

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

In the Matter of the Application of	)	No. BP14-00075
	)	
	)	
<b>Northview Ridge Properties, LLC</b>	)	<b>Sinclair Ridge Preliminary Plat and</b>
	)	<b>Residential Cluster Development</b>
	)	<b>Major Plat Amendment</b>
	)	
For Approval of a Preliminary Plant and	)	
Residential Cluster Development	)	FINDINGS, CONCLUSIONS,
<u>Major Plat Amendment</u>	)	AND DECISION

**SUMMARY**

The request for a preliminary plat and residential cluster development major plat amendment to subdivide 133 acres into 343 single-family residential lots for development in four phases on property located north of SW Old Clifton Road is **APPROVED**. Conditions are necessary to mitigate specific impacts of the project.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner for the City of Bremerton held an open record hearing on the matter on June 22, 2020.<sup>1</sup> Due to the COVID-19 pandemic, the hearing was held using remote technology. The record was left open to allow members of the public to submit additional comments on the proposal by June 26, 2020, and to allow the parties to respond to additional comments by July 8, 2020.

Testimony:

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

- Allison Satter, City Planning Manager
- Joseph O'Donnoghue
- Deb Vedin
- Martin Vedin
- Greg Krabbe
- Kristina Weller
- Tim McHarg
- Brent Carson, Attorney

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<sup>1</sup> The hearing was originally scheduled to commence on May 26, 2020, then June 8, 2020, but was postponed (on the record) by agreement of the Applicant and City. All substantive matters concerning the hearing occurred on June 22, 2020.

Edward Coviello  
Mark Kuhlman  
Shawn Williams  
Robbyn Meyers

Nancy Rogers represented the Applicant at the open record hearing.

Exhibits:

The following exhibits were admitted into the record:

1. Application for Preliminary Land Division Amendments, dated December 2, 2015
2. Addendum – SEPA Mitigated Determination of Nonsignificance (MDNS), dated June 10, 2020; Mitigated Determination of Nonsignificance, issued July 31, 2007
3. Conditional Utility Availability Letter, City of Bremerton, dated March 24, 2020
4. Preliminary Plat and Site Plan Drawings:
  - A. Preliminary Plat Drawings (Sheets 1-5 of 5), revised November 17, 2015
  - B. Site Plan Drawings (Sheets 1-49 of 49), revised various dates
5. Memorandum - Reuse of Previous Application Materials, Mark A. Kuhlman, P.E., dated November 24, 2014
6. Hearing Examiner's Findings, Conclusions, and Decision (No. BP06-00183), Sinclair Ridge Preliminary Plat and Residential Development, dated November 6, 2007
7. Environmental Checklists:
  - A. Environmental Checklist, undated
  - B. Environmental Checklist, dated December 22, 2015
8. Notice of Application, dated February 4, 2016
9. Phasing Plan, received June 4, 2020, with Phased Grading (Sheet 49 of 49), revised February 18, 2020, and Preliminary Plat (Sheet 1 of 5), revised November 17, 2015
10. Preliminary Plat – Road, Utilities and Storm Campus Parkway – Plan & Profiles (Sheets 1-3 of 3), dated February 20, 2019
11. Off-site Sewer Plan and Profiles, revised November 17, 2015:
  - A. Preliminary Plat Off-site Sewer Plan & Profile (Sheets 46-48 of 48)
  - B. Preliminary Plat Off-site Sewer Plan & Profile (Sheets OS-1 to OS-3 of 48)
12. Memorandum from Matthew Palmer, P.E., Gibson Traffic Consultants, Inc., to Dale Severson, P.E., dated May 13, 2014, with attachments
13. Project Narrative, Team 4 Engineering, undated
14. Preliminary Storm Drainage Report, Team 4 Engineering, revised February 11, 2020
15. Landscaping Plan (Sheets 40-42 of 42), revised November 17, 2015
16. Memorandum from Matthew Palmer, P.E., Gibson Traffic Consultants, Inc., to Tom Knuckey, P.E., dated January 11, 2018, with attachments
17. Title Report (No. MM-20366559), Fidelity National Title, dated January 23, 2012, with attachments
18. Critical Area Assessment and Mitigation Plan, BGE Environmental, LLC, dated May 11, 2018

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19. Buffer Mitigation (Sheets 11-14 of 48), revised May 15, 2020
20. Preliminary Geotechnical Report, Terra Associates, Inc., dated October 2, 2006
21. Geotechnical Engineering Report, EnviroSound Consulting, Inc., dated October 14, 2015
22. Geotechnical Engineering Report, EnviroSound Consulting, Inc., dated July 7, 2016
23. Letter from Shawn E. Williams, EnviroSound Consulting, Inc., to Mark Kuhlman, dated January 12, 2018
24. Memorandum from John Sadler, Terra Associates, Inc., to Malcolm McNaughton, dated February 5, 2007
25. Preliminary Geotechnical Report, Terra Associates, Inc., dated September 11, 2014
26. Addendum Letter for Geotechnical Engineering Report, EnviroSound Consulting, Inc., dated October 20, 2016
27. Addendum Letter for Geotechnical Engineering Report, EnviroSound Consulting, Inc., dated November 17, 2016
28. Habitat Management Plan, BGE Environmental, LLC, dated March 23, 2019
29. Technical Memorandum, Sinclair Ridge Bald Eagle Management Plan, BGE Environmental, LLC, dated November 15, 2016
30. Public Comments:
  - A. Letter from Jack Stanfill to Kristin Moerler, dated February 5, 2016
  - B. Email from Patrick McGraner to Jack Stanfill, dated April 2, 2015, with email string
  - C. Letter from Cooke Scientific to Jack Stanfill, date March 3, 2015
  - D. Email from Donna Roberts to Kristin Moerler, dated February 18, 2016
  - E. Letter from Donna Roberts to Kristin Moerler, dated February 18, 2016
  - F. Email from Joe & Judy O'Donnoghue to Kristin Moerler, dated February 12, 2016
  - G. Letter from Al Lewis, received February 19, 2016
31. Letter from Nick Bond, City of Port Orchard, to Kristin Moerler, dated February 16, 2016
32. Letter from Edward Coviello, Kitsap Transit, to Kristin Moerler, dated February 19, 2016
33. Email from Paul Anderson, Department of Ecology, to Kristin Moerler, dated February 19, 2016, with email string; letter from Paul Anderson, Department of Ecology, to Rob O'Neill, dated February 23, 2016
34. Letter from Brittany N. Gordon, Department of Fish and Wildlife, to Kristin Moerler, dated February 26, 2016
35. Letter from Alison O'Sullivan, Suquamish Tribe, to Kristin Moerler, dated February 26, 2016
36. Letter from Thomas L. Adams, South Kitsap School District, to Kristin Moerler, dated February 11, 2016
37. Sinclair Ridge Notice of Application Response to Comments, dated January 5, 2019
38. Joint Aquatic Resources Permit Application (JARPA) Form, dated February 15, 2018, with attachments

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39. Traffic Impact Analysis, Final Report, Gibson Traffic Consultants, dated October 19, 2006
40. Concurrency Review and Proportionate Share Recommendation, Transportation Solutions, Inc., dated August 2, 2016
41. Memorandum from Matthew Palmer, P.E., Gibson Traffic Consultants, Inc., to Tom Knuckey, P.E., dated June 30, 2017
42. Notice Materials:
  - A. Notice of Public Hearing, undated, with aerial map and proposed lot layout drawing
  - B. Invoice, Kitsap Sun (No. 0004224267), run date June 8, 2020, with ad text
  - C. Declaration of Posting, dated June 8, 2010, with photograph of posted sign, and aerial map showing posted sign location.
  - D. Declaration of Mailing, dated June 8, 2020, with mailing list
43. Staff Report
44. Email from Erik Ekstrom to Joe O'Donnoghue, dated June 18, 2020, with email string
45. Email from Greg Krabbe to Vicki Grover and Allison Satter, dated June 19, 2020, with attachment
46. Letter from Nicole De Leon, Cairncross & Hempelmann, re: Requested Revised Conditions and Transmittal of Potential Exhibits, dated June 19, 2020
47. Letter from Tim McHarg, Van Ness Feldman, LLP, dated June 19, 2020
48. Letter from Allison Satter re: Conditions of Plat Approval, undated
49. Geotechnical letter from Shawn E. Williams, EnviroSound Consulting, dated February 13, 2020
50. Resume of Qualifications, Mark A. Kuhlman, Team 4 Engineering, undated
51. Letter from Nicole De Leon, Cairncross & Hempelmann, re: Applicant response to McHarg Comment, dated June 22, 2020
52. City PowerPoint Presentation
53. Screenshot from Department of Ecology website
54. Draft appeal to MDNS, Northcamp Property Investments, LLC, undated
55. Letter from Tim McHarg, Van Ness Feldman, LLP, to Allison Satter, dated June 26, 2020
56. Email from Joseph and Judy O'Donnoghue to Allison Satter, dated June 26, 2020, with email string
57. Greg Krabbe Comments:
  - A. Letter from Greg Krabbe, McCormick Communities, LLC, to Allison Satter, dated June 26, 2020
  - B. Technical Memorandum, The Riley Group, Inc., dated June 26, 2020
58. Letter from Allison Satter re: City Response to Comments, dated July 8, 2020
59. Letter from Nicole De Leon, Cairncross & Hempelmann, re: Applicant Response to Comments, dated July 8, 2020, with enclosures
60. Letter from Erik Ekstrom to Allison Satter, dated June 29, 2020

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

## **FINDINGS**

### Background

1. On November 6, 2007, the Hearing Examiner approved a request from Sinclair Ridge, LLC, related to a proposed preliminary plat and residential cluster development (RCD) to subdivide 125.5 acres into 600 lots for development of a mixture of attached and detached single-family homes, open space, and associated improvements, including roadways, utilities, stormwater facilities, grading, parking, and landscaping, on property located north of SW Old Clifton Road, with 25 conditions. Northview Ridge Properties, LLC (Applicant), now seeks to amend the Sinclair Ridge Subdivision to include an additional 8.47 acres of critical area open space associated with a stream on the west side of the property and to reduce the proposed number of single-family residential lots to 343. Because the Applicant's proposal would constitute a major amendment to the previously approved subdivision, it must be processed in the same manner as a new preliminary plat application and vests to the codes in effect at the time of the new application.<sup>2</sup> *Bremerton Municipal Code (BMC) 20.12.140(c). Exhibit 1; Exhibit 4.A; Exhibit 4.B; Exhibit 6; Exhibit 43, Staff Report, pages 1 and 3.*

### Application and Notice

2. The Applicant requests approval for a preliminary plat and RCD major plat amendment to subdivide 133.86 acres into 343 single-family residential lots in four phases, with associated improvements, including construction of roadways and utilities, associated stormwater control facilities, grading, parking, and landscaping. Phase 1 would include development of 76 lots and associated infrastructure in the central portion of the southern half of the site, including construction of approximately 3,000 linear feet of off-site portions of Campus Parkway to connect to SW Old Clifton Road, recreation amenities in 'Tract B,' stormwater management facilities in 'Storm Tract 1,' and a sanitary sewer main extending north through the site and continuing off-site through City property to the Anderson Hill sewer pump station. Phase 2 would include development of 89 lots and associated infrastructure in the western portion of the southern half of the site, including construction of recreation amenities in 'Tract A' and improvements to ramps associated with SR-16. Phase 3 would include development of 86 lots and associated infrastructure in the eastern portion of the southern half of the site. Phase 4 would include development of 92 lots and associated infrastructure located in the northern half of the site, including construction of stormwater management facilities in 'Storm Tract 2.' The property is

