

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION,  
AS CLARIFIED<sup>1</sup>**

**McWilliams Preliminary Plat  
and Performance Based Development  
File Nos. 17 04030 and 17 04032**

**March 27, 2018**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** This Preliminary Plat/Performance Based Development subdivides 29.1 acres into 152 lots of about 3-4,000 square feet, for attached townhomes (limited to two connected units), with two to three story wood frame construction. The PBD approval is requested to eliminate the five foot side yard setback to accommodate shared internal property lines. The project's two private access roads connect it to NE McWilliams Road, which will be improved to accommodate vehicular and pedestrian access. Constructed in three phases, other improvements include stormwater treatment and detention control facilities, utilities, open space and landscaping, recreational amenities, and preserved areas for wetland protection. The Applicant/property owner, Applicant's representative, and location are as follows.

**Applicant/Property Owner:** McWilliams Road LLC, P. O. Box 115, Hobart, WA 98025.

**Applicant's Representative:** Blue Architects + Interiors, 247 4<sup>th</sup> Street, Ste. 508, Bremerton, WA 98337.

**Site Location:** 700 NE McWilliams Road, Bremerton, WA. (Assessor Parcel No. 262501-3-007-2003).

**1.2 Administrative Record.** Before the hearing, the Hearing Examiner reviewed Exhibits 1-33, which included the Staff Report. At the hearing, the Department of Community Development ("DCD") proposed adding its power point presentation as Exhibit 34. The Examiner admitted all exhibits.

**1.3 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application.<sup>2</sup> Public comments addressed traffic and stormwater. DCD issued a Mitigated Determination of Non-Significance which included mitigation addressing these impacts.<sup>3</sup> No SEPA appeals were filed. The MDNS includes these conditions:

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<sup>1</sup> Per HE Rule 1.8.4, DCD requested Examiner clarification on phasing. Although the code language cited at Finding 1.15.2 cannot be revised, the planned phasing is referenced at Findings 1.1 and 1.15.2. Also, at p. 9, PPD was changed to PBD.

<sup>2</sup> See Exhibit 16 and WAC 197-11-355.

<sup>3</sup> See Exhibit 22.

Conditions:

1. The proposal will be conditioned for stormwater control pursuant to KCC Title 12 (Stormwater Management). On-site bioretention and stormwater detention is proposed.
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 KCC 19.700.
3. On site wetlands will be buffered from impacts and placed in a protective Open Space Tract, per KCC Title 19.200.
4. Frontage improvements along the entire property frontage of NE McWilliams Road are required, including 14-foot travel lanes,<sup>4</sup> 5-foot bicycle lane, vertical curb, gutter, and 5-foot sidewalks.
5. A Hydraulic Project Approval with the Washington State Department of Fish and Wildlife may be required for stormwater overflow outfall flows to Mosher Creek.

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. The Kitsap County Comprehensive Plan (revised in June of 2016) requires concurrence with the Transportation Element. The application has been reviewed for consistency with these elements, and requires the following, per the January 2018 Development Engineering staff and Kitsap County Public Works memorandum:

Traffic and Right of Way Mitigation:

The conditions, as listed below, are required pursuant to SEPA Substantive Authority (KCC 18.04.200.D):

3. Frontage improvements shall also include curb ramps for each direction of pedestrian travel at the intersection of Road B and NE McWilliams Road; this will require construction of sidewalk with curb ramps on the south side of NE McWilliams Road, to match the location of the curb ramps on the north side, as well as continuation of sidewalk, around the radius, southerly on Juanita Circle NE.

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<sup>4</sup> This was a typographical error. The vehicle travel lanes are actually 11 feet in width to allow for bike lanes. See e.g., Exhibit 26. DCD provided clarification at the hearing.

**1.4 Notice.** Under Kitsap County Code ("KCC") Title 21, Land Use and Development Procedures, DCD gave the required public notice, including for the application itself and for the hearing.<sup>5</sup> No concerns on notice were identified.

**1.5 Hearing.** The Hearing Examiner considered the proposal at a March 8, 2018 open record public hearing. DCD, through Mr. Smith, summarized the project. As conditioned, DCD found the proposal consistent with the KCC and recommended approval. Applicant and citizen testimony followed.

**1.5.1 Applicant Testimony.** The Applicant, through its Project Engineer, Mr. Olson, stated that he would mainly address public comment, but also provided information on project open space and density. He emphasized the project's 9 plus acres of open space is 32% of the site. As for density, at 11.7 units per acre, the site is considerably less dense than what it could have been developed at; 450 apartment units, with no required hearing. On project design, the homes are not duplexes, but attached housing. This means that while the housing is connected, the owner owns each house and lot.

