

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

In the Matter of the Application of)	NO. BP06-00183
)	
)	
Malcolm McNaughton)	Sinclair Ridge Preliminary Plat and
Sinclair Ridge, LLC)	Residential Cluster Development
)	
For Approval of a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Residential Cluster Development</u>)	AND DECISION

SUMMARY

The request for a preliminary plat and residential cluster development to subdivide 125.25 acres into 600 single-family residential lots, on property located north of SW Clifton Road is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request:

Malcolm McNaughton, Sinclair Ridge, LLC requests approval of a preliminary plat and residential cluster development to subdivide 125.25 acres into 600 lots, including open space and a mixture of detached single-family residential lots and attached single-family residential lots. The development would be located approximately 2,900 feet north of SW Clifton Road, on the future Campus Parkway, in Bremerton, Washington.

Hearing Date:

The Hearing Examiner for the City of Bremerton held an open record hearing on the matter on October 22, 2007.

Testimony:

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

1. Nicole Ward, City Planner
2. Paul Wandling, City Development Engineer
3. Steven Pesce, PacLand, Applicant Representative
4. Edward Koltonowski, P.E., for Applicant
5. Leslie Kabelac
6. Lawrence Roberts
7. Donald Palmer
8. Deanne Brewer, WSDOT

Attorney Duana Kolouskova represented the Applicant at the open record hearing.

Exhibits:

The following exhibits were admitted into the record:

BP 06-00183

1. Background information
2. Project Narrative
3. Bremerton Municipal Codes
4. Vicinity Map
5. Pre-submittal report, dated February 10, 2006
6. Preliminary Plat Application, dated March 26, 2007
7. Residential Cluster Development Application, dated March 26, 2007
8. Conditional Water Availability letter, dated April 28, 2006, and Conditional Sewer Availability letter, dated October 18, 2006
9. SEPA Checklist, prepared October 17, 2006
10. Preliminary Plat Map, dated April 12, 2007
11. Preliminary Grading & Utilities Map, dated April 12, 2007
12. Preliminary Storm Drainage Report, dated April 12, 2007
13. Preliminary Landscape Plans, dated April 12, 2007
14. Typical Housing Elevation and Floor Plans
15. Wetland and Stream Report and Buffer Mitigation Plan, prepared by Wetland Resources, Inc., dated October 18, 2006
16. Bald Eagle Management Plan prepared by Wetland Resources, Inc., dated October 17, 2006
17. Traffic Impact Analysis, prepared by Gibson Traffic Consultants, dated October 19, 2006
18. Preliminary Geotechnical Report, prepared by Terra Associates, Inc., dated October 2, 2006
19. Section of City Zoning Map & Aerial Photograph of Site
20. Steep Slope Evaluation, Addendum to Geotechnical Report, prepared by Terra Associates, Inc., dated February 5, 2007
21. Revised Wetland and Stream Report, prepared by Wetland Resources, Inc., dated March 26, 2007
22. Large Print of Plat Map, dated April 12, 2007
23. Revised Wetland and Stream Buffer Mitigation Plan and Map, dated April 11, 2007
24. Notice of Completeness, dated April 16, 2007
25. Notice of Application and SEPA Determination with affidavit of mailing, posting, and publication
26. Email from Doug Johnson, Kitsap Transit, to Nicole Ward, sent April 26, 2007
27. Letter from Mary Urback, Attorney for South Kitsap School District, to Andrea Spencer, Director of Community Development, dated April 30, 2007, with attached Mitigation and Settlement Agreement
28. Letter from Alison O'Sullivan, Biologist, Environmental Program, Suquamish Tribe, to Nicole Ward, dated May 10, 2007
29. Letter from Jason Kunz, WDFW, to Nicole Ward, dated May 11, 2007
30. Letters from Terri Patton, Assistant Superintendent, South Kitsap School District, to Nicole Ward, dated May 9, 2007, and July 19, 2007
31. Letter from Dale Severson, P.E., WSDOT, to Nicole Ward, dated May 11, 2007
32. Letter from Larry Keeton, Kitsap County Department of Community Development, to City of Bremerton, received July 19, 2007

33. Email correspondence between David Ross, neighboring property owner, and Nicole Ward
34. Gibson Traffic Consultants response to WSDOT comments, dated June 5, 2007
35. Public Comments Response Letter from Steven Pesce, PacLand, to Nicole Ward, dated June 8, 2007
36. Letter from Dale Severson to Nicole Ward, dated July 26, 2007
37. Mitigated Determination of Nonsignificance, issued July 31, 2007, with Affidavit of mailing
38. Notice of Public Hearing with affidavit of mailing and publication
39. Letter from Malcolm McNaughton, Authorized Agent, L198-1 Sinclair Ridge LLC, to JoAnn Vidinhar, regarding Voluntary Mitigation Offer for Traffic Impact Fees, dated August 13, 2007
40. Notice of Hearing Postponement with affidavits of posting for original notice of hearing and notice of postponement
41. Updated Notice of Application and SEPA Determination with affidavit of posting, mailing, and publication
42. Comment Letter from Bill Mullins, dated September 10, 2007
43. Comment Letter from Leslie Kabelac, neighboring property owner, dated September 11, 2007
44. Comment Letter from Terri Patton, South Kitsap School District, dated September 11, 2007
45. Comment Letter from Ray McGovern, dated September 12, 2007
46. Letter from Rosemary Larson, Inslee Best Doezie & Ryder PS, for McCormick Land Company/GEM1 LLC, to Nicole Ward, dated September 17, 2007
47. Public Comments Response Letter from Steven Pesce to Nicole Ward, dated September 26, 2007
48. Detention Pond 3 Outfall Map
49. Revised Notice of Public Hearing with affidavit of mailing
50. Email from Deanna Brewer, WSDOT, to Edward Koltonowski, sent August 21, 2007
51. Revised Staff Report, prepared for October 22, 2007 hearing

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

FINDINGS

1. Malcolm McNaughton, Sinclair Ridge LLC (Applicant) requests approval of a preliminary plat and residential cluster development (RCD) to subdivide 125.25 acres of land into 600 single-family residential lots to consist primarily of detached single-family units and approximately 224 single-family attached units. The proposal includes 31 tracts totaling approximately 61 acres of parks, detention ponds, undisturbed slopes, and trails. The development would be located approximately 2,900 feet north of SW Clifton Road,

on the future Campus Parkway, in Bremerton, Washington.¹ *Exhibit 2; Exhibit 6; Exhibit 7; Exhibit 51, page 1.*