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<sup>2</sup> For clarity, this decision cites to the current version of City code where there has been no substantive change to its provisions.

located approximately 2,900 feet north of SW Old Clifton Road.<sup>3</sup> *Exhibit 1; Exhibit 4.A; Exhibit 4.B; Exhibits 9 through 11; Exhibit 15.*

3. The City of Bremerton (City) determined that the preliminary plat and RCD major plat amendment application was complete on January 22, 2016. The City provided notice of the application as required by the municipal code including by mailing notice to property owners within 300 feet of the subject property and to reviewing government departments and agencies. An open record hearing associated with the application was originally scheduled for May 26, 2020, but was later continued to June 8, 2020, and again to June 22, 2020. The City provided notice of the rescheduled open record hearing associated with the application on June 8, 2020, as required by the municipal code, including by mailing or emailing notice to property owners within 300 feet of the subject property and to reviewing government departments and agencies, posting notice at the subject property, and publishing notice in the *Kitsap Sun*. The City received several public comments and comments from reviewing agencies in response to its notice materials, which are discussed in further detail below. *Exhibit 8; Exhibit 42; Exhibit 43, Staff Report, pages 1, 3, and 24.*
4. The City received several comments from members of the public that raised concerns about the proposal's impacts to streams, wetlands, steep slope areas, and associated buffers; stormwater and landslide impacts to adjacent properties; lack of proposed fencing to prevent trespassing to adjacent properties from future residents of the site; and traffic impacts. Additionally, Tim McHarg, Van Ness Feldman, LLP, provided comments raising concerns with the application process. Specifically, Mr. McHarg commented that the staff report and exhibits associated with the application were not posted to the City's website, the public hearing was not listed in the City Calendar or in the Hearing Examiner Agenda page, the City did not conduct sufficient environmental review when issuing an addendum to the 2007 MDNS, and City code does not provide for amendment of an expired preliminary subdivision. *Exhibit 30; Exhibit 37; Exhibit 43, Staff Report, page 25; Exhibit 44; Exhibit 45; Exhibit 47; Exhibit 51.*
5. The Applicant responded to the concerns raised by members of the public, and Mr. McHarg, noting that:
  - Wetlands and streams were reassessed in June 2016, with wetland boundaries and categorizations confirmed under current standards.
  - A field review was performed by the Washington State Department of Ecology (DOE), the Washington State Department of Fish and Wildlife (WDFW), and the Suquamish Tribe, and the results of the studies were presented in the Sinclair Ridge Critical Area and Assessment Report.

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<sup>3</sup> The property is identified by parcel number 042301-2-038-2006. *Exhibit 1.* The legal description for the subject property is provided with the staff report. *Exhibit 43, Staff Report, page 2.*

- Geotechnical studies have identified area slopes of concern as stable and have defined the required setbacks for the proposed development; the preliminary design for site development has complied with the requirements identified in the geotechnical studies.
- Stormwater management for the project would conform to the requirements of the DOE 2012 Stormwater Management Manual for Western Washington.
- Fencing along the subdivision boundary would be inappropriate because construction of the fence would disturb steep slope critical area buffers and would impact wildlife movement.
- Gibson Traffic Consultants prepared an updated Traffic Impact Analysis (TIA) in 2018 to supplement its original 2006 TIA, which determined that traffic impacts of the proposal to Feigley Road would be insignificant.
- The City has met all code requirements to make the staff report and hearing exhibits available to the public.
- Issues regarding the City's issuance of a SEPA MDNS Addendum must be addressed in a SEPA appeal and is not within the Hearing Examiner's jurisdiction to resolve in this forum.
- The City issued the SEPA MDNS Addendum in compliance with all applicable code and statutory requirements.
- The application was deemed complete well before the expiration date of the original approved preliminary plat and RCD.
- Even if the original approved preliminary plat and RCD had expired, the application for a major amendment included all necessary updated documentation to analyze the current proposal, which is processed in the same manner as a new application.

*Exhibit 30; Exhibit 37; Exhibit 43, Staff Report, page 25; Exhibit 44; Exhibit 45; Exhibit 47; Exhibit 51.*

6. The City also received several comments from reviewing agencies in response to its notice materials. Specifically:
  - The City of Port Orchard expressed concerns about the proposal's traffic impacts, noting that it had annexed adjacent roadways since the previous preliminary plat approval. The Applicant responded that the City traffic consultant performed a concurrency review and proportionate share recommendation for the proposed development, which concluded that traffic impacts would be adequately mitigated by the payment of traffic impact fees and improvements to SR-16 ramps.
  - Kitsap Transit commented that a bus turnaround should be installed near the entrance to the project site to accommodate for potential future bus service in the area. In response, the Applicant noted that the proposal currently includes construction of a roundabout at the intersection of SW Old Clifton Road and Campus Parkway as part of Phase 3 construction and that street construction within the development would include a block grid system and City standard cul-

de-sacs suitable for bus service. Additionally, the City recommended a condition of approval requiring the Applicant to coordinate with Kitsap Transit for siting a bus stop within the site for each phase of development.

- DOE requested that the Applicant provide additional information prior to the start of any site work, including: a wetland delineation report consistent with current state and federal standards, with wetland ratings using the current Washington State Wetland Rating System for Western Washington (Hruby 2014); a jurisdiction determination from the U.S. Army Corps of Engineers; a Joint Aquatic Resource Permit Application (JARPA) form for impacts to jurisdictional wetlands; and a mitigation plan for unavoidable wetland impacts. In response, the Applicant noted that it provided the requested information to DOE, as shown in the May 11, 2018, Sinclair Ridge Critical Area Assessment and Mitigation Report and the February 15, 2018, JARPA form. The Applicant further noted that the Army Corps of Engineers provided a Preliminary Jurisdictional Determination, indicating that wetlands and waterways within the project area may be waters of the United States, and that the Applicant would treat the wetlands and waterways as within United States jurisdiction for purposes of computing the impact area and compensatory mitigation requirements.
- WDFW provided comments expressing concerns with aspects of the stream and wetland analysis provided in the Applicant's 2006 Wetland Report and subsequent 2014 Wetland Addendum. In response, the Applicant noted that it has retracted the 2014 Wetland Addendum and that the 2018 Sinclair Ridge Critical Area Assessment and Mitigation Report addresses WDFW's concerns.
- The Suquamish Tribe raised similar concerns about the stream and wetland analysis provided in the Applicant's 2006 Wetland Report and subsequent 2014 Wetland Addendum. In addition, the Suquamish Tribe raised concerns with the project's stormwater and erosion impacts, requested that the Applicant perform a cultural resource study, and requested that the proposal comply with the most current DOE stormwater manual for western Washington. In response, the Applicant noted that it retracted the 2014 Wetland Addendum and provided an updated assessment and mitigation report, that the project would comply with the current DOE stormwater manual, that it provided a geotechnical analysis ensuring that the project would meet the City code requirements for geologically hazardous critical areas, and that the City has proposed a condition of approval requiring a cultural resource study and report prior to construction activity.
- The South Kitsap School District commented that it reaffirms and understands that the March 27, 2007, mitigation and settlement agreement to pay school mitigation fees would remain in full force and effect for the current proposal. In response, the Applicant agreed that it would be required to pay mitigation funding to the District in accord with the previous agreement, as provided in a mitigation condition of the SEPA MDNS Addendum.

*Exhibit 2; Exhibits 31 through 38; Exhibit 43, Staff Report, pages 25 through 28.*



State Environmental Policy Act

7. In 2007, the City reviewed the original preliminary plat and RCD proposal to develop 600 homes on 125 acres and determined that, with three mitigation conditions, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) for the original proposal on July 31, 2007, which included conditions requiring that the Applicant improve State Route 16 (SR-16), pay school impact mitigation fees to South Kitsap School District, and pay traffic impact mitigation fees to Kitsap County. *Exhibit 2; Exhibit 6; Exhibit 8; Exhibit 43, Staff Report, page 5.*
  
8. The City's Department of Community Development (DCD) acted as lead agency and analyzed the environmental impacts of the proposed major amendment to the previously approved subdivision, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City consolidated the application and SEPA comment periods under the Optional DNS process provided for by the Washington Administrative Code (WAC) 197-11-355, with a comment deadline of February 19, 2016. Notice materials stated that a prior MDNS had been issued for the prior project proposal and that, depending on the scope of comments received on the proposal, the City may issue an Addendum to the prior MDNS or adopt the prior MDNS by reference in a new threshold determination. DCD reviewed submitted comments and determined that the concerns expressed in the comments would be adequately addressed through City code and did not require SEPA mitigation. DCD further determined that the proposed major amendment would not result in any new significant adverse impacts not addressed in the 2007 MDNS and, therefore, issued an MDNS Addendum on June 10, 2020. The MDNS Addendum made changes to two of the original MDNS conditions based on an annexation entitling the City of Port Orchard to receive traffic mitigation fees and to clarify the location and timing of SR-16 ramp improvements. The MDNS Addendum conditions state:
  1. Prior to final plat approval of Phase 2, the project shall improve State Route 16 (SR-16) as follows:
    - a. Build a full design right turn lane on the westbound, SR-16 off ramp to Tremont Street; and
    - b. A left turn refuge storage area on westbound Clifton Road serving the eastbound SR-16 on ramp.
  2. The proponent shall provide mitigation funding to South Kitsap District for school mitigation impacts. Mitigation funding shall be paid to South Kitsap School District in the amount of \$1,017.45 per dwelling unit.
  3. The project shall mitigate transportation impacts in the City of Port Orchard as follows. The City of Port Orchard shall provide the proponent with an official receipt after payment.

- a. The proponent shall provide mitigation funding to Port Orchard for mitigation of traffic impacts in the City of Port Orchard. Prior to building permit issuance, the proponent shall pay to Port Orchard the amount of \$1,668.97 per dwelling unit.
- b. As mitigation for construction of the intersection at Old Clifton Road and Campus Parkway, the Parkway, the proponent shall pay a proportionate share fee to Port Orchard. Prior to building permit issuance, the proponent shall pay to Port Orchard the amount of \$1,049.56 per dwelling unit.

*Exhibit 2; Exhibit 6; Exhibit 8; Exhibit 43, Staff Report, page 5.*

Comprehensive Plan, Zoning, and Surrounding Property

9. The property is designated Low Density Residential (LDR) by the City Comprehensive Plan. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
  - Plan for the City’s population and employment growth (Goal LU1).
  - Designate neighborhoods, communities, and centers throughout the city and encourage the implementation of design guidelines for new development and redevelopment that complement the designated purpose and scale (Policy LU1A).
  - Protect the city’s natural environment (Goal LU3).
  - Promote land use patterns and development phasing to minimize impacts on natural systems, maximize returns on infrastructure investment, and reduce greenhouse gas emissions (Policy LU3C).
  - Promote infill and concurrent infrastructure improvements in areas that are already developed in order to preserve rural areas, open spaces, and ecological functioning lands within the city (Policy LU3I).
  - Promote community health by allowing opportunities for healthy lifestyle choices (Goal LU4).
  - Encourage the development of a variety of new housing options and densities to meet the changing needs of the city’s residents (Goal H2).
  - Promote a sense of community, or gathering places, within new neighborhoods by creating spaces where residents can interact (Policy H2F).
  - Support access to quality and affordable housing for all city residents (Goal H3).