**1.5.2 Public Testimony.** Mr. Meyers owns adjacent property to the east. His property line begins at a point roughly 300 feet north of the project's south boundary line, and then runs for about 300 feet. He would like to see a fence along the project boundary. His fruit trees attract about a dozen deer and the new residents will likely bring dogs and other animals to the area, creating conflicts. Fencing would address the issue. If the Applicant does not provide it, he is prepared to construct fencing, but needs a survey to confirm property line location. Mr. Meyers explained that the first 300 feet going inland is already fenced. His concern is about the lack of fencing along his property line. Properties to the north are fenced, and this has kept dogs from coming down onto his property.

Mr. Meyers also raised concerns about traffic. While improvements have been made to make the McWilliams and Old Military intersection safer, he is concerned about the project's added traffic. There is also an issue with cars being parked on McWilliams Road and further down to Central Valley Road. If parking within the plat is insufficient, additional spaces should be added, to ensure the plat does not exacerbate the issue.

Ms. Van Buskirk lives in Silverdale Estates to the north and is concerned about the plat's storm water draining into this area. She also asked about fencing on the plat's north side.

**1.5.3 Applicant Responses to Public Comment.** On fencing, Mr. Olson stated that given the plat lay out, with the large open space area on the east, Mr. Myers will have a buffer along the north part of his property. With this open space, there is no need to fence this area. And, starting at the south property line on the east, the first 11 homes will be or are already fenced.

Mr. Olson explained that one of the project's purposes is to resolve the Silverdale Estates' drainage issues. The project owners also own Silverdale Estates, and the Applicant agreed there is a known drainage problem. This is because the site drains north. With the plat, this problem will

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<sup>5</sup> See Exhibits 16, 24, and 32.

be addressed. The plat includes four stormwater detention ponds, with controlled release, and a conveyance system through Silverdale Estates. There will be some infiltration through bio-retention cells, with the remainder water conveyed to Mosher Creek.

**1.5.4 DCD Clarification.** DCD clarified that besides the fencing being considered, a ten foot vegetative strip along the east property line will provide relief.

**1.6 Public Comment Submitted Before the Hearing.** Ms. Sanchez, an adjacent property owner, asked that: 1) along the west property line abutting the Grand Pine Subdivision, the plat have a 10-foot no-cut buffer; and 2) enough parking to ensure plat residents do not use NE McWilliams Road as overflow parking.<sup>6</sup>

**1.7 Agency Comment.** Agency comment was received regarding regulatory compliance. As long as code requirements and project conditions are followed, there were no objections to approval.

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

[P]rovide for higher densities where a full range of community services and facilities are present or will be present at the time of development. This zone is also intended to create energy-efficient residential areas by allowing common wall construction, as well as to facilitate residential development which utilizes cost-efficient design.<sup>9</sup>

The zone requires minimum and maximum densities of 10-18 dwelling units per acre. The minimum density calculation is based on net developable acreage.<sup>10</sup> With just under 13 net developable acres and 152 units, the project's net density is 11.71, meeting minimum density requirements. The project is well under the maximum density threshold.

**1.9 Surrounding Land Use and Zoning.** Urban Restricted zoning surrounds the site on the north, west, and a portion of the south, with the other portion zoned Urban Low. The Urban Restricted properties were platted with clustered residential development, with more extensive critical areas in open space. To the east, properties are zoned Urban Medium Residential, with residential uses.

**1.10 Site Physical Characteristics.** The 29.1 acre site contains a single-family dwelling built in 1965 and associated outbuildings formerly in agriculture use. Approximately 10 acres is in pasture with brush. Though thinned in 2011 (County Conservation Option Harvest Permit 11-96110), mature tree stands remain in the northeast corner, and also with the wetlands. Generally

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<sup>6</sup> Exhibit 17.

<sup>7</sup> See Exhibit 29.

<sup>8</sup> See Exhibit 27.

<sup>9</sup> KCC 17.220.010.