2. The City of Bremerton (City) determined that the preliminary plat and RCD applications were complete on April 16, 2007. The City provided notice of the application by mailing notice to government agencies and contiguous property owners on April 17, 2007; posting notice on-site on April 18, 2007; and publishing notice in the *Kitsap Sun* on April 19, 2007. The City issued an updated notice of application to allow for proper mailing to all adjacent property owners within 300 feet of the project site by mailing notice and posting notice on-site on August 31, 2007, and publishing notice in the *Kitsap Sun* on September 4, 2007. *Exhibit 24; Exhibit 25; Exhibit 41; Exhibit 51, pages 16 and 21.*
3. The City provided notice of the public hearing on August 10, 2007, by mailing notice and posting notice on-site. The City published notice of the public hearing in the *Kitsap Sun* on August 11, 2007. The City rescheduled the August 27, 2007 open record hearing. On October 11, 2007, the City provided notice of the rescheduled hearing by mailing notice and posting notice on-site. The City published notice of the hearing in the *Kitsap Sun* on October 12, 2007. *Exhibit 38; Exhibit 40; Exhibit 49; Exhibit 51, pages 21 and 23.*
4. The City acted as the lead agency, reviewing the proposed preliminary plat and RCD for environmental impacts pursuant to the State Environmental Policy Act (SEPA). The City determined that with conditions, the proposed preliminary plat and RCD would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) on July 31, 2007. The MDNS includes three conditions requiring that the Applicant improve State Route 16, pay school impact mitigation fees to South Kitsap School District, and pay traffic impact mitigation fees to Kitsap County. No appeal of the MDNS was received prior to the termination of the 14-day SEPA appeal period. *Exhibit 37; Exhibit 51, pages 22 and 24.*
5. The subject property and properties to the north, east, and west are zoned Low Density Residential R-10, allowing development of five to ten dwelling units per acre. The properties to the north, east, and west are developed for residential and City watershed use. The property to the south is zoned Kitsap County Urban Reserve and is developed with residential and business park uses.² The subject property is classified as underutilized urban fringe pursuant to Bremerton Municipal Code (BMC)

¹ The property is identified by parcel number 042301-2-017-2001. *Exhibit 6; Exhibit 7; Exhibit 51, page 1.* The legal description for the subject property is provided with the preliminary plat and RCD applications, the preliminary plat map, and the City staff report. *Exhibit 6; Exhibit 7; Exhibit 10; Exhibit 22; Exhibit 51, page 1.*

² The Project Narrative describes surrounding land uses as North: City of Bremerton – City of Bremerton watershed; South: Kitsap County – Undeveloped business park; East: Kitsap County – residential single family lots; and West: City of Bremerton – City of Bremerton watershed. *Exhibit 2.*

20.60.068(a)(1)(ii).³ The property is designated Low Density Residential by the City of Bremerton Comprehensive Plan. *Exhibit 19; Exhibit 51, pages 2 and 21.*

6. Several of the City's Comprehensive Plan goals and policies are relevant to this application. Land Use goals and policies promote neighborhood interaction through walkable communities with open space and recreation areas. Housing Element goals and policies encourage home ownership and cohesive neighborhoods with a variety of housing types and densities.⁴ *City Comprehensive Plan, Land Use Element, pages 66 – 68, 80, 81; City Comprehensive Plan, Housing Element, pages 111, 114, 115; Exhibit 51, pages 3 and 4.*

Zoning District Standards

7. The intent of the R-10 zone is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. Some attached single-family housing may be appropriate when responding to sensitive areas or with innovative design. Residential development at higher densities is encouraged at the edge of designated centers. *BMC 20.60.010.*
8. The intent of the residential cluster development (RCD) is to accommodate urban densities of the underlying district while allowing residential development to utilize less land area. The purpose of the RCD is to preserve open space, allow for innovative design and reduce impacts to sensitive environmental areas. *BMC 20.58.060(a).* Approval of a RCD constitutes an overlay to the underlying zone. Through the RCD, modifications to the setbacks, height, lot area, building coverage and development coverage may be granted. *BMC 20.58.060(e)(1).*
9. The minimum and maximum density requirements of the underlying zone apply to the RCD.⁵ *BMC 20.58.060(f)(1)(i).* Single family dwelling units are allowed in the R-10 zone at a density of five to 10 dwelling units per acre. *BMC 20.60.065.* A minimum density of 7 dwelling units per acre is required in the Urban Fringe Area. *BMC*

³ BMC 20.60.068(a)(1) provides: "A property shall be classified as underutilized urban fringe when the average lot size of all lots within three hundred (300) feet of the site's outer boundaries is greater than eight thousand seven hundred twelve (8,712) square feet, and the property meets one (1) of the following criteria:

...

(ii) The property is inside of the December 1, 2005, Bremerton City limits and is a single project equal to or greater than fifty (50) acres in size."

⁴ The City identified the following Comprehensive Plan goals and policies as particularly relevant to this application: Land Use Goals LU1, LU2, LU3, LU4, and LU20, and Policies LU1K, LU2C, LU2D, LU3E, LU4C, and LU20E; and Housing Goals H3, H6, and H7, and Policies H3C and H6A. *Exhibit 51, pages 3 and 4.*

⁵ "For the purposes of calculating allowable densities within this code, density shall be measured on a "net" basis, whereby unusable areas such as rights-of-way and lands in public or shared ownership shall be deducted from the overall area in the calculation." *BMC 20.42.040.* BMC 20.58.060(f)(1)(i) provides that for residential cluster development, unbuildable environmentally sensitive areas shall be included in the area for calculating density; however, the right-of-way assumption shall be deducted from the total area of the environmentally sensitive area.