*Exhibit 43, Staff Report, pages 1 and 5.*

10. The subject property is located within the low density residential (R-10) zoning district. The purpose of the R-10 zone is to “accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns.” *BMC 20.60.010*. Residential uses, including attached and detached single-family units, duplexes, and townhouses, are allowed in the R-10 zone. *BMC 10.60.020(j)*. Development standards applicable to the

R-10 zone, as modified by development standards for residential cluster development, are discussed in further detail below. *Exhibit 43, Staff Report, page 2.*

11. Property to the north and west of the site is also zoned R-10 and contains residential development and City watershed property. Property to the east is zoned LDR and Urban Reserve (both within the City and in Kitsap County) and contains undeveloped land and City watershed property. Property to the south is zoned Urban Reserve (both within the City and in Kitsap County) and contains residential development and business park properties. *Exhibit 43, Staff Report, page 2.*

#### Residential Cluster Development

12. The intent of the residential cluster development (RCD) provisions of the municipal code is to “accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area.” *BMC 20.58.060(a)*. The RCD provisions aim to allow greater flexibility in the design of subdivisions to ensure that development is harmonious with the natural on-site characteristics and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. *BMC 20.58.060(a)*. An RCD may be applied to all subdivisions as permitted in Chapter 20.12 BMC. *BMC 20.58.060(b)*. “An RCD shall be approved with the approval of a subdivision” and “shall follow the same approvals and timelines as the concurrent subdivision application pursuant to Chapter 20.12 BMC.” *BMC 20.58.060(e)(1)*.
13. The minimum and maximum density requirements of the underlying zone apply to the RCD; however, unbuildable critical areas may be included in the area for calculating density, but land used for rights-of-way may not.<sup>4</sup> *BMC 20.58.060(d)(1)*. The R-10 zone has a minimum density of 5 dwelling units per acre and a maximum density of 10 dwelling units per acre. The proposed development would result in a density of 7.99 dwelling units per acre, in accord with the applicable density requirements. The R-10 zone provides for a minimum lot area of 4,300 square feet and maximum of lot area of 8,712 square feet. *BMC 20.60.065(c) and (d)*. The minimum lot area may be reduced to 2,500 square feet for an RCD. *BMC 20.58.060(d)(2)*. The proposed lot areas range from 4,363 square feet to 6,486 square feet and, therefore, would meet the lot area requirements of the underlying R-10 zone. The proposal would also comply with the development standards for the underlying R-10 zone for maximum building height, maximum lot development coverage, and minimum front, side, and rear yard setbacks, without the need for modifications allowed for innovative site design in an RCD. *BMC 20.58.060(d)(3)(ii)*. Structures and parking areas in an RCD are required to have a 10-foot setback from the exterior boundary of the entire site. *BMC 20.58.060(d)(3)(i)*. City staff recommended as a condition of approval that this perimeter setback requirement be

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<sup>4</sup> For purposes of calculating density, “[l]ot area shall include all areas within the exterior lot lines less any water areas, wetlands and other areas that may be restricted from use of from the types of development allowed by the zone in which the property is located.” *BMC 20.44.080*.

shown on the face of the final plat. Development coverage in an RCD is limited to 50 percent of the total site area, including open space. *RCW 20.58.060(5)*. The Applicant proposes to develop 44 percent of the site, in accord with this limitation. Open space designation and preservation requirements applicable to RCDs are discussed in detail below. *Exhibit 4.A; Exhibit 4.B; Exhibit 13; Exhibit 43, Staff Report, pages 11 and 12.*

#### Preliminary Plat Requirements

##### *Open Space and Landscaping*

14. The Applicant proposes to include over 68 acres of open space areas, including 34.72 acres of undeveloped stream and wetland critical areas and associated native vegetation buffers, 34.72 acres of undeveloped passive park areas, and 5.1 acres of active recreation park areas. The proposed open space areas would be commonly owned by residents of the site and would be managed by a homeowners association. The Applicant proposes to encumber the 34.72-acre critical area and 14 acres of the undeveloped passive park areas with a covenant providing permanent protection of native vegetation as mitigation for filling Wetland E, as discussed in further detail below. City staff reviewed the Applicant's open space plan and determined that, with conditions, it would meet the open space designation and preservation requirements for an RCD under BMC 20.58.060(8). City staff also reviewed the Applicant's preliminary landscape plan and determined that it demonstrates general compliance with the landscaping requirements of Chapter 20.50 BMC. The Applicant would be required to submit final landscaping plans in conjunction with the Site Development Permit process for each phase of development. City staff recommended a condition requiring property owners in the subdivision to be responsible for maintenance of all landscaping within the existing and proposed right-of-way, common areas, and open space tracts. *Exhibit 4.A; Exhibit 4.B; Exhibit 9; Exhibit 13; Exhibit 15; Exhibit 18; Exhibit 19; Exhibit 28; Exhibit 43, Staff Report, pages 13 and 14.*

##### *Access and Traffic*

15. The Applicant would make improvements to a future public street, Campus Parkway, to provide the proposed plat's sole connection with the SW Old Clifton Road, which is located approximately 2,900 feet to the south of the site. Campus Parkway is currently a privately-owned primitive road located about 2.5 miles west of SR-16. The Applicant has an easement that would allow it to construct access improvements to Campus Parkway prior to its dedication as a public street. The off-site portion of Campus Parkway connecting the site with SW Old Clifton Road is located in the City of Port Orchard, and the Applicant would be required to obtain required permits and approval for the proposed access improvements from the City of Port Orchard. The Applicant would complete access improvements to Campus Parkway prior to final plat submittal for Phase 1. The Applicant would also construct sidewalks throughout the plat to provide safe walking conditions for students and other pedestrians. *Exhibit 4.A; Exhibit 4.B; Exhibit 9; Exhibit 10; Exhibit 13; Exhibit 17; Exhibit 31; Exhibit 43, Staff Report, pages 1, 2, and 10.*

16. The Applicant would construct a new internal street system to provide access to individual lots. All internal streets would lie within the City's jurisdiction and would be constructed to City standards, including standards for street lighting and driveway approaches. All frontage improvements, including curb, gutter, sidewalks, ADA ramps, street trees, and street lighting would be completed, or bonded at the City's discretion, prior to final plat approval for each phase of development. The City Building Division reviewed the proposed internal roadway design and recommended conditions: requiring the Applicant to provide an accessible route within the site to and from sidewalks, public streets, public transportation stops, accessible parking, and accessible loading zones; requesting the Applicant to show the slope and cross slope of the finished elevation off all required walkways, sidewalks, and ramps intended to be part of the accessible route; and requiring the Applicant to submit a geotechnical report prior to construction of any structures, roadways, or parking areas. The City Fire Department reviewed the proposal and recommended conditions: requiring installation of fire sprinklers for all homes in the subdivision and requiring compliance with applicable fire and building code requirements, including requirements for minimum roadway width, turning radii, and turn-arounds. The City Engineer reviewed the proposal and determined that proposed streets, alleys, transit stops, and sidewalks would comply with City code. The Applicant would be required to provide a minimum of two off-street parking spaces per dwelling unit. *BMC 20.48.060(i). Exhibit 4.A; Exhibit 4.B; Exhibit 9; Exhibit 10; Exhibit 13; Exhibit 31; Exhibit 43, Staff Report, pages 1, 2, 10, 14, 23, 24, and 28 through 35.*
17. Gibson Traffic Consultants (Gibson) prepared a Traffic Impact Analysis (TIA) for the original proposal on behalf of the Applicant, dated October 19, 2006. The 2006 TIA determined at that time that six studied intersections operated at level of service (LOS) D or better, except for the SR 16 off-ramp at Tremont Street, which operated at LOS F.<sup>5</sup> Transportation Solutions, Inc. (TSI) provided a concurrency review and proportionate share recommendation that analyzed the traffic impacts of the new proposal for phased development of 343 single-family residential units on the City of Port Orchard street network, dated August 2, 2016. TSI determined that the proposed development would result in an additional 343 average daily trips accessing the site via the City of Port Orchard street network, with approximately 60 percent of the trips forecasted to leave an origin or find a destination within the City of Port Orchard during the PM peak hour. TSI studied 14 area intersections and determined that the intersections currently operated at

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<sup>5</sup> LOS serves as an indicator of the quality of traffic flow and degree of congestion at an intersection or roadway segment. It is a measure of vehicle operating speed, travel time, travel delays, and driving comfort. For stop-controlled intersections, LOS A represents a delay of less than 10 seconds per vehicle; LOS B represents a delay of 10 to 15 seconds per vehicle; LOS C represents a delay of 15 to 25 seconds per vehicle; LOS D represents a delay of 25 to 35 seconds per vehicle; LOS E represents a delay of 35 to 50 seconds per vehicle; and LOS F represents a delay of greater than 50 seconds per vehicle. *Exhibit 39, pages 7, 8, 26; Exhibit 40, page 4.*

LOS D or better, with the exception of the SW Old Clifton Road/SR-16 eastbound ramp and Tremont Street and SR-16 westbound ramp intersections, which operate at LOS E. TSI determined that future conditions would cause the SR-16 intersections to operate of LOS F with or without the proposed development, but that improvements to the SR-16 intersections would allow them to operate at LOS D with the proposed development. TSI also determined that the proposed new intersection at SW Old Clifton Road and Campus Parkway would operate at LOS A with the proposed development. Although TSI determined that the proposal would cause the SW Old Clifton Road/Berry Lake Road intersection to operate at LOS F, it noted that the intersection is not subject to City of Port Orchard concurrency standards and, thus, would not require improvements. TSI recommended conditions requiring the Applicant to make SR-16 ramp improvements and to pay traffic mitigation fees to the City of Port Orchard. Gibson provided updated TIA memoranda addressing the proposed new intersection at SW Old Clifton Road and Campus Parkway and the proposal's traffic impacts to SR-16 ramps. Gibson determined that the intersection would operate at an acceptable LOS without any channelization improvements to SW Old Clifton Road and recommended that SR-16 ramp improvements not be required prior to completion of Phase 1 of development. As noted above, the Applicant would pay the City of Port Orchard traffic impact fees and would make improvements to SR-16 ramps prior to final plat approval of Phase 2 as conditions of the SEPA MDNS Addendum. *Exhibit 2; Exhibit 6; Exhibit 12, Exhibit 16; Exhibit 39; Exhibit 40; Exhibit 41; Exhibit 43, Staff Report, pages 11, 25, and 26.*

#### *Critical Areas*

18. The property contains critical areas in the form of streams, wetlands, critical aquifer recharge areas, steep slopes, and their associated buffers. BGE Environmental, LLC (BGE), prepared a Critical Area Assessment and Mitigation Plan on behalf of the Applicant, dated May 16, 2018, and a Habitat Management Plan, dated March 23, 2019. There are four streams associated with the property. Anderson Creek, a Type F fish-bearing stream, runs along the eastern side of the property; No-Name creek, a Type F fish-bearing stream runs along the western side of the property; Stream B, a perennial Type Np non-fish-bearing stream, flows northwest from a wetland in the northern portion of the property; Stream C, an ephemeral Type Ns non-fish-bearing stream, originates near the east-central portion of the property and flows to the east.<sup>6</sup> The standard buffer width for fish-bearing Type F streams is 150 feet, with a minimum 15-foot building setback

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<sup>6</sup> Streams are classified in BMC 20.14.720, which defines *Type F* streams as “segments of natural waters other than Type S waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands ... and which in any case contain fish habitat.” *BMC 20.14.720(a)(2)*. *Type Np* streams are defined as “all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall.” *BMC 20.14.720(a)(3)*. *Type Ns* streams are defined as all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. *BMC 20.14.720(a)(4)*.