<sup>10</sup> KCC 17.420.020(A).

sloping from east to west, grades range between 5% and 15%, with up to 25% in limited areas.<sup>11</sup>

Although within a Category I Aquifer Recharge Area, the project is below the threshold requiring a hydrogeologic report. Two drainage basins split the property, draining into Mosher Creek. The southwest corner contains a 2,036 square foot Type IV wetland (Wetland A), while the northwest corner contains a 60,554 square foot Category III wetland (Wetland B). Wetland A will be filled, with "water quality and hydrologic function " incorporated into stormwater facilities.<sup>12</sup> There are no direct impacts to Wetland B and the buffering is averaged "to achieve a no net loss to required buffer area."<sup>13</sup> DCD found the plat consistent with the CAO wetland regulations vested to, and no concerns were raised on the mitigation approach.

### 1.11 Utility and Public Services.

- **Water:** City of Bremerton (availability letter provided).<sup>14</sup>
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County Waste Water (availability letter provided).<sup>15</sup>
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire and Rescue
- **Schools:** Central Kitsap School District No. 401. Plat notification was provided.<sup>16</sup> When the District responds, its comments will be included with the Site Development Activity Permit ("SDAP") review.<sup>17</sup>

**1.12 Transportation and Access.** The project fronts NE McWilliams Road, a minor arterial. Along NE McWilliams Road, 1,170 feet of frontage improvements will be constructed, including an 11-foot travel lane, five-foot sidewalk, curbs, gutter, and five-foot bike lane.<sup>18</sup>

Vehicular access is via on-site private roads, which intersect with McWilliams along the south property line through two access points. For traffic safety, the western access will align with Juanita Circle NE, which is on McWilliams's south side. For pedestrian safety, curb returns on Juanita Circle NE will be constructed.

The project's internal roads include a five-foot sidewalk, with curbs on both sides of the road. There are four areas with on-street perpendicular parking. Consistent with code requirements, the plat will have two parking spaces per residence on each lot's driveway (this does not include garage space), plus .5 spaces per lot within the plat itself, for 380 spaces total.<sup>19</sup> The parking approach meets code requirements and addresses concerns over overflow parking onto McWilliams Road.

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<sup>11</sup> See Exhibit 12 (Geotechnical Engineering Investigation), p. 1.

<sup>12</sup> Exhibit 13 (Wetland Delineation & Mitigation Plan), p. 8.

<sup>13</sup> Exhibit 13 (Wetland Delineation & Mitigation Plan), p. 11. For mitigation sequencing summary, *see* p. 12.

<sup>14</sup> Exhibit 10.

<sup>15</sup> Exhibit 11.

<sup>16</sup> Staff Report (Exhibit 33), p. 8.

<sup>17</sup> An elementary school is .5 acres from the site. Exhibit 3 (SEPA Checklist), p. 10, ¶ 12(a).

<sup>18</sup> *See* DCD Testimony, Staff Report (Exhibit 33), and Finding 1.3 on MDNS Condition #4.

<sup>19</sup> Exhibit 6 (Parking Analysis). Also addressed in Staff Report (Exhibit 33) and DCD testimony.

The Applicant has requested the County to condition the Final Plat to allow those private roads to become public streets with approval by Public Works, as set forth in proposed Condition 47. At Applicant request, DCD proposed that Condition 32 be struck to allow for same, and to follow proposed Condition 47.

On street lighting, urban plats generally include internal roadway illumination and street lighting where private roads intersection with County right-of-way.<sup>20</sup> The Applicant will install the lighting at the County's intersection and convey same to the County.

Engineering staff and Public Works have reviewed the transportation issues, including the Applicant's traffic impact analysis,<sup>21</sup> and issued preliminary approval.<sup>22</sup>

**1.13 Stormwater.** The proposal includes a stormwater system, comprising bioretention cells with underdrains to collect runoff from roads and driveways for water quality treatment; a system of pipes and catch basins will convey runoff from the bioretention cell underdrains, overflows and rooftops to four water quality ponds. To reduce runoff, low impact development practices will be reviewed during the SDAP process.

The Applicant requested public maintenance of its storm drainage system. It is Kitsap County policy that stormwater facilities are only publicly maintained when roads are public. While Condition 47 allows for that possibility, the system is currently planned for private maintenance. Engineering has reviewed the stormwater approach, including the storm drainage report,<sup>23</sup> and issued preliminary approval.<sup>24</sup>

**1.14 Landscaping, Open Space, and Recreational Amenities.** The Applicant has provided a landscaping plan that conforms to the intent of the landscaping requirements for preliminary land use. It includes screening of the site with trees, shrubs, and groundcover along the perimeter (including along NE McWilliams Road and a site obscuring buffer along the north and south property lines), street trees and landscaping of recreation facilities, and storm drainage tracts. Street trees adjacent to sidewalks will be a variety with a limb height to not impede sidewalk pedestrian use. The final landscape plan submitted with the SDAP must follow all code requirements, including Ch. 17.500 KCC.

