

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BREMERTON**

In the Matter of the Application of	)	No. BP16-00050
	)	
<b>John Seelbach, LDC, Inc., on behalf of</b>	)	Wright Creek
<b>West Hills Development LLC</b>	)	
	)	
For a Preliminary Plat and	)	FINDINGS, CONCLUSIONS,
<u>Residential Cluster Development</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a preliminary plat and residential cluster development (RCD) to subdivide 35.11 acres into 110 single-family lots located off Sinclair Way near 3<sup>rd</sup> Avenue West is **APPROVED**. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 27, 2017.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Kelli Lambert, City Planner  
Mark Willwack, P.E., for Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Application for Preliminary Pat Subdivision, received July 12, 2016
2. Residential Cluster Development (RCD) Application, dated October 19, 2016
3. Density Calculation
4. Letter from Paul Wandling to West Hill Development LLC, Water and Sewer Availability, dated July 12, 2016
5. Environmental Checklist, dated July 12, 2016
6. Addendum to Design Drainage Report for Wright Creek, LDC, Inc., dated July 2016
7. Geotechnical Slope Evaluation Report, Robinson Noble Inc., revised September 7, 2016
8. Wetland & Stream Rating for Wright Creek, Acre Environmental Consulting, LLC, dated September 6, 2016
9. Wright Creek Traffic Impact Analysis, Gibson Traffic Consultants, dated August 2016

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10. Determination of Completeness, dated October 10, 2016
11. Preliminary Plat Plans, revised October 11, 2016
  - a. Cover Sheet and Phasing Plan (CS-01, Sheet 1 of 20)
  - b. Existing Conditions Map (TO-01, Sheet 2 of 20)
  - c. Existing Conditions Map (TO-02, Sheet 3 of 20)
  - d. Existing Conditions Map (TO-03, Sheet 4 of 20)
  - e. Preliminary Site Plan (SP-01, Sheet 5 of 20)
  - d. Preliminary Site Plan (SP-02, Sheet 6 of 20)
  - f. Preliminary Site Plan (SP-03, Sheet 7 of 20)
  - g. Preliminary Road, Storm Drainage and Grading Plan (RD-01, Sheet 8 of 20)
  - h. Preliminary Road, Storm Drainage and Grading Plan (RD-02, Sheet 9 of 20)
  - i. Preliminary Road, Storm Drainage and Grading Plan (RD-03, Sheet 10 of 20)
  - j. Preliminary Road and Storm Drainage Profiles (RD-04, Sheet 11 of 20)
  - k. Preliminary Road and Storm Drainage Profiles (RD-05, Sheet 12 of 20)
  - l. Preliminary Road and Storm Drainage Profiles (RD-06, Sheet 13 of 20)
  - m. Preliminary Road and Storm Drainage Profiles (RD-07, Sheet 14 of 20)
  - n. Preliminary Road and Storm Drainage Profiles (RD-08, Sheet 15 of 20)
  - o. Preliminary Road and Storm Drainage Profiles (RD-09, Sheet 16 of 20)
  - p. Preliminary Road Sections (RD-10, Sheet 17 of 20)
  - q. Preliminary Utility Plan (UT-01, Sheet 18 of 20)
  - r. Preliminary Utility Plan (UT-02, Sheet 19 of 20)
  - s. Preliminary Utility Plan (UT-03, Sheet 20 of 20)
12. Landscape Plans (Sheets L-01 to L-05), dated September 2, 2016
13. Notice of Application and SEPA Determination, dated October 13, 2016
14. Public Notice
  - a. Declaration of Mailing on October 13, 2016
  - b. Declaration of Posting on October 12, 2016
  - c. Affidavit of Publication, *Kitsap Sun*, dated October 13, 2016, with ad copy
  - d. Mailing Label Map with mailing addresses
15. Letter from John Seelbach to Kelli Lambert, Parking Analysis, dated October 18, 2016
16. Email from David Bernstein to Kelli Lambert, dated October 17, 2016
17. Email from Cindy Sommerfield to Kelli Lambert, dated October 17, 2016, with email string
18. Letter from Edward Coviello, Kitsap Transit, to Kelli Lambert, dated October 18, 2016
19. Letter from Alison O'Sullivan, The Suquamish Tribe, to Kelli Lambert, dated October 27, 2016, with email string
20. Letter from Brittany Gordon, Washington State Department of Fish and Wildlife, dated October 21, 2016, with email string
21. Fire Marshal's Office Fire Plan Review, dated November 9, 2016
22. Wetland & Stream Rating for Wright Creek, Acre Environmental Consulting, LLC, dated revised November 10, 2016
23. Determination of Nonsignificance, issued December 19, 2016

