**2.1** The Hearing Examiner reviews Preliminary Plat applications for consistency with Single-Family Subdivision/Development Standards and relevant platting requirements. These requirements include zoning requirements in KCC 16.04.080 General Provisions, KCC 16.24.040 Urban Standards, and KCC 16.40 Subdivisions. These regulations require that plats meet sizing and related requirements (*i.e.*, density, height, setbacks, and landscaping), and be adequately served with necessary infrastructure and services (*i.e.*, stormwater facilities, sewage, water supply, transportation facilities, recreational facilities, and schools).

**2.2** The zoning code authorizes the proposed residential use at the densities proposed. As addressed in the findings above, and assuming the below conditions are complied with, the proposal can meet all platting requirements, including lot size, setbacks, and infrastructure requirements. Conditions are imposed to ensure these requirements are complied with.

**2.3** Conditions are imposed to ensure County transportation, stormwater, and water/sewer service requirements are complied with. Conditions are imposed to directly address concerns identified at the hearing. The proposal, as conditioned, and as the findings address throughout, includes appropriate provisions to address impacts on drainage; roads, including adequate access and safe walking conditions; water supplies; sanitary wastes; fire protection; landscaping; and, other supporting public and private facilities and improvements. Also, a condition was developed to address neighbor concerns over wind throw.

2.4 As mitigated and proposed, the project is consistent with Comprehensive Plan policies providing for attractively designed urban development which is adequately supported by urban facilities and services.

2.5 Given project consistency with applicable requirements and policies, the Hearing Examiner concludes it should be approved.

## DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Preliminary Plat, provided the following 59 conditions<sup>26</sup> are adhered to.

### Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing and/or construction.
2. All building permits on these lots will be subject to impact fees pursuant to Kitsap County Code.
3. A Final Landscape Plan will be required to be submitted consistent with KCC 17.385 Landscaping, during civil site plan review, which depicts natural vegetation, and the planting and irrigation plan. The tree retention plan recommended should be included with the SDAP.
4. Street Trees (2' to 2.5') shall be planted along the access driveway and on individual lots at approximately 25' spacing. A final landscape plan will be subject to approval by the department prior to SDAP approval. Trees on individual lots are required to be installed prior to Certificate of Occupancy of individual residential units.
5. The recreational facility shall be moved from the current location adjacent to Central Valley Road to a more central location within the subdivision, consistent with KCC 16.24.040(H).
6. Include a note on the face of the plat showing building setbacks for the lots as conditioned per the plat approval.
7. Prior to the plat transferring to the Home Owners Association (HOA), the developer will be responsible for irrigation and maintenance of all landscaping to ensure survival up to two years. The developer or the HOA should maintain all landscaping consistent with Tree Care Industry Association standard practices.

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<sup>26</sup> The numbering through Condition 35 was adjusted from the Staff Report as the first proposed condition was not numbered.

8. Pursuant to KCC 21.04.110 Timeline and Duration of Approval, Kitsap County's land use approval for the Preliminary Plat is valid for a period of up to five (5) years from the decision date of the Preliminary Plat consistent with RCW 58.17.140 and .170.

9. Land use approval is limited to the uses proposed by the Applicant on the recommended site plan and the SEPA Environmental Determination. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Any modifications or expansion of the project will be subject to further review pursuant to the requirements of the appropriate sections of the KCC.

10. The decision set forth herein is based upon representations made and exhibits contained in the project application. Any change or deviation in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County.

11. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

12. Any violation of the conditions of approval shall be grounds to initiate revocation of this Plat.

**Public Health.**

13. The Applicant shall comply with all applicable Kitsap Public Health District requirements.

**Fire.**

14. The minimum fire flow requirements for one and two family dwellings in subdivisions shall be 500 gallons per minute for thirty (30) minutes.

15. Water line size, location, and the location of fire hydrants must be shown on SDAP plans. A letter of water availability indicating available fire flow from the water purveyor is required to be submitted to the Kitsap County Fire Marshal's office prior to the approval of any building permits.

