

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision	)	LSS2017-0002
Application by	)	
	)	FINDINGS OF FACT,
Wesley Herman	)	CONCLUSIONS OF LAW,
<i>"WD-40 Cluster Long Subdivision"</i>	)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting Preliminary Long Subdivision Approval for a proposed long subdivision and associated infrastructure to create seven clustered lots and one reserve tract with a residential building site on approximately 40 acres in the Rural (R5A) zoning district. Four lots will be eligible for Accessory Dwelling Units (ADUs). The site contains Agricultural Protection Overlay (APO) soils and extensive wetlands.

A Development Agreement, pursuant to RCW 36.70B.170, has been applied for to alter Development Standards.

The Applicant is proposing to deviate from Development Standards for the following items:

- Setbacks from APO reserve tract – the Applicant is requesting the 100 foot setback for habitable structures and the 30 foot setback for non-habitable structures from the reserve tract be reduced to the standard rear or side yard setbacks in WCC 20.80.210(5)(b));
- Location of On-site Sewage System (OSS) drainfields - the Applicant is requesting the OSS drainfields be located within an easement on the reserve tract; and
- Direct wetland impacts – the Applicant is proposing 5,227 square feet of wetland fill for road construction.

As authorized through RCW 36.70B.170, the Development Agreement the Applicant has proposed includes a fee-in-lieu payment to the Whatcom County Purchase of Development Rights (PDR) Program for unavoidable impacts to agricultural lands. The Applicant has also proposed wetland mitigation to a greater extent than required by the Standard Mitigation Requirements of WCC 16.16.680.

Lots will be served by public water and individual on-site sewage systems (OSS). Access will be to Zander Road via a private road for ingress, egress, and utilities.

Whatcom County Planning and Development Services has recommended Approval of the Development Agreement and Preliminary Subdivision Approval, subject to conditions.

Decision: The Hearing Examiner Recommends the Whatcom County Council Approve the Development Agreement and grant Preliminary Long Subdivision Approval, subject to the conditions recommended herein.

SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Wesley Herman

Site Location/Address: '0' Zander Drive
Bellingham, Washington

Assessor's Parcel Numbers: 390334 202205 0000

Zoning: Rural [R5A]

Comprehensive Plan: Rural

Subarea: Urban Fringe

Number of Lots: seven residential lots and one buildable reserve tract

Total Acreage: Approximately 40 acres

Roads: Private Roads

Water Supply: Deer Creek Water Association

Sewage Disposal: On Site Septic Systems

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Meridian School District

Topography: Mostly flat with sloping to the west and southwest

Vegetation: Vegetation consists mostly of mature standing trees, young saplings and pasture grass.

Adjacent Land Uses:

- North: Single-family Residential
- East: Single-family Residential/Agriculture
- South: Single-family Residential/Agriculture
- West: Single-family Residential

Utilities Easements: Necessary utility easements will be established prior to recording of Final Plat.

Variances: No variances requested

SEPA Review: Determination of Non-significance, issued June 24, 2019

Authorizing Ordinances

Revised Code of Washington Chapter 58.17

Revised Code of Washington Chapter 36.70B.170

Whatcom County Comprehensive Land Use Plan

Whatcom County Code Chapter 2.33, Permit Review Procedures [repealed ordinance 2018-032]

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code Title 21, Subdivision Regulations

Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, August 26, 2019
 Mailed – Notice of Application, April 24, 2017
 Notice of Public Hearing, August 19, 2019
 Published – Notice of Application, April 3, 2017
 Notice of Public Hearing, August 29, 2019

Hearing Date: September 11, 2019

Parties of Record

Wesley Herman
353 E. Wiser Lake Road
Lynden, WA 9824

Ali Taysi
AVT Consulting, LLC
1708 F Street
Bellingham, WA 98225

Sanja Barisic, Senior Engineering Technician
Public Works, Engineering

Amy Keenan, Senior Planner
Planning and Development Services

Exhibits

- 1 Preliminary Long Subdivision Application with attachments
 - 1-1 Fee Responsibility, June 30, 2016
 - 1-2 Agent Authorization, June 30, 2016
 - 1-3 Preliminary Long Plat Narrative
 - 1-4 Preliminary Long Subdivision Application
 - 1-5 Preliminary Traffic & Concurrency Information, April 2017 end July 2018
 - 1-6 Preliminary Stormwater Proposal, with Site Plan Requirements, 01/30/2017
 - 1-7 Latta Engineering, PLLC Preliminary Stormwater Proposal Letter, 01/30/2017
 - 1-8 Vicinity Map, January 2017 and Soil Map, 2/1/2017

- 1-9 Whatcom Land Title Company: Plat Certificate Update, dated Jan 4, 2017
- 1-10 Easement Option Agreement for Potable Water Storage Site, Deer Creek Water Association
- 1-11 Determination of Completeness, dated March 21, 2017
- 1-12 Revised WD-40 APO Cluster Long Subdivision & Developer's Agreement to County Property Owners within 1,000 feet, with Project Description, dated April 24, 2017
- 1-13 Current Planning Hearing Examiner Checklist, July 24, 2019
- 1-14 Customer Receipt, dated March 8, 2017
- 1-15 Current Planning Hearing Examiner Checklist, September 3, 2019
2. Staff Report, dated September 3, 2019
3. Development Agreement between Whatcom County and Wes and Diane Herman,
4. Declaration of Covenants, Conditions, Reservations & Restrictions of the WD-40 Cluster Long Subdivision
5. Agency Comments:
 - Engineering Technician, Memo dated August 9, 2019
 - Fire Inspector, Revision of 2017 memo, dated Nov 11, 2017
 - Natural Resources, Memo dated August 22, 2019
 - Memo to AVT Consulting, from Chris Elder, Purchase of Development Rights Program Administrator, dated April 15, 2019
 - Environmental Health, Memo dated July 23, 2019
 - PDS Stormwater Memo, April 9, 2019
6. SEPA Determination of Non-significance, dated June 24, 2019, with attached Interested Parties, Letter dated Jan 4, 2017 from Deer Creek Water Association to AVT Consulting; Meridian School District letter dated January 4, 2017 to AVT Consulting; Notice of Application & Optional DNS Distribution List; and SEPA Environmental Checklist
7. Vicinity Map Subject Area, dated March 2017
8. WD-40 A Clustered Long Subdivision Site Plan Map with notes, with additional Site Plan Map with enlarged drawings
9. Storm Water Site Plan Report, Revision 2, dated May 3, 2019, prepared by LATTA Engineering, PLLC
10. Impact Assessment & Mitigation Report, Revision 1.0, August 2018, prepared by NW Ecological Services
11. Critical Areas Assessment, May 2016, prepared by NW Ecological Services
12. Enlarged Northwest Surveying Maps
13. LATTA Engineering PLLC Road and Storm Drainage Construction Plan Set, May 3, 2019
14. LATTA Engineering PLLC Drawings showing Land Use Areas

15. Bellingham Herald Tear-Sheet, published April 3, 2017, with attached Legal Notice
16. Certificate of Mailing Notice of Application, April 24, 2017, with list of property owners addresses
17. Certificate of Mailing Notice of Public Hearing, August 19, 2019
18. Certificate of Posting: Notice of Public Hearing, August 26, 2019
19. Legal Notice of Public Hearing, published August 29, 2019

II.