Recreational amenities include a trail system, an exercise circuit, play areas, and the wetland/buffer areas. Two play areas, along with play equipment for young children, will be centrally located on a leveled area near the southeast side of Wetland-B. To meet code

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<sup>20</sup> See Ch. 11.40 KCC, Street Lighting.

<sup>21</sup> See Exhibit 14.

<sup>22</sup> See Exhibit 21.

<sup>23</sup> See Exhibit 15.

<sup>24</sup> See Exhibit 21.

requirements, in total, 9.32 acres or 32.39% of the plat is landscaped or in dedicated open space, with a significant proportion in active or passive recreational use.<sup>25</sup>

## **1.15 Performance Based Development Standards, Ch. 17.450 KCC.**

**1.15.1 PBD Requirements.** PBD requirements are designed to improve project design. A PBD allows clustering to:

preserve open space, encourage the creation of suitable buffers between differing types of development, facilitate the residential densities allowed by the zone, provide for increased efficiency in the layout of the streets, utilities and other public improvements and to encourage the use of low-impact development techniques and other creative designs for the development of land.<sup>26</sup>

A PBD may be used to modify lot size, width, depth, height (if within a UGA), and setback requirements, but not densities.<sup>27</sup> The Applicant requested elimination of the five foot side yard setback to allow zero lot line duplex development. In addition, due to tight spacing, the Applicant requested a five reduction of the 10 foot setback requirement for Lots 95 and 96.

A PBD must meet various requirements addressing transportation, access, pedestrian circulation, open space, and recreational amenities. On transportation, a PBD must have "adequate pedestrian and vehicle access and parking commensurate with the location, size, density and intensity of the proposed development," access cannot be "unduly detrimental to adjacent areas," and increases in traffic must be considered.<sup>28</sup> In addition, there must be "adequate road access, connected road network, safe pedestrian access, and emergency vehicle access."<sup>29</sup>

A traffic engineer analyzed transportation issues and identified impacts have been addressed through project mitigation and design, including conditions requiring frontage improvements, internal sidewalks and other right-of-way improvements, and transportation impact fee payment. As addressed in Finding 1.12, access (including for vehicles, bicycles, pedestrians, and emergency vehicles) and parking have been adequately addressed. The parking spaces provided follow KCC 17.490.030.<sup>30</sup> Also, as addressed in Finding 1.12, "[a]dequate pedestrian circulation facilities," are provided, which are "durable, serviceable, safe, convenient to the buildings and separated by curb or other means from the vehicle traffic facilities."<sup>31</sup>

As addressed in Finding 1.14, the common open space meets all requirements. The open space "location, shape, size and character" is suitable for the plat; exceeds 15% of the plat's gross acreage; at over nine acres feet total, open space areas exceed 500 square feet; and, the areas are

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<sup>25</sup> KCC 17.500.025 (15% landscaping requirement); KCC 17.450.040(B)(1) and (C) (15% common open space (contiguous 5% recreational open space requirement). See Exhibit 33 (Staff Report) and Exhibits 2A and 2B.

<sup>26</sup> KCC 17.450.010.

<sup>27</sup> KCC 17.450.010.

<sup>28</sup> KCC 17.450.040(A)(1).

<sup>29</sup> KCC 17.450.040(A)(2).

<sup>30</sup> KCC 17.450.040(A)(3).

<sup>31</sup> KCC 17.450.040(A)(4).

appropriate for the plat's "scale and character," topography, and density.<sup>32</sup> The maintenance requirements, including development of an association to ensure same, meet PBD requirements.<sup>33</sup>

The recreational areas must be at least 5% of the site's gross acreage, all areas must be exceed 500 square feet unless "the area provides a reasonable functional or aesthetic benefit to the residents of the PBD."<sup>34</sup> These requirements are met. Also, the areas are outside perimeter buffers; will be commonly owned and available for the residents' use; and, covenants will provide for "perpetual maintenance."<sup>35</sup> Over 390 square feet per lot is provided; the amenities are "centrally located," "clearly visible," suitably located, and consistent with grade requirements (active recreational areas on a 5% grade or less).<sup>36</sup>

**1.15.2 PBD Specific Findings.** Besides addressing the PBD code requirements, the Examiner must find that these conditions exist:

- A. The design of the PBD meets the requirements of this section, other sections of the county code and the goals and policies of the Comprehensive Plan and the site is adequate in size and character to accommodate the proposed development;
- B. The design of the PBD is compatible with neighboring conforming land uses. An assessment of compatibility shall include, but not be limited to, the consideration of association with adjacent land uses and the proposed project's effects on existing views, traffic, blockage of sunlight, and noise production;
- C. If the development is phased, each phase of the proposed development shall meet the requirements of this chapter;
- D. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- E. The proposed and/or existing public facilities and utilities are adequate to serve the project; and
- F. The establishment, maintenance, and/or conduct of the use for which the development plan review is sought will not, under the circumstances of the particular case, be detrimental to the health, safety or welfare of persons residing or working in a neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development.