20.60.068(b). The proposed net density would be 7.51 dwelling units per acre.⁶ Nicole Ward, City Planner, testified that seven units per acre is the minimum density necessary to obtain cost-effective services to the area. *Exhibit 2; Exhibit 10; Exhibit 22; Exhibit 51, pages 5, 6, 23; Testimony of Ms. Ward.*

10. When a residential cluster development is proposed on a property with environmentally sensitive areas, the minimum lot size of 3,000 square feet may be reduced to ensure compliance with minimum and maximum density requirements. *BMC 20.58.060(f)(1)(ii)*. The proposed development would include lots that range in size from 2,550 square feet to 5,385 square feet. Structures within an RCD must comply with setbacks of the underlying zone along the perimeter. *BMC 20.58.060(f)(4)*. The Applicant has not proposed a reduction in perimeter setbacks. However, the Applicant has proposed reduction of rear yard setbacks from the typical 15 feet to 10 feet wide. Reductions to setbacks may be allowed for a residential cluster development, as long as the proposed development complies with the underlying zone's setbacks along the outer perimeter of the property. *BMC 20.58.060(e)(1), (f)(3)*. The preliminary plat map depicts some lots with a lot width less than the required 30 feet, including Lots 71 – 80, 474 – 481, 490, and 491. The City defines lot width as the “average horizontal distance between side lot lines, measured at right angles to the lot depth line.” *BMC 20.42.040*. The lots depicted with lot widths of less than 30 feet are slightly irregular shaped, and the City states that the average lot width for each lot is compliant. *Exhibit 10; Exhibit 22; Exhibit 51, pages 5 and 6.*

Access and Traffic

11. A new public road, Campus Parkway, would be constructed to provide the proposed plat's sole connection with the existing Old Clifton Road to the south. Old Clifton Road connects to Anderson Hill Road to the east of the site, which connects to State Route (SR) 16. The plat would not be directly connected to SR 16. The Applicant would construct a new public street system to provide internal plat access. Campus Parkway and all internal plat streets would lie within the City's jurisdiction and would be constructed to City standards, including street lighting. The Applicant would submit an approved detailed street lighting plan prior to final plat approval. Old Clifton Road and Anderson Hill Road lie within the jurisdiction of Kitsap County (County). *Exhibit 10; Exhibit 17; Exhibit 22; Exhibit 34; Exhibit 51, page 13.*
12. Gibson Traffic Consultants prepared a Traffic Impact Analysis prepared on behalf of the Applicant. Gibson determined that the proposed plat would result in an additional 5550

⁶ Here, the area to be considered for determining net density is the gross area minus the combined area of the rights-of-way, assumed rights-of-way, public parks, and detention/water quality ponds: $125.25 - 18.63 - 6.69 - 11.65 - 8.36 = 79.92$ acres. The net density is determined by dividing the proposed number of lots by the net area: $600 / 79.92 = 7.51$. *Exhibit 2; Exhibit 51, pages 5 and 6.* The revised preliminary plat map depicts a different total acreage for parks and ponds. However, even with the 4.63 total park acres and 11.33 total pond acres, the net density would still be greater than seven dwelling units per acre. *Exhibit 22.*

average daily trips, with 437 new AM peak-hour trips and 547 new PM peak-hour trips.⁷ Gibson assessed existing and future traffic conditions for six intersections: SR 16 northbound ramp at Tremont Street; SR 16 southbound ramp at Old Clifton Road; Anderson Hill Road SW/Old Clifton Road; SR 3/Sunnyslope Road; Campus Parkway/Old Clifton Road; and Berry Lake Road/Old Clifton Road. Gibson determined that the intersections all currently operate at level of service (LOS) D or better, except for the SR 16 off-ramp at Tremont Street, which operates at LOS F.⁸ Gibson determined that with planned development, the Campus Parkway/Old Clifton Road intersection would degrade from LOS D to LOS F. The SR 3/Sunnyslope Road intersection would experience increased delays but would continue to operate at LOS D. *Exhibit 17; Exhibit 34.*

13. The Applicant agreed to pay traffic impact fees of \$1059.00 per dwelling unit to the County to mitigate impacts, instead of the \$550.16 per dwelling unit required in the MDNS. The Applicant would also address off-site traffic impacts through construction of a right turn lane on westbound SR 16 at the Tremont Street off-ramp, and construction of street widening and a left turn lane on Old Clifton Road at the intersection with Campus Parkway, as requested by the County and Washington State Department of Transportation (WSDOT). Edward Koltonowski, P.E., testified on behalf of the Applicant that another development may be constructing the roadway improvements described in proposed condition No. 12. Mr. Koltonowski suggested that the condition be amended to specify the requirement is “prior to issuance of the first occupancy permit.” Ms. Ward testified that proposed conditions of plat approval Nos. 22 and 23 reflect private impact fee agreements between the Applicant and the County *Exhibit 17; Exhibit 34; Exhibit 36; Exhibit 37; Exhibit 39; Exhibit 50; Exhibit 51, pages 13, 21, 24 – 26; Testimony of Mr. Koltonowski; Testimony of Ms. Ward.*
14. Doug Johnson, Kitsap Transit, sent an email to Nicole Ward requesting construction of sidewalks throughout the proposed plat and suggesting installation of bus stop shelters. Mr. Johnson stated that although Kitsap County does not currently provide bus service to the proposed development, it is likely that service would be provided in the future. He suggested that Applicant work with Kitsap Transit to determine appropriate locations for future bus stops. Steven Pesce responded on behalf of the Applicant in a letter to the City, stating that sidewalks would be provided throughout the development and suggesting that park areas at the ends of blocks could be used as bus stops. Mr. Pesce

⁷ Gibson based the trip generation equations on development of 611 new residences. The Applicant is only proposing development of 600 new residences. *Exhibit 2; Exhibit 17, page 9; Exhibit 22; Exhibit 51, page 1.*

⁸ 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 10 seconds or less 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 17, pages 4, 5, 23.*

stated that the Applicant would work with Kitsap Transit to identify bus stop locations. *Exhibit 26; Exhibit 35.*