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24. Memorandum, Public Works and Utilities, dated December 23 2016
25. Public Notice
  - a. Declaration of Posting on January 5, 2017
  - b. Notice of Public Hearing, undated
  - c. Declaration of Mailing on January 5, 2017
  - d. *Kitsap Sun* notice, dated January 5, 2017
26. Example Critical Area Covenant
27. Notice of Continued Hearing until February 27, 2017
28. Memorandum from Brad Lincoln, Gibson Traffic Consultants, Inc., Addendum to August 2016 Traffic Impact Analysis, dated February 9, 2017
29. Staff Report, dated February 15, 2017
30. Proposed Revised Condition 11

The Hearing Examiner enters the following findings and conclusions based upon the exhibits admitted at the open record hearing:

### **FINDINGS**

#### Application and Notice

1. John Seelbach, LDC, Inc., on behalf of West Hills Development LLC (Applicant), requests approval of a preliminary plat and residential cluster development (RCD) to subdivide 35.11 acres<sup>1</sup> into 110 single-family lots. Site improvements include grading of approximately 65,000 cubic yards, stormwater control facilities, associated parking, and landscaping. City Planner Kelli Lambert testified that although the plat plans show the development in two phases, phasing is not currently proposed, but remains an option. The property is located off Sinclair Way near 3<sup>rd</sup> Avenue West.<sup>2</sup> *Exhibit 1; Exhibit 2; Exhibit 11; Exhibit 29, Staff Report, page 1; Testimony of Ms. Lambert.*
2. The City of Bremerton (City) determined the applications were complete on October 10, 2016. The City posted a Notice of Application and SEPA Determination on the subject property on October 12, 2016, and the next day mailed notice to the Applicant, agencies, interested parties, the Suquamish Tribe, and owners of property within 300 feet of the

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<sup>1</sup> The Application for Preliminary Plat Subdivision describes the property as 38.32 acres (Exhibit 1) and the Notice of Application and SEPA Determination (Exhibit 13) describes the size as 35.5. Other exhibits give different acreage figures. Mark Willwack, P.E., testified for the Applicant that the property size is 35.11 acres. *Testimony of Mr. Willwack.*

<sup>2</sup> The Preliminary Plat drawings, Exhibit 11.a, .c, and .d, and Landscape Plan drawings, Exhibit 2.a and .b, label the north/south road to the east as 3<sup>rd</sup> Avenue. This decision will refer to 3<sup>rd</sup> Avenue West. The Preliminary Plat Cover Sheet and Phasing Plan (Exhibit 11.a) lists four tax assessor parcel numbers in the legal description. The Preliminary Plat Application (Exhibit 1) lists three parcel numbers. The staff report (Exhibit 29) lists two parcel numbers: 282401-1-086-2000 and 5549-000-009-0008. *Exhibit 29, Staff Report, page 1.* Correct parcel numbers shall be provided on the face of the final plat. A legal description is provided with the Cover Sheet and Phasing Plan. *Exhibit 11.a.*

property. The City provided notice of a January 23, 2017, public hearing by posting on the property; mailing to property owners within 300 feet of the property, the Applicant, agencies, and the Suquamish Tribe; and publishing in the local paper of record on January 5, 2017. Ms. Lambert testified that the public hearing was rescheduled to February 27, 2017. Notice of the continued hearing was given by posting a notice on the door of the hearing room prior to the initial starting time on January 23<sup>rd</sup>. City staff also waited in the hearing room on January 23<sup>rd</sup> to advise anyone who appeared of the continued hearing date. *Exhibit 13; Exhibit 14; Exhibit 25; Exhibit 27; Exhibit 29, Staff Report page 13; Testimony of Ms. Lambert.*

#### State Environmental Policy Act

3. The City Department of Community Development (DCD) acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City consolidated the DNS and application comment periods pursuant to the Optional DNS process provided by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of October 27, 2016. The City DCD reviewed the Applicant's Environmental Checklist and other information on file with the City and determined that the proposal would not have a probable significant adverse impact on the environment. The Applicant's Environmental Checklist lists hawks, songbirds, and deer that have been observed or are known to be on or near the site. No threatened or endangered species are known to be on or near the site. The City issued a Determination of Nonsignificance (DNS) on December 19, 2016. The DNS was not appealed. *Exhibit 5; Exhibit 13; Exhibit 23; Exhibit 29, Staff Report, page 1.*

#### City Comprehensive Plan, Zoning, and Surrounding Property

4. The subject property is designated Low Density Residential (LDR) in the City Comprehensive Plan. The purpose of the LDR designation is to create new single-family housing, as well as support existing single-family neighborhoods. Comprehensive Plan Land Use Element goals and policies relevant to the proposal include planning for Bremerton's population and employment growth, protecting Bremerton's natural environment, promoting infill, and ensuring design and orientation that encourage pedestrian and bicycle use. Comprehensive Plan Housing Element goals and policies include promoting a sense of community within new neighborhoods and supporting access to quality and affordable housing.<sup>3</sup> *Comprehensive Plan (May 2016); Exhibit 29, Staff Report, pages 10 and 11.*
5. The subject property is located within the City's Low Density Residential (R-10) zoning district. *Exhibit 29, Staff Report, page 1.* The intent of the low density residential (R-10)