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<sup>32</sup> KCC 17.450.040(B) (1-3).

<sup>33</sup> KCC 17.450.040(B)(4).

<sup>34</sup> KCC 17.450.040(C)(1).

<sup>35</sup> KCC 17.450.040(C)(1).

<sup>36</sup> KCC 17.450.040(C)(2).

G. Innovations and/or public benefits shall be commensurate with the code modifications proposed.<sup>37</sup>

The plat follows these criteria. As addressed above, the PBD meets all code requirements, with all three phases complying with Title 17. The plat follows the Comprehensive Plan, which provides for urban development at this location, with adequate supporting infrastructure, attractively designed development, and supporting urban amenities.<sup>38</sup>

PBD design is compatible with neighboring land uses. Much of the surrounding area contains residential development. For the properties to the north, the drainage conditions are expected to improve. The area to the east is more wooded, and a neighbor expressed concerns with potential pet conflicts with deer. The open space area to the north provides buffering, and the first 11 properties along the east property line have or will have fencing, which is coupled with a ten foot setback. These measures should address the potential conflict. However, should the property owner(s) to the east elect to construct additional fencing, a possibility outlined at the hearing, a sentence was added to Condition 48 providing for the Applicant to coordinate with property owners to the east to confirm property boundary line location during final plat preparation. As the final plat is prepared by a licensed surveyor, confirmation of boundary line location should be readily accomplished.

As mitigated, there is general compatibility with neighboring uses. The question of densities for the area was addressed during the legislative process, and while the zoning allows considerably greater densities, the Applicant's project is within the range of what is allowed. Also, the project follows the development patterns in this area.

The open space, wetland protections, landscaping and recreational amenities improve overall aesthetics. A traffic engineer analyzed transportation impacts. There will be an increase in traffic, but those impacts are addressed, as noted above. With the mitigation proposed, the transportation system is adequate to accommodate the project. As also detailed above, public facilities and utilities are adequate to serve the project. The evidence presented identified mitigation to protect downstream properties and improve drainage conditions to the north. Regarding noise, it is expected to increase, but noise requirements, including during construction, will be met, and noise will follow the residential nature this area is planned for. Any phasing which occurs with the project must meet proposed conditions and comply with the KCC. There were no concerns raised about sunlight blockage.

The plat/PBD design will provide attractively designed residential development consistent with zoning code requirements. With mitigation, the impacts will not be "detrimental to the health, safety or welfare of persons residing or working in a neighborhood," and will not "be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development."<sup>39</sup>

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<sup>37</sup> KCC 17.450.050.

<sup>38</sup> See Staff Report identifying Comprehensive Plan policies providing for urban development adequately supported by urban infrastructure and facilities, and attractively designed. For example, Land Use Policies 1, 3, 14, 21, 29, and Land Use Goals 1 and 3.

<sup>39</sup> KCC 17.450.050.

This area is planned for urban densities. Under GMA, it is the state and local policy for residents to live proximate to employment, and at urban densities in areas designated for same. The project follows that policy, and with the adopted GMA policies and regulations, and is properly mitigated and supported by adequate infrastructure, so cannot be said to be detrimental to the public welfare or injurious to property.

The evidence supports a finding that the infrastructure provided is adequate to support the proposed use. And, given the open space and recreational amenities provided, along with the attendant infrastructure improvements, the benefits provided are commensurate with the code modifications proposed. Allowing zero lot line duplex development and a reduction of the rear setbacks on two lots is an efficient use of land, which provides needed housing, in a well designed setting which meets or exceeds code requirements. The County's PBD requirements have been met.

**1.16 Single-Family Subdivision/Development Standards - KCC 17.420.037.** Single-family subdivision development standards are met.