The project area consists of a 40 acre parcel off Zander Road and is zoned Rural [R5A] and is within the Agricultural Protection Overlay [APO] due to soil types present on the property as well as agricultural taxation and historic Agriculture Uses. The subdivision proposal includes seven clustered residential building lots and one reserve tract with a residential building site for a total of eight single-family residential units on 40 acres in the R5A zone.

The Application was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in the Staff Report, entered into the Hearing Examiner file as Exhibit No. 2, dated September 3, 2019, prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Committee recommended Preliminary Long Subdivision Approval, subject to conditions.

III.

The Applicant's Representative indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the proposal at the public hearing.

The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as the Findings of Fact herein.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Review Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or failed to properly support the approval of the Preliminary Long Subdivision and the associated Development Agreement. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated September 3, 2019, Exhibit No. 2, a copy of which is attached hereto and incorporated herein by this reference.

The Hearing Examiner concurs with the Technical Review Committee that, subject to the proposed Conditions of Approval, the project will comply with the applicable Whatcom County and Washington State regulations and is in the general public interest, health and welfare. The Hearing Examiner should recommend the Whatcom County Council grant Preliminary Subdivision Approval to the Herman WD-40 Long Subdivision and Approve the associated Developers Agreement.

The Hearing Examiner sees what was an obviously complicated and lengthy process, as an excellent example of Staff and the Applicant using the flexibility allowed by use of Development Agreements to obtain a result allowing a property owner appropriate development rights, while carefully protecting sensitive critical areas and fostering at the same time, the long term goal of Agriculture land preservation.

II.

Based on these Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following decision:

DECISION

The Hearing Examiner hereby Recommends Preliminary Approval of the proposed Wesley Herman Long Subdivision and Development Agreement, to be located on Assessor's Parcel Nos. 390334 202205, addressed as "0" Zander Drive, Bellingham, Washington, subject to compliance with the Development Agreement and subject to the following conditions:

Planning Division

1. The use and location on the site as shown on the site plans, dated August 2019, shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the two phases of the final plat are submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.

6. The Applicant shall obtain all necessary Federal, State and local permits prior to construction.
7. The rear and/or side setbacks for habitable and non-habitable structures for lots 1-5 shall be as stated by WCC 20.80.210(5)(b) or as required by WCC 16.16.265(D) whichever is more restrictive.
8. Lots 6 and 7 shall have the 100 foot setback for habitable and 30 foot setback for non-habitable structures from the southern property line as well as any additional setbacks required by WCC 16.16.265(D).
9. Utilizing the \$7,000 per acre average for the approximately 20 acres of land removed from permanent agricultural production, the applicant has agreed to pay approximately \$140,000 directly to the PDR program. As agreed upon through the development agreement and conditioned herein, the funds will be paid prior to final plat approval and be used to purchase agricultural conservation easements consistent with the purpose of the PDR program.
10. The following Accessory Dwelling Unit note shall be placed on the face of the plat:

ACCESSORY DWELLING UNIT (ADU) NOTE: LOTS 3, 5, 6 AND 7 ARE SPECIFICALLY DESIGNATED AS BEING ELIGIBLE FOR THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT. OWNERS OF THE LOTS MUST APPLY FOR APPROVAL WHICH MAY OR MAY NOT BE GRANTED PURSUANT TO REQUIREMENTS AS SPECIFIED WITHIN THE WHATCOM COUNTY ZONING ORDINANCE AT THE TIME OF APPLICATION.

11. The following right-to-farm note shall be placed on the face of the plat:

RIGHT-TO-FARM COVENANT: (THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AN AGRICULTURE OR RURAL DISTRICT.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS SHORT PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON. THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE WHATCOM COUNTY AUDITOR'S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

12. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC 20.97.344. The reserve area shall be protected in perpetuity so long

as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown 75 percent (WCC 20.36.253).

13. An Agriculture Protection Overlay (APO) Cluster and Reserve Area Note will be provided at check-print review and shall be placed on the face of the plat.
14. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

Health Department

15. The Applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated April 7, 2016, unless modified by that Department or appealed to the appropriate agency.
16. On-site sewage system (OSS) components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.
17. If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.
18. For those OSS located on different parcel than they serve, approved individual OSS permit applications will be required and the transport lines and OSS will need to be installed prior to final approval.

Critical Areas

19. The Applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Natural Resources Division in the memo dated August 22, 2019, unless modified by that Department or appealed to the appropriate agency.
20. Low impact development shall be used where appropriate.
21. Covenants shall be established to prohibit pesticide use within area protected by conservation easement. Exception allowed only unless party to requirements of mitigation plan, PDS approved farm plan, and only as applied by licensed herbicide applicator.
22. The unique Applicant proposed permanent conservation easement shall be in place prior to final plat approval.

23. Permanent fencing (split-rail cedar or similar) shall separate all development areas from critical areas at buffer edge, to be shown on face of plat. Fencing schematic shall be approved by PDS staff prior to final plat approval.
24. Native Growth Protection Area (NGPA) or similar signage shall be placed at a minimum of no greater than 200ft apart on all wetland buffer edges facing development areas with a minimum of at least one sign per lot. Sign locations shall be shown on face of plat, and subject to PDS staff approval prior to final plat approval.
25. No vegetative clearing, fill or grade is to occur on site until the surety bond (with amount outlined in final approved mitigation plan) has been submitted and approved by critical areas staff.
26. Agreement to maintain the mitigation area form shall be signed and submitted by responsible party.
27. A final mitigation plan showing all construction and planting occurring in the plat (critical area enhancement plantings as well as stormwater required native plantings) shall be approved by CA staff prior to final approval of construction drawings (all plantings/work within buffer areas shall be approved by NR staff). Critical area mitigation and stormwater native planting schematic can be prepared separately, but it is strongly encouraged to combine into a single document.
28. All fees associated with mitigation shall be paid prior to approval (as-built, monitoring, review).
29. Mitigation monitoring shall be extended to 10 years for the wetland creation area. Wetland buffer enhancement monitoring shall be maintained at 5 years of monitoring.
30. The following critical areas note shall be placed on the face of the plat:

CRITICAL AREAS ORDINANCE (CAO) NOTE:

THIS LONG SUBDIVISION HAS BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, WHATCOM COUNTY CODE TITLE 16, CHAPTER 16.16 ADOPTED PURSUANT TO ORDINANCE 2005-068 FOR THE PURPOSES OF LAND DIVISION. REGULATED CRITICAL AREAS WERE FOUND TO EXIST WITHIN THE BOUNDARIES OF THE LONG SUBDIVISION A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR, AUDITOR'S FILE NO. _____ FOR THE CRITICAL AREAS AND ASSOCIATED BUFFERS.