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<sup>3</sup> City staff identified Comprehensive Plan Land Use Element Goals LU1, LU3, and LU20 and Policies LU1A, LU3C, LU3I, and LU4C as relevant to the proposal. City staff also identified Housing Element Goals H2 and H3 and Policy H2F as relevant to the proposal. *Exhibit 29, Staff Report, pages 10 and 11.*

zoning district is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. Some attached single-family housing may be appropriate when responding to sensitive areas or with innovative design. Residential development at higher densities is encouraged at the edge of designated centers.

*Bremerton Municipal Code (BMC) 20.60.010.* Development of single-family detached dwelling units and single-family attached (zero lot line) dwelling units is allowed within the R-10 zoning district. *BMC 20.60.020(j)(1) and (2).*

6. The minimum required density in the R-10 zoning district is five dwelling units per acre (du/ac), and the maximum density of 10 dwelling units per acre. Minimum lot size in the R-10 zone is 30 feet wide and 4,300 square feet. *BMC 20.60.060(a)(4); BMC 20.60.065(d).* Minimum front and rear setbacks are 15 feet and minimum side yard setback is five feet. *BMC 20.60.060(a)(1).* Building envelopes are outlined on the preliminary plat site plans, and would be detailed on the final plat, demonstrating compliance with required setbacks. *BMC 20.60.060.* *Exhibit 29, Staff Report, page 6.* Surrounding property to the north contains the Kitsap Readiness Center, zoned Freeway Corridor. Property to the east across 3<sup>rd</sup> Avenue West within Kitsap County contains undeveloped land, multifamily apartments and condominiums and commercial warehouse buildings, zoned Industrial and Urban Medium Residential. Property to the south within Kitsap County contains undeveloped land, zoned Rural Protection and residences zoned Urban Low to Urban Medium Residential. Property to the west is undeveloped land, zoned R-10 Low Density Residential. *Exhibit 29, Staff Report, page 5.*

#### Residential Cluster Development

7. The intent of the residential cluster development (RCD) is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area. These provisions aim to allow greater flexibility in the design of subdivisions to ensure development is in harmony with the natural characteristics onsite and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. *BMC 20.58.060(a).* A RCD may be applied to all subdivisions as permitted in Chapter 20.12 BMC. *BMC 20.58.060(b).* The maximum and minimum density of the underlying zone applies, and unbuildable critical areas may be included in the area for calculating density. *BMC 20.58.060(d)(1).* The Applicant submitted a density calculation showing a net buildable area of 21.07 acres, after unbuildable critical areas are subtracted. With 110 lots, the density proposed is 5.22 dwelling units per acre. *Exhibit 3; Exhibit 29, Staff Report, pages 5 and 6.* With a RCD, minimum lot size may be reduced to 2,500 square feet, provided all lots are buildable and additional open space is provided. *BMC 20.58.060(d)(2).* The minimum lot size proposed is 2,655 square feet. Structures and parking areas must be set back a minimum of ten (10) feet from all perimeter property lines. All other setbacks may be modified to encourage innovative site design. *BMC 20.58.060(d)(3).* Total development coverage is limited to 50 percent of the total site area including open space, and each RCD shall provide a minimum of 20

percent of the gross site area for common open space, set aside on separate tracts. *BMC 20.58.060(d)(5) and (8)*. The total development coverage proposed is 32 percent and the proposed plat would contain approximately 23.5 acres of open space, which exceeds the minimum required. The Applicant would submit a final open space plan with the Site Development Permit, as well as a landscape plan to comply with the Chapter 20.50 BMC, the City's landscaping chapter. The Applicant would identify common open space areas on separate tracts, restrict them in perpetuity from further subdivision or development, and include these restrictions on the face of the final plat. *Exhibit 11.a; Exhibit 29, Staff Report, pages 2 and 6.*