between structures and the stream buffer edge. The standard buffer width for Type Np streams is 50 feet, with a minimum 15-foot building setback. The standard buffer width for Type Ns streams is 35 feet, with a minimum 15-foot building setback. *BMC 20.14.730 (Table 1)*. The Applicant does not request a permanent reduction or modification of the standard stream buffer widths. As discussed in more detail below, however, the Applicant proposes to locate stormwater management facilities within the Anderson Creek buffer to an extent greater than allowed by *BMC 20.14.730(d)(6)*, which permits such facilities to be located within the outer 25 percent of the buffer if certain conditions are met. Grading work associated with the proposed development would temporarily impact 1,554 square feet of Anderson Creek buffer area, 3,323 square feet of No-Name Creek buffer area, and 89 square feet of Stream C buffer area. The Applicant would mitigate for the temporary impacts by restoring all impacted areas after construction and through buffer averaging by widening the Anderson Creek buffer by 3,530 square feet in the vicinity of the impacted area, widening the Stream C buffer by 2,904 square feet, and widening a wetland buffer that overlaps No-Name Creek buffer in the vicinity of the impacted area by 27,864 square feet.<sup>7</sup> *Exhibit 6; Exhibit 18; Exhibit 19; Exhibit 28; Exhibit 43, Staff Report, pages 14 and 19 through 21.*

19. BGE identified five wetlands associated with the property. Wetland A, a Category II riverine wetland associated with No-Name Creek, is located in the western portion of the property and requires a standard 100-foot protective buffer; Wetland B, a Category II riverine wetland at the source for Stream B, is located in the northern portion of the property and requires a standard 100-foot protective buffer; Wetland C, a Category III slope wetland, is located adjacent to Wetland B along the northern property line and requires a standard 75-foot protective buffer; Wetland D, a Category IV slope wetland, is

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<sup>7</sup> *BMC 20.14.730(d)(4)* provides:

[B]uffer widths may be modified by averaging buffer widths as long as the total area contained within the buffer after averaging is no less than the required buffer prior to averaging, and as set forth below. A buffer enhancement plan shall be required for any request for buffer averaging. The enhancement plan shall be similar to a mitigation plan, and include provisions for mitigation monitoring and contingency plans. Buffer width averaging shall be allowed only where the applicant demonstrates through a report prepared by a qualified biologist or habitat specialist with five (5) years' experience that:

- (i) Buffer averaging is necessary to avoid a hardship caused by circumstances to the property;
- (ii) The habitat contains variations in sensitivity due to existing physical characteristics, or the buffer varies in characteristics and it would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- (iii) Lower intensity land uses would be located adjacent to areas where the buffer width is reduced;
- (iv) The widest portion of the buffer shall be the area where the habitat is most sensitive;
- (v) Buffer width averaging will not adversely impact fish and wildlife habitat conservation areas;
- (vi) The buffer width may be reduced by thirty-five (35) percent of the standard buffer, but not less than thirty-five (35) feet unless provided for by a habitat management plan.

located adjacent to the northeastern end of the property and requires a standard 50-foot protective buffer; Wetland E, a Category IV depressional wetland, is located in the north central portion of the property and requires a standard 50-foot protective buffer. *Exhibit 18; Exhibit 19; Exhibit 28; Exhibit 43, Staff Report, pages 14 and 15.*

20. The proposed development of Lots 18 through 22 at the southwest portion of the property would permanently impact 5,725 square feet of Wetland A buffer area. An additional 8,944 square feet of Wetland A buffer area would be temporarily impacted by the lot development. The Applicant would mitigate impacts to the Wetland A buffer through buffer averaging.<sup>8</sup> The Applicant would replace the lost 5,725 square feet of Wetland A buffer area and would mitigate temporary buffer impacts by restoring disturbed buffer and conserving an additional 48,833 square feet of Wetland A buffer area. Construction activities at the northern portion of the property required for development of Lots 197 and 198, and for utility extensions, would temporarily impact 3,581 square feet of Wetland B buffer area. The Applicant would mitigate for the temporary impacts by restoring the disturbed buffer and by widening the buffer by 19,446 square feet. City staff determined that the permanent and temporary impacts to the buffers of Wetlands A and B would be necessary for development, would not reduce the buffer by less than 75 percent of the standard width, would not reduce wetland functions, and would result in the protection of additional forested buffer area. The standard buffer widths for Wetlands C and D would be maintained. *Exhibit 18; Exhibit 19; Exhibit 28; Exhibit 43, Staff Report, pages 15 and 16.*
21. The Applicant proposes to fill the 5,733-square-foot Wetland E. BGE determined that Wetland E is a moderate- to low-functioning wetland and that avoiding impacts to Wetland E would result in expanded development to the north, which in turn would result in additional impacts to the higher-functioning buffers for Anderson Creek and No-Name Creek. The Applicant would provide compensatory mitigation for the loss of Wetland E

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<sup>8</sup> BMC 20.14.330(h)(5) provides:

The Director may allow modification of the standard wetland buffer width in accordance with an approved wetland report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where the applicant and a qualified professional wetland scientist demonstrate that:

- (i) No feasible site design exists without buffer averaging;
- (ii) It will not reduce wetland functions or functional performance;
- (iii) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- (iv) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
- (v) The buffer width is not reduced to less than seventy-five (75) percent of the standard width or thirty-five (35) feet.



by preserving 284,425 square feet of wetland area on-site, a 49:1 ratio, and by preserving 1,536,559 square feet of upland habitat area, a 266:1 ratio. City staff reviewed the Applicant's mitigation plan for filling Wetland E and determined that it would meet the requirements of BMC 20.14.340. The Applicant would be required to obtain a permit from the United States Army Corps of Engineers prior to filling Wetland E. *Exhibit 18; Exhibit 19; Exhibit 28; Exhibit 43, Staff Report, page 16.*

22. The Applicant proposes to construct a sanitary sewer main that would extend north through the site and continue off-site through City property to the Anderson Hill sewer pump station. The Applicant has submitted alternative plans for two different potential alignments of the proposed sewer main. BGE's 2018 Critical Area Assessment and Mitigation Plan, however, did not identify whether the proposed alternative sewer main alignments were surveyed for wetlands or habitat conservation areas. City staff notes that it had observed a topographic depression with standing water near the northern end of the proposed alternative alignment routes during a site visit on January 23, 2020, which could indicate the presence of a regulated wetland or stream. City staff recommends a condition requiring the Applicant to submit a revised critical areas report identifying any wetlands or habitat conservation areas within 300 feet of the proposed sewer main alignment and notes that compensatory mitigation would be required for any unavoidable impacts to wetlands or habitat areas and their associated buffers. *Exhibit 11.A; Exhibit 11.B; Exhibit 13; Exhibit 18; Exhibit 19; Exhibit 43, Staff Report, pages 16 and 17.*
23. The 2018 Critical Area Assessment and Mitigation Plan states that temporarily impacted wetland areas would be monitored for a minimum of three years. BMC 20.14.340(j), however, would require monitoring for a minimum of five years. Accordingly, City staff has recommended a condition requiring a minimum five-year monitoring period. City staff has also recommended a condition requiring the Applicant to post performance and maintenance bonds to ensure that mitigation measures are constructed and monitored during the five-year period. *Exhibit 18; Exhibit 43, Staff Report, page 17.*
24. Terra Associates, Inc., prepared a Preliminary Geotechnical Report for the original proposal to develop 600 lots, dated October 2, 2006. The report described the property as generally rolling with a gentle grade down toward the north, with a ravine extending north/south through the western portion of the property and another ravine running along the eastern property boundary. Terra Associates identified the ravines as areas of high geologic hazard.<sup>9</sup> Terra Associates determined that the property does not appear to

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<sup>9</sup> BMC 20.14.620(a) defines *areas of high geologic hazard*, in part, as "(1) Areas with slopes greater than forty (40) percent with vertical relief of ten (10) or more feet." BMC 20.14.620(b) defines *areas of moderate geologic hazard* as "any areas with slopes of thirty (30) percent or greater and vertical relief of ten (10) or more feet, and any areas with slopes of fifteen (15) percent to thirty (30) percent with vertical relief of ten (10) or more feet and any of the characteristics per subsections (a)(2)(i) through (iii) of this section."

contain areas of moderate geologic hazard other than localized areas within the ravines identified as high geologic hazard areas. Areas of high geologic hazard typically receive 50-foot wide setbacks from the top and toe of the slope, with 25-foot wide native vegetated buffer. *BMC 20.14.630(a)*. City code allows for reduction of the standard buffer width if a geotechnical or geological report demonstrates that modified or reduced buffers, through design and engineering solutions, will provide protection to the proposed development and adjacent properties equal to that of the standard buffer. *BMC 20.14.630(c)*. Terra Associates found no indication of seismic instability on the slopes and determined that a 25-foot wide native vegetation buffer from the top of all steep slopes would adequately mitigate geologic hazards. Because the location of the top of steep slopes was not clear at the time Terra Associates prepared its 2006 Preliminary Geotechnical Report, it submitted a February 5, 2007, addendum that identified the top of the slopes. The 2007 addendum also stated that steep slope areas appeared relatively stable and that the previously recommended 25-foot buffer would adequately mitigate geologic hazards. *Exhibit 4.A; Exhibit 4.B; Exhibit 6; Exhibit 20; Exhibit 24; Exhibit 43, Staff Report, pages 17 through 19.*

25. Terra Associates prepared another addendum, dated September 11, 2014, which reviewed the revised proposal to develop 343 lots. Terra Associates determined that its previous recommendations in the 2006 Preliminary Geotechnical Report would remain applicable to the current proposal. In addition, the 2014 addendum recommended that the Applicant perform additional location-specific evaluations: at all locations where site grading would be within 25-feet of the slope crest, in areas where the proposed stormwater detention pond berms would approach the ravine side slopes, and in the areas at the northern portion of the development site that were not included in the previous subsurface explorations. EnviroSound Consulting prepared a separate Geotechnical Engineering Report, dated July 7, 2016, which confirmed the analysis contained in the 2006 Preliminary Geotechnical Report prepared by Terra Associates, but recommended additional field investigations at an old slide scarp area near proposed Lots 322, 323, and 324. EnviroSound conducted the field investigations and recommended a 65-foot setback from the east property line for Lot 322 and a 70-foot setback for Lot 323. The recommended increased buffers for these lots are shown in the Applicant's site plans, and City staff determined that the increased buffers would comply with code requirements for protection of the proposed development and adjacent properties. *BMC 20.14.630(d). Exhibit 4.A; Exhibit 4.B; Exhibits 20 through 27; Exhibit 43, Staff Report, pages 17 through 19.*
26. City code allows utilities to be constructed within geologically hazardous areas if a geotechnical report demonstrates that construction would not significantly increase landslide or erosion risk. *BMC 20.14.630(k)*. EnviroSound prepared a geotechnical report addendum, dated November 17, 2016, which analyzed slope stability concerns associated with one of the two proposed alternative sewer main alignments. The

geotechnical report addendum determined that the lower portion of the proposed sewer main would be aligned to have a minimal impact on scarp areas but does not state whether it would significantly increase landslide or erosion risk. City staff recommended a condition requiring the Applicant to provide an updated geotechnical report if the selected sewer main alignment route is proposed within a geologically hazardous area. *Exhibit 11.A; Exhibit 11.B; Exhibit 27; Exhibit 43, Staff Report, page 19.*

27. The property is located within a Critical Aquifer Recharge Area (CARA), which is defined, under the municipal code, as an area with highly permeable soils that serve as sources of potable drinking water. City code allows for development within CARAs if certain criteria are met, including a hydrological assessment showing that the proposed activity would not cause significant impact to aquifer quality or recharge. EnviroSound Consulting provided a letter, dated January 12, 2018, which stated that it had evaluated the hydrological assessments for the site and determined that the proposed development would not adversely affect aquifer quality or recharge.<sup>10</sup> *Exhibit 23; Exhibit 43, Staff Report, page 17.*