Fire Marshal's Office

31. The Applicant shall comply with all of the conditions of the Fire Marshal's memo dated November 11, 2019, unless modified by the Fire Marshal's Office or appealed to the appropriate agency.

32. Per Whatcom County Code 15.04.040-N. Appendix C, Fire Hydrant Location and Distributions is amended with the following added section:
- a. Section C106 Subdivision Alternative, is added to the Appendix: C106.1 Hydrant placement alternative, subdivisions and plats with no fire flow infrastructure require a minimum lot size of 1 (one) acre and a minimum 20 (twenty) foot setback from property lines to structures, in addition to applicable fire flow requirements per Appendix B as amended.
33. Please provide letter of fire flow availability with the minimum fire flow of 500 gallons per minute at 20 psi for 60 minute duration from the water provider. Site plan shall be updated to show fire hydrant locations that are a maximum of 600 feet from all building sites that are on parcels that are under the minimum lot size of one acre. If no fire flow is available then lot size is required to be a minimum of 1(one) acre.
34. The road width shall meet Whatcom County Fire Marshal's Road Standards per WCC Chapter 15.04.040.
35. Road shall be a minimum of 24 paved with 1(one) foot gravel shoulders on each side until the user count is below 7. Then the road is allowed to be 18 feet wide gravel until it is below 3 users. The road shall be allowed to be 12 feet wide gravel with fire department turnouts as required by code and a fire department turn-a-round at the end of the shared road.
36. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

Public Works Engineering Services

37. The Applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated April 7, 2016, unless modified by that Department or appealed to the appropriate agency.
38. All development shall comply with the Whatcom County Development Standards (WCDS).
39. Sight distance at all access road intersections shall meet Whatcom County Development Standards (WCDS).
40. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
41. A private road maintenance agreement shall be included in the CC&R's for the WD-40 Subdivision.

42. Vehicle access for all subdivision-created lots shall be to the interior subdivision road; no subdivision-created lot shall access directly to Zander Drive.
43. The interior private road shall be passable at all times for emergency and public service vehicle use.
44. All road, stormwater, and grading plans shall be designed and stamped by a Washington State licensed civil engineer. Final civil plans and design documents shall be submitted and approved by PWES prior to any land disturbance or final plat recordation.
45. Upon completion of the subdivision process, development of the individual lots will be subject to the requirements of WCDS.
46. Turnarounds shall be provided as shown on the plan and must be shown and approved in the Final Civil Construction Drawings.
47. The subdivision is accessed from a publicly maintained County road, Zander Drive. Any work in the County right-of-way including construction access, paved apron and culvert work, will require the applicant obtain an Encroachment Permit. No work shall be done in the right-of-way prior to obtaining the Encroachment Permit.
48. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.
49. The proposed private road shall be constructed according to WCDS.
 - a. The private road shall have a paved apron per WCDS drawing 505.B-1.
 - b. The private road shall have a paved width of 26-feet to serve the first five lots of the development.
 - c. The road shall transition to a paved width of 18-feet to serve the reserve tract; the transition from 26ft to 18ft shall occur over a 10:1 taper.
 - d. The paved roads shall have a thickened edge per WCDS drawing 508.F-1.
50. A final engineered stormwater design report addressing conveyance, detention, and water quality measures according to the 2012 Department of Ecology Stormwater Management Manual for Western Washington, as amended, must be approved by PWES prior to any land disturbance. The report shall be prepared by a Washington State licensed civil engineer and shall be submitted for approval by Whatcom County Engineering Services prior to Final plat approval.
51. Performance securities will be required for both road and storm improvements per WCDS Chapter 2, Section 205.B.10, and Chapter 5, Section 509.B.
52. Provision for maintenance of the private stormwater system shall be required as set forth in WCDS, Chapter 2, Section 205.B.11. Prior to Final plat approval a fund will need to be

established for the first two years of the stormwater system performance verification and maintenance.

53. The *Stormwater Maintenance Plan* shall be included in the CC&R's for WD-40.
54. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement for stormwater maintenance purposes. Document is required to be recorded prior to issuance of any building Certificate of Final Occupancy.
55. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
56. Applicant shall show on the final plat map all easements and any physical appurtenances (such as fences or structures that might indicate encroachment, lines of possession, or conflict of title) per current Washington Administrative Code (WAC) 332-130-050(1)(f)(vii).
57. Developer shall provide a plat layout to the United States Postal Service to get approved mailbox location(s). The location and use of mailboxes shall not interfere with county road traffic as per Chapter 5 of the WCDS. Mailbox locations, if shared, shall be shown on the final construction plans.
58. Following County approval of the final drawings and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with the Whatcom County Public Works Engineering Services staff per WCDS.
59. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering Services for address assignment. The plat address fee shall be paid prior to recording.
60. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
61. Certified record drawings for all new roads and stormwater systems must be submitted to and approved by the County upon completion of construction.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

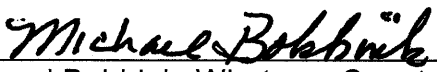
NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 17th day of September 2019.