#### Critical Areas

8. The site is currently undeveloped, except for power lines running across the southeastern portion of the site and an existing detention pond in the southeast corner. The site has been previously graded to direct onsite flow to the detention pond. Additional site improvements would include grading of approximately 65,000 cubic yards. Areas with slopes greater than 40 percent grade with vertical relief of 10 or more feet are defined as areas of high geologic hazard under the City critical areas ordinance. *BMC 20.14.620(a)(1)*. Under the City critical areas ordinance, no construction of a structure or impervious surface is allowed within 50 feet of the top and toe of slope in a high geologic hazard area, unless modifications supported by a geotechnical report are approved. *BMC 20.14.630(a)(1)*. In addition, native vegetation must be in place from the toe of the slope to 25 feet beyond the top of slope, unless modifications supported by a geotechnical report are approved. *BMC 20.14.630(a)(2)*. *Exhibit 6; Exhibit 29, Staff Report, pages 1, 5, 7, and 8.*
9. Robinson Noble, Inc., prepared a revised Geotechnical Slope Evaluation Report (GSER) for the Applicant, dated September 7, 2016. The GSER identified vegetation in the northern and southeast regions as scotch broom, blackberry, and various other shrubs and field grass and small to medium size deciduous trees. A steeply sloped region in the southwest corner contains small to large deciduous and evergreen trees and thick understory growth. The ground surface within the site is generally sloping down to the south, becoming moderate to steep, which appears to be greater than 40 percent, and extending down to a creek near the southern border of the property. The GSER determined that there is a potential that the surficial soils on the steeper sections of the slope could slough over time, but based on a slope stability analysis, the site is not a landslide hazard. The GSER listed the erosion hazard on site from slight to moderate and a very low potential for liquefaction and amplification of ground motion from seismic events. The GSER determined that the 50-foot structure setback required by *BMC 20.14.630(a)*, could be reduced to a minimum 20 foot structure setback between the planned Sinclair Way and the top of slope. Slope vegetation would be left in its existing state. *Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 29, Staff Report, pages 7 and 8.*

10. Acre Environmental Consulting, LLC, prepared a Wetland & Stream Rating (WSR) for Wright Creek for the Applicant, dated September 6, 2016. The WSR identified Wright Creek as a Type Np stream that does not support anadromous fish and flows south through a ravine along the western portion of the property and eventually drains into Sinclair Inlet. A Type Np stream requires a 50-foot buffer. The Washington State Department of Fish and Wildlife (WDFW) provided a comment letter, dated October 21, 2016, requesting a field verification of Wright Creek as a likely fish bearing stream. Alison O’Sullivan, Biologist, The Suquamish Tribe, provided a comment letter, dated October 27, 2016, identifying Wright Creek as a fish bearing stream and requesting that the wetland and headwater systems remain protected (with adequate buffers) and connected to downstream habitat. She also requested that a cultural resource report be completed and provided to the Tribe for review. Acre Environmental Consulting, LLC, prepared a revised Wetland & Stream Rating for Wright Creek, dated November 1, 2016, and determined that Wright Creek supports fish and should be classified as Type F water, with a 150-foot protective buffer. *Exhibit 19; Exhibit 20; Exhibit 22; Exhibit 29, Staff Report, page 8.*
11. The WSR identified two Category III wetland systems (Wetlands A and B), requiring a 220-foot buffer, associated with Wright Creek that extend into the southwestern portion of the site. Both wetlands are identified as palustrine, forested wetland, broad-leaved deciduous, and seasonally flooded/saturated with a canopy of western red cedar, with salmonberry, piggy-back plant, and lady fern, dominant in the understory. The proposed development would avoid Wright Creek, associated wetlands, and buffers. *Exhibit 8; Exhibit 29, Staff Report page 8.*

#### Landscaping

12. All new development is subject to Chapter 20.50 BMC landscaping requirements. *BMC 20.50.020*. *BMC 20.50.040* and *BMC 20.50.050(a)(1)* require landscaped front yard setback areas; street trees along public and private streets at a standard of one tree for every 25 linear feet of street frontage, unless otherwise required by *BMC 20.50.050(c)*; and preservation of existing vegetation on undeveloped portions of property, excluding noxious weeds and invasive species. An alternative landscaping plan may be approved, provided the City finds there is public benefit and the total area of landscaping shall be equal to or exceed that created by adherence to the standard landscaping and buffer requirements. *BMC 20.50.040(f)(2)*. Approximately 44,391 square feet of landscaping is proposed, including 189 street trees along Sinclair Way, 3<sup>rd</sup> Avenue West, and Drive B, and 36 trees within the common parking lot landscape areas. The Applicant would plant a total of 189 street trees along Sinclair Way, private drive B, and the portion of 3<sup>rd</sup> Avenue West that borders the site. *Exhibit 12; Exhibit 29, Staff Report, pages 3 and 7.*