16. When required by the Fire Code Official, fire department access roads shall be posted with approved signs or marked as follows: All curbs shall be painted red on the sides and top, and shall be labeled with 4-inch high white lettering at 25-foot intervals with the words "NO PARKING TOW AWAY ZONE IFC 503.3." Hammerhead Road B shall be painted per the above condition.

### **Development Engineering.**

17. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to plan acceptance.

18. Approval of the Preliminary Plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of KCC Titles 11 and 12.

### **Stormwater.**

19. The information provided demonstrates this proposal is a Major Development as defined in KCC Title 12, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.

20. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Preliminary Plat application was deemed complete, June 29, 2016. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

21. Should the proponent propose phasing of the project, a phasing plan shall be submitted to Development Services and Engineering for review and approval. The phasing plan shall, as a minimum, address the following items:

- Timetables indicating the anticipated time between initial site grubbing/grading activity and the completion of construction, including site stabilization of that specific phase.
- The extent of drainage improvement to be installed during the various phases.

22. Any project that includes off-site improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation or intersection channelization shall provide stormwater mitigation in accordance with KCC Title 12 effective at the time the Preliminary Plat application was deemed complete, June 29, 2016.

23. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall.

24. The project proponent shall be responsible for installing any necessary off-site downstream drainage improvements. Procurement of any permits or easements necessary to install off-site improvements shall be the responsibility of the project proponent.

25. The site plan indicates that greater than one (1) acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More

information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Josh Klimek at 360-407-7451, email [joshklimek@ecy.wa.gov](mailto:joshklimek@ecy.wa.gov). This permit is required prior to issuance of the SDAP.

26. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as an Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The Applicant shall contact Ecology to determine if the facility is regulated under the UIC program.

27. The design of the infiltration facilities will be in accordance with Section 7.3.4 of the Kitsap County Stormwater Design Manual.

28. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

29. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

30. Upon completion of the storm drainage facilities, the developer will be required to post a two-year maintenance bond for the facility. The developer will be responsible for providing regular and adequate maintenance during this two-year period and supportive maintenance records. At the end of this time, the County will inspect the system and, when the facility is acceptable and 80% of the homes have been completed, the County will take over maintenance and operation of the system. Wording to this effect must appear on the plat and in the covenants before final recording. Areas proposed to be maintained by the County that are not in the right-of-way must be shown as a separate tract/s or drainage easements with Kitsap County being designated as the grantee.

31. Kitsap County will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in Kitsap County's judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.

32. The impervious area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the final plat. Additional impervious surfaces created on an individual lot beyond the amount accounted for in the overall drainage facilities shall be mitigated in accordance with KCC Title 12.

33. The Site Development Activity Permit submittal materials shall include information to clarify the release point for the 10-acre upstream stormwater flow, along with a complete analysis of the off-site flow-path.

34. The Site Development Activity Permit submittal materials shall include a complete Level 2 downstream analysis, including a basin map of the entire contributory acreage to the downstream drainage, to support the engineer's conclusions as stated in the supplementary Memorandum, submitted by the project engineer on April 11, 2017.

35. Kitsap County Code 12.08.010(52) includes bike lanes in the definition of pollution-generating impervious surfaces. Within the definition, exceptions are made for surfaces not regularly used by vehicles, including "paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles." At the time of Site Development Activity Permit application, the Applicant shall provide design information and applicable stormwater mitigation for offsite improvements, including the bike lane.<sup>27</sup>

### **Traffic and Roads.**

36. An Application for Concurrency Test (KCPW Form 1601) shall be submitted as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW Form 1601 reserves road capacity for the project.

37. The following note shall appear on the face of the final plat map. "All interior roads shall remain private."

38. All traffic control devices on public and private roads shall comply with the Manual on Uniform Traffic Control Devices as amended by the Washington Administrative Code. This is in accordance with 23 Code of Federal Regulations (CFR), Part 655.

39. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per Washington State Department of Transportation (WSDOT) standard plans at the time of construction.

40. All lots shall access from interior roads only. This note shall appear on the face of the final plat map.

41. The property owners within the plat shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the face of the final plat map and the accepted construction plans. In addition, Development Services and Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.

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<sup>27</sup> This language reflects a proposed condition jointly submitted by the Applicant and DCD in Exhibit 42.

42. The Applicant shall provide surveyed cross-sections at 50-foot intervals along the parcel frontage on Central Valley Road NE. The cross-sections should show existing and proposed pavement shoulders, ditches, and slopes. The cross-sections should also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.

43. The Applicant shall submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

44. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.

45. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Central Valley Road NE and Road A. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the Kitsap County Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.

46. All work, equipment and materials for traffic signal and street lighting installations shall meet and be in compliance with all requirements of the Kitsap County Road Standards, Project Contract Provisions of Plans and Specifications accepted for construction by Kitsap County, MUTCD Manual on Uniform Traffic Control Devices, NEMA National Electrical Manufacturer's Association, NEC National Electrical Code, WSDOT Standard Specifications and Standard Plans, and the Occupational Safety and Health Administration (OSHA).

47. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. The Applicant shall construct frontage improvements consisting of a 12-foot travel lane, 5-foot bike lane, and 5-foot sidewalk along Central Valley Road NE across the entire property frontage. Any required road widening shall be from the centerline.

**Survey.**

48. A Final Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16.

49. All private roads shall be labeled as tracts and constructed in accordance with Fire Code requirements. Ten feet for utility easements shall be provided on each side of private road tracts.

50. All potential park areas, common open space, buffers and stormwater

management areas shall be labeled as separate tracts. The ownership and maintenance responsibility shall be addressed on the face of the final plat, as well as in the CCRs.

**Wastewater.**

51. Kitsap County sanitary sewer is available for the project. The Applicant shall submit an Application to Construct Sanitary Sewer to KCPW Sewer Utility Division.

52. The Applicant shall submit a complete set of sewer plans, profiles, and specifications designed in accordance with KCPW – Wastewater Division Standards and Regulations.

**Solid Waste.**

53. Prior to SDAP approval, Waste Management (360-674-3166) shall be contacted for information on implementing the solid waste/recycling storage requirements influenced by the service provider (e.g. dumpster size and location) for the project. The Applicant shall note access requirements of collection trucks. Documentation shall be provided from the solid waste/recycling service provider that its requirements for this project have been met.

**Other.**

54. Construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge shall require a building permit with an engineered design. This note shall appear on the face of the final construction drawings.

55. Rock and retaining walls shall meet all applicable setback requirements of KCDSM 11.4.4.

**Environmental.**

56. The proposal will be conditioned for stormwater control pursuant to KCC Title 12 Stormwater Management. On-site infiltration is proposed. Impacts to Mosher Creek for system overflow will be reviewed in future phases, should infiltration prove infeasible.

57. Due to the presence of steep slopes on the property and unclassified drainage conveyance systems, the proposal will be conditioned to follow all recommendations of the geotechnical report per KCC 19.400 and KCC 19.700.

58. The Stormwater design plans to detain and infiltrate Stormwater through innovative stormwater techniques. Should the designs change upon future permitting or phasing of the Site Development Activity Permit (Final Plat designs), a revised SEPA Decision may be required by the SEPA Responsible Official.

59. A tree safety analysis has been performed by the Applicant through a certified risk assessment report prepared by Katy Bigelow. Design efforts will implement

recommendations of this report to assess on-site tree safety and the safety of the residents of Madrona Heights, located to the west of the plat. The 20-foot Madrona Heights required buffer may have potential wind throw impacts by this development. Further tree safety analyses will be provided by additional risk assessment.

THIS DECISION is entered this 5th day of June, 2017.

A handwritten signature in blue ink, appearing to read 'Susan Drummond', written over a horizontal line.

Kitsap County Hearing Examiner  
Susan Elizabeth Drummond