15. The proposed plat would be served by the South Kitsap School District. Students residing in the proposed plat would attend Sunnyslope Elementary School, Cedar Heights Junior High School, and South Kitsap High School. All students would be bused to school. The proposed plat would house an estimated 300 new students. To mitigate school impacts, the Applicant entered into a School Mitigation Agreement with Kitsap County to pay the County \$1,017.45 per dwelling unit at the time of building permit issuance. In addition, the School District requested that the Applicant coordinate with the District to determine bus stop locations. The School District expressed safety concerns regarding the Old Clifton Road/Campus Parkway intersection at the plat entrance. Mr. Pesce responded in a letter to the City, stating that the Applicant would work with the School District to locate school bus stops. Mr. Pesce noted that the Campus Parkway/Old Clifton Road intersection is addressed in the Gibson traffic impact analysis. *Exhibit 27; Exhibit 30; Exhibit 44; Exhibit 47; Exhibit 51, page 18.*
16. David Ross, adjacent property owner, owns an 80-foot wide ingress, egress and utilities easement across the southwest corner of the subject property. In his letter to the City, Mr. Pesce stated that plat development would not be likely to affect the easement. In emails to Ms. Ward, Bill Mullins and Ray McGovern expressed concern regarding future traffic congestion on Old Clifton Road resulting from increased development. Mr. Pesce responded that the Gibson traffic impact analysis addresses increased traffic along Old Clifton Road, and that mitigation fees would provide for needed improvements. *Exhibit 33; Exhibit 35; Exhibit 42; Exhibit 45; Exhibit 47.*
17. Leslie Kabelac testified at the open record hearing, expressing concern about increased traffic. Lawrence Roberts testified that it is already difficult to exit or enter his driveway, especially when the shipyard gets out. He suggested a separate access road rather than new turn lanes to address increased traffic. Ms. Ward testified that Mr. Roberts accesses his property from SR 16, but that access to the proposed plat would be from Old Clifton Road. Deanne Brewer, WSDOT, testified that the general area is high-traffic, and WSDOT requires mitigation of specific problem areas at Tremont and Anderson Hill Road. *Testimony of Ms. Kabelac; Testimony of Mr. Roberts; Testimony of Ms. Ward; Testimony of Ms. Brewer.*

Open Space

18. The Applicant proposes incorporation of over 50 acres of open space, including passive open space and active open space in the form of 16.25 acres of trails and 14 neighborhood parks ranging in size from 3,920 square feet to 52,272 square feet.⁹ Ms.

⁹ The Project Narrative states that the total open space area would be 50.19 acres, with 29.19 acres of passive open space and 21.00 acres of active open space. It is not clear what the passive open space acreage refers to: the plat would include 33.08 acres of critical areas and buffers, according to the Project Narrative. The revised plat map appears to confirm the approximately 21 acres of active open space, depicting park tracts totaling 4.65 acres and trail tracts totaling 16.25 acres. The plat map does not depict total acreage for passive open space or critical areas. The

Ward testified that the passive open space would be located along the eastern and western portions of the property. The trails would be designed to limit tree removal and minimize disturbance to wildlife and habitat. In addition to the open space, the Applicant would plant street trees in compliance with City landscaping requirements. Maintenance of all landscaping within the existing and proposed right-of-way, including any structures other than roadway, storm drainage facilities, and traffic signage, would be the responsibility of the property owners. *Exhibit 2; Exhibit 13; Exhibit 22; Exhibit 51, pages 5 – 8, 12, 23; Testimony of Ms. Ward.*

19. In a letter to the City, Rosemary Larson, Attorney for McCormick Land Company and GEM1 LLC, expressed concern that the proposed plat lacked sufficient public parks or other active recreation opportunities to support the proposed 600 new residential units. Ms. Larson compared the proposed Sinclair Ridge plat to the GEM1 plat, which is located within Kitsap County and was required to pay a County park impact fee, develop approximately 5 acres of active recreation parks, and dedicate another 60 acres of park and open space to the County. In a letter to the City, Mr. Pesce responded that the proposed Sinclair Ridge plat is located within the City jurisdiction rather than the County jurisdiction, and that the proposed open space is consistent with City requirements. *Exhibit 46; Exhibit 47; Exhibit 51, pages 18 – 20.*

Critical Areas

20. The property contains critical areas in the form of wetlands, streams, steep slopes, and their associated buffers. Wetland Resources, Inc. (WRI) prepared a Wetland and Stream Report and Buffer Mitigation Plan on behalf of the Applicant, with a revised report on March 26, 2007, and a revised mitigation plan on April 11, 2007. There are four stream associated with the property. Stream A, an Type F stream supporting salmonids, north through a ravine in the western portion of the property; Stream B, a Ns stream, flows northwest from a wetland in the northern portion of the property; and Stream C, also a Ns stream, originates near the eastern property line and flows off-site to the east.¹⁰ The fourth stream, Anderson Creek, a Type F salmonid supporting stream, flows north through a ravine near the eastern property line but does not enter the subject property. The standard buffer width for fish-bearing Type F streams is 150 feet, with a minimum 15-foot wide building setback between structures and the stream buffer edge. The standard buffer width for Type Ns streams is 35 feet, with a minimum 15 foot-wide

City's staff report states that the plat would include a total of 61.52 acres of open space. Again, it is not clear what this figure is based on. As depicted on the preliminary plat map, the total area of tracts for parks, slope/undisturbed, hiking trails, ponds, and the eagle protection zone is 61.07 acres. *Exhibit 2; Exhibit 22; Exhibit 51, pages 5 – 8, 23.*

¹⁰ Streams are classified in BMC 20.14.720, which defines Type F streams "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." 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. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Type Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters." *BMC 20.14.720(a)(2) and (4).*

building setback. *BMC 20.14.730 (Table 1). Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, pages 11 – 12.*

21. The Applicant proposes reducing the Anderson Creek buffer from 150 feet wide to 115 feet wide, in order to construct a detention pond near the eastern property boundary. The Applicant would mitigate the 5,223 square-foot reduction through buffer averaging, increasing one section of stream buffer by 31,338 square feet and another section by 9,556 square feet.¹¹ The additional buffer would be located at the top of the ravine, beyond the 25-foot top of slope setback, and would be enhanced with plantings. Standard buffer widths for the other three streams associated with the property would be maintained. *Exhibit 21; Exhibit 23; Exhibit 51, pages 11 – 12.*
22. WRI found five wetlands located on the property. Wetland A is located in a ravine in the western portion of the property and is associated with Stream A; Wetland B is located in the northern portion of the property and appears to be the headwaters for Stream B; Wetland C is located near the northern property line; Wetland D is located off-site from the northwest property corner, in a ravine west of Wetland C; and Wetland E is located in the central northern portion of the property.¹² Wetlands A and B are classified as Category II riparian wetlands, which typically receive a 100-foot wide buffer. Wetland C is classified as a Category III wetland, which typically receives a 75-foot wide buffer. Wetlands D and E are classified as Category IV wetlands, which typically receive a 50-foot wide buffer. *BMC 20.14.330(f); Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, pages 8 – 10.*
23. The Applicant proposes reducing the buffers associated with Wetlands A and B, to be mitigated through buffer averaging.¹³ In order to construct houses on the top of the ridge

¹¹ BMC 20.14.730(d) provides:

“Buffer 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.”