#### *Stormwater Facilities*

28. Team 4 Engineering prepared a preliminary storm drainage report on behalf of the Applicant, revised February 11, 2020. The undeveloped property currently drains into No-Name Creek to the west and Anderson Creek to the east. Stormwater runoff from pollution-generating surfaces associated with the first three phases of development would be routed to a 2.61-acre detention pond located at the east side of the site, “Storm Tract 1,” for treatment and discharge into Anderson Creek. Stormwater runoff from pollution-generating surfaces associated with Phase 4 of development would be routed to a 1.01-acre detention pond located at the northwest corner of the site, “Storm Tract 2,” for treatment and discharge into Anderson Creek. The stormwater detention facilities would be designed in accordance with the latest DOE Stormwater Management Manual for Western Washington. The proposed detention ponds would be located adjacent to the top of a steep slope running down to Anderson Creek. Outfalls would be tight lined on the steep slope and located outside the ordinary high-water mark of Anderson Creek. The proposed location for the outfalls would extend into the Anderson Creek buffer beyond the outer 25 percent allowed by code. *BMC 20.14.730(d)(6)*. *BMC 20.14.130(j)* permits modifications or reductions of critical areas buffers through a site-specific or special report. City staff determined that a modification is necessary because discharging water near the top of the steep slope would create an erosion risk. *Exhibit 4.A; Exhibit 4.B; Exhibit 9; Exhibit 13; Exhibit 14; Exhibit 43, Staff Report, page 21.*

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<sup>10</sup> Specifically, EnviroSound stated that it had reviewed hydrological information contained both in the preliminary geotechnical report prepared by Terra Associates, Inc., dated October 2, 2006, and admitted as Exhibit 20, and in the geotechnical engineering reports prepared by EnviroSound, dated October 14, 2015, and July 7, 2016, and admitted as Exhibits 21 and 22. *Exhibit 23.*

29. BGE prepared a Habitat Management Plan (HMP) on behalf of the Applicant to address impacts to Anderson Creek, a “Class I Fish and Wildlife Conservation Area,” dated March 23, 2019. *BMC 20.14.720(d); BMC 20.14.730(e)*. The HMP determined that the proposal would not result in any permanent, direct impacts to Anderson Creek or its associated buffer, but the HMP did not address potential impacts resulting from the construction of the proposed outfall pipes and energy dissipation facilities. City staff recommends a condition requiring a revised HMP to address impacts and corresponding compensatory mitigation measures if construction would result in the removal of shrubs or trees within the Anderson Creek buffer. City staff also recommends conditions requiring the Applicant to construct the detention pond in Storm Tract 2 in accordance with the geotechnical design recommendations of EnviroSound Consulting as outlined in its October 14, 2015, Geotechnical Engineering Report. *Exhibit 13; Exhibit 28; Exhibit 43, Staff Report, pages 18, 21, 33, and 34.*

*Utilities*

30. The City would provide water and sewer service to the property. The Applicant obtained a letter of conditional water and sewer availability, dated March 24, 2020. The letter notes there is not water or sewer infrastructure currently serving the property and that utility service availability would be conditioned on the Applicant completing required on-site and off-site utility improvements. *Exhibit 3; Exhibit 43, Staff Report, pages 2, 8, and 9.*

*Phasing*

31. As detailed above, the proposed plat would be developed in four phases. A Site Development Permit would be required for each phase of development, and each phase would be processed as an individual final plat. The Applicant would be required to submit a detailed phasing plan for City approval prior to issuance of a Site Development Permit for each phase of development. City staff recommended a condition of approval requiring the Applicant to adhere to the required phased development timelines under *BMC 20.12.060(j)*.<sup>11</sup> *Exhibit 43, Staff Report, pages 6 through 8, and 35.*

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<sup>11</sup> *BMC 20.12.060(j)(1)* provides:

Phasing Timelines. The first phase submitted for final subdivision approval must be completed prior to the expiration of the preliminary plat (five (5) years or as otherwise defined by RCW 58.17.140). For each subsequent phase, required infrastructure shall be completed and final subdivision application shall be submitted within two (2) years of the date of the previous phase’s final subdivision approval. No project shall include more than a maximum of four (4) phases. Provided no extensions are granted, this allows for a total of eleven (11) years for project completion.

### Testimony

32. City Planning Manager Allison Satter testified generally about the application for a major plat amendment and how, with conditions, the current proposal to subdivide approximately 133 acres into 343 single-family residential lots would comply with the City's Comprehensive Plan, zoning ordinances, critical areas ordinances, and the criteria for plat approval under BMC 20.12.100. She described the project site, noting that access would be provided via the currently undeveloped Campus Parkway, which would connect the site to the SW Old Clifton Road. Ms. Satter also detailed the history of the project, noting that a preliminary plat to develop 600 lots on the subject site had been approved in 2007 and was due to expire in 2017. She noted that the Applicant completed an application for a major plat amendment in 2016 to reduce the proposed lots to 343 and to incorporate additional lands containing critical areas. Ms. Satter testified that City code requires major plat amendments to be processed in the same manner as new applications but that the Applicant may rely on previously submitted materials and technical studies at the discretion of the Director. She noted that the Applicant is seeking to develop the property as a residential cluster development (RCD), which allows for innovative designs and reduces impacts to sensitive areas by preserving open space and accommodating urban densities through utilization of less land area. Ms. Satter described the SEPA mitigation conditions, which would require the Applicant to make SR-16 ramp improvements, pay school mitigation fees, and pay traffic impact mitigation fees. Ms. Satter briefly described concerns raised in public comments on the proposal, including concerns regarding stormwater runoff, the geotechnical analysis, and the application procedures. She noted that the Applicant provided a response addressing these concerns. Ms. Satter stated that current wetland categorization would apply to the proposal but that it would vest to the buffer requirements in effect at the time of complete application. She noted that City staff reviewed the proposal against the buffer requirements in effect at the time of complete application. Ms. Satter testified that the City recommends approval of the application with the City's recommended conditions and proposed revisions thereto. *Testimony of Ms. Satter; Exhibit 46; Exhibit 48.*
33. Attorney for the Applicant, Nancy Rogers, stated that the Applicant agrees with analysis provided in the City staff report and with the City's recommended conditions and proposed revisions to the conditions. She noted that the numerous delays in the project over the years were attributable to economic conditions, changes in ownership, City staff turnover, the need for additional analysis, and the COVID-19 pandemic. Ms. Rogers asserted that the proposal would vest to the critical area codes in effect at the time of complete application, noting that the codes in effect at that time were the same codes in effect when the original application was approved in 2007. *Argument of Ms. Rogers.*
34. Joseph O'Donnoghue testified that he owns three lots near the northwest corner of the proposed subdivision. He expressed concerns about the proposed development's stormwater runoff impacts to his property. Mr. O'Donnoghue also expressed concerns

about the proposed development's impacts to his water right permits. *Testimony of Mr. O'Donnoghue.*

35. Deb Vedin testified that she and her husband, Martin Vedin, own property directly northwest and downslope of the proposed development. She expressed concerns about the proposed development's stormwater impacts to her property, noting that the limited clearing and construction activity that has occurred at the site has caused stormwater runoff to flow under her house. She requested more detail on the Applicant's stormwater management plans to ensure that it would adequately mitigate for stormwater impacts. *Testimony of Ms. Vedin.*
36. Martin Vedin testified that the limited construction activity on the project site has caused silt deposits to move downstream toward their property. He expressed concerns about the additional deposits that may occur from the proposed development and how these additional deposits may impact SR-16 culverts. Mr. Vedin noted that he supports the project but wants to ensure that it adequately addresses impacts to his property and the surrounding area. *Testimony of Mr. Vedin.*
37. Greg Krabbe testified that he is a registered civil engineer with GFK Consultants, Inc. and represents property owners to the south of the site. He expressed concerns with the application process and with geotechnical aspects of the proposal. Mr. Krabbe noted that, based on the Applicant's documentation indicating that there are steep slopes surrounding the property, his group hired a geotechnical engineer to review the Applicant's geotechnical reports. He stated that his group's engineer identified issues with the Applicant's geotechnical investigation and analysis, which should be addressed at the preliminary plat application and SEPA review stage rather than during final engineering. Mr. Krabbe noted that the application and SEPA addendum process limited the public's ability to review and comment on the proposal. *Testimony of Mr. Krabbe.*
38. Kristina Weller testified that she is a geotechnical engineer with The Riley Group, Inc., and that she was hired to review the Applicant's geotechnical reports. She expressed concerns with the Applicant's geotechnical reports, noting that groundwater was not addressed in any of the analysis for slope stability and that other aspects of the geotechnical analysis appears inconsistent and incorrect, as detailed in her June 18, 2020, technical memorandum, which was admitted into the record as Exhibit 45. *Testimony of Ms. Weller.*
39. Tim McHarg testified that he is a Senior Land Use Planner with Van Ness Feldman, LLP, and represents property owners to the south of the site. He expressed concerns with the SEPA review process for the application, noting that a revised MDNS was issued for the project on May 8, 2020, which was subsequently withdrawn and replaced with the June 10, 2020, MDNS Addendum. Mr. McHarg stated that his group has concerns that the

notice of application was issued in 2016 and that this was the only opportunity for the public to review and comment on the environmental aspects of the proposal. He also stated that the group has concerns with the application process, noting that City code provisions providing for the expiration of preliminary subdivisions are designed to avoid the vesting issues present in the current application. Mr. McHarg also expressed concerns that the application relies on outdated information and that the proposed subdivision would rely on the use of a private street. *Testimony of Mr. McHarg.*

40. Brent Carson stated that he is an attorney with Van Ness Feldman and represents property owners to the south of the site. He asserted that the original preliminary plat application has expired and argued that the Hearing Examiner should deny the application for a major plat amendment on that basis. Mr. Carson stated that the major plat amendment process allows an applicant to rely on outdated information and causes confusion for member of the public reviewing the proposal. He testified that his firm was prepared to appeal the revised MDNS issued for the project on May 8, 2020, but that the MDNS was withdrawn and replaced with an MDNS Addendum and, therefore, the major plat amendment process allowed the Applicant to bypass sufficient SEPA review and public comment. *Testimony and Argument of Mr. Carson.*
41. Kitsap Transit Transportation and Land Use Planner Edward Coviello testified that Kitsap Transit is satisfied with the Applicant's proposal to construct a roundabout at the intersection of SW Old Clifton Road and Campus Parkway during Phase 3, which would facilitate transit service to the area. *Testimony of Edward Coviello.*
42. Applicant Attorney Nancy Rogers responded to concerns raised at the hearing. She asserted that the application process has been open and deliberate, noting that the Applicant had applied for a preliminary plat amendment in 2014, that notice for the complete application was issued in 2016, and that reports associated with the application have been publicly available since at least that time. Ms. Rogers argued that, if the application process had been rushed, it may have been completed prior to the expiration of the previously approved subdivision. She also asserted that considerable geotechnical analyses were conducted for the project and that it is typical for numerous geotechnical reports to be generated for this type of proposal. Ms. Rogers argued that the Applicant has supplied geotechnical information for the proposal in excess of what is typically required at the preliminary plat application stage and that additional geotechnical work is always performed at the time of final site design. She noted that the revised MDNS was withdrawn because it contained errors and did not contain the correct mitigation measures and that the City elected to issue a MDNS Addendum after providing sufficient public notice with the notice of application. Ms. Rogers explained that, per agreements and as proposed to be conditioned, all internal roadways and the section of Campus parkway connecting the subdivision to SW Old Clifton Road would be dedicated as public roadways. *Argument of Ms. Rogers.*