- **Sidewalks.**<sup>40</sup> To increase safety and reduce pedestrian/vehicle conflicts, five-foot wide sidewalks are on both sides of the roads within the plat. Rolled curbing is not proposed. Frontage improvements are required along NE McWilliams Road for pedestrian safety and access. *See* Finding 1.12.
- **Public Streets and Connectivity.**<sup>41</sup> The opportunities for additional connectivity are limited due to topography, critical areas, and existing development. The plat's internal streets are private and dedication is not being required. However, the Applicant has requested the option of public dedication, as outlined in the proposed conditions and Finding 1.12.
- **Utility Connectivity to Abutting or Contiguous Properties.**<sup>42</sup> As with street connectivity, there are similar limitations for additional utility connectivity.
- **Landscaping Requirements.**<sup>43</sup> *See* Findings 1.14.
- **Off-Street Parking.**<sup>44</sup> *See* Finding 1.12.

**1.17 Urban Standards – KCC 16.24.040.** KCC urban standards requirements are met.

- **Access.** *See* Finding 1.12.

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<sup>40</sup> KCC 17.420.037(A).

<sup>41</sup> KCC 17.420.037(B).

<sup>42</sup> KCC 17.420.037(C).

<sup>43</sup> KCC 17.420.037(D).

<sup>44</sup> KCC 17.420.037(E), *see also* KCC 17.490.030.

- **Public Transit.** Kitsap County Transit has inquired on the frontage improvements and are assessing bus shelter feasibility.
- **Non-Motorized Facilities.** *See* Finding 1.12, which details sidewalk improvements which will connect to other existing and adjacent developments. A bike lane will also be constructed, along with internal trails. On mailbox/sidewalk design, the trend is to move away from traditional rural boxes and install a clustered mailbox design for efficiency, security, and aesthetics. Where clustered mailboxes are proposed, the sidewalk must meet clear zone requirements.<sup>45</sup>
- **Off-Street and On-Street Parking.** *See* Finding 1.12.
- **Fire Protection.** The Fire Marshall has reviewed the project, and conditions addressing fire requirements are included. The Fire Marshall forwarded the plat plans to Central Kitsap Fire and Rescue #1. Conditions include that fire flow with fire hydrants be not over 600 feet apart within the plat.
- **Landscaping Requirements.** *See* Finding 1.14.
- **Utilities.** *See* Finding 1.11.
- **Recreation.** The plat will include recreational open space amendments consistent with subdivision and PBD standards. The recreation facility, with play equipment for young children, will be centrally located on a leveled area near the southeast side of Wetland-B. *See* Finding 1.14.

**1.18 Appropriate Provisions for Facilities and Improvements - KCC 16.04.080.**

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, follows the Comprehensive Plan and County Code. Both provide for attractive urban development adequately supported by urban facilities and services. The Staff Report explained Plan policies, which outline these objectives. No policy or code provision was identified which the project would contravene. Regarding the zoning, the Urban Medium Residential zoning provides for 10-18 dwellings units per acre, and the proposed net density is consistent.
- **Adequacy of Access.** Finding 1.12 addresses access. County engineering staff and fire personnel have reviewed the proposed access to ensure its adequacy.
- **Safe Walking Conditions.** Finding 1.12 addresses the provision for and interconnection of sidewalks to ensure safe walking conditions are in place.

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<sup>45</sup> *See e.g.*, KCC 16.24.040(C)(1)(d)

- **Lot Configuration.** Consistent with KCC requirements, the proposed 152 lots run at right angles to the street the lots face. The plat includes 20-foot front yard setbacks from the driveway access off the private road. Lots 95 and 96 may require a setback reduction from ten to five feet.
- **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.

With the proposed mitigation, and as outlined in the application materials and record, the proposed PBD/plat has adequate infrastructure and facilities to support its approval, and follows County Code requirements.

**1.19 Conditions - Clarifications.** 57 agreed upon conditions (with two modifications requested at the hearing) were submitted to the Hearing Examiner for consideration to address code compliance and mitigate impacts. The Examiner finds all conditions as proposed should apply, but provides these clarifications/corrections, and adds a sentence to Condition 48, as explained below.

- An unnumbered condition requiring the Applicant to obtain permits before starting land clearing and construction preceded the proposed conditions. It is numbered as 1A.
- One condition was repeated twice (Conditions 12 and 13), so the duplicate was struck.
- DCD and the Applicant requested that Condition 32 requiring that all internal roads be private be struck, to allow for the possibility of transfer to the County, as outlined in Condition 47. The Examiner sees no reason to prohibit such a process, which the County will later make a final decision on, so finds the revision should be made.
- Condition 37 referred to a 14 foot travel lane. This was a typographical error, and should refer to an 11 foot travel lane.
- A sentence was added to Condition 48 to ensure that if additional fencing is added by property owners to the east, there is no difficulty with confirming boundary lines.