Michael Bobbink, Whatcom County Hearing Examiner

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax

**EXHIBIT**

Mark Personius, AICP
Director

#2

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

September 3, 2019

The application by **Wesley Herman**
for a Long Subdivision and
Developers Agreement (WD40 Long
Subdivision)

LSS2017-00002, PLN2017-00008,
and SEP2017-00030 FINDINGS
CONCLUSIONS, AND
RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary:

A proposed long subdivision and associated infrastructure to subdivide seven clustered lots and one reserve tract with a residential building site on approximately 40 acres in the Rural (R5A) zoning district. Four lots will be eligible for Accessory Dwelling Units (ADUs). The site contains agricultural protection overlay (APO) soils and extensive wetlands. A development agreement, pursuant to RCW 36.70B.170, has been applied for to alter development standards. Wetlands are enhanced to a greater extent than required by existing Whatcom County code. The lots will be served by public water and individual on-site sewage systems (OSS). Access will be to Zander Road via a private road for ingress, egress, and utilities.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, subject to conditions.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Owner:

Wes Herman
353 E Wiser Lake Road
Lynden, WA 98264

Agent:

Ali Taysi
AVT Consulting, LLC
1708 F Street
Bellingham, WA 98225

Surveyor:

Northwest Surveying and GPS

407 5th Street
Lynden, WA 98264

Engineer: Latta Engineering PLLC
Neil Latta
5970 Birch Point Road
Blaine, WA 98230

Assessor's Parcel Number: 390334 202205

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Urban Fringe

Number of Lots: Seven residential lots and one buildable reserve tract

Total Acreage: Approximately 40 acres

Roads: Private Road

Water Supply: Deer Creek Water Association

Sewage Disposal: Onsite septic systems

Fire Protection: Whatcom County Fire District #4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Meridian School District

Topography: The site is described as mostly flat with sloping to the west and southwest

Vegetation: Vegetation consists mostly of mature standing trees, young saplings and pasture grass.

Adjacent Land Uses: North: Single family residential
East: Single family residential/Agricultural
South: Single family residential/Agricultural
West: Single family residential

Utilities Easements: Necessary utility easements will be established

prior to recording the final plat.

Variances: No variances requested

SEPA Review: Determination of Non-Significance was issued on June 24, 2019.

B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. Revised Code of Washington Chapter 36.70B.170
3. Whatcom County Comprehensive Land Use Plan
4. Whatcom County Code Chapter 2.33, Permit Review Procedures (repealed ordinance 2018-032)
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code
7. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code Title 21, Subdivision Regulations
11. Whatcom County Code Title 24, Health Regulations

III. SITE DESCRIPTION

The project area consists of a 40 acre parcel off Zander Road and is zoned Rural (R5A) within the Agricultural Protection Overlay (APO) due to soil types present on the property as well as agricultural taxation. The property is currently undeveloped with approximately half the site being used for pasture grass. The remainder of the property is covered in large forested areas. There are several small wetlands located within the pasture areas and larger wetland areas within the forest area.

Surrounding properties to the north and west are characterized by large lot single family residential development. Properties to the south and east are large tracts primarily used for agriculture. All surrounding properties are zoned R5A.

IV. PROJECT PROPOSAL

As shown on the preliminary plat map (dated August 5, 2019), the WD40 subdivision proposal includes seven clustered residential buildings lots and one reserve tract with a residential building site for a total of eight single family residential units on 40 acres in the R5A zone.

The property is located within the APO district and requires clustering of the development with at least 75 percent of the property to be placed in a reserve area

easement with no residential development or related infrastructure. The cluster lots will be located in the northwest portion of the existing property with a new paved private road off Zander Drive.

The applicant is proposing to deviate from development standards for the following items:

- Setbacks from APO reserve tract – the applicant is requesting the 100 foot setback for habitable structures and the 30 foot setback for non-habitable structures from the reserve tract be reduced to the standard rear or side yard setbacks in WCC 20.80.210(5)(b));
- Location of on-site sewage system (OSS) drainfields - the applicant is requesting the OSS drainfields be located within an easement on the reserve tract; and
- Direct wetland impacts – the applicant is proposing 5,227 square feet of wetland fill for road construction.

As authorized through RCW 36.70B.170, the development agreement (Attachment A) the applicant has proposed a fee-in-lieu payment to the Whatcom County Purchase of Development Rights (PDR) Program for unavoidable impacts to agricultural lands. The applicant has also proposed wetland mitigation to a greater extent than required by the standard mitigation requirements of WCC 16.16.680.

Residential water will be served by an extension of the Deer Creek Water Association water main from Zander Drive through the property. OSS drainfields will be provided for on each lot or offsite on the reserve tract with appropriate easements.

Submitted Plans/Map data/Reports (by date received)

Critical Areas Assessment Report, NW Ecological Services, February 1, 2017

Impact Assessment & Mitigation Report Revision, NW Ecological Services, September 12, 2018.

Agriculture Area Fee-in-lieu Map, Latta Engineering, PLLC., May 28, 2019

Stormwater Site Plan Report Revision 2, Latta Engineering, PLLC., May 28, 2019.

Preliminary Plat Map (Sheets 1 and 2), Northwest Surveying and GPS, Inc., August 15, 2019.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33 (repealed ordinance 2018-032).

Determination of Completeness: The determination of completeness was issued on March 21, 2017.

Notice of Application: The Notice of Application for this proposal was published on April 3, 2017. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application the County received written comments and had counter discussions and phone calls with other concerned citizens. A summary of the comments and a response follows:

- Concerns regarding stormwater resulting from development

The applicant has submitted a preliminary stormwater plan as well as civil drawings for construction. Public Works Engineering Services has reviewed the proposal and has determined the stormwater methods to be consistent with local and state law.

- Concern regarding the conversion of agricultural lands to residential lands as well as noise and light pollution.

The property is zoned R5A which allows eight single family residential units on the 40 acre parcel. The applicant has demonstrated compliance with the subdivision code and has worked with PDS and to mitigate the loss of agricultural lands resulting from this subdivision.

Notice of SEPA Threshold Determination: The SEPA Determination of Non-significance (DNS) for this project was issued on June 24, 2019. The notice was sent to state and local agencies, and interested parties for the project. No appeal of the threshold decision was submitted.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project.

A SEPA Determination of Non-Significance (DNS) was issued on June 24, 2019. No public comments were received and no appeal was filed.

VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS

A. Roads and Bridges (WCC Chapter 12.08)

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations. Engineering Services reviewed the proposal and submitted a memo dated August 9, 2019 with the following discussion:

Engineering Services has reviewed the proposal for a subdivision with seven clustered residential lots (four of which are designated as eligible for Accessory Dwelling Units (ADUs)), and one buildable reserve tract lot. The subdivision must demonstrate conformance with Whatcom County Code (Title 21) and Whatcom County Development Standards (WCDS). The following findings and recommended conditions are based on documents that have been submitted for review. Any changes to the proposed plat (lot configuration, easements, ADUs, etc.) may modify these conditions.