43. Civil Engineer Mark Kuhlman testified in response to comments raising concerns about the proposed development's stormwater impacts. He noted that the proposed stormwater management system would follow the most current DOE Stormwater Management Manual for Western Washington, a component of which would require stream hydrology to be maintained. Mr. Kuhlman explained that stream hydrology would be maintained by retaining native vegetation and critical area buffers. He also explained that downstream sediment impacts resulting from the clearing, grading, and other construction activity at the site would be limited through phased development of the site and through Temporarily Erosion and Sediment Control (TESC) measures that would be implemented during construction. Mr. Kuhlman stated that downstream sediment may have been the result of previous logging activity on the site from previous owners but that the proposed development is not expected to contribute to additional downstream sediment issues. He explained that stormwater runoff from pollution-generating surfaces would be directed to two stormwater detention facilities, with the first stormwater facility addressing runoff associated with the first three phases of development and the second stormwater facility addressing runoff associated with the fourth phase of development. Mr. Kuhlman further explained that the facilities would provide water quality and treatment prior to discharging to Anderson Creek. He stated that water from non-pollution-generating roofs would be directed to No-Name Creek. Mr. Kuhlman noted that geotechnical reports for the site showed that infiltration would not be feasible for the site. He further noted that the detention ponds would be maintained by a homeowner's association. *Testimony of Mr. Kuhlman.*
44. Geologist Shawn Williams testified in response to concerns about the geotechnical studies that were prepared for the proposal. He noted that the geotechnical studies analyzed the worst-case scenarios for slope stability and, based on that analysis, recommended greater setbacks. Mr. Williams explained that cohesion provides greater slope stability and noted that the 2015 slope stability analysis did not assume a cohesion value for sand but that the 2016 analysis included a cohesion value for the sand based on exposures showing silt and gravel in the sand. He noted that the geotechnical investigation utilized 13 borings, 48 test pits, and detailed site reconnaissance. Mr. Williams also noted that observed seasonal groundwater did not affect the slope stability analysis and that the slope stability investigation focused on the most critical locations for fill placement. He stated that the peak ground acceleration in the 2016 analysis is correct based on information provided by a new engineer. Mr. Williams explained that the amount of geotechnical work performed for the project is greater than is typically required for a preliminary plat and meets all the criteria for standard engineering practices. *Testimony of Mr. Williams.*



45. Wetland Biologist Robbyn Meyers, of BGE Environmental, LLC, testified that the analysis for impacts to wetlands from the current proposal differed from the impacts identified for the original plat because of the increased area included in the current proposal and because of design changes, including changes to road alignment and plat layout, that would be incorporated in the current proposal. She noted that the delineation for Wetland E was changed for the current proposal based on her more current analysis and that reviewing agencies agreed with her analysis. Ms. Meyers stated that the Applicant has received a Preliminary Nationwide Permit from the United States Army Corps of Engineers to fill Wetland E. *Testimony of Ms. Meyers.*
46. Ms. Satter responded to concerns raised at the hearing. She testified that a recommended condition of approval would require the Applicant to coordinate for waste management services to serve the site prior to final plat approval, noting that the condition would alleviate concerns about garbage service to the site while awaiting dedication of Campus Parkway and internal streets. Ms. Satter stated that the Applicant had applied for a major plat amendment prior to the expiration of the previously approved subdivision and that City staff reviewed the proposal in the same manner as it would for a new application for a preliminary plat. She confirmed that the City withdrew a May 8, 2020, revised MDNS for the project because it contained errors and that the City then elected to issue a MDNS Addendum in accordance with state law. *Testimony of Ms. Satter.*
47. The Hearing Examiner admitted two documents submitted at the hearing, which included a screenshot from the DOE website addressing SEPA rules and a draft appeal of the May 8, 2020, revised MDNS that was later withdrawn. Ms. Rogers argued that the Hearing Examiner should not give any weight to the additional documents because they concern the SEPA process, over which the Hearing Examiner lacks authority. The Hearing Examiner left the record open until June 26, 2020, to allow for the submission of any additional comments on the proposal, and left the record open until July 8, 2020, for the limited purpose of allowing the parties to respond to any additional comments on the proposal. *Argument of Ms. Rogers; Exhibit 53; Exhibit 54.*

#### Additional Materials

48. Tim McHarg submitted additional comments after the hearing, which asserted that the previously approved subdivision had expired and was not permitted to be amended; that the geotechnical reports submitted for the proposal were inadequate to evaluate geologic hazard areas because the geotechnical reports were presented in piecemeal fashion and because there is no written documentation of peer review by the City's geotechnical consultants; and that it would be insufficient to have geologic hazard analysis conducted during engineering review rather than remand the application for inclusion of detailed independent third-party review. As an alternative to remanding the application, Mr. McHarg requests that the Hearing Examiner impose a condition requiring third-party review prior to approval of final engineering, with an opportunity for public review and

comment. Joseph and Judy O'Donnoghue submitted a comment stating that they had reviewed the proposal and determined that it would not impact their water right permits. Greg Krabbe submitted additional comments and a technical memorandum, which asserted that the Applicant's steep slope analysis was insufficient to support the proposed development and reiterated the specific concerns that Mr. Krabbe had raised at the hearing. *Exhibit 55; Exhibit 56; Exhibit 57.A; Exhibit 57.B.*

49. The City provided a response to the additional comments received after the hearing, which noted the following:
- The City followed applicable procedure and process including compliance with City code provisions for a Major Plat Amendment under BMC 20.12.140(c).
  - This proposal considered the original preliminary plat decision but was processed as a new preliminary subdivision application and vested to the code in effect at the time that the major plat amendment application was deemed complete in February 2016.
  - The City hired Parametrix to assist it in determining whether the proposal would comply with critical areas regulations.
  - Parametrix reviewed the Applicant geotechnical documents and confirmed that, at this stage of review for preliminary plat approval, sufficient information was provided for critical area compliance, including compliance with steep slope regulations.

*Exhibit 58.*

50. The Applicant also provided a response to the additional comments, which noted:
- The Major Plat Application was complete prior to expiration of the of the original plat approval, and there is no City code provision requiring original plat approval to be valid at the time of Major Amendment Application approval.
  - The City's determination that the Major Amendment Application was the appropriate process is supported by numerous code provisions affording the City such discretionary authority to determine how to implement City code.
  - The issuance of the SEPA Addendum was proper and complied with all applicable regulations.
  - The City reviewed updated environmental analyses and the SEPA Responsible Official correctly exercised discretionary authority to determine that the Major Amendment Application would neither increase the significant impacts nor substantially change the analysis of significant impacts identified in the MDNS issued for the original plat approval.
  - The geotechnical analysis for the proposal is sufficient for preliminary plat approval.
  - A preliminary plat is not required to have detailed engineering level schematics and drawings that address construction level compliance of the ultimate plat;

these detailed plans are generated throughout the construction phase and are reviewed for compliance during final plat review and upon recording.

- City code requires that a Site Development Permit application include civil engineering drawing, final storm drainage reports, erosion control and sediment control plan, and other final detailed plans.
- Confirmation that all engineering requirements are satisfied occurs after preliminary plat approval in conjunction with the Site Development Permit process.
- In the interest of assuring that slope stability is accurately analyzed prior to construction, the Applicant agrees to adding the following language in the City's recommended condition 55, "The [geotechnical] documentation [required for the Site Development permits for each phase] may include additional analysis of slope stability, which may require additional site investigation, as to be determined by the City at the time detailed Site Development Permit plans are submitted." [Additions underlined.]

*Exhibit 59.*

#### Staff Recommendation

51. City staff determined that, with conditions, the proposed development would comply with the City Comprehensive Plan, Critical Area Ordinance, and applicable development regulations under the municipal code. *Testimony of Ms. Satter; Exhibit 43, Staff Report, pages 28 through 35.*

### **CONCLUSIONS**

#### Jurisdiction

Major plat amendments shall be processed as a new preliminary subdivision application, pursuant to *BMC 20.12.140(c)*. Pursuant to Sections 2.13.070, 2.13.080 and 20.02.040 of the Bremerton Municipal Code (BMC), the Hearing Examiner has jurisdiction to hold an open record on a preliminary plat application and Residential Cluster Development and to approve, approve with conditions, or deny the application. *BMC 2.13.080 and .110; BMC 20.02.040.*

#### Criteria for Review

##### *Major Plat Amendment*

Major amendments shall be processed as a new preliminary subdivision application and shall vest to the codes in effect at the time the new application is deemed complete. All application materials required for a preliminary subdivision outlined in BMC 20.12.110 shall be required, and the Director shall have the discretion to determine if application materials, technical reports, and studies from the previous application may be used, or if new or updated reports will be required.

*BMC 20.12.140(c).*

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*Preliminary Plat*

The following criteria shall be used to review and approve preliminary short subdivisions, formal subdivisions, and binding site plans:

- (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.*

*Residential Cluster Development*

“An RCD shall be processed in coordination with a subdivision application and will follow the permitting procedures established in Chapter 20.12 BMC, Land Division.” *BMC 20.58.060(c)(1)*.

“The decision-making authority may grant an RCD only if it is found that: (1) An RCD shall be approved 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)(1)*.

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 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)*.

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*.

Conclusions Based on Findings

- 1. With conditions, the proposed plat would comply with the approval criteria provided in BMC 20.12.100, and with the requirements for a Residential Cluster Development.** The property is designated Low Density Residential by the City Comprehensive Plan. City staff analyzed the proposal for consistency with relevant goals and policies of the City Comprehensive Plan and determined that the proposal would be consistent with such goals and policies. The property is located in the R-10 zoning district. With conditions, the proposed plat would comply with development standards applicable to the R-10 zoning district as modified by the residential cluster development provisions, including standards for density, minimum and maximum lot areas, maximum building height, maximum lot development coverage, and minimum front, side, and rear yard setbacks.

The Applicant would manage stormwater on-site by directing runoff from pollution-generating surfaces associated with the first three phases of development to a 2.61-acre detention pond for treatment and discharge to Anderson Creek. Stormwater from pollution-generating surfaces associated with the fourth phase of development would be directed to a separate 1.01-acre detention pond for treatment and discharge to Anderson Creek. The proposed stormwater detention facilities would be designed in accordance with the latest DOE Stormwater Management Manual for Western Washington. The proposed outfalls for the detention ponds would be tight lined on a steep slope and would be located within the Anderson Creek buffer beyond the outer 25 percent allowed by code. Modification of this buffer requirement, as permitted under BMC 20.14.130(j), is required to prevent the erosion risk of discharging water near the top of a steep slope. The Applicant's Habitat Management Plan determined that the proposal would not result in any permanent impacts to Anderson Creek or its associated buffer, but it did not address the potential impacts of the proposed outfall locations. Accordingly, conditions, as detailed below, are necessary to ensure that the proposal would sufficiently address any potential impacts to Anderson Creek and its associated buffer. The property is located in a Critical Aquifer Recharge Area. The Applicant's hydrological assessments demonstrate that the proposed development would not adversely affect aquifer quality or recharge. The City would provide water and sewer to the property, subject to conditions requiring the Applicant to complete necessary utility infrastructure improvements. The Applicant's Critical Area Assessment and Mitigation Plan does not identify whether the proposed alignment for a sewer main extending north through the site and continuing off-site through City property was surveyed for wetlands or habitat conservation areas. Accordingly, a condition is necessary to ensure that the Applicant submits a revised critical areas report identifying any wetlands or habitat conservation areas within 300 feet of the proposed sewer main alignment.