### Access and Traffic Impacts

13. As depicted on the proposed preliminary plat map, in the northwest corner, Drive B would branch off Sinclair Way east and south to provide access to lots in the northern portion of the subject property. The Applicant would remove an existing gate across Sinclair Way north of Watershed Drive. A separate Drive C further east would provide parking access to lots in the southern portion of the proposed development. Drive A would branch off Sinclair Way south to provide access to Lots 1-26. All common areas, including paths, recreation, and parking areas would be the responsibility of the developer until such time as responsibility is transferred to a Homeowners' Association. *Exhibit 11.a; Exhibit 29, Staff Report, pages 2 and 5.*
14. Gibson Traffic Consultants prepared a Traffic Impact Analysis (TIA) for the Applicant, dated August 2016. The proposed development would result in approximately 1,047 vehicle trips per day on the surrounding road system, with 83 AM peak-hour trips and 110 PM peak-hour trips. With the development, by the year 2022 four area intersections are anticipated to operate at either LOS E or LOS F.<sup>4</sup> WSDOT has proposed improvements for SR-3, (which runs north/south to the east) south of Werner Road and the interchange with SR-304. These improvements would improve the southbound flow along SR-3 and would reduce commuters utilizing the Union Avenue/3<sup>rd</sup> Avenue West route as a bypass route. The Applicant would pay traffic mitigation fees in lieu of proportionate share costs of \$311,355 to be paid at the time of building permit issuance on a per unit basis. *Exhibit 9; Exhibit 28.*

### Parking

15. RCD development standards require two off-street parking spaces for each residence, but allows deviations to apply parking to the entire site rather than to individual lots; to place parking tracts in easily accessible locations; and to clearly mark designated parking spaces. *BMC 20.58.060(d)(6)*. The 110-lot proposal would provide 241 parking spaces. Sixty-four spaces would be located on residential lots, with the remaining parking spaces proposed in common parking areas on Tracts L, M, and N. LDC, Inc., prepared a Parking Analysis for the Applicant, dated October 18, 2016. The Parking Analysis determined that 177 common parking spaces would be shared between residences, with a trail system to connect the parking areas without direct drive aisle access. The Applicant would comply with the residential parking development standards in *BMC 20.48.060* and the common parking facilities would comply with the nonresidential parking development standards, including lighting, signage, and striping in *BMC 20.48.080*. A sight-obscuring fence or wall would be constructed adjacent to parking areas at Lots 17, 19, 21 through 26, 73, 74, 77, 78, 81, 82, 85, and 86. *BMC 20.50.050(b)(iv)*. *Exhibit 11.a; Exhibit 29, Staff Report, pages 6 and 7.*

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<sup>4</sup> Roadway facilities and intersections are rated between LOS A and LOS F, with LOS A being free flow and LOS F being forced flow or over-rated conditions. *2010 Highway Capacity Manual; Exhibit 9.*

### Stormwater

16. The City Public Works and Engineering Department reviewed the proposal and requires stormwater quantity and quality mitigation pursuant to Chapter 15.40 BMC. LDC, Inc., prepared an Addendum to Design Drainage Report for Wright Creek for the Applicant, dated July 2016. Two upstream basins flow onto the existing site. Upstream Basin C (5.88 acres) and Basin C (25 acres) are forested areas within parcel number 21240140042000. Current runoff onsite flows north to southeast into an existing detention pond. The existing detention pond would be regraded and expanded to provide both stormwater detention and meet water quality storage requirements of the 2015 Bremerton SWMP and the 2016 King County Surfacewater Design Manual. All runoff from the developed surfaces would be collected, treated, detained, and released to natural drainage courses at historic mitigated rates. The Applicant would submit a Storm Drainage Management Agreement to the City for review and approval prior to final plat approval, and would be recorded. The Applicant would also submit a Temporary Erosion and Sedimentation Control Plan and obtain a Department of Ecology water quality construction permit prior to issuance of a Site Development Permit. *Exhibit 6; Exhibit 24, Exhibit 29, Staff Report, pages 3, 8 and 9.*

### Utilities and Services

17. The City of Bremerton has facilities and adequate capacity and supply to provide sewer and water service to the proposed development. Sewer service is conditionally available in the Sinclair Way right-of-way. The lower portion of the proposed development would need to be serviced with a sewer pump station. The Applicant would design and install public water and sanitary sewer mains, to be accepted by the City pursuant to Title 15 BMC prior to final plat approval. Utility access easements would be identified on the face of the final plat. *Exhibit 4; Exhibit 29, Staff Report, pages 3 and 12.*
18. City Captain/Fire Marshal Michael Six submitted a comment letter, dated November 9, 2016, requesting conditions of approval. The recommended conditions would help ensure that all buildings accessed from road Tract L have automatic fire sprinkler systems and a fire department turnaround, including a redesign of the fire access road turning radii; that there be installation of removable bollards or gates at entrance points at Drive "B" and Drive "C"; that hydrants be extended into Tract M for Lots 27-41; that there be fire sprinkler systems installed for Lots 49 through 55, 58 through 61, 64, 65, and 68 through 70; that additional access be provided if Watershed Drive is not useable; and that fire lanes be identified on the formal site development permit. *Exhibit. 21.*
19. Kitsap Transit provided a comment letter dated October 18, 2016, requesting that a bus stop concrete pad be placed to the south of the new roadway entrance to 3<sup>rd</sup> Avenue West. The City Public Works and Engineering Department reviewed the proposed development and determined that frontage improvements should include curb, cutter, sidewalk, street lighting, street trees, planter strips, and associated pavement restoration.