¹² The Applicant did not provide the area measurements of the five wetlands. *Exhibit 15; Exhibit 21; Exhibit 23.*

¹³ BMC 20.14.330(f)(4) 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

east of Wetland A, the associated buffer would be reduced to 75 feet wide. The Applicant would replace the lost 2,931 square feet of Wetland A buffer with 17,586 square feet of additional buffer, a 6:1 ratio. Site grading would result in a total of 6,756 square feet of temporary impacts to the Wetland A buffer. The Applicant would mitigate the temporary impacts by restoring the temporarily disturbed buffer with native vegetation and creating additional buffer areas totaling 40,526 square feet. *Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, pages 8 and 9.*

24. In order to provide road access and utility connection to the northern portion of the property, the buffer associated with Wetland B would be reduced to a minimum of 75 feet wide, for a total reduction of 4,654 square feet along the southern and eastern portions of the wetland and buffer. The Applicant would mitigate the buffer reduction with an additional buffer area totaling 28,027 square feet (Addition Area D). The Applicant also proposes restoration of graded areas near the Wetland B buffer, totaling 32,574 square feet (Addition Areas DA, DB, and DC). The combined additional and restored buffer areas would provide an addition to reduction ratio of 13:1. Site grading for the proposed road would result in temporary impacts to the Wetland B buffer totaling 2,704 square feet. The Applicant would restore the temporarily impacted buffer with native vegetation. *Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, page 9.*
25. The standard buffer widths for Wetland C would be maintained. Site grading for a detention pond would temporarily impact 2,468 square feet of the Wetland D buffer. The Applicant would mitigate the temporary impact through restoration of the impacted buffer with native vegetation and creation of an additional 6,577 square feet of buffer to the west of the standard 50-foot wide buffer. *Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, page 9.*
26. The Applicant proposes entirely filling the 9,028-square-foot Wetland E. WRI found that impacts to the wetland would be unavoidable: if the wetland is not filled, the proposed plat would require steeper roads and unusually deep utility lines, which could create a low spot within the plat potentially resulting in flooding. WRI describes Wetland E as isolated, lacking plant diversity, providing only limited habitat, and with little water quality functions or stormwater storage capabilities. The Applicant proposes mitigating the permanent impact to Wetland E through designation of an additional 263,733 square

buffer widths. Averaging of buffer widths may only be allowed where the applicant and a qualified professional wetland scientist demonstrates 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.”

feet of wetland buffer (Addition Areas H).¹⁴ The Mitigation Plan states that the proposed Addition Areas H would create an unbroken forested corridor between the eagle nest to the north and the forested ravine in the western portion of the property, increasing the distance between site development and the eagle nest and discouraging intrusions into the nesting area. *Exhibit 15; Exhibit 21; Exhibit 23; Exhibit 51, page 9.*

27. The SEPA Checklist prepared by the Applicant identifies birds and animals observed on or near the property, including bears, coyotes, and raccoons. A bald eagle nest is located off-site to the north of the property. WRI prepared a Bald Eagle Nest Management Plan on behalf of the Applicant. The bald eagle plan establishes a 500-foot radius around the nest, in which no disturbance would occur. Construction of 22 residences, a stormwater detention pond, and a road are proposed within 800 feet from the nest. The Applicant would screen the nest site from development and discourage intrusion through the use of plantings, fencing, and Native Growth Protection Area (NGPA) signs along the edge of the 800-foot radius. The bald eagle plan includes management conditions to minimize disturbance of eagles and their habitat. *Exhibit 9; Exhibit 16.*
28. Terra Associates, Inc. prepared a Preliminary Geotechnical Report on behalf of the Applicant, dated October 2, 2006, with an additional Steep Slope Evaluation dated February 5, 2007. The report describes 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.¹⁵ Terra Associates determined that the property does not appear to contain areas of moderate geologic hazard other than localized areas within the ravines identified as high geologic hazard areas.¹⁶ 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

¹⁴ BMC 20.14.340(b) provides that “Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:

- (1) The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
- (2) Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types. “

¹⁵ BMC 20.14.620(a) defines areas of high geologic hazard as “(1) Areas with slopes greater than forty (40) percent with vertical relief of ten (10) or more feet.”

¹⁶ 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.”

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 suggested that, with conditions, a 25-foot wide buffer would adequately mitigate geologic hazards. Terra Associates identified the top of slopes in the February 5, 2007 addendum. *Exhibit 18; Exhibit 20; Exhibit 51, pages 10 – 11.*

29. The property is located within a Critical Aquifer Recharge Area, identified as areas with highly permeable soils that serve as sources of potable drinking water. City code allows development within Terra Associates performed a hydrogeologic evaluation of the property to determine potential aquifer impacts. Terra Associates found three private wells located north and northwest of the property and eight City municipal wells located northeast of the property in the Anderson Creek Well Field. The evaluation states that the surface water run-off from the property does not contribute significant recharge to the aquifers serving the wells. Notice of the proposed plat was provided to all applicable state and local agencies. The City proposed conditions of plat approval requiring the Applicant to utilize low impact development (LID) techniques. Mr. Pesce testified that he was not sure that LID techniques would be feasible. Ms. Ward responded that the Department of Community Development Director would make the decision as to whether LID techniques are economically feasible. *Exhibit 18, pages 7 – 9; Exhibit 51, page 10; Testimony of Mr. Pesce; Testimony of Ms. Ward.*

Stormwater Facilities

30. PacLand prepared a Conceptual Storm Drainage Analysis on behalf of the Applicant, based on the 1992 Department of Ecology drainage requirements. The property currently drains into No Name Creek to the west and Anderson Creek to the east.¹⁷ With the proposed development, surface water run-off would be routed through three detention ponds for treatment and discharge into No Name Creek and Anderson Creek. Ponds 1 and 2 would discharge into Anderson Creek; pond 3 would discharge into No Name Creek. *Exhibit 12.*
31. Jason Kunz, Washington State Department of Fish and Wildlife, sent a letter to Nicole Ward expressing concern that the increased impervious surfaces resulting from the proposed development would result in a significant adverse impact to fish habitat in Anderson Creek and No Name Creek. Mr. Kunz requested that the proposed development be required to comply with the 2005 Department of Ecology stormwater manual; that wildlife impacts be reduced with an east/west migration corridor; that the number of proposed homes be reduced; and that the Applicant utilize low impact development techniques. Mr. Kunz stated that the Applicant must obtain a Hydraulic Project Approval (HPA) if any stormwater outfalls are proposed within fish bearing streams. Mr. Pesce responded that the City currently only requires compliance with the

¹⁷ The stormwater management report does not identify which of the three unnamed streams described in the stream report is No Name Creek. However, based on the maps provided with the stormwater management report and the wetland and stream report, it appears that No Name Creek is Stream A. *Exhibit 12; Exhibit 15; Exhibit 23.*

1992 manual; that the plat is designed to reduce impacts to sensitive areas and incorporates low impact development; and that undeveloped areas in the north of the property provide a sufficient east/west migration corridor. Mr. Pesce stated that the stormwater outfalls would be designed pursuant to HPA requirements. *Exhibit 29; Exhibit 35.*

32. The Suquamish Tribe sent a letter to Nicole Ward expressing concern about stormwater drainage and water quality, geologically hazardous areas, and cultural resources. The Tribe requested that the Applicant comply with the most recent Department of Ecology stormwater manual, incorporate LID techniques to reduce runoff pollution, and complete a cultural resource assessment. In a letter to the City, Mr. Pesce responded that the proposed development incorporates LID measures to the maximum extent feasible, including open space and green belt areas. Mr. Pesce stated that the proposed development complies with City standards regarding stormwater drainage and soil stability. Mr. Pesce stated that it would be unlikely to find undisturbed archaeological artifacts, but would work with the Suquamish Tribe and Archaeological Services consultants to prepare a Cultural Resources Archeological Survey for the portions of the site to be developed. *Exhibit 28; Exhibit 35.*
33. In a letter to the City, Lesley Kabelac expressed concern that the preliminary plat map depicts proposed Pond 3 outfall crossing her property. Mr. Pesce testified that the outfall was inadvertently shown as crossing Ms. Kabelac's property. He explained that Exhibit 48 shows the revised Pond 3 outfall within the subject property. Mr. Pesce testified that run-off would be routed through an overland pipe next to the creek, which would connect to Pond 3. He further explained that the proposed stormwater facilities would actually reduce the amount of run-off entering No Name Creek. *Exhibit 43; Exhibit 48; Testimony of Mr. Pesce.*
34. Ms. Ward testified that proposed stormwater detention facilities must be moved outside of wetland buffers for Category I and II wetlands. The City staff report notes that Habitat Management Plan (HMP) provided by the Applicant does not discuss stormwater facilities within stream buffers. Ms. Ward testified that the HMP must be revised to reflect the proposed stormwater facilities and ensure appropriate mitigation prior to facilities construction within critical areas. *Exhibit 51, pages 9 and 12; Testimony of Ms. Ward.*

Utilities

35. The City would provide water and sewer service to the proposed plat. The Applicant obtained letters of conditional water and sewer availability, dated April 28, 2006, and October 16, 2006. According to the letter, there is no water or sewer infrastructure currently serving the property. Water service would be provided through the Old Clifton Road right-of-way. Because the proposed plat includes only one entrance and features steep slopes, the City proposed conditions of plat approval requiring a sprinkler system in all proposed residences. At the open record hearing, Donald Palmer questioned how sewer would be provided to the proposed plat. Mr. Pesce testified in response that a new

sewer main would be installed along SR 16, and would also be connected to the West Hills Plat under development. *Exhibit 8; Exhibit 51, pages 13 and 26; Testimony of Mr. Palmer; Testimony of Mr. Pesce.*

Phasing

36. Mr. Pesce testified that the proposed plat would be developed in phases, and requested that phasing of the proposed mitigation be allowed. He explained that the plat would be composed of five divisions, to be presented for final plat approval in five phases over five years. He proposed amendment of proposed condition No. 8 to require that mitigation be complete prior to approval of each final plat phase. *Testimony of Mr. Pesce.*

CONCLUSIONS

Jurisdiction

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 2.13.110, .080; BMC 20.02.040.*

Criteria for Review

Preliminary Plat

The Hearing Examiner may approve a preliminary plat pursuant to the following criteria:

- (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

The Hearing Examiner may grant a RCD only if it is found that:

- (1) The location, design, and uses are consistent with the goals and policies of the Comprehensive Plan, the Shoreline Master Program (when applicable), the City's development codes and other City plans and ordinances;
- (2) The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood;
- (3) The traffic generated by the development can be accommodated safely and within acceptable levels of service for affected streets;
- (4) All development will adequately be served by existing or planned facilities and services;
and
- (5) The development makes adequate and appropriate provision for the preservation of the environment, both natural and manmade, and the conservation of energy.

BMC 20.58.060(g).

Conclusions Based on Findings

1. **With conditions, the proposed plat would comply with the approval criteria provided in BMC 20.12.100.** The proposed plat would create a new pedestrian-friendly community with open space, recreation areas, and a variety of housing designs, consistent with the City Comprehensive Plan. The City reviewed the proposal for compliance with the State Environmental Policy Act (SEPA) and determined that with conditions the proposal would not result in probable significant adverse environmental impacts. The City issued a Mitigated Determination of Nonsignificance (MDNS) on July 31, 2007. The proposed plat would comply with the R-10 zone and Urban Fringe Area minimum lot size, lot width, and density standards, as modified by the residential cluster development provisions. Although some of the proposed lots are depicted with lot widths less than the required 30-feet, the lots would comply based on averaging of lot widths within each lot, pursuant to the City code definition of lot width. Conditions of approval are necessary to ensure that the plat provides a minimum density of seven dwelling units per acre. *Findings 1, 4 – 10.*

The Applicant would address surface water run-off through the construction of three detention ponds to treat stormwater prior to discharge into No Name Creek to the west and Anderson Creek to the east. Conditions of approval are necessary to ensure that the Applicant obtain Hydraulic Project Approval for the modified stormwater outfall depicted in Exhibit 48; that the Applicant provide a revised Habitat Management Plan to properly mitigate for any stormwater facilities located within Category III or IV wetlands or buffers; and to ensure that the Applicant removes any outfalls from within streams, the inner 75% of stream buffers, or Category I or II wetlands or their buffers. The property is

located within a Critical Aquifer Recharge Area. Conditions of approval are necessary to ensure that the aquifer quality is protected with low impact development techniques where economically feasible, as determined by the Director of the Department of Community Development. The City of Bremerton would provide water and sewer service to the proposed plat. *Findings 29 – 35.*