There are four streams and five wetlands associated with the property. The Applicant proposes stream buffer averaging and wetland buffer averaging, to be mitigated through the creation of new buffer areas and enhancement of existing buffer areas pursuant to the Buffer Mitigation Plan. The Applicant's Buffer Mitigation Plan demonstrates that temporary and permanent impacts to wetland buffers would be necessary for development, would not reduce the buffer by less than 75 percent of the standard width, would not reduce wetland functions, and would result in the protection of additional forested buffer area. The Applicant proposes to completely fill Wetland E, a 5,733-square-foot moderate- to low-functioning wetland. Developing the property without filling Wetland E would result in expanded development to the north causing greater impacts to the higher-functioning buffers for Anderson Creek and No-Name Creek. The Applicant would mitigate for filling Wetland E by preserving 284,425 square feet of wetland area on-site and 1,536,559 square feet of upland habitat area.

The property contains steep slopes identified as geologic hazard areas. The Applicant submitted geotechnical reports analyzing slope stability in accordance with code requirements. The geotechnical reports determined that a 25-foot wide native vegetation buffer from the top of steep slopes areas at the northeastern portion of the site between the proposed stormwater detention ponds would adequately mitigate geologic hazards associated with the steep slopes and recommended increased setbacks from the east property line for proposed Lots 322 and 323 at the southeast portion of the property. Conditions, as detailed below, are necessary to ensure that the Applicant complies with geotechnical recommendations and that adequate geotechnical analysis and review would be performed in association with site development permits for each phase of development.

The Applicant would mitigate for traffic impacts of the proposed development through the payment of impact fees and the construction of off-site improvements to SR-16 ramps. The Applicant would construct access improvements to Campus Parkway after obtaining approval and necessary permits from the City of Port Orchard. The Applicant would construct all internal streets in compliance with City standards. A Homeowners Association would maintain all commonly owned property.

Conditions, as detailed below, are necessary to ensure that the proposal complies with all requirements of municipal code and other local, state, and federal requirements, as well as requirements for phased residential cluster development. *Findings 1 – 51.*

2. **With conditions, the proposed plat would comply with the approval criteria provided in RCW 58.17.110.** The City provided reasonable notice and opportunity to comment on the proposed development. Comments on the proposal raised concerns about the proposal's potential environmental impacts to streams, wetlands, steep slope areas, and associated buffers, as well as concerns of the application process. The Applicant has complied with all code requirements for a Major Plat Amendment. The City issued an MDNS Addendum for the proposal that determined, with three conditions, the proposal would not have a probable significant adverse impact. The Applicant would provide over 68 acres of open space areas, including 34.72 acres of undeveloped stream and wetland critical areas and associated native vegetation buffers, 34.72 acres of undeveloped passive park areas, and 5.10 acres of active recreation park areas. The Applicant would construct sidewalks throughout the plat to provide safe walking conditions for students and other pedestrians. *Findings 1 – 51.*

## DECISION

Based upon the preceding findings and conclusions, the request for a preliminary plat and residential cluster development major plat amendment to subdivide 133 acres into 343 single-

family residential lots in four phases on property located north of SW Old Clifton Road is **APPROVED**, subject to the following conditions:<sup>12</sup>

1. A Site Development Permit is required for each phase, and all infrastructure to serve that phase shall be installed (or may be bonded as allowed by code and at the discretion of the City) prior to Final Plat approval for that phase.
2. A landscaping plan with appropriate street trees and landscaping will be required with Site Development Permit for each phase. This landscaping shall be installed prior to Final Plat approval for each phase, or may be bonded as allowed by code and at the discretion of the City. The Homeowner's Association for the project shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way and within the open space tracts and that will be identified in the CC&Rs or on the face of the plat.
3. Root barrier per detail 3354 (or as amended and updated) shall be installed for all trees within or near the Right-of-way.
4. All easements, including any new easements (such as utility easements), shall be shown on the face of the Final Plat.
5. The face of the plat shall include: (1) Setbacks, (2) perimeter setback language for parking and structures, (3) building envelopes for each proposed residential lot, (4) allowed maximum height, and (5) allowed development coverage.
6. Each residential lot shall provide two paved off-street parking spaces, and all vehicle maneuvering areas shall also be paved.
7. The Applicant shall submit an Inadvertent Archaeological Material Discovery Plan prior to any permitted site disturbing work being approved. In the event that any ground-disturbing activities results in the uncovering of protected cultural materials (e.g. bones, shells, stone tools, beads, ceramics, old bottles, hearths, etc), work shall immediately stop and the Administrator or the State Department of Archaeology and Historic Preservation (DAHP) be contacted. Work shall not continue until authorization is provided by the City of Bremerton's Director. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required.

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<sup>12</sup> This decision includes conditions required to reduce project impacts as well as conditions required to meet City code standards.



8. The Applicant will coordinate with Kitsap Transit prior to Site Development Permit approval of each phase, and install a Kitsap Transit bus stop(s) within the Sinclair Ridge site if Kitsap Transit will provide service within this Plat. This coordinated location shall be shown on the plans submitted for the Site Development Permits.
9. Parcel addresses and private street names are required and shall be shown on the face of the plat prior to Final Plat approval.
10. The developer shall coordinate with the US Postal Service for proper mail service and waste management for proper disposal services during site development permit and prior to Final Plat approval.
11. The conditions of the SEPA Addendum, as detailed in this decision, shall be met.
12. Prior to approval of a Site Development Permit for each phase, a more detailed phasing approach that addresses the proposed work and construction schedule, per phase shall be submitted and approved by the City. The project phasing requirements and details are to include storm water calculations, temporary access and Temporary Erosion and Sediment Control (TESC) Best Management Practices (BMPs).
13. Required infrastructure for Phase 1 includes construction of TESC BMPs, about 3,000 linear feet of off-site portions of Campus Parkway to connect to Old Clifton Road, recreation amenity improvements in Tract B, stormwater management facilities in Stormwater Tract 1 (that will serve Phases 1, 2 and 3), and sanitary sewer main extending north through the remainder of the site and continues off-site to the vicinity of the Anderson Hill sewer pump station (SB-1).
14. Required infrastructure for Phase 2 includes TESC BMPs, improvement to SR-16 ramps including a right turn lane on the SR-16 westbound off ramp to Tremont Street and a left turn refuge lane on Old Clifton Road to access the SR-16 eastbound on ramp. Phase 2 improvements also include recreation amenity improvements in Tract A.
15. Phase 3 shall be served by the stormwater detention pond constructed in Phase 1.
16. Required infrastructure for Phase 4 includes construction of stormwater management facilities in Stormwater Tract 2 and TESC BMPs.
17. A preferred off-site sewer route will be determined and designed and installed by the Applicant prior to final plat approval of Phase 1. The City shall approve the location and design of the off-site sewer at the Site Development Permit. A geotechnical assessment of the preferred alignment shall be submitted to the City for review and approval.

18. All water, storm water and sewer improvement connections shall be in accordance with the City of Bremerton Design and Construction Standards, APWA/WSDOT Specifications, AWWA Standards, and Title 15 of the BMC.
19. The project is conditioned to comply with this conditional utility availability letter dated March 24, 2020 for this project, *Exhibit 3*. The conditional requirements for both water and sewer may change; improvements will be based on the current availability letter.
20. Per the Design and Construction Engineering Standard, 5-35 horizontal and vertical utility clearances shall be followed and be shown on the submittal for the Site Development Permits for all phases. This will include the submittal of a composite utility plan for the project.
21. Utility easements are required to be shown on the face of the plat and shall be approved as to the dimensions and locations during the Site Development Permits.
22. All sewer infrastructure within the development and the required off-site improvements will be the responsibility of the developer to design and install and this shall be completed prior to final plat approval for each applicable phase.
23. Clearing and grading work will be limited to that required for the construction of that phase and will extend into other phases only as necessary to achieve earthwork balance. No work, including clearing and grading, or demo shall be conducted on subsequent phases until it has been reviewed and approved by the City.
24. Tree or vegetation removal from Phases 2, 3 and 4 shall be limited to the greatest extent possible. Removal of dangerous trees may be permitted, but clearing of Phase 2, 3 and 4 will not be permitted in Phase 1. Phase 1 of the project is allowed to extend into other phases to have an earth work balance, but this work shall be limited in area, while trying to preserve existing trees. This information shall be provided in the detailed phasing approach during the Site Development Permit. Noxious weeds may be removed.
25. Pursuant to BMC, Section 15.04, storm water quantity and quality mitigation is required in compliance with the 2014 published version of the Department of Ecology (DOE) Stormwater Management Manual for Western Washington, the Kitsap County Stormwater Management Manual (for conveyance calculations only), the Low Impact Development Technical Guidance Manual for Puget Sound and the City of Bremerton's Engineering Design and Construction Standards. Where the above reference manuals are in conflict, the DOE Stormwater Management Manual for Western Washington shall govern. A condition is for the required nine minimum requirements (per 2014 DOE manual) to be addressed in the final drainage report submittal for the Site Development Permit (SDP).

26. The Western Washington Hydrology Model (WWHM) model flow output shall be used for final stormwater management design and reporting, and will be revised for the Site Development Permits.
27. All stormwater ponds are to be lined per the recommendations of the geotechnical report (*Exhibit 25*) and per V-1.3 of the DOE Stormwater Manual.
28. A NPDES Permit is required prior to Site Development Permits submittal. Please submit the Notice of Intent (NOI) with the Site Development Permit for Phase 1.
29. All stormwater embankments are to be designed by a geotechnical engineer. Additionally, per WAC 173-175-020(1), stormwater ponds that surpass 10 acres feet in storage (or any other qualification for a dam from Ecology) shall comply with the Washington State Dam Safety Regulations and shall be included in the final geotechnical report submitted at Site Development Permits. Documentation of the plan submitted to and the decision from Department of Ecology shall be provided.
30. All stormwater ponds, tracts, and facilities are to be maintained by the owners or the homeowners' association (HOA) and this shall be stated on the face of the plat. Maintenance practices and frequency shall be included in the Operation and Maintenance Manual for the various stormwater facilities and is to be authored by the development's design engineer and included in the CC&Rs.
31. A Storm Drainage Maintenance Agreement shall be submitted for review and approval prior to Final Plat approval for each phase. This agreement shall be recorded at the Kitsap County Auditor's office and the Auditors File Number shall be referenced on the Final Plat.
32. All transportation related design elements on the project site are to follow Chapter 11.12 BMC entitled Transportation Development Code.
33. Campus Parkway must be improved prior to Final Plat submittal of Phase 1. As this roadway is in Port Orchard jurisdiction, this shall include a permit, construction, and inspection approvals by the City of Port Orchard.
34. All frontage improvements, including curb and gutter, sidewalks, ADA ramps, street lighting and landscaping, shall be installed prior to Final Plat approval for each relevant phase or may be bonded as allowed by code and at the discretion of the Director. Each phase will need to ensure that Safe Routes to school per WAC 392-151-025 is provided to each residential lot.