The Bremerton School District did not provide any comments. The City Building Official reviewed the proposed development and determined that an accessible route within the site to and from sidewalks, streets, public transportation stops and loading zones to provide safe walking routes for students should be provided. Mr. Willwack, P.E., testified for the Applicant that the nearest school is West Hills Elementary, approximately 3-5 miles away. He testified that the proposed development would provide safe walking to a bus stop at the entrance to the plat. *Exhibit 18; Exhibit 24; Exhibit 29, Staff Report, pages 8 and 9; Testimony of Mr. Willwack.*

#### Public Comment

20. David Bernstein submitted written comments, dated October 17, 2016, expressing concerns about traffic “coming off Werner to Union and then to 3<sup>rd</sup>.” He also inquired about industrial zoning within the development. City staff clarified that the proposal does not involve commercial activity and that the Applicant would pay traffic mitigation fees to help mitigate traffic impacts. *Exhibit 16; Exhibit 29, Staff Report, page 15.*

#### Staff Recommendation and Applicant Response

21. Ms. Lambert requested that proposed Condition 11 be revised to allow for some flexibility for compliance with the Americans with Disabilities Act (ADA) standards, as follows:

An accessible permanent route shall be provided within the site to and from the sidewalks, public streets, accessible parking and loading zones and accessible building areas. ~~The~~ Where feasible, accessible routes shall be provided and shall comply with International Code Council A117.1 Accessible and Useable Buildings and Facilities.

*Exhibit 30; Testimony of Ms. Lambert.*

22. The City determined that, with conditions, the proposed development would comply with the Comprehensive Plan, Critical Area Ordinance, and applicable BMC development regulations. Mr. Willwack testified that the Applicant agrees with the proposed conditions, as revised. *Exhibit 29, Staff Report, pages 1, 10 through 15; Testimony of Mr. Willwack.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide preliminary plat requests. *Bremerton Municipal Code (BMC) 20.12.090(a)(2)(i)*. A Residential Cluster Development may be processed as a non-administrative Type III Hearing Examiner decision. *BMC 20.58.060(c)(2)*.

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Criteria for Review  
Preliminary Plat

The Hearing Examiner may approve a preliminary plat if it meets the following criteria established by the City Council in BMC 20.12.100:

- (a) The subdivision is in conformance with the Comprehensive Plan, Shoreline Master Program, and any other City-adopted plans;
- (b) Provisions have been made for water, storm drainage, erosion control and sanitary sewage disposal for the subdivision that are consistent with current standards and plans as adopted in City code or ordinance;
- (c) Provisions have been made for roads, utilities, street lighting, street trees and other improvements that are consistent with the zoning code and Engineering Standards;
- (d) Provisions have been made for dedications, easements and reservations;
- (e) The design, shape and orientation of the proposed lots are appropriate to the proposed use. In addition to meeting the minimum lot size density requirement, each residential lot must provide a building envelope. Therefore, corner lots, lots with easements, or lots with environmental constraints may have to be larger than other lots in the subdivision;
- (f) The subdivision complies with the relevant requirements of the zoning code and all other relevant local regulations;
- (g) Appropriate provisions are made to address all impacts identified by any special reports that have been prepared;
- (h) Appropriate provisions for maintenance and monitoring of privately owned common facilities have been made;
- (i) Appropriate provisions, in accordance with RCW 58.17.110, are made for:
  - (1) The public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys or other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
  - (2) The public use and interest will be served by the platting of such subdivision and dedication.

*BMC 20.12.100.*

The above criteria carry out the state subdivision criteria, codified at Chapter 58.17 RCW, as follows:

A proposed subdivision and dedication shall not be approved unless the City, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and

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other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

*RCW 58.17.110(2).*

#### *Residential Cluster Development*

In accord with the Bremerton Municipal Code, the decision-making authority may grant a RCD only if it is approved concurrent with the approval of a subdivision. The RCD shall follow the same approvals and timelines as the concurrent subdivision application pursuant to Chapter 20.12 BMC, Land Division. *BMC 20.58.060(e).*

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusion Based on Findings

- 1. With conditions, the proposed plat would comply with BMC 20.12.100.** The City gave reasonable notice of the application and opportunity to comment. The proposed development of clustered single-family residential dwellings is consistent with the property's Low Density Residential designation under the City Comprehensive Plan. Conditions are necessary including those to ensure installation of frontage improvements and street lighting, consistent with Comprehensive Plan Land Use and Housing Element goals and policies to create walk-able and safe neighborhoods. Safe walking conditions would be provided within the subdivision and along Sinclair Way for student pick up from a proposed transit stop in the vicinity. *Findings 1-7, and 22.*