Documents submitted for review:

- Storm Water Site Plan Report for WD-40 Cluster Long Subdivision, Revision 2: May 3, 2019 [Preliminary Stormwater Design Report]
- WD-40 Cluster Long Plat Road and Storm Drainage Construction Plan Set, May 2019, plans revision 5/3/2019. [Preliminary Civil Plans]
- Preliminary Plat Map 8/15/2019

Both report and plans were prepared by Latta Engineering, PLLC.

Findings:

1. The subdivision will access Zander Drive. Through a mitigation determination, Engineering Services has determined that Zander Drive has sufficient width for the proposed traffic from this project. No street widening or other improvements are required at this time.
2. The applicant's request for a private road to serve the plat was received. The conditions of WCDS 505.E were met and the private road request has been approved by the Whatcom County Engineer.
3. The road name Heritage Acres Drive has been approved and recorded by PWES and Emergency Services.

4. Engineering Services has issued Preliminary Concurrency Determination for this project per WCC 20.78. PWES does not, however, issue a Certificate of Transportation Capacity, and reserve transportation capacity, until the time of final plat approval. PWES does not foresee any concerns issuing concurrency on Zander and Smith for trips generated per this development.
5. Engineering Services has reviewed and accepted the Preliminary Storm Water Site Plan Report for WD-40.
6. Engineering Services has reviewed and accepted the request for design variance from standards for a narrower road section in the reduced radius curves near the terminus of the private road.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 12.08.

B. Building and Fire Code (WCC Title 15)

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1, and hereby referred to as the Office of the Fire Marshal.

The Whatcom County Fire Marshal submitted a memo dated April 23, 2019 with conditions of approval.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.

C. Critical Areas (Title 16)

Wetlands (Article 6)

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The following wetland reports were submitted and reviewed:

- Critical Areas Assessment, NW Ecological Services, May, 2016.
- Impact Assessment and Mitigation Report (Revision 1), NW Ecological Services, August 2018.

On June 20, 2017, staff was able to field verify the wetland delineation conducted by Northwest Ecological Services (NES) reviewed under permit CA2017-00034. Staff concurred with the wetland delineation as put forth, both in the field and via the provided mapping at that time (surveyed). Continual consultation with project consultant(s) resulted in latest version of NES "Impact Assessment & Mitigation Report (Revision 1)." Staff concurred with the reporting/assessment as well as the mitigation concept put forth; however, while an advanced concept, the mitigation plan is still considered conceptual needing further technical revision prior to final approval and implementation, but adequate to move forward with a recommendation of approval for the platting process.

Critical area and associated buffer impacts were reviewed for compliance with the minimum mitigation requirements put forth in WCC 16.16.680. The impacts/mitigation was noted as the following:

- *Direct wetland impacts are the proposed filling of a single 0.12 acre Category IV wetland. Mitigation via wetland creation was proposed, with the minimum 1.5:1 ratio being met pursuant to WCC.*
- *1.01 acres of wetland buffer impact (permanent) is proposed. WCC requires a minimum mitigation (enhancement) ratio of 1:1. This has been met in the mitigation proposal.*
- *0.57 acres of temporary wetland buffer impacts (within pastoral setting) has been proposed; mitigated via immediate rectification as allowed by WCC.*
- *Indirect wetland impact has been identified and mitigated for pursuant to USACE standards ("paper fill"). WCC has no specific mitigation requirements for indirect wetland impacts, with mitigation for such impacts addressed on a case-by-case basis. The mitigation for said indirect impacts is made pursuant to USACE defined mitigation standards for indirect impacts; in this case PDS will defer to USACE for minimum mitigation which has been met by the proposal.*

As outlined above, the minimum mitigation requirements have been met to address critical area impacts. The mitigation proposal, however, far exceeds the minimum standards put forth by WCC in numerous regard and as proposed, no net loss of overall wetland functions and values is foreseen with a significant uplift anticipated in consideration of watershed level functions.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.

D. Rural (R5A) District (WCC Chapter 20.36)

The project site is zoned Rural (R5A) district. WCC Chapter 20.36 outlines the land use controls for development within the R5A zone.

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.26.253, establishes the basic density and lot size requirements for residential development in the R5A zone. The requirement for the R5A zoning district for agricultural protection overlay (APO) subdivisions is listed below:

District	Gross Density	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Minimum Reserve Area (Cluster Divisions)
R-5A subject to agricultural protection overlay (Chapter 20.38 WCC)	1 dwelling unit/5 acres	N/A	15,000	75%

The site is approximately 40 acres with a density of one unit per five acres. The applicant is proposing seven clustered residential lots and one buildable reserve tract. The proposal is consistent with the maximum density requirements of WCC 20.36.253.

The proposed cluster lots will be between 0.62 acres and 1.64 acres in size which meets the minimum cluster lot size requirements. The reserve tract is 32 acres total with a reserve area easement of 30 acres. The parent parcel size is 40 acres and the minimum reserve area requirement is 30 acres. For purposes of this calculation, the proposed reserve area excludes the proposed 0.50 acre house site as well as the drainfield reserve area and access road and meets the requirements of WCC 20.36.253.

The following details the parent parcel and development acreages:

Parent Parcel:	40.09 acres
Reserve Area Easement:	30.64 acres
Clustered Lots:	8.06 acres
Reserve Lot House Area:	0.50 acres
Reserve Tract Drainfield Area:	1.25 acres
Reserve Tract Access Road:	0.15 acres

WCC Section 20.36.254 outlines the width at street line, width at building line and minimum mean depth requirements for cluster lots within the R5A district.

District	Width at Street Line – Conventional	Width at Street Line – Cluster	Width at Bldg. Line	Minimum Mean Depth
R5A	300'	70'	80'	100'

The proposed development meets the requirements for width at street line and building line and minimum mean depth.

WCC 20.36.130 Administrative Approval Uses

The applicant has indicated lots 3, 5, 6 and 7 will be designed as eligible for an accessory dwelling unit (ADU). WCC 20.36.132 allows ADU's as an Administrative Use. Current code allows an ADU on platted lots preliminarily approved after January 25, 1994 only if the lot has been specifically designated.

Lots 3, 5, 6 and 7 will be formally designated as eligible to apply for an administrative use permit for an ADU. Lots less than 4.5 acres are only allowed an accessory apartment (WCC 20.36.132(10)) which is defined as:

WCC 20.97.003 Accessory apartment.

"Accessory apartment" means a separate complete residential unit designed for occupancy by a family. It is substantially contained within the contiguous structure or attached garage of a single-family residence and there is internal access between the units; provided, however, that a detached garage whose foundation is 10 feet or less from the single-family residence is permitted as an accessory apartment. For structures further than 10 feet apart, a covered or enclosed breezeway does not constitute an approved access.