35. Standard driveway approaches are required and shall be shown on the relevant phase's Site Development Permit submittal. The driveway must be per the Standard Driveway requirement in current City's Engineering Design and Construction Standards and Chapter 11.12 BMC.
36. The internal streets of this development must comply with City of Bremerton Design and Construction Engineering Standards and BMC Title 11, Streets and Right-of-Way. All local streets shall be private streets upon Final Plat approval. These streets may be dedicated as public right-of-way once Campus Parkway has been completed and dedicated as public right-of-way. The dedication of local street right-of-way will be evaluated in accordance with BMC 11.12.140.
37. Street lighting is required along all streets. Street illumination in accordance with City of Bremerton Design and Construction Engineering Standards and Title 11 of the BMC is required along all streets within the development. A detailed street lighting plan (photometric plan) will be required to be submitted and approved by the City for the Site Development Permits.
38. During the construction of the Campus Parkway during Phase 1, a minimum of 35-permanent parallel parking spaces shall be constructed to provide parking for the local City park. Until Campus Parkway is dedicated to the City, this parking area will be maintained by the Home Owner's Association unless other arrangements can be made. Documentation of entity accepting maintenance shall be established prior to Final Plat approval of Phase 1.
39. As compensatory mitigation for the loss of Wetland E, as described in *Exhibit 18*, Critical Area Assessment and Mitigation Plan, and *Exhibit 19*, Map showing Buffer Mitigations, the 284,425 square feet of on-site wetland preservation and 1,536,449 square feet of upland habitat preservation shall be on the face of the plat that shows that this area to be protected in perpetuity, with the exception that the work to provide the compensatory mitigation described herein may be performed. Such a covenant shall include a restriction in perpetuity from further subdivision and/or land development.
40. The active open space layout and proposed equipment will need to be provided with the Site Development Permit and installed (or bonded for as code allows and at the discretion of the City) prior to Final Plat approval. Unless expressed elsewhere in this report, all open space tracts shall be completed in the phase that it is located as identified in the Phasing Plan, *Exhibit 9*. For Tracts that are separated by a phase (such as Tract C, D, E, G and H), those Tracts shall be established in Phase 1.

41. No active recreational activity shall be allowed within the protected critical areas and its buffers. Fencing, signs and/or other protective measure is required to protect the critical areas from the active open space.
42. Tract O's active open space tract access is provided between proposed Lots 170 and 171 which shall be shown and described on the face of the plat.
43. The Open Space areas will be "commonly owned" by the residents of the plat with management of the Open Space pursuant to the Plat conditions tasked to the Home Owners Association (HOA).
44. An Open Space Management Plan must be submitted with Site Development Permit for the maintenance and protections of all Open Space tracts.
45. The project shall follow the Critical Areas Assessment and Mitigation Plan (Exhibit 18) and buffer mitigation plan sheets (Exhibit 19) that show proposed buffer impacts and mitigations. Modifications may be allowed with support of a qualified professional.
46. Prior to Final Plat approval for each phase, a revised monitoring plan of completed compensatory wetland re-planting mitigation must be submitted, that includes provisions for monitoring to occur for at least 5 years.
47. Pursuant to BMC 20.14.165, the Applicant is required to post performance and maintenance bonds to ensure that the required compensatory wetland re-planting mitigation is constructed and maintained for the 5-year monitoring period.
48. With the Site Development Permit, any wetlands and fish and wildlife habitat conservation areas located within 300 feet of the final sewer alignment must be described in a revised critical areas report, per the requirements of BMC 20.14.360 and 20.14.740.
49. Pursuant to BMC 20.14.330(g)(1), the outer perimeter of the wetland or buffer and the limits of those areas to be disturbed shall be marked in the field in such a way to ensure that no unauthorized intrusion will occur and is subject to inspection prior to the commencement of permitted activities.
50. Permanent signs are required to protect the critical areas and shall be installed prior to Final Plat approval for each phase. Pursuant to BMC 20.14.330(g)(2) permanent signs are required to mark the edge of the wetland buffer at an interval of one per every lot or every 50' and must be maintained by the property owner or HOA in perpetuity.
51. The Plat shall develop consistent to the recommendations of the Geotechnical Reports and any subsequent amended reports.

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52. The City's critical area code requires a 50' buffer be maintained from steep slopes. However, pursuant to BMC 20.14.630(c), the setback and buffer may be reduced provided a Geotechnical Report demonstrates that the modified or reduced buffers, through design and engineered solutions will provide equal or better protection to the proposed development and adjacent properties as the standard buffer would provide. The Terra Associates Inc. Geotechnical Report, *Exhibit 20*, supports a 25-foot buffer from the top of the slope on the residential lots. The report contains specific geotechnical design recommendations for the site, and also states that the final site development plans should be reviewed by the geotechnical professional once they are finalized, to verify site grading and drainage adjacent to the ravine slopes.
  
53. Documentation from a geotechnical professional shall be provided for the Site Development permits for each phase, to address any structures or infrastructure within 200' of a geologically hazardous area or on any structures on non-native or structural fill. The documentation shall include any needed geotechnical inspections for said permit review, and may include additional analysis of slope stability, which may require additional site investigation, as to be determined by the City at the time detailed Site Development Permit plans are submitted. If the geotechnical recommendations during the Site Development Permit decision for site specific development is greater than this preliminary plat approval, those recommendations shall supersede the recommendations from the Preliminary Plat geotechnical review and shall be met.
  - a. As allowed by BMC 20.14.660, entitled Special Reports of Geological Hazardous Areas, subsection (h) to protect public health, safety and welfare, the Department may call for a third-party review of any geotechnical report in cases where it determines there may be substantial damage to life, property or the environment should a proposed engineered solution fail. The City has retained the authority to request a third-party review of any geotechnical analysis for the construction activities, such as the analysis for the detention pond.
  
54. Before construction on any structures, roadway, or parking areas, a geotechnical documentation is required to ensure the structures are on native soil or structural fill that has been placed properly. Geotechnical inspections and compaction tests shall be performed in accordance with the geotechnical engineer's requirement and recommendations. All inspection results or density tests shall be provided to the Department of Community Development prior to requesting any soils related inspections (such as footing or foundation inspections). Required geotechnical inspections: 1) Structural fill and compaction; 2) Soil bearing; 3) Retaining wall and rockery placement; 4) Ongoing site monitoring during wet weather construction; and 5) Final grading.

55. That 25-foot buffer that the geotechnical report supports for residential lots shall consist of native vegetation. In areas that are not currently vegetated with native species and/or will be disturbed during construction, these areas shall be re-vegetated in accordance with the requirements of BMC 20.14.620(g) and monitored for 5 years in accordance with the requirements of BMC 20.14.650(h)(2).
56. The Geotechnical Engineering Report prepared by EnviroSound Consulting, Inc. (dated October 14, 2015) (*Exhibit 21*) investigated the proposed detention pond area at the northeastern portion of the site. The report contains specific geotechnical design recommendations for the detention pond area that shall be met (as discussed in the following condition of approval). The report recommended a 65-foot buffer between the top of the slope and the outside edge of the pond berm. This recommendation shall be provided. This buffer is shown on the Plat drawings of *Exhibit 19*.
57. Geotechnical compliance includes following all the Geotechnical Report recommendations, including for the detention pond area. During Site Development Permit submittal a geotechnical engineer shall submit a statement that: a) the plans and specifications conform to the recommendations report(s), and b) all portions of the site which are disturbed or impacted by the proposed development have appropriate measures or specifications that allow construction to occur while addressing slope stability so that the work does not create additional risk. The statement by the geotechnical engineer shall also indicate whether or not a relative gain in slope stability will be achieved after construction is complete. Additionally, in accordance with BMC 20.14.660(i), a final inspection report shall be provided by the geotechnical engineer stating that construction has (or has not) implemented the design recommendations of the geotechnical report and include an evaluation of any deviation from the design recommendations.
58. A separate Geotechnical Engineering Report prepared by EnviroSound Consulting, Inc. (dated July 7, 2016) (*Exhibit 22*) confirmed the findings of the 2006 Terra Associates report (*Exhibit 20*), but recommended additional field investigations at an “old slide scarp” area in the vicinity of lots 322, 323, and 324. This additional investigation is described in a Geotechnical Engineering Report Addendum Letter (EnviroSound Consulting, Inc., dated October 20, 2016) (*Exhibit 26*). The addendum letter recommends a setback of 65-feet from the east property line of Lot 322 and a setback of 70-feet for Lot 323. This setback shall be provided for Lots 322 and 323.
59. If the selected sewer main alignment route is proposed within a geologically hazardous area, the proposal is required to provide an updated Geotechnical Report (meeting the requirements of BMC 20.14.660), prior to Site Development Permit of Phase 1.
60. Clearing or grading of any area within a high or moderate geologic hazard area or within two hundred (200) feet of the high or moderate geologic hazard area shall be limited to

the period between May 1st to October 1st, unless the Applicant provides an erosion and sedimentation control plan prepared by a qualified professional licensed in the State of Washington that specifically and realistically identifies methods of erosion control for wet weather conditions and ensures slope stability.

61. Because of the erosion risk that would result from discharging water near the top of the steep slope, locating the energy dissipation facilities within the outer 25 percent of the Anderson Creek and No-Name Creek buffers is not feasible. Due to conflict in City codes for this development, pursuant to BMC 20.14.130(j) Critical Area Administration and Procedures, modifications or reduction to critical area buffers, setbacks, or other standards through a site-specific or special reports may be processed; and for this project, Stormwater management facilities may be located within the Anderson Creek and No-Name Creek buffers to an extent greater than what is allowed by BMC 20.14.730(d)(6). In accordance with the City's geologically hazardous area code (specifically BMC 20.14.630(i) and BMC 20.14.130(j)) and the Washington State Department of Ecology stormwater manual, Stormwater Ponds 1 and 2 may discharge to energy dissipation facilities located within the stream buffer and outside of the ordinary high water mark of Anderson Creek and roof runoff from 49 homes in Phase 2 may discharge to energy dissipation facilities located within the stream buffer and outside of the ordinary high water mark of No-Name Creek. Stormwater management facilities may be located within the Anderson Creek and No-Name Creek buffers to an extent greater than what is allowed by BMC 20.14.730(d)(6).
62. Stormwater outfall pipes and energy dissipation will retain existing vegetation to the maximum extent possible through the critical area. If construction associated with the outfall pipes or energy dissipation facilities would result in the removal of shrubs and/or trees within the Anderson Creek buffer, then these impacts and corresponding compensatory mitigation must be addressed in a revised HMP submitted and approved together with the applicable Site Development Permit.
63. All critical area mitigation and buffer enhancement shall be completed prior to final plat approval of each applicable phase.
64. All site development permits shall demonstrate compliance with Washington State Fish and Wildlife Hydraulic Permit requirements.
65. Due to one access to the site (Campus Parkway), Fire Sprinklers are required for all homes, and this shall be included on the face of the plat.
66. Comply with the 2015 International Fire Code International Building Code, National Fire Protection Assoc, and Bremerton Municipal Code and;
  - a. Specifically the Roadway provisions of section 503.

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- b. Minimum roadway width shall be 20' unobstructed.
  - c. Turning radii shall be no less than 23' inside/45' outside.
  - d. Angles of departure shall be agreeable to the Fire Marshall's Office.
  - e. A turn-around shall be installed compliant with International Fire Code Appendix D.
67. Fire hydrants and fire flow are required pursuant to the International Fire Code.
68. Either placed on the face or the plat, or within the Conditions, Covenants and Restrictions (CC&Rs) for this development reference on the face of the plat, shall include language stating that the property owners shall be responsible for maintenance of all stormwater ponds and associated facilities, tracts, and common areas, including the landscaping within the existing and proposed right-of-way. Maintenance shall include, but not be limited to, mowing of lawn area and irrigating. The document shall also outline the necessary protection measures for all critical areas including the wetlands. A copy of the CC&Rs shall be provided with the Final Plat submittal.
69. Per BMC 20.12.090(a)(2)(ii) and BMC 20.12.060(j)(1), the first phase submitted for Final Plat approval must be completed prior to the expiration of the Preliminary Plat (five (5) years or as otherwise defined by RCW 58.17.140). For each subsequent phase, required infrastructure shall be completed and a Final Plat application shall be submitted within two (2) years of the date of the previous phase's Final Plat approval. Provided no extensions are granted, this allows for a total of eleven (11) years for project completion. Extensions may be approved per BMC 20.12.060(k). Should the project fail to comply with these timelines, the formal subdivision shall become null and void.

Decided this 22<sup>nd</sup> day of July 2020.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center