## 2. CONCLUSIONS OF LAW

**2.1** The Hearing Examiner has review authority for preliminary plats and PBD's.<sup>46</sup> For PBD's, the Examiner issues a recommendation, with the Board of County Commissioners making the final decision.<sup>47</sup> With this consolidated plat/PBD proposal, the Examiner issues a recommendation, with the Board making the final decision.<sup>48</sup>

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<sup>46</sup> KCC 17.450.020.

<sup>47</sup> KCC 17.450.020; KCC 17.450.050.

<sup>48</sup> KCC 21.04.180(A)

**2.2** The Hearing Examiner reviews Preliminary Plat applications for consistency with County platting requirements, including 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, and setbacks), and be adequately served with necessary infrastructure and services (*i.e.*, stormwater facilities, sewage, water supply, transportation/pedestrian facilities, landscaping, open space/recreational facilities, and schools). Setbacks may be varied from, if PBD requirements at KCC 17.450 are met.

**2.3** The zoning code authorizes the proposed residential use at the densities proposed, which are within the range of what is authorized at this location. As addressed in the findings above, the proposal can meet all platting requirements, including infrastructure requirements. Conditions are imposed to ensure these requirements are complied with.

**2.4** The PBD amenities proposed (*i.e.*, open space, including open space recreational areas constituting over 32% of the plat's gross acreage, along with the trail system and use of the stormwater ponds to double as both infrastructure and aesthetic improvements) warrant the flexibility requested to eliminate side lot setbacks to allow for the zero lot line duplexes, and decrease rear yard setbacks by five feet for Lots 95 and 96. As detailed in the findings, all PBD requirements are met.

**2.5** 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 and in public comment. The proposal, as conditioned and as the findings address throughout, includes provisions to address impacts on drainage; roads, including adequate access and safe walking conditions; water supplies; sanitary waste; fire protection; landscaping; and other supporting public and private facilities and improvements.

**2.6** As mitigated and proposed, the project follows Comprehensive Plan policies providing for attractively designed urban development adequately supported by urban facilities and services.

**2.7** Given project consistency with KCC requirements and Plan policies, the Hearing Examiner concludes it should be approved.

## **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, recommends approval of the requested Preliminary Plat and Performance Based Development, provided these conditions are adhered to.

### **Planning/Zoning.**

1. All building permits on these lots will be subject to impact fees pursuant to KCC.

- 1A. All required permits shall be obtained prior to commencement of land clearing and/or construction.
2. A Final Landscape Plan will be required to be submitted consistent with KCC 17.500 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.
3. Street trees 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 DCD prior to SDAP approval. Trees on individual lots are required to be installed prior to Certificate of Occupancy of individual residential units.
4. Include a note on the face of the plat showing building setbacks for the lots as conditioned per the plat approval.
5. Consistent with the Performance Based Development, allow a reduced rear yard setback from ten feet to five feet for lots 95 and 96.
6. Prior to the plat transferring to the Home Owner's 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.
7. Pursuant to KCC Section 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.
8. The decision set forth herein is based upon representations made and exhibits contained in the project application (Exhibits 1A and 1B). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County.
9. 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.
10. Any violation of the conditions of approval shall be grounds to initiate revocation of this Plat.

**Environmental.**

11. Land use approval is limited to the uses proposed by the Applicant on the recommended site plan and the SEPA Environmental Determination dated February 20, 2018. 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.

### **Development Engineering.**

#### **General.**

12. The information provided demonstrates this proposal is a Large Project as defined in KCC Title 12, and as such will require an SDAP from Development Services and Engineering.

13. [DUPLICATE CONDITION STRICKEN]<sup>49</sup>

#### **Stormwater.**

14. 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/Performance Based Development application was deemed complete, September 27, 2017. 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.

15. 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:

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

16. 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/Performance Based Development application was deemed complete, September 27, 2017.

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

18. The project proponent shall be responsible for installing any necessary off-site downstream drainage improvements – the storm drainage discharge to Mosher Creek northerly of the site.

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<sup>49</sup> See Finding 1.19.

Procurement of any permits or easements necessary to install off-site improvements shall be the responsibility of the project proponent.

19. The site plan indicates that greater than one 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.

20. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology. This approval must be completed prior to issuance of the SDAP.