The City would provide water and sewer service to the property. An existing detention pond would be regraded and expanded to provide both stormwater detention and meet water quality storage requirements of the 2015 Bremerton SWMP and the 2016 King County Surfacewater Design Manual. The Applicant would also submit a Temporary Erosion and Sedimentation Control Plan and obtain a Department of Ecology water quality construction permit prior to issuance of a Site Development Permit. Conditions are necessary to ensure that the Applicant submits a Storm Drainage Management Agreement to the City for approval prior to final plat approval. *Findings 1, 16, 17, and 22.*

Provisions have been made within the proposed subdivision for roads, utilities, street lighting, and street trees consistent with the City zoning code and Engineering Standards. The Applicant would pay traffic impact fees as mitigation for traffic impacts of the proposed development on the surrounding road system. Conditions are necessary to

ensure that the Applicant installs street trees and removes an existing gate across Sinclair Way north of Watershed Drive. *Findings 1, 12 - 14, and 22.*

The Applicant would provide active recreation and passive recreation within open space tracts. Conditions are necessary to ensure that utility access easements, as well as open space dedications, would be identified on the face of the final plat. *Findings 1, 7, 17, and 22.*

The City code allows for subdivision as a Residential Cluster Development to allow for alternative design, shape, and orientation to better utilize a site containing critical areas. The site contains steep slopes, a Type F stream and associated wetlands and buffers. The proposal would provide 5.22 dwelling units per acre. Conditions are necessary to ensure that the building envelopes are shown on the final plat. *Findings 1, 6 - 11, and 22.*

The proposed lots are appropriate for residential use within the City's R-10 residential zoning district. The slope area is sufficiently stable to allow construction of the proposed development and that the 50-foot structure setback required by BMC 20.14.630(a), could be reduced to a minimum 20 foot structure setback between the planned Sinclair Way and the top of slope. The internal pathways and sidewalks would provide safe walking conditions to Sinclair Way for student pickup. Conditions are necessary to ensure that the Applicant complies with comments provided by the City's Building, Fire, and Public Works Departments. *Findings 1, 16, 18, 19, and 22.*

The City received and reviewed the Applicant's geotechnical, wetland and stream, traffic impact analysis, and storm drainage reports. Conditions are necessary to ensure that the Applicant complies with the recommendations of the Robinson Noble, Inc. Geotechnical Slope Evaluation Report. *Findings 1, 9, and 22.*

All common areas, including paths, recreation, and parking areas would be the responsibility of the developer until such time as responsibility is transferred to a Homeowners' Association. Conditions are necessary to ensure that this is shown on the face of the final plat. *Findings 1, 13, and 22.*

The City acted as lead agency and determined that the proposal would not have any probable significant adverse environmental impacts. The determination was not appealed. *Findings 1 - 6, 9 - 21.*

2. **With conditions the Residential Cluster Development is consistent with the approval criteria for a subdivision pursuant to BMC 20.58.060(e).** The intent of the RCD is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area. These provisions aim to allow greater flexibility in the design of subdivisions to ensure development is in harmony with the natural

characteristics onsite and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. The proposed RCD allows for clustered single-family residences while protecting existing critical areas including steep slopes, Wright Creek, and its associated wetlands and buffers, which limit development. An RCD follows the same approvals and timelines as the concurrent subdivision application pursuant to Chapter 20.12 BMC, Land Division. With the conditions set out below, the proposed RCD would meet the subdivision criteria described in Conclusion 1, above. *Findings 1 - 21.*

### DECISION

Based upon the preceding findings and conclusions, the request for a preliminary plat and residential cluster development (RCD) to subdivide 35.11 acres into 110 single-family lots located off Sinclair Way near 3<sup>rd</sup> Avenue West, is **APPROVED**, subject to the following conditions:<sup>5</sup>

1. Building envelopes shall be shown on the final plat. All new structures must comply with the RCD standards and all primary structures must be built within the indicated building envelope. The approval of the final subdivision does not constitute approval to construct a residence on any lot. Application(s) for building permits that include site plan review from the City are required.
2. A Site Development Permit is required pursuant to BMC 20.58.090 and should be completed prior to final plat approval. Due to phasing, two Site Development Permits may be required.
3. All driveways and areas used for loading, parking and maneuvering motorized vehicles shall have a paved surface.
4. All units shall have two (2) assigned off-street paved parking spaces. Parking spaces in the common parking areas shall be marked with appropriate signage to identify the address of the lot to which the parking space is assigned.
5. The common parking areas shall contain signage, striping, lighting and landscaping pursuant to BMC 20.48.080.
6. A sight-obscuring fence or wall and/or vegetation, or other like feature, will be required adjacent to parking areas at lots 17, 19, 21 through 26, 73, 74, 77, 78, 81, 82, 85, and 86, to ensure headlights do not project into residential properties.

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<sup>5</sup> Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

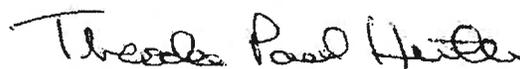
7. Fire sprinkler systems are required for the homes on lot numbers #49 through 55, 58 through 61, 64, 65, and 68 through 70; this requirement shall be recorded on the face of the final plat.
8. The Fire Access road shall either be constructed of asphalt, or grass pavers; if a grass paver road, it shall be shown capable of supporting a vehicle of 80,000 pounds and the edges of the roadway permanently marked. Removable bollards or a 14 foot wide gate shall be placed at the two entrance points of the Fire Access road from Drives B and C.
9. The existing gate across Sinclair Way north of Watershed Drive shall be removed as part of this development, opening a second, permanent access route into the subdivision. This shall be shown at time of Site Development Permit submittal.
10. Fire lanes are required and shall be identified on the Site Development Permit.
11. A permanent route shall be provided within the site to and from the sidewalks, public streets, accessible parking and loading zones and accessible building areas. Where feasible, accessible routes shall be provided and comply with International Code Council A117.1 Accessible and Usable Buildings and Facilities.
12. A photometric plan shall be submitted which shows the location of all lighting fixtures and meets the requirements in BMC 20.44.110.
13. The open space areas shall be restricted in perpetuity from further subdivisions and/or land development. This shall be recorded on the face of the final plat.
14. A final Open Space Plan which complies with the requirements of the landscaping code (BMC 20.50), and with monitoring, maintenance and guarantees, is required for the Site Development Permit and prior to final plat approval. This proposal identifies common open space areas on separate tracts, and these must be restricted in perpetuity from further subdivision or development. This provision will be required on the face of the final plat.
15. The maintenance of the commonly owned areas will be required on the face of the plat as being the responsibility of the property owners. All common areas, including paths, recreation, and parking areas, shall be the responsibility of the developer until such time that the responsibility transfers to the Homeowners Association (HOA). This shall be shown on the face of the final plat.
16. An additional geotechnical report is required before Site Development Permit or Building Permits are issued for any structures, to ensure the structures are on native soil or structural fill that has been placed property. All inspection results or density tests shall be

provided to the Department of Community Development before requesting any soils related inspections.

17. The open space tracts must be approved at Site Development Permit and installed prior to final plat approval.
18. Street trees are required along Sinclair Way, private Drive B, and the portion of 3<sup>rd</sup> Avenue West that borders the site. A total of 189 street trees shall be planted prior to final plat approval.
19. Development shall comply with the recommendations within the Geotechnical Engineering Report prepared by Robinson Noble dated September 7, 2016 (Exhibit 7).
20. Prior to the issuance of any building permit, a Notice to Title & Hold Harmless Agreement (example: Exhibit 26) shall be recorded at the Kitsap County Auditor's Office. This requirement shall be recorded on the final plat.
21. All required storm drainage infrastructure shall be installed under separate permits prior to final plat approval.
22. A Storm Drainage Maintenance Agreement shall be submitted for review and approval prior to Final Plat approval. This agreement shall be recorded at the Kitsap County Auditor's office and the Auditors File Number shall be referenced on the final plat.
23. Public water and sanitary sewer mains are required and shall be designed, installed and accepted pursuant to BMC Title 15 prior to final plat approval.
24. Sinclair Way shall be dedicated public right of way as shown on the plat, at the time of final plat approval.
25. All frontage improvements shall be installed prior to final plat approval.
26. Standard driveway approaches are required, per the Standard Driveway requirement in current City of Bremerton Standards and Chapter 11.12 BMC.
27. A Street Maintenance Agreement shall be submitted for review and approval prior to final plat approval. This agreement shall be recorded at the Kitsap County Auditor's Office and the Auditor's File Number shall be referenced on the final plat.
28. Public street lighting shall be installed prior to final plat approval pursuant to BMC 11.12.200.

29. Utility access easements are required for review and approval prior to Final Plat approval and shall be recorded and shown on the face of the plat.
30. Parcel addresses and private street names are required and shall be shown on the face of the plat prior to final plat approval.
31. The developer shall coordinate with the US Postal Service for proper mail service prior to final plat approval.
32. Location of fire hydrants shall comply with requirements of the Fire Marshal and shall be shown on the Site Development Permit.
33. The developer shall coordinate with Kitsap Transit for the siting of bus stops or bus shelters prior to final plat approval.
34. A Cultural Resources report shall be provided, and the Applicant shall coordinate with the Suquamish Tribe prior to any site work.
35. Per BMC 20.12.090(a)(2)(ii), the final formal subdivision shall be submitted to the Director within five (5) years of the date that the preliminary approval became final or as approved through phasing and/or timeline extensions per BMC 20.12.060, *General Provisions*. Should the project fail to comply with these timelines, the formal subdivision shall become null and void.
36. Correct parcel numbers shall be specified prior to approval of the final plat.

Decided this 7<sup>th</sup> day of March 2017.



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THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center