Proposed ADU's will be reviewed in conformance with all requirements at the time of administrative use permit submittal.

WCC 20.36.300 Lot clustering, reserve area and reserve tract.

WCC 20.36.305 Lot clustering. (Adopted by reference in WCCP Chapter 2.)

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost and increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

(3) Lot clustering is required for residential developments on parcels 10 acres or greater when the property is located within an urban growth area reserve.

The proposed division is a cluster subdivision pursuant to WCC 20.38.050. At least 75% of the site will be preserved in the reserve area easement and used for preservation of wetlands and buffers as well as ongoing agriculture.

WCC 20.36.310 Design standards. (Adopted by reference in WCCP Chapter 2.)

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

- (1) Clustered building lots may be only created through the subdivision or short subdivision process.
- (2) Building lots shall be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
- (3) The majority of building sites shall be arranged in a cluster or concentrated pattern to be compatible with physical site features and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- (4) Common access to clustered building lots shall be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "reserve tract" for the purpose of future approved development in urban growth areas and urban growth area reserves.
- (5) Where the boundaries of a proposed cluster subdivision include land in more than one rural zone designation (R-2A, R-5A and R-10A) the following shall apply:
 - (a) The total number of units permitted shall be computed by separately calculating the number of lots allowed in each zone district based on the amount of land area within the district. The number of lots allowed in each district shall be totaled to arrive at the total number of lots.
 - (b) Lot clusters may be distributed or arranged on property(s) covered by the subdivision such that density from an R-5A or R-10A portion of a subdivision may be transferred to an adjacent portion of the subdivision with a different rural zoning designation (R-2A, R-5A or R-10A); provided, the total number of lots for the entire subdivision does not exceed the number calculated in subsection (5)(a) of this section; and provided further, that the lot design is consistent with subsections (1) through (4) of this section. Density from R-2A portions of the subdivision may not be transferred to R-5A or R-10A portions of the subdivision.
- (6) In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters.

The applicant is creating the lots through the long subdivision process, the design of the proposal protects the natural resources on the site and the proposal will not include more than one access to the county road system for the new development. The clustered lots are arranged to protect wetland areas and buffers while maintaining viable agriculture. The reserve tract is accessible by the proposed internal access road and there are seven cluster lots proposed.

WCC 20.36.315 Reserve area.²

(1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.36.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC 20.36.052. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.36.253.

The proposal will be conditioned to include a reserve area easement that is protected consistent with WCC 20.36.315(1). The reserve area will include OSS drainfields and a portion of the access road. The area the OSS and access road occupy will not be included in the reserve area percentages per WCC 20.38.060.

WCC 20.36.320 Reserve tract. (Adopted by reference in WCCP Chapter 2.)

For the purposes of this section, "reserve tract" is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space purposes. All "reserve tracts" created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this section, the "reserve tract" may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The "reserve tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a "reserve area" easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The "reserve tract" may be further subdivided only through the long subdivision process and only under one of the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.36.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original

subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts." Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.36.253.

(5) The requirements of subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

The reserve tract will include a homesite for a single family residence and associated development. The area allotted to the single family residence will not be included within the Reserve Area calculations or easement. After subdivision, there will be no additional densities for residential purposes and no further subdivision will be allowed unless the division is consistent with WCC 20.36.320(3). The subdivision will be conditioned to include notes that shall be placed on the face of the mylar.

WCC 20.36.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements).

Front Yard	Side Yard	Rear Yard
20 ft.	5 ft.	5 ft.

Setback will be addressed at the time of building permit. It appears all lots have adequate area to meet setbacks.

WCC 20.36.400 Height limitations.

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

No structures will be greater than 35 feet in height.

WCC 20.36.450 Lot coverage. (Adopted by reference in WCCP Chapter 2.)

No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total area, not to exceed

25,000 square feet. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

Lot coverage will be reviewed at the time of building permit submittal.

WCC 20.36.650 Development criteria.

WCC 20.36.652 Use of natural resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

A right-to-farm disclosure will be required as a condition of approval.

WCC 20.36.656 Drainage. (Adopted by reference in WCCP Chapter 2.)

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

Stormwater management has been addressed through conditions of approval from Public Works Engineering Services.

WCC 20.38 Agriculture Protection Overlay (APO)

WCC 20.38.010 Purpose.

The purpose of this chapter is to maintain and enhance commercial agricultural activity and further protect open space resources within Whatcom County; further the county's efforts in meeting long-term agricultural needs; provide a reasonable mix of uses and activities which may enhance the economic resources available to the farmer; and provide for a variety of uses within the rural areas which are not inconsistent with or incompatible with the use of lands within the area for agricultural activities. This chapter is not intended to interfere with the use of other resources.

The site is covered in more than 50 percent agriculture protection overlay soils and the proposed development is subject to the APO standards. Design of the subdivision shall be consistent with WCC 20.38.060.

WCC 20.38.060 Development and use standards checklist.

Subdivisions or segregations for nonagricultural uses shall be clustered. Development on all parcels subject to this section shall follow the requirements below:

- (1) The clustered residential lot(s) shall not exceed 25 percent of the gross acreage of the original parent parcel, regardless of the number of separate subdivision events; and
- (2) Shall not interfere with the resource productivity and agricultural use of the agricultural reserve tract; and
- (3) If the parent parcel contains an area that is nonagricultural or lower class soils, and if this area is large enough to contain or partially contain the clustered residential lots then the clustered residential lots shall be located on this lower class soil unless restricted by physical constraints or unless the placement of said lots would be contrary to subsection (2) of this section; and
- (4) Minimum lot size shall comply with WCC 20.36.253, unless a larger lot is required as determined by the requirements of the Bellingham-Whatcom County Sanitary Code for on-site septic disposal; provided, however, separate drainfield tracts and common drainfields shall be allowed consistent with the sanitary code. Drainfields serving the cluster development may be located within the required building setback, but not within the reserve tract; and
- (5) In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters; and
- (6) All wells for potable water within the cluster subdivision shall be kept a minimum of 100 feet from the property line of an existing farm or any parcel or portion thereof which is designated as the agricultural reserve tract; and
- (7) Any structure within the cluster subdivision which will be used for human habitation shall be set back a minimum of 100 feet from the property line of any parcel or portion thereof which is designated or used for agricultural purposes. No structures shall be constructed within 30 feet of exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use; and
- (8) The 25 percent of a parcel available for development may be contiguous or in separate clusters so long as the requirements of this section are met; and
- (9) At the time of the initial development of a parcel under this section the entire parcel shall be included within the plat or tract map recorded, including the clustered residential parcel or parcels, and the reserve tract. Modifications to the plat or tract map shall be made in accordance with state law and county codes and ordinances, and shall be permitted, so long as the provisions of this section are met as applied to the original parcel; and
- (10) A statement that the property is subject to the agriculture protection overlay (Chapter 20.38 WCC) shall be recorded on the face of the tract map, or short plat; and

(11) For purpose of determining additional development density should a rezone take place, the original (pre-subdivided) parent parcel acreage must be included in the total acreage calculation and the original development density shall be subtracted from the increased total development density assigned to the original parent parcel, to obtain remaining density.

The clustered lots represent no more than 25 percent of the parent parcel and agriculture can occur on the reserve tract without interference from the clustered lots. There are wetlands and associated buffers located on the reserve tract; these areas will be preserved with no agricultural uses allowed.

As stated in the project description the applicant is proposing to deviate from development standards relating to WCC 20.38.060 (4) and (6) through a development agreement. The applicant is proposing a 1.25 acre easement located within the reserve tract for OSS drainfields for lots 1, 2, 4 and 5. The applicant is also requesting the 100 foot setback for habitable structures and the 30 foot setback for nonhabitable structures from the reserve tract be reduced to the standard rear or side yard setbacks in WCC 20.80.210(5)(b)). Further analysis regarding the developers agreement can be found in Section VII. I.

E. Transportation Concurrency (WCC Chapter 20.78)

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Whatcom County Public Works Department Engineering Services issued a Preliminary Concurrency Determination. A Certificate of Transportation Capacity will be issued prior to final plat approval.

The Technical Review Committee has determined the project is consistent with the requirements of WCC Chapter 20.78.

F. Concurrency (WCC Section 20.80.212)

WCC Section 20.80.212 states that no subdivision shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

Water

Water will be provided for to the site from the Deer Creek Water Association. For more analysis regarding water see Section VII.I. Section I Health Department of this report.

Sewage Disposal

Sewage disposal will be provided by onsite septic systems. OSS for Lots 3, 6, 7 and 8 will be located on the parcel with the remaining systems located within an easement on the Reserve Tract. For more analysis regarding sewage disposal see Section VII.I of this report.

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

Schools

The applicant submitted a will-serve letter for this proposal dated January 4, 2017 from the Meridian School District. The school district received notice of the proposal and made no further comments.

Fire Protection

The proposal is within the service area for the Whatcom County Fire Protection District No. 4. The Fire District was notified of the proposed subdivision and provided no comments.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.

G. Subdivision Regulations (Title 21)

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, 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 the public use and interest will be served by the platting of such subdivision and dedication; and

1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.

2. With regard to open space, parks and playgrounds the Technical Review Committee finds the following:

The proposed lots are located in the Rural zoning district and meet the minimum cluster lot size requirements. At least 75 percent of the site will be set aside for agricultural and/or critical area protection. The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.

3. With regard to streets or roads, alleys, other public ways and transit stops, the Technical Review Committee finds the following:

Proposed access to the subdivision will be a private road off Zander Drive.

The Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.

4. With regard to drainage Technical Review Committee finds the following:

The Technical Review Committee has determined that the proposal, as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.

5. With regard to schools the Technical Review Committee finds the following:

The Meridian School District provided a letter of availability; therefore, the Technical Review Committee has determined that the proposal is providing adequately for schools.

6. With regard to compliance with the relevant policies of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

Applicable goals and policies of the comprehensive plan are as follows:

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

Policy 2DD-6: In the "Agriculture Protection Overlay Zone" on parcels 20 acres and larger with Rural 5 acre and Rural 10 acre zoning, require non-agriculturally related development to be clustered where it would not create more conflicts with accepted agricultural practices, on a maximum of 25 percent of the available land with the remainder available for open space and agricultural uses. Development standards shall provide flexibility to achieve development potential in cases of natural limitations.

Policy 2GG-6: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.

The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

As analyzed previously in this report, the Technical Review Committee finds that, as conditioned, the project is in compliance with Title 20 and Title 21 and all other land use controls.

The Technical Committee has determined that, as conditioned and amended, the project meets the requirements of WCC Title 21.

WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.

(1) Except as provided by subsection (1)(a) of this section, a final plat shall be submitted to the subdivision administrator in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within 10 years of the date of preliminary plat approval if this project is not subject to

requirements adopted under Chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

The applicant has not requested a phased subdivision. As conditioned, the applicant shall complete infrastructure requirements and record the final subdivision within five years of the date of preliminary approval.

WCC 21.05.040 Development requirements.

(1) All subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final subdivision approval, unless security is provided under WCC 21.06.040.

(3) Improvements and other requirements shall be provided to the extent that each phased subdivision will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed, except on-site septic systems do not have to be installed unless required by the health officer. (Ord. 2009-007 § 1).

As conditioned, the proposed subdivision is consistent with the applicable standards, requirements and procedures of the Whatcom County Development Standards. All improvements shall be completed prior to final subdivision approval except as agreed to under WCC 21.06.040.

WCC 21.05.050 Roads.

Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

No dedication is required for this development.

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the final plat, unless security is provided under WCC 21.06.040.

No frontage improvements are required for this development.

(3) Minor and local access roads should discourage through traffic.

No through traffic on minor and local access roads are proposed for the proposed development.

(4) All subdivisions and phased subdivisions shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site and to ascertain the appropriate classification and character of the proposed roads.

The subdivision is accessed by a constructed and maintained private road as allowed by the Whatcom County Engineer. There is one access point to the site for this development.

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the subdivision.

A secondary access point or additional road right-of-way is not necessary the development.

(6) Public road rights-of-way and/or easements shall be extended to the boundaries of subdivisions that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

The development does not abut public lands or public bodies of water. No rights-of-way or easements will be required at this time.

(7) Private roads may be permitted in a subdivision when in compliance with the Whatcom County Development Standards. (Ord. 2009-007 § 1).

The applicant has requested private roads for the development. As discussed in Section VII. A, the Whatcom County Engineer has reviewed and approved the request.

WCC 21.05.080 Water supply.

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

Public water is proposed to be provided by Deer Creek Water Association.

WCC 21.05.090 Sewage disposal.

(2) Outside of the urban growth area and small town Comprehensive Plan designations, subdivisions shall not be approved that require extension or expansion of public sewer except when:

- (a) Public sewer is necessary to protect the public health, safety or environment; and
- (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC 24.05.210, Developments, subdivisions, and minimum land area requirements.

The proposed subdivision is not located within the urban growth area or the small town comprehensive plan designations. Public sewer is not proposed. As discussed in Section VII. H the OSS shall meet the requirements of WCC 24.05.210.