21. The application indicates that a significant quantity of grading material will be exported from the site. Prior to issuing the SDAP an approved fill site(s) must be identified. Any fill site receiving more than 150 cubic yards of material must obtain an SDAP. Fill sites receiving 5,000 cubic yards or more must have an engineered SDAP.

22. The application indicates that a significant quantity of grading material will be exported from the site. Typically this means five or more trucks leaving the site per hour. Because of this a vehicle wheel wash must be included as an element of the situation erosion control plan.

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

24. 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.

25. 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.

26. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.

27. 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.

28. The rooftop and driveway hard surface area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the Final Plat.

29. The following condition shall be placed on the face of the Final Plat: Additional hard 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.

30. If the project proposal is modified from that shown on the submitted site plan dated January 17, 2018, Development Services and Engineering will require additional review and potentially new conditions.

#### **Traffic and Roads.**

31. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

32. [REPLACED BY CONDITION 47].

33. 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.

34. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction. Sidewalk ramps shall be provided at all intersections for each permissible pedestrian movement.

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

36. 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.

37. Frontage improvements along the entire property frontage of NE McWilliams Road, consisting of a 11-foot travel lane, vertical curb, gutter and five-foot sidewalks, are required and shall be depicted on the SDAP plans.

38. Frontage improvements shall also include curb ramps for each direction of pedestrian travel at the intersection of Road B and NE McWilliams Road; this will require construction of sidewalk with curb ramps on the south side of NE McWilliams Road, to match the location of the curb ramps on the north side, as well as continuation of sidewalk, around the radius, southerly on Juanita Circle NE.

39. Provide surveyed cross-sections at 50-foot intervals along the parcel frontage on NE McWilliams Road. The cross-sections should show existing and proposed pavement, vertical curb, gutter and sidewalk, shoulders, ditches and side slopes. The cross-sections should also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.

40. 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 and in accordance with Kitsap County Road Standards Figure 4-3.

41. Frontage improvements along the interior plat roads, consisting of vertical curb, gutter and five-foot sidewalks, are required and shall be depicted on the SDAP plans.

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

43. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of NE McWilliams Road and Road A; and at the intersection of NE McWilliams Road and Road C. 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.

44. Prior to issuance of the SDAP, the Applicant shall contribute proportionate shares for the following capital improvement project, included in the 2018-2023 Transportation Improvement Program, that is within the project study area: Bucklin Hills Road/Nels Nelson Road. The Applicant's proportionate share is \$4,833.00, calculated as follows:

Estimated project cost = \$985,000.00

Build-out year background PM peak hour entering intersection volume = 1,014

Site traffic entering intersection volume = 5

Proportionate share =  $(5 / (1,014 + 5)) \times \$985,000 = \$4,833.00$

45. 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).

46. The Applicant shall apply for and satisfy all conditions of a Right-of-Way Permit through the Department of Public Works for any and all work performed in the County right-of-way associated with this project. Contact Kitsap County Public Works, Right-of-Way Division at (360) 337-5777 to obtain a Right-of-Way permit.

47. The following condition shall appear on the face of the Final Plat: All interior roads shall remain private, as proposed by the Applicant. If at any time, the Applicant or his successors or assigns choose to dedicate these roads to Kitsap County, it shall be subject to a further review by Kitsap County Development Services and Engineering and Public Works. For roads to be dedicated to Kitsap County, they must meet all the requirements of the KCC as adopted at the time of dedication. All improvements necessary to bring said roads to current Kitsap County standards shall be done at no expense to the County prior to being accepted into the Kitsap County road system.

#### **Survey.**

48. A Final Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16. If property owner(s) to the east elect to construct additional fencing, coordinate with them to assist with confirming property line location.

49. All private roads shall be labeled as tracts and constructed in accordance to 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. Sewer Availability Agreement account(s) shall be kept current and in good standing through permit approval date.

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

53. Kitsap County sanitary sewer is available for the project. The Applicant shall submit a complete set of sewer plans, profiles, and specifications designed in accordance with Kitsap County Public Works - Sewer Utility Division Standards and Regulations.

#### **Solid Waste.**

54. 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. Pay particular attention to the 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.**

55. This project includes the construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge. A separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.

56. Rock and retaining walls shall meet all applicable setback requirements of Kitsap County Stormwater Design Manual, Vol. II, Chapter 9.4.4.

57. A Hydraulic Project Approval (HPA) may be required for discharge to Mosher Creek. Prior to SDAP approval, the Applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.

THIS RECOMMENDATION was entered on March 20, 2018, and clarified on March 27, 2018.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond