

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

In the Matter of an MDNS Appeal)	NO. BP06-00198/BP06-00099
And Preliminary Plat and Residential)	
Cluster Development Application by)	
)	
Bayside, LLC)	FINDINGS, CONCLUSIONS
)	& DECISION
For Property Located to the West of)	
Anderson Hill Road, Approximately)	REVISED February 2, 2007
<u>1,000 Feet North of Old Clifton Road SW</u>)	

SUMMARY [REVISED]

The request for approval of a Preliminary Plat and Residential Cluster Development for subdivision of 56 acres into 294 lots is **APPROVED** with conditions.

The parties reached agreements resolving the appeal of the Mitigated Determination of Nonsignificance (MDNS). Those agreements are described herein and the appeals are therefore dismissed.

The Hearing Examiner's decision was issued January 17, 2007. Bayside, LLC filed a motion for reconsideration of the Hearing Examiner's decision, received by the City on January 24, 2007. Bayside, LLC requested revision of Condition 10(a) to clarify that the condition involves on-site frontage improvements, not off-site roadway improvements. The City of Bremerton filed a response requesting that the Hearing Examiner grant Bayside's motion for reconsideration and amend Condition 10(a) as requested by Bayside LLC.

The Hearing Examiner approves the request for amendment of Condition 10(a), and is issuing a revised decision, including revisions to the summary section of the decision, the exhibit list, and Condition 10(a). No findings or conclusions are revised with this decision.

SUMMARY OF RECORD

Request:

Bayside, LLC requests approval of a Preliminary Plat and Residential Cluster Development to subdivide 56 acres into 294 lots composed primarily of single family unattached homes and approximately 56 single family attached units.

*Findings, Conclusions and Decision
Hearing Examiner for the City of Bremerton
Consolidated Appeal and Application of Bayside, LLC
No. BP06-00198/BP06-00099*

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Hearing Date:

The Hearing Examiner held an open record appeal hearing and open record hearing on the application on December 18, 2006. The hearing was continued to January 5, 2007 to ensure proper public notice of the open record hearing on the preliminary plat and residential cluster development application. The December 18 hearing addressed the MDNS appeal; the January 5 hearing addressed the preliminary plat and residential cluster development application.

Testimony:

The following individuals presented testimony under oath at the open record appeal hearing held December 18, 2006 and at the open record hearing held January 5, 2007:

1. JoAnn Vidinhar, City of Bremerton Planner
2. Malcolm McNaughton, Representative for Bayside, LLC
3. David Toyer, Representative for Bayside, LLC
4. Tom O'Brien, South Kitsap School District Director of Facilities and Operations
5. Terri Patton, South Kitsap School District Assistant Superintendent
6. Steve Pesce, Project Manager for the Applicant
7. Merita Trohimovich, Kitsap County Development Engineering

At the open record hearings, L-224 Bayside, LLC was represented by Attorney Duana Kolouskova, and the City of Bremerton was represented by Attorney Mark E. Koontz. The South Kitsap School District was represented by Attorney Mary J. Urback.

Exhibits: [REVISED]

The following exhibits were admitted into the record:

1. Bayside Residential Development Background Information, dated May 22, 2006
2. Bayside Residential Development Project Narrative, dated May 22, 2006
3. Bremerton Municipal Code 20.58 and 20.60
4. Bayside Residential Development Vicinity Map, dated May 22, 2006
5. Bayside Residential Development Pre-Submittal Report, dated February 10, 2006
6. Preliminary Plat Application, dated May 18, 2006
7. Residential Cluster Development, dated May 18, 2006
8. SEPA Checklist, dated May 22, 2006
9. Preliminary Plat Map, dated May 22, 2006
10. Preliminary Grading and Utilities Map, dated May 22, 2006

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11. Conceptual Storm Drainage Analysis, prepared by PacLand, dated May 19, 2006
12. Preliminary Landscape Plans, dated May 22, 2006
13. Typical Housing Elevation and Floor Plans, dated May 22, 2006
14. Wetland and Stream Report, prepared by Wetland Resources, Inc., dated May 22, 2006
15. Traffic Impact Analysis, Final Report, prepared by Gibson Traffic Consultants, dated March 2006, and Addendum dated May 18, 2006
16. Preliminary Geotechnical Report, prepared by Terra Associates, Inc., dated May 22, 2006
17. Letter from JoAnn Vidinhar, City Planner, to Steve Pesce, dated June 21, 2006
18. Letter from Steven Pesce to JoAnn Vidinhar, dated June 29, 2006, regarding density calculations
19. Revised Wetland and Stream Report and Buffer Mitigation Plan, dated July 18, 2006
20. Addendum to Preliminary Geotechnical Report – Geologic Hazard Areas, dated July 15, 2006
21. Hydrogeologic Evaluation, prepared by Terra Associates, Inc., dated July 14, 2006
22. Notice of Application and SEPA Determination, including Affidavit of Posting, copy of publication, and mailing list
23. Email from Doug Johnson, Transit Planner for Kitsap Transit, to JoAnn Vidinhar, dated July 25, 2006
24. Letter from Jeff Davis, Habitat Program, State of Washington Department of Fish and Wildlife, to JoAnn Vidinhar, dated July 25, 2006
25. Comments on the Bayside Residential Cluster, submitted by the Suquamish Tribe, dated August 3, 2006
26. Letter from Terri L. Patton, Assistant Superintendent of the South Kitsap School District, to JoAnn Vidinhar, dated August 3, 2006
27. Letter from Mr. and Mrs. Eugene Griffith, Re: Comment on Notice of Land Use Applications, dated July 27, 2006
28. Letter from Steve Cochran to JoAnn Vidinhar, dated August 2, 2006
29. Letter from Steven Pesce to JoAnn Vidinhar, dated August 8, 2006, correcting property boundary error, and including a revised preliminary plat map and revised density calculations

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30. Letter from Steven Pesce to JoAnn Vidinhar, dated August 25, 2006, responding to public comments
31. Traffic Impact Analysis Final Report, prepared by Gibson Traffic Consultants, dated October 2006
32. Letter from Merita Trohimovich, Kitsap County Development Engineering, to Paul Wandling, City of Bremerton
33. Mitigated Determination of Nonsignificance, dated November 16, 2006, with Affidavit of Mailing and mailing list
34. Notice of Public Hearing, Affidavit of Mailing, and mailing list
35. McCormick Land Company Appeal of Mitigated Determination of Nonsignificance, dated November 30, 2006
36. Bayside, LLC. Appeal of Mitigated Determination of Nonsignificance, dated December 4, 2006
37. City of Bremerton's Response to L-224 Bayside LLC Appeal, dated December 12, 2006
38. Memorandum of South Kitsap School District, dated December 18, 2006
39. Proposed Revision to Mitigated Determination of Nonsignificance
40. South Kitsap School District Demographic Trends and Enrollment Projections, dated December, 2005
41. South Kitsap School District Capital Facility Plans [NOT ADMITTED]
42. South Kitsap School District Impact Fee Calculation
43. South Kitsap School District Impact Fee Calculation II
44. Staff Report, Conclusions, and Findings, with proposed conditions of approval, for Bayside Plat/RCD, No. BP06-00099, prepared for public hearing held December 18, 2006
45. Agreement regarding school mitigation fees, with the following attachments:
 - a. Letter from Mary Urback to Duana Kolouskova, dated January 4, 2007
 - b. Letter from Duana Kolouskova to Mary Urback, dated January 4, 2007
46. L-224 Bayside, LLC Withdrawal of Appeal of Mitigated Determination of Non-Significance, dated January 4, 2007
47. Letter from Malcolm McNaughton, Authorized Agent of L-224 Bayside, LLC, to JoAnn Vidinhar, regarding voluntary mitigation offer for traffic impact fees for L224-1 Bayside, LLC, dated January 4, 2007

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48. Letter from Rosemary Larson, representative of McCormick Land Company and GEM1 LLC, to Duana Kolouskova, dated January 4, 2007
49. Public Notice Documents, including affidavits of notice, publication notice, and mailing list
50. Bayside Phasing Plan, dated January 4, 2007

The following exhibits were admitted into the record as part of the request for reconsideration:

51. Applicant's Motion for Reconsideration to Clarify Condition 10(a), received January 24, 2007
52. Declaration of Service, dated January 24, 2007
53. City of Bremerton's Response to L-224 Bayside, LLC's Motion for Reconsideration to Clarify Condition 10(a), dated January 29, 2007

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

FINDINGS

1. Bayside, LLC (the Applicant) is the owner of the subject property consisting of 56 acres and located to the west of Anderson Hill Road approximately 1,000 feet north of Old Clifton Road SW.¹ *Exhibit 2, Project Narrative; Exhibit 4, Vicinity Map; Exhibit 6, Preliminary Plat Application; Exhibit 7, Residential Cluster Development Application; Exhibit 44, Staff Report, page 1.*
2. The Applicant submitted an application for approval of a Preliminary Plat and Residential Cluster Development (RCD) for the subdivision of 56 acres into 294 lots², 22 tracts (Tracts A through V) and 15 roads (Roads A through O). The City of Bremerton (City) reviewed the potential environmental effects of the proposal as required by the State Environmental Policy Act (SEPA). The City determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) on November 16, 2006. The MDNS included three conditions --1(a) through 1(c) --

¹ A legal description of the property can be found on page 2 of the Staff Report and on the Preliminary Plat Map. *Exhibit 9; Exhibit 44, page 2.*

² The Phasing Plan provided by the Applicant at the January 5, 2007 open record hearing, for the purpose of demonstrating the dual phase of the development, only portrays 293 lots. However, no testimony was received indicating that the Applicant intended to reduce the number of proposed lots. *Exhibit 50.*

to mitigate traffic impacts and one condition -- Condition 2 -- to mitigate school impacts. The Applicant and the McCormick Land Company appealed Condition 1(c) and the Applicant appealed Condition 2. *Exhibit 6; Exhibit 7; Exhibit 8, SEPA Checklist; Exhibit 29, Revised Preliminary Plat Map; Exhibit 33, MDNS; Exhibit 44, Staff Report, pages 1 and 16.*

3. The MDNS appeal and Preliminary Plat application were consolidated into a single hearing process as required by law.³ The Hearing Examiner held an open record hearing on the MDNS appeal on December 18, 2006. The Hearing Examiner continued the hearing to January 5, 2007 to ensure that the public had sufficient notice of the open record hearing on the preliminary plat and RCD. *RCW 43.21.075(2); Exhibit 44; Exhibit 49.*

MDNS Appeal

4. The Applicant and the McCormick Land Company requested that the City charge a higher amount for the traffic mitigation fees identified in MDNS Condition 1(c). At the December 18 hearing, the Applicant submitted a proposed revision to MDNS Condition 1(c), admitted as Exhibit 39. The Applicant agreed to pay \$1,059.00 per dwelling unit to Kitsap County prior to the City's issuance of single family residential building permits. The proposed revision of MDNS Condition 1(c) reflects a private agreement between the Applicant and the neighboring property owner. The Applicant requested revision of proposed preliminary plat condition 10(c) to reflect the proposed MDNS Condition 1(c) revision as an agreement between the parties. Mark Koontz, City Attorney, stated that the proposed increase in mitigation fee is acceptable because the MDNS sets a minimum required amount of mitigation rather than a maximum amount. *Exhibit 35; Exhibit 36; Exhibit 39; Exhibit 47; Testimony of Mr. McNaughton; Testimony of Ms. Vidinhar.*
5. The Applicant requested deletion of MDNS Condition 2 in its appeal. However, at the January 5 open record hearing Ms. Kolouskova, attorney for the Applicant, stated that an agreement had been reached with the South Kitsap School District. As agreed, the Applicant will pay a fee of \$1,017.00 per dwelling unit to the South Kitsap School District prior to the City's issuance of building permits. This agreement is to become a condition of approval of the application. *Exhibit 36; Exhibit 45.*
6. McCormick Land Company withdrew its MDNS appeal on January 4, 2007. Rosemary Larson, an attorney with a law firm representing McCormick Land Company/GEM1 LLC, provided a letter to the Applicant's attorney stating that

³ RCW 43.21C.075 (2) states that "appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations."

adoption of the Applicant's proposed revision of MDNS Condition 1(c) would resolve GEM1 LLC's MDNS appeal. No representative from GEM1 LLC or McCormick Land Company appeared at either open record hearing. *Exhibit 46; Exhibit 48.*

Preliminary Plat and Residential Cluster Development

7. The property subject to the preliminary plat and RCD application is located within the City's R-10, Residential Low-Density zoning district. The property is classified as "underutilized urban fringe" in BMC Section 20.60.068(a)(1).⁴ The City Comprehensive Plan designates the subject property as Low Density Residential. Property to the west is zoned R-10. It is developed with residences and also contains City watershed property. Property to the north and east is zoned Kitsap County Urban Reserve and is developed with residences. Property to the south is zoned Kitsap County Urban Cluster Residential and is being developed as a residential subdivision. *Exhibit 2; Exhibit 44, Staff Report, pages 1 – 3.*
8. Several of the City's Comprehensive Plan goals and policies are relevant to this application. The City identified Land Use goals and policies promoting growth and the creation of communities and interaction between residences. Housing goals and policies encourage home ownership by providing strong, livable neighborhoods and a variety of housing types and densities. *See Exhibit 44, Staff Report, pages 3 and 4 for an identification of applicable goals and policies not reprinted here.*
9. The intent of the R-10 zoning district is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. Some attached single-family housing may be appropriate to accommodate sensitive areas or to encourage innovative design. *BMC 20.60.010.*
10. The intent of Residential Cluster Development (RCD) is to accommodate urban densities of the underlying zoning 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*

⁴ BMC 20.60.068(a)(1) states:

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:

- (i) The property is outside of the December 1, 2005, Bremerton City limits; or
- (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.

20.58.060(a). If property is developed as an RCD, the City may grant modifications to setbacks, height, lot area, building coverage and development coverage on the property. *BMC 20.58.060(e)(1)*.

11. The minimum and maximum density requirements of the underlying zone apply to the RCD.⁵ Single family dwelling units are allowed in the R-10 zoning district at a density of 5 to 10 dwelling units per acre. A minimum density of 7 dwelling units per acre is required in the Urban Fringe Area. The net density of the proposed subdivision would be 7.4 dwelling units per acre.⁶ *BMC 20.58.060(f)(1)(i); BMC 20.60.068(b); Exhibit 2, Project Narrative; Exhibit 18, Density Calculations; Exhibit 29, Revised Preliminary Plat Map and Density Calculations; Exhibit 44, Staff Report, pages 5 and 6.*
12. When an RCD is proposed on 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 3,510 square feet. Reductions to setbacks may be allowed for an RCD, as long as the proposed development complies with the underlying zone's setbacks along the outer perimeter of the property. As depicted on the preliminary plat map, the proposed subdivision would feature undeveloped tracts between the residences and the outer edge of the property to ensure compliance with perimeter setbacks. *BMC 20.58.060(e)(1); BMC 20.58.060(f)(4); Exhibit 2; Exhibit 18; Exhibit 29; Exhibit 44, page 6; Exhibit 29.*
13. The proposed subdivision would be accessed by two roads (Roads A and L, to be constructed) which would connect the development to Anderson Hill Road. Anderson Hill Road connects SW Clifton Road, to the south of the subject property, with Highway 16 to the north. None of the proposed residences would directly access Anderson Hill Road. Anderson Hill Road lies within the jurisdiction of Kitsap County and would be improved as required by the County. In addition to Roads A and L connecting the development to Anderson Hill Road, 13 internal roads would be

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*. 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. *BMC 20.58.060(f)(1)(i)*.

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: $56.0 - 10.61 - 1.72 - 1.30 - 2.72 = 39.65$ acres. The net density is determined by dividing the proposed number of lots by the net area: $294 / 39.65 = 7.4$. *Exhibit 29, Revised Density Calculation Areas.*

constructed to serve the proposed residences. The 13 proposed internal roads lie within the City's jurisdiction, and would be constructed to City standards. *Exhibit 29, Revised Preliminary Plat Map; Exhibit 44, Staff Report, pages 6 and 10.*

14. During the preliminary plat process, the City received public comment expressing concern about potential traffic impacts generated by the proposed development. Mr. and Mrs. Eugene Griffith wrote that the impact of 294 new homes would overwhelm the existing roads. Steve Cochran stated that the increase in traffic resulting from 294 new homes would result in greater congestion, a decrease in the level of service, and an increase in the number and severity of impacts. Mr. Cochran requested that a Traffic Impact Analysis be prepared to address traffic impacts. The Applicant responded that traffic impacts were considered. A Traffic Impact Analysis prepared on behalf of the Applicant determined that the proposed development of 294 new residences would result in an additional 2,814 average daily trips to the local road system including 221 AM peak-hour trips and 297 PM peak-hour trips. Traffic impacts on Anderson Hill Road would be mitigated with street improvements, as required by the MDNS. In addition, the Applicant entered into an agreement with neighboring property owners and Kitsap County to pay additional mitigation funding to Kitsap County.⁷ *Exhibit 27; Exhibit 28; Exhibit 30; Exhibit 31, Table 4; Exhibit 33, MDNS; Exhibit 39, Proposed Revision to MDNS; Exhibit 47; Exhibit 48; Testimony of Mr. McNaughton.*

15. At the January 5 hearing, Merita Trohimovich, Kitsap County Development Engineer, requested a modification in proposed plat Condition 17, which requires compliance with City street standards. Ms. Trohimovich requested that the condition be modified to require compliance with Kitsap County standards. Specifically, Ms. Trohimovich requested that the Applicant be required to comply with preliminary conditions she proposed in a memorandum to Paul Wandling, City of Bremerton, dated November 9, 2006 (admitted as Exhibit 32). She stated that she believed items 4, 5, and 10 of her memo -- requiring Kitsap County review and approval of construction plans, County permits, and maintenance or performance bonds for work performed in the Kitsap County rights-of-way -- were not included in the City's proposed plat conditions. In addition, Ms. Trohimovich requested that the proposed plat conditions be amended to require payment of mitigation funding to Kitsap County at the commencement of construction activities rather than upon issuance of building permits. Ms. Vidinhar, City Planner, responded that proposed plat Condition 14 would address Ms. Trohimovich's concerns regarding Kitsap County permits. Ms. Kolouskova, attorney for the Applicant, agreed that Condition 14 would address the

⁷ The Applicant volunteered to pay traffic mitigation funding to Kitsap County in the amount of \$1059 per dwelling unit instead of the \$550.16 per dwelling unit required by the MDNS issued by the City. *Exhibit 33; Exhibit 39; Exhibit 47; Testimony of Mr. McNaughton.*

County's concerns. However, she stated that because there is no interlocal agreement, the City's ordinances apply. Furthermore, she stated that Ms. Trohimovich's comments on January 5 were untimely, as the County's comments in Exhibit 32 were received and reviewed by the City prior to the issuance of the MDNS on November 16 and the County did not appeal the MDNS. Regarding Ms. Trohimovich's request to change the timing of impact payments, Ms. Kolouskova stated the Applicant should not be required to pay transportation impact fees before the impact arises. She stated that because the source of transportation impacts would be the additional traffic resulting from home construction, the Applicant should not be required to pay impact fees prior to the issuance of building permits for those homes. *Exhibit 32; Testimony of Ms. Trohimovich; Testimony of Ms. Vidinhar; Statement of Ms. Kolouskova.*

16. Doug Johnson, Transit Planner for Kitsap Transit, sent an email to JoAnn Vidinhar requesting the construction of sidewalks along Anderson Hill Road. In the email, Mr. Johnson stated that Kitsap County does not currently provide bus service in the area of the proposed development but it is likely that the County will provide future service. He suggested that sidewalks be constructed now to provide connections between the proposed subdivision and potential bus stops along Anderson Hill Road. The Applicant responded in a memorandum to the City, stating that the proposed development would entail street frontage improvements including construction of an eight-foot wide shoulder along Anderson Hill Road. In the memo, the Applicant stated that with the construction of proposed roads and sidewalks, future residences of the development would be able to access potential bus stops on Anderson Hill Road. *Exhibit 23; Exhibit 30; Exhibit 44, page 6.*
17. Mr. Cochran expressed concern in a letter to JoAnn Vidinhar about the potential loss of an Olympic Mountains view. The Applicant responded that the proposed residences would be primarily two-story and that all would comply with the 35 foot height restriction for the R-10 zone such that the houses would not significantly block views. *Exhibit 28; Exhibit 30.*
18. The Applicant proposed incorporating approximately 24.83 acres of open space into the proposed subdivision including seven neighborhood parks ranging in size from 3,007 square feet to 13,569 square feet. The proposed open space would provide both passive and active recreational opportunities. The Applicant would plant trees in compliance with City landscaping requirements. *Exhibit 2, Project Narrative; Exhibit 8, SEPA Checklist; Exhibit 44, Staff Report, page 7.*
19. The subject property includes critical areas in the form of wetlands, streams, and steep slopes. A Wetland and Stream Report (Report) prepared on behalf of the

Applicant determined that there is a fish bearing Type F stream⁸ off-site (Stream A) to the west of the subject property. There are two Type Np⁹ streams on-site (Streams B and C). Stream B is located in the northwest portion of subject property. Stream C is located in the central northern portion of the property. Both streams flow north/northwest into Stream A. The Wetland and Stream Report identified four wetlands, all located in the northern half of the property. Wetlands A, B, and D are Type III wetlands¹⁰ associated with Streams B and C and are located entirely on-site. Wetland C is a Type III wetland located in the northeast corner of the property and extending off-site to the north. The streams run through ravines, which feature slopes greater than 40% classified as areas of High Geologic Hazard.¹¹ *Exhibit 8; Exhibit 14; Exhibit 19; Exhibit 44, pages 7 – 9.*

20. The standard buffer width for Type III wetlands is 75 feet. *BMC 20.14.330(f)(1)*. The standard buffer width for year-round, non-fish bearing streams is 50 feet, with a minimum 15 foot-wide building setback between structures and the stream buffer edge. The standard buffer width for fish-bearing Type F streams is 150 feet, with a 15 foot building setback. *BMC 20.14.730 (Table 1)*. In high geologic hazard areas, no construction of any structure or impervious surface is allowed within 50 feet of the top and toe of the slope, unless reductions supportable by a geotechnical report are approved. Native vegetation shall be in place from the toe of the slope 25 feet beyond the top of the slope, unless modifications supportable by a geotechnical report are approved. *BMC 20.14.630(a)(1), (a)(2)*.
21. The proposed development would entail a reduction in the standard buffer width for portions of Stream A and Stream C buffers. The Applicant would mitigate the buffer reduction through buffer averaging.¹² In exchange for a reduction of 7,995 square

⁸ 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.” *BMC 20.14.720(a)(2)*.

⁹ Type Np water means 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. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. *BMC 20.14.720(a)(3)*.

¹⁰ Category III wetlands are those wetlands that are not Category I or II wetlands, and that meet the following criterion: a) Provide moderate levels of functions, scoring between thirty (30) through fifty (50) out of one hundred (100) points (DOE Wetlands Rating System, 2004). *BMC 20.14.320(a)(1)(iii)*. According to the Wetland and Stream Report, Wetlands A, B, and D scored 48, 50, and 44, respectively. Wetland C scored 36. *Exhibit 19, Revised Wetland and Stream Report, page 2.*

¹¹ As defined by City code, areas of high geologic hazard include “areas with slopes greater than forty (40) percent with vertical relief of ten (10) or more feet.” *BMC 20.14.620(a)(1)*.

¹² *BMC 20.14.731(d)(4)* allows stream buffer averaging as follows:

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feet of stream buffer, the Applicant would designate 18,000 square feet of additional buffer to be enhanced and set aside as a Native Growth Protection Area (NGPA). In addition, the proposed development would entail temporary impacts on a total of 12,473 square feet of wetland buffer arising out of the construction of a stormwater detention facility in Tract C. The Applicant would restore the wetland buffer with native vegetation. *Exhibit 8; Exhibit 14; Exhibit 19; Exhibit 44, Staff Report, pages 7 - 9.*

22. There would be no construction or impervious surface within 15 feet of the streams running through the ravines. A Preliminary Geotechnical Report was prepared on behalf of the Applicant on May 22, 2006. An Addendum to that report was prepared on July 15, 2006, in response to passage of a new ordinance allowing the reduction or modification of the 50-foot steep slope buffer.¹³ The Addendum to the Preliminary Geotechnical Report determined that the use of a 25-foot wide buffer from the top of the slopes would not reduce slope stability, based on existing site conditions and the nature of the project and assuming compliance with the recommendations of the Preliminary Geotechnical Report. The Applicant would construct rockeries along the north edge of Lots 157 and 158 and the south edge of Lots 193, 194, and 195, creating a 25-foot wide buffer from the top of the slope. *Exhibit 16; Exhibit 20; Exhibit 29, Revised Preliminary Plat Map; Exhibit 44, pages 8 and 9.*
23. A May 19, 2006 Conceptual Storm Drainage Analysis was prepared on behalf of the Applicant. The analysis was based on 1992 Department of Ecology stormwater drainage requirements. Currently, the entire site drains west into Stream A. The

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.

¹³ Modifications and/or reductions to the buffers prescribed per subsections (a)(1) and (2) and (b)(1) and (2) of this section may be granted 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).*

Applicant would construct a network of catch basins and underground piping to capture and direct stormwater to two separate stormwater detention ponds located in Tracts B and C, to the north and south of the stream ravine in the central northern portion of the property. Stormwater would be treated in the ponds before being released into the streams at a controlled rate matching pre-development peak flows. Jeff Davis, Washington State Department of Fish and Wildlife, sent a letter to JoAnn Vidinhar expressing concern that the proposed development would result in a significant adverse impact to instream fish habitat in Anderson Creek and potentially also in Sinclair Inlet. Mr. Davis requested that the proposed development be required to comply with the 2005 Department of Ecology stormwater manual. The Applicant responded that the City currently only requires compliance with the 1992 manual. *Exhibit 11, pages 2 and 7; Exhibit 24; Exhibit 30; Exhibit 44, pages 9 and 10.*

24. The Suquamish Tribe sent a letter to JoAnn Vidinhar 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 low impact development (LID) measures to reduce runoff pollution, and complete a cultural resource assessment. The Applicant responded that the proposed development incorporated LID measures to the maximum extent feasible, including infiltration of roof-top runoff. The Applicant stated that the proposed development complies with City standards regarding stormwater drainage and soil stability. The Applicant 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 25; Exhibit 30.*
25. Ms. Trohimovich, Kitsap County Development Engineer, expressed concern that the proposed plat conditions would result in the County assuming responsibility for the maintenance of stormwater facilities processing water that originated in the City. She requested that proposed plat Condition 21 be modified to apply only to right of way improvements and facilities within the right of way that are solely for stormwater collected within the right of way. Both Ms. Vindinhar and Ms. Kolouskova accepted the proposed amendment. *Testimony of Ms. Trohimovich; Representations of Ms. Vindinhar and Ms. Kolouskova.*
26. Although the Applicant received a letter of binding sewer availability from the City of Port Orchard, water, sanitary sewer and storm sewer services would all be provided by the City of Bremerton. The proposed development would be constructed in phases, allowing some development before a sewer pump station would be necessary. At the January 5 hearing, the Applicant submitted a Phasing Plan Map indicating that Phase I of the development would include lots on the east side of the

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site and Phase II would include the remaining lots on the west side of the site. The Phase I lots would go to the final plat stage upon approval of sewer extensions and Phase II lots would not advance to the final plat stage until sewer pump station approval. *Exhibit 2; Exhibit 6, Preliminary Plat Application; Exhibit 7, Residential Cluster Development; Exhibit 44, Staff Report, page 10; Exhibit 50; Testimony of Mr. Pesce.*

27. The City determined the preliminary plat and residential cluster development application to be complete on July 20, 2006. The City issued a notice of application on July 22, 2006 and provided public notice of the application in compliance with City ordinances. The City published notice of the public hearing associated with the application in the *The Kitsap Sun* on November 30, 2006 and mailed notice to all owners of property within 300 feet of the subject property. However, notice of the December 18, 2006, hearing was not posted on the subject property. To ensure sufficient notice of the December 18 hearing, the Hearing Examiner continued the open record hearing on the preliminary plat and residential cluster development application to January 5, 2007. The City posted notice of the January 5, 2007 hearing on the subject property, published notice in *The Kitsap Sun* on December 20, 2006, and mailed notice to all owners of property within 300 feet of the subject property. *Exhibit 22; Exhibit 34; Exhibit 44, Staff Report, page 16; Exhibit 49; Testimony of JoAnn Vidinhar.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to review an appeal of an administrative decision by Bremerton Municipal Code (BMC) Section 2.13.070(1)(a) and Section 2.13.080. The Hearing Examiner is authorized to review an appeal of a SEPA determination of nonsignificance by BMC Section 20.02.140(a) and BMC Section 20.04.210. When reviewing an appeal of an administrative decision, the Bremerton City Council restricts the authority of the Hearing Examiner to determining whether the administrative decision is supported by substantial evidence. *BMC 20.02.140(a)(2)*. When reviewing an appeal of a SEPA determination, the procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding. *BMC 20.04.210(a)(3)*.

A preliminary plat application is a Type III decision according to BMC Section 20.02.040 and Chapter 20.02, Table 040. An application for residential cluster development may be processed as a Type III nonadministrative decision, pursuant to BMC Section 20.58.060(d). The Hearing Examiner is authorized to review a preliminary

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plat and residential cluster development application and approve, conditionally approve, or deny the application. *BMC 2.13.070; BMC 20.02.040(c); BMC 20.58.060(d).*

Criteria for Approval

The subdivision criteria set forth in Chapter 58.17, Revised Code of Washington (RCW) apply to this preliminary plat application. Pursuant to RCW Section 58.17.100, the Hearing Examiner may approve a preliminary plat application only upon finding 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.

The Hearing Examiner may approve an application for residential cluster development only upon finding 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. **The MDNS appeals have been resolved.** The Applicant entered into an agreement with the MDNS Appellant regarding the payment of transportation mitigation fees. Pursuant to the agreement, the Applicant withdrew its appeal of MDNS Condition 1(c). As no representative from McCormick Land Company or GEM1 LLC appeared at either open record hearing, its appeal of MDNS Condition 1(c) is dismissed. The Applicant entered into an agreement with South

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Kitsap School District regarding the payment of school impact mitigation fees, and withdrew its appeal of MDNS Condition 2. Conditions of approval are necessary to ensure that the Applicant complies with transportation and school mitigation fee agreements. *Findings 1, 2, 4, 5, and 6.*

2. **With conditions, appropriate provision will be made for the public health, safety and general welfare and for all other relevant facts, and the public interest will be served.** The public interest will be served through the accommodation of urban densities permitted within the R-10 zoning district while protecting open space and environmentally sensitive areas. Adequate street access will be provided to each of the lots. Potable water and sanitary sewer service will be provided to each of the lots. Sidewalks and streets will be provided within the development. Currently, no transit stops serve Anderson Hill Road in front of the planned development. With the construction of streets and sidewalks connecting the proposed subdivision to Anderson Hill Road, residents will be able to access transit stops if they are provided in the future. Students would attend schools within the South Kitsap School District. As conditioned, and pursuant to the Applicant's agreement with the South Kitsap School District, the Applicant will mitigate school impacts through the payment of mitigation funding to the School District. The City provided adequate notice of the preliminary plat/residential cluster development application and the associated open record hearing. The Applicant would preserve open space through the protection and enhancement of streams, wetlands, and their buffers located on the subject property. Conditions of approval are necessary to ensure that the Applicant sets aside a Native Growth Protection Area as an additional buffer, mitigating buffer impacts through buffer averaging. The Applicant will construct planned detention ponds and design of subdivision drainage system to be consistent with on-site natural drainage ways. Conditions of approval are necessary to ensure that the required infrastructure is completed and utility availability is confirmed prior to final plat approval. *Findings 1, 2, 7 – 27.*
3. **With conditions, the proposed development would comply with the Residential Cluster Development criteria.**
 - a) The proposed residential cluster development will feature a variety of housing types at an urban density, which will encourage home ownership and the creation of strong communities consistent with the City's Comprehensive Plan. Conditions of approval are necessary to ensure that the proposed development complies with City and County street standards, City stormwater requirements, and City Critical Areas Ordinances.

- b) The proposed residences will be less than 35 feet in height, ensuring minimal interference with views. The proposed development will be residential in nature and have a net density of 7.4 dwelling units per acre, which complies with R-10 zoning district density standards.
- c) The Applicant will construct new internal roads to serve the proposed subdivision. Conditions of approval are necessary to ensure construction of street improvements to mitigate proposed subdivision impacts on the local street system.
- d) As conditioned, the proposed development will be served by existing or planned facilities and services. Conditions of approval are necessary to ensure phased development based on approval of sewer extensions and a pump station.
- e) By preserving over 24 acres of open space including active and passive recreational opportunities, the proposed development makes adequate and appropriate provision for environmental preservation. The Applicant will conserve energy with a drainage system that mimics existing natural drainage on the subject property and the incorporation of low impact development techniques. Conditions of approval are necessary to ensure that the Applicant mitigates sensitive area buffer impacts and protects sensitive areas by establishing a Native Growth Protection Area.

Findings 1, 2, 7 – 27.

DECISION

Based on the preceding Findings and Conclusions, the MDNS appeal is **DISMISSED** due to resolution of the appeal by the parties to the appeal.

Based on the preceding Findings and Conclusions, the request for approval of a 294-lot Preliminary Plat and Residential Cluster Development on 56 acres is **GRANTED**, subject to the following conditions:¹⁴

1. Approval of the Residential Cluster Development constitutes an overlay to the underlying zone and allows modification to development standards.
2. Approval of the Residential Cluster Development is limited to only those designs and standards specifically indicated in the application.

¹⁴ Conditions include both legal requirements applicable to all developments and provisions to mitigate the specific impacts of this development.

3. Development must comply with BMC 20.58.060 development standards.
4. Screening from surrounding properties for community utility, trash and outdoor storage facilities shall be provided per BMC 20.58.060(f)(6).
5. A Final Open Space Plan with monitoring, maintenance and guarantees are required with the Final Plat submittal.
6. Landscaping is required per BMC 20.50.050 including street trees for every 25 lineal feet of street frontage.
7. Development shall comply with Geotechnical Report prepared by Terra Associates and the Wetland and Stream Report and Buffer Mitigation Plan prepared by Wetland Resources. 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 other 40% of the area. The trees shall be planted on 8-foot centers, and the shrubs shall be planted on 3-foot centers.
8. 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 said 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 site. The face of the cut and fill on slopes shall be prepared and maintained to control against erosion.
9. A Buffer Modification Monitoring Plan is required prior to Final Plat approval. Monitoring is required at least once per year for three years, with a copy of the report submitted to the Department of Community Development on an annual basis.
10. Development shall comply with traffic mitigation to include:
 - a. Widen Anderson Hill Road to a 3 lane section at the south project entrance to provide a northbound left turn lane on Anderson Hill Road SW, with a minimum storage length of 100 feet and minimum 125 foot taper to match the existing road cross section on Anderson Hill Road SW. Shoulder width on Anderson Hill Road SW shall be maintained at existing width or increased to meet Kitsap County Road Standards.
 - b. Provide an 8 foot paved shoulder on the west side of Anderson Hill Road SW along the entire site frontage. The shoulder will be widened on the east side of

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Anderson Hill Road SW along the entire site frontage up to 8 feet in width as right-of-way is available.

c. The proponent shall provide mitigation funding to Kitsap County for mitigation of traffic impacts and pro rata share of transportation improvements including improvements to non-motorized facilities. Mitigation funding shall be paid to Kitsap County in the amount of at least \$550.16 per dwelling unit.¹⁵

11. The stormwater quantity and quality shall comply with BMC 15.04. Temporary erosion and sediment control Best Management Practices shall be enacted on all building sites.
12. 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.
13. Development must comply with BMC 11.12.130 and 11.12.200 and provide street lighting. A detailed street lighting plan is required to be submitted and approved by the City Engineer prior to Final Plat approval.
14. A Site Development Permit is required for this project. 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. Approval of the construction plans is required from both the City and County.
15. Construction plans to provide surveyed cross-sections at 50' intervals on Anderson Hill Road. The cross-sections should show existing and proposed pavement, shoulders, ditches and slopes. The cross-sections should also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.
16. The construction plans shall include an engineer certificate that there is adequate entering sight distance at the intersections of site access roads (north and south) and Anderson Hill Road SW. Such certification shall note the minimum required site distance, the actual site distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the

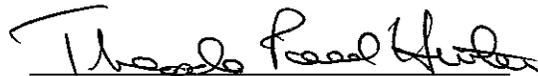
¹⁵ The Applicant has agreed to provide mitigation funding to Kitsap County for mitigation of traffic impacts and pro rata share of transportation improvements including improvements to non-motorized facilities. Mitigation funding shall be paid to Kitsap County in the amount of \$1,059.00 per dwelling unit, consistent with the terms of the agreement detailed in Exhibit 39. Mitigation funding shall be paid to Kitsap County at the time of building permit issuance by the City of Bremerton. Condition 1 (c) of the MDNS may be revised to capture this agreement if the City desires to do so. However, the agreement will be enforceable by the parties and any third party beneficiaries of the agreement.

- sight triangle. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.
17. Development shall comply with BMC Title 11.12, City Street Standards, including curb, gutter, and sidewalks. Right-of-way permits, road approach permits and possibly maintenance/performance bonds are required for work within the right-of-way. These permits must be secured from the County if required by its ordinances. Development must comply with BMC 11.02 and any applicable county ordinances.
 18. No lots shall access directly off of Anderson Hill Road. This note shall appear on the face of the final plat map.
 19. Construction of handicap access facilities within the right-of-way shall conform to the requirements of the American with Disabilities Act. This includes wheelchair ramps on both sides of the site approach.
 20. The Conditions, Covenants and Restrictions 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 area. A copy of the CC&R shall be provided with the Final Plat submittal.
 21. Upon completion of the storm drainage facilities, the developer will be required to post a two-year maintenance bond for the facility, including regular and adequate maintenance during the 2-year period and supportive maintenance records. At the end of the 2-year, the County will inspect the system and, when the facility is acceptable and 80% of the homes have been completed, the County will take over maintenance and operation of the system. Wording to this effect must appear on the face of the plat and in the covenants before final recording. Areas proposed to be maintained by Kitsap County that are not in the right-of-way must be shown as a separate tract(s) or drainage easement(s) with Kitsap County being designated as the grantee. This condition applies to facilities designed to mitigate stormwater impacts within Kitsap County jurisdiction.
 22. The applicant shall enter into an agreement with South Kitsap School District, consistent with the settlement terms specified in Exhibit 45, to provide mitigation funding to South Kitsap School District for school impacts. Mitigation funding shall be paid to South Kitsap School District in the amount of \$1,017.45 per dwelling unit at the time of building permit issuance.

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23. The applicant is responsible to comply with all Federal and State laws pertaining to Archaeological and Historical Preservations, including RCW 27.44 and 27.53.
24. Compliance with Washington State Fish and Wildlife hydraulic permit requirements.
25. A building permit is required for each residence and the rockeries constructed to maintain the slope setback. The permits must comply with the International Building Code requirements.
26. 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.
27. The proposed development will be in two Phases, as depicted in Exhibit 50. Final Plat approval of Phase I may occur following compliance with applicable conditions, including installation of a gravity sewer system. Final Plat approval of Phase II may occur following approval of a sewer pump station.

So ordered this 31st day of January 2007.


THEODORE PAUL HUNTER
Hearing Examiner