The Applicant would mitigate impacts to County roads through the payment of impact fees and the construction of off-site improvements including a right turn lane on westbound SR 16 at the Tremont Street off-ramp, and street widening and a left turn lane on Old Clifton Road at the intersection with Campus Parkway. Conditions of approval are necessary to ensure that the necessary traffic mitigation is completed prior to issuance of the first occupancy permits. The Applicant would construct Campus Parkway and all new internal plat roads to City public street standards, including street lighting. The Applicant would submit an approved detailed street lighting plan prior to final plat approval. The neighboring property owner to the southwest owns an 80-foot wide ingress, egress and utilities easement across the southwest corner of the subject property. The easement would not be impacted by the proposed development. The Applicant would provide sidewalks throughout the proposed plat for students and pedestrians to access school bus stops and potential future transit bus stops. *Findings 11 – 17.*

There are four streams associated with the property and five wetlands on-site. 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. Conditions of approval are necessary to ensure that development complies with the Wetland and Stream Report and Buffer Mitigation Plan and that all mitigation and buffer enhancements are completed prior to final plat approval. The Applicant proposes filling Wetland E in its entirety, to be mitigated through creation of additional wetland buffer. Development of the proposed plat would be difficult without filling the wetland, requiring deeper utility lines and steeper roads, and potentially resulting in flooding. The wetland currently provides minimal functions. The proposed mitigation would provide increased wildlife habitat, create an unbroken forested corridor between the eagle nest to the north and the forested ravine in the western portion of the property, and would increase the distance between site development and the eagle nest and discouraging intrusions into the nesting area. The Applicant would mitigate for all temporary buffer impacts by restoring temporarily impacted areas with native plantings. *Findings 20 – 26.*

Signs of wildlife have been observed on the property, including eagles and bears. Conditions of approval are necessary to ensure that the development complies with an approved Bald Eagle Management Plan, and that future home-owners are aware of potential presence of bears and the proper management of garbage, food, and safe use of pesticides. *Finding 27.*

Maintenance of all landscaping within the existing and proposed right-of-way, including any structures other than roadway, storm drainage facilities, and traffic signage, would be the responsibility of the property owners. *Finding 18.*

The property contains steep slopes identified as High Geologic Hazard areas, which would be left generally undisturbed. The Applicant proposes reduction of top of slope buffers pursuant to recommended conditions included in the Terra Associates, Inc. Preliminary Geotechnical Report. Conditions of approval are necessary to ensure that clearing or grading in the high geologic hazard areas is limited to the minimum necessary and is only performed between May 1 and October 1. *Findings 28 and 29.*

2. **With conditions, the proposed plat would comply with the approval criteria provided in RCW 58.17.110.** The proposed plat would include over 50 acres of open space, including approximately 21 acres of active recreation areas in the form of neighborhood parks and trails. Existing drainage ways would be preserved with construction of three detention ponds that would discharge into the current discharge locations in No Name Creek and Anderson Creek. Conditions of approval are necessary to ensure that the location of proposed stormwater facilities complies with City code. The Applicant would construct a new public street system to provide internal plat access, and would mitigate impacts to existing County roads pursuant to a private agreement between the Applicant and the City. The proposed plat is located within the South Kitsap School District. All students would be bused to school. The Applicant would coordinate with the School District to determine the best location for school bus stops. The Applicant would construct sidewalks throughout the plat to provide safe walking conditions for students and other pedestrians. The City gave adequate notice of the preliminary plat application and associated open record hearing, and provided opportunity to comment on the application. The City determined that the proposed subdivision would not have a probable significant adverse environmental impact. *Findings 1 – 4, 11 – 15, 18, 19, 30 – 34.*

3. **With conditions the proposal is consistent with the approval criteria for a Residential Cluster Development provided in BMC 20.58.060(g).** The proposed plat and RCD would create a new pedestrian-friendly community with open space, recreation areas, and a variety of housing designs, consistent with the City Comprehensive Plan. The City reviewed the proposal for compliance with the State Environmental Policy Act (SEPA) and determined that with conditions the proposal would not result in probable significant adverse environmental impacts. Conditions of approval are necessary to ensure that the new City streets are developed consistent with Title 11 of the BMC; that water and wastewater services are developed consistent with Chapter 15.03; that wetland and stream buffer mitigation and monitoring are consistent with the buffer modification monitoring plan; that stormwater drainage is developed consistent with the recommendations in the geotechnical report; and that all mitigation is complete prior to phased final plat approval. *Findings 1 – 36.*

The proposed plat and RCD is designed to integrate with its surroundings and harmonize with existing and proposed development. The property would be developed with a density of 7.51 dwelling units per acre, consistent with the minimum density requirement of seven dwelling units per acre. *Findings 5 – 10.*

Development of the proposed plat would result in an additional 5550 average daily trips, with 437 new AM peak-hour trips and 547 new PM peak-hour trips. All area intersections currently operate at LOS D or better, except for the SR 16 off-ramp at Tremont Street, which operates at LOS F. Development of the proposed plat would result in a decreased level of service at Campus Parkway/Old Clifton Road intersection, from LOS D to LOS F. The Applicant would mitigate traffic impacts through construction of off-site improvements and payment of traffic impact mitigation fees. Conditions of approval are necessary to ensure that traffic mitigation improvements are completed prior to issuance of the first occupancy permit. *Findings 11 – 17.*

The City of Bremerton issued a Conditional Water and Sewer Letter on May 4, 2006. Conditions of approval are necessary to ensure that the City's water and sewer requirements in the City's letter are met. Kitsap Transit does not currently provide bus service to the area, but the Applicant would coordinate with Kitsap Transit to determine the best location for potential future bus stops. *Findings 14 and 35.*