WCC 21.05.100 Fire protection.

Long subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal. (Ord. 2009-007 § 1).

As conditioned by the Whatcom County Fire Marshal, this proposal is consistent with WCC 21.05.100.

H. Health Code (Title 24)

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department (WCHD) has reviewed the proposed project noted above in accordance with WCC 24.05 *On Site Sewage System Regulations*, WCC 24.11 *Drinking Water Code*, and WCC 21 *Land Division Regulations*. The WCHD submitted a memo dated July 23, 2019 stating the following:

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC Title 24 Health Code and Title 21 Land Division Regulations.

WCHD recommends preliminary approval with the following conditions:

Sewage Disposal

- OSS components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.

If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.

For those OSS located on different parcel than they serve, individual OSS permit applications will be required and transport lines will need to be installed prior to final approval.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.

I. Development Agreement (WCC 2.11.200 Hearing Examiner – Duties and Powers)

WCC 2.11.200 Hearing examiner – Duties and powers.

WCC 2.11.205 Recommended decisions.

In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

C. Development agreements, as authorized in Chapter 36.70B RCW;

Chapter 36.70B.170 Revised Code of Washington

1. A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

The applicant and Whatcom County are entering into a development agreement for real property within the County. This development agreement will include three alternative standards that will govern and vest the agreement upon standards for the duration of the subdivision. The subdivision will be consistent with all applicable development regulations.

2. RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

This section is not applicable to this agreement.

3. For the purposes of this section, "development standards" includes, but is not limited to:
- Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
 - The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
 - Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW
 - Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
 - Affordable housing;
 - Parks and open space preservation;
 - Phasing;
 - Review procedures and standards for implementing decisions;
 - A build-out or vesting period for applicable standards; and
 - Any other appropriate development requirement or procedure.

The applicant is proposing to deviate from existing development standards for the following items:

- Setback from APO reserve tract – the applicant is requesting the 100 foot setback for habitable structures and the 30 foot setback for non-habitable structures from the reserve tract be reduced to the standard rear or side yard setbacks in WCC 20.80.210(5)(b));*
- Location of on-site sewage system (OSS) drainfields - the applicant is requesting the OSS drainfields be located within an easement on the reserve tract; and*
- Direct wetland impacts – the applicant is proposing 5,227 square feet of wetland fill for road construction.*

These items relate to mitigation measures as well as design standards. These items are appropriate for consideration through a development agreement.

4. The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different

regulations to the extent required by a serious threat to public health and safety.

The applicant is proposing to deviate from development standards through the development agreement process for three items. With regard to setbacks from the APO reserve tract, PDS has agreed that the habitable and non-habitable structure setbacks required in WC 20.38.060(7) are not necessary for the lots abutting portions of the reserve tract designated as wetland and buffer and placed in a conservation easement.

While practicing ongoing agricultural operations within designed critical areas and buffers can generally occur with approval of a farm plan (WCC 16.16.800), the areas adjacent to lots 1 through 5 and the north boundary of lots 6 and 7 will be planted in native vegetation for stormwater purposes. No ongoing agricultural operations will occur and the additional habitable and non-habitable structure setback will not be necessary to protect homeowners from potential agricultural related impacts.

As agreed upon through the development agreement and conditioned herein, the side and/or rear setbacks for lots 1-5 shall be as stated by WCC 20.80.210(5)(b) or as required by WCC 16.16.265(D) whichever is more restrictive. Lots 6 and 7 shall have the 100 foot setback for habitable structures from the southern property line as well as any additional setbacks required by WCC 16.16.265(D).

The applicant is also proposing to locate OSS drainfields within the APO reserve tract which is prohibited by WCC 20.38.060(4). The applicant submitted soil logs for the site detailing areas suitable for OSS drainfields and reserve areas. Lots 3 and 6 had suitable soils for OSS outside of road and utility areas. Lots 1, 2, 4 and 5 did not have suitable soils for OSS drainfields and reserve areas within the boundary of the lot, however adequate soils were found on the APO reserve tract. The drainfield for lot 2 will be located along the northern property line within an easement on the APO reserve tract. Lots 1, 4 and 5 will be located on two separate easements within the center of the APO reserve tract.

Through design of the subdivision, the applicant has worked to balance the critical areas and associated buffers, the stormwater and road infrastructure requirements as well as ongoing agriculture on the property. As required by WCC 20.38.060(1) the lots, utilities and roads will occupy no more than 25 percent of the parent parcel. However, the requirement of a conservation easement for wetland and buffers, the requirements of native planting for stormwater infiltration, as well as the location of suitable soils for septic systems will reduce the acreage available for ongoing agriculture.

To mitigate for lands removed permanently from agricultural production, the applicant has agreed to make a fee-in-lieu payment into the PDR program. Chris Elder, Whatcom County PDR Program Administrator, has reviewed the proposal and provided a memo on April 15, 2019. The PDR program regularly places permanent agricultural conservation easements on parcels using a per acre or per development

right valuation. Utilizing the last six projects for the purpose of valuation, the average value of an agricultural conservation easement per acre is \$7,000.

Utilizing the \$7,000 per acre average for the approximately 20 acres of land removed from permanent agricultural production, the applicant has agreed to pay approximately \$140,000 directly to the PDR program. As agreed upon through the development agreement and conditioned herein, the funds will be paid prior to final plat approval and be used by Whatcom County to purchase agricultural conservation easements consistent with the purpose of the PDR program.

The applicant has also proposed wetland mitigation identified in the Impact Assessment and Mitigation Report Revision 1, September 12, 2018 prepared by Northwest Ecological. The proposal will mitigate to a greater extent than required by the standard mitigation requirements of WCC 16.16.680. The proposed project will implement four types of mitigation strategies:

- Wetland Creation – To compensate for 0.12 acres of wetland impact 0.18 acres, a ratio of 1.5:1, will be created contiguous with Wetland C.*
- Buffer Enhancement – To compensate for the 1.01 acres of impact to the wetland buffer 1.54 acres, a ratio of 1.5:1, of the buffer will be enhanced.*
- Buffer Averaging – A total of 0.88 acres of wetland buffer will be averaged to the southeast property corner, adjacent to Wetland X providing protection against potential future development in the forested area.*

All mitigation will be required to be completed prior to final plat approval and monitoring will occur for ten years to ensure successful mitigation.

VIII. RECOMMENDATION

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the Long Subdivision and development agreement applications, subject to the following conditions:

IX. CONDITIONS OF APPROVAL

A. Current Planning Division

1. The use and location on the site as shown on the site plans dated August 2019 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64