The Applicant would set aside over 50 acres of open space, including approximately 21 acres of active recreation areas. Ravines along the eastern and western edges of the property would be protected as critical areas. The Applicant would mitigate impacts of stream and wetland buffer averaging through the creation of new buffers and the enhancement of existing buffers. Conditions of approval are necessary to ensure that streams, wetlands, and associated buffers are protected in compliance with the Wetland and Stream Report and Buffer Mitigation Plan. The Applicant would fill in Wetland E in its entirety, and would mitigate the permanent loss of 9,028 square feet of wetland with the addition of 263,733 square feet of wetland buffer. City code allows for mitigation that is not in-kind when the lost wetland provides minimal functions and the proposed mitigation would provide greater functions. Wetland E currently provides only limited wildlife habitat and water quality functions. The proposed mitigation would provide increased wildlife habitat, create an unbroken forested corridor between the eagle nest to the north and the forested ravine in the western portion of the property, and would increase the distance between site development and the eagle nest and discouraging intrusions into the nesting area. Signs of wildlife have been observed on the property, including eagles and bears. Conditions of approval are necessary to ensure that the development complies with an approved Bald Eagle Management Plan; and that future home-owners are aware of potential presence of bears and the proper management of garbage, food, and safe use of pesticides. Conditions of approval are necessary to ensure that the Applicant provides a final Open Space Plan, and submits a Revised Habitat Management Plan addressing impacts and mitigations of any stormwater management facilities to be located within any Category III or IV wetlands, wetland buffers, or within the outer 25 percent of any stream buffer. *Findings 18 – 34.*

DECISION

Based upon the preceding Findings and Conclusions, the request for a preliminary plat and a Residential Cluster Development to subdivide 125.25 acres into 600 lots, including attached single-family lots, detached single-family lots, and open space is **APPROVED**, subject to the following conditions:¹⁸

1. Approval of the Residential Cluster Development constitutes an overlay to the underlying zone and allows modification to development standards that otherwise would apply to the R-10 zone.
2. Approval of the Residential Cluster Development is limited to only those designs and standards specifically indicated in the application.
3. The proposed subdivision must maintain a density of no less than 7 units per acre pursuant to BMC 20.60.066 Underutilized Fringe Area.
4. A Final Open Space Plan with monitoring, maintenance and guarantees is required with the Final Plat submittal.
5. Development shall comply with the Wetland and Stream Report and Buffer Mitigation Plan prepared by Wetland Resources. Wetland and stream buffer averaging is allowed only within the scope of the wetland and stream reports. The proposed restoration of the graded area shall have native trees planted among 60% of the area and the native shrubs shall be planted among the remaining 40% of the area. The trees shall be planted on 8-foot centers, and the shrubs shall be planted on 3-foot centers. If more than 20 percent of the plants are severely stressed or it appears that more than 20 percent may not survive, the Mitigation Plan contains a contingency plan including aggressive weed control, expansion of the irrigation system, plant mortality replacement, species substitution, fertilization, and/or soil amendments.
6. Prior to issuance of a Site Development Permit, the Applicant shall submit a Revised Habitat Management Plan that addresses any stormwater management facilities or detention ponds proposed within any Category III or IV wetlands, wetland buffers, or within the outer 25% of any stream buffer. No outfalls are allowed within streams, the inner 75% of stream buffers, or Category I or II wetlands or their buffers. The proposal shall be revised to exclude stormwater outfalls from these areas prior to issuance of a Site Development Permit. The Applicant shall obtain a Hydraulic Project Approval (HPA) from Washington Department Fish and Wildlife for the modified stormwater outfall as depicted on Exhibit 48.

¹⁸ This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.

7. Prior to issuance of a Site Development Permit, the Bald Eagle Management Plan shall be approved by the Department of Fish and Wildlife. The proposal shall comply with the approved Bald Eagle Management Plan.
8. All mitigation and buffer enhancement shall be completed prior to final plat approval for each phase.
9. Low Impact Development techniques shall be implemented where economically feasible, as determined by the City Director of the Department of Community Development.
10. Development shall comply with the Geotechnical Report prepared by Terra Associates, dated February 5, 2007.
11. All authorized clearing or grading in the high geologic hazard areas shall be limited to the minimum necessary to accomplish construction. Clearing, grading or filling of this site shall be limited to the period between May 1 and October 1. All site disturbances shall be marked in the field for inspection and approved by the Applicant's geotechnical engineer and City building inspectors prior to alteration of the site. The face of the cut and fill on slopes shall be prepared and maintained to control against erosion.
12. Prior to issuance of first occupancy permit, development shall comply with traffic mitigation to include:
 - a. The Developer shall build a full design right turn lane on the westbound SR 16 off-ramp to Tremont Street;
 - b. The Developer shall build a left turn refuge storage area on Clifton Road.
13. All water and sewer improvements and connections shall be in accordance with the City of Bremerton Utility Development and Construction Standards, APWA/DOT Specifications, AWWA Standards, and Title 15 of the BMC.
14. Development shall comply with BMC Title 11 and shall provide street lighting. A detailed street lighting plan is required to be submitted and approved by the City Engineer prior to Final Plat approval.
15. A site Development Permit is required for this project pursuant to BMC 20.58.090. Construction plans and profiles for all roads, storm drainage facilities and appurtenances within Kitsap County jurisdiction shall be submitted to Kitsap County for review and acceptance. Prior to issuance of Site Development Permit, construction plans shall be approved for both the City and County, for their respective jurisdictions.
16. The Conditions, Covenants and Restrictions (CC&Rs) for this development shall include language stating that the property owners shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. The CC&Rs shall include language that

notify future property owners regarding dangerous wildlife presence and provide cautionary measures for proper management of garbage, food, and safe use of pesticides. A copy of the CC&Rs shall be provided with the Final Plat submittal.

17. The Applicant is responsible for compliance with all Federal and state laws pertaining to Archaeological and Historical Preservations, including Chapters 27.44 and 27.53 RCW.
18. The Applicant is responsible for compliance with Washington State Fish and Wildlife Hydraulic Permit requirements.
19. A building permit is required for each residence. The permits must comply with the International Building Code and International Residential Code as adopted by the State.
20. All units will require a fire sprinkler system; this requirement shall be recorded on the face of the Final Plat. Fire hydrants and fire flow are also required to be consistent with the International Fire Code.
21. The developer shall coordinate with Kitsap Transit and South Kitsap School District for the siting of sidewalks, bus stops, and bus sheds.
22. The developer shall pay \$1,017.45 in mitigation fees to South Kitsap School District for each residential unit. This condition shall be recorded on the face of the Final Plat.
23. The developer shall pay \$1,059.00 in mitigation fees to Kitsap County for each residential unit. This condition shall be recorded on the face of the Final Plat.
24. Detention pond drainage routes shall not cross any adjacent properties without a recorded legal easement.
25. A Final Plat meeting applicable development standards and conditions shall be submitted to the City for approval within five years of the date of preliminary plat approval.

Decided this 6th day of November 2007.


THEODORE PAUL HUNTER
City of Bremerton Hearing Examiner