

**WHATCOM COUNTY HEARING EXAMINER**

*re:* The application of **Brar & Brar Brothers** for a Preliminary Long Subdivision

*“Brar Bros Farm Estates APO Cluster Long Plat”*

LSS2019-0001

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicants are seeking Preliminary Long Subdivision and associated infrastructure to subdivide approximately 76.01 acres subject to APO in the Rural [R5A] zoning district into a five-lot cluster subdivision.

Decision: The Hearing Examiner grants Preliminary Long Subdivision Approval, subject to the conditions recommended herein.

**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.

**FINDINGS OF FACT**

**I.**

Applicants: Harbinder S. & Parmjit K. Brar and Jagmail S. & Karamjit K. Brar

Site Location/Address: 76.01-acre parcel East of Sand Road and approximately 3300-ft. north of the intersection of 5560 Sand Road and Smith Road, Bellingham, Washington

Assessor's Parcel Number: 390429 142334

Zoning: Rural [R5A]

Comprehensive Plan: Rural

Number of Lots: Five [5] lots and Agriculture Protection Overlay

Total Acreage: Approximately 76.01 acres

Roads: N/A

Water Supply: Private Shared Wells

Sewage Disposal: On-Site Septic Systems

Fire Protection: Whatcom County Fire District No. 1

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mount Baker School District No. 507

Topography: The site is varied with regulated critical areas on the western portion of the parcel separating the residential lots from the agricultural operations tract.

Vegetation: Vegetation consists mostly of farmed land & critical areas.

Adjacent Land Uses:

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

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

Variances: No variances requested.

SEPA Review: Determination of Non-significance, issued February 22, 2021.

Authorizing Ordinances

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11  
 Revised Code of Washington [RCW] 36.70B, LOCAL PROJECT REVIEW  
 RCW Chapter 58.17, PLATS—SUBDIVISIONS—DEDICATIONS

Whatcom County Comprehensive Land Use Plan  
Whatcom County Code (WCC) 2.11, Hearing Examiner  
WCC 2.33, Permit Review Procedures [repealed ordinance 2018-032]  
WCC 12.08, Development Standards  
WCC 15, Building Code  
WCC 16.08, Whatcom County Environmental Policy Administration  
WCC 16.16, Critical Areas  
WCC Title 20, Official Whatcom County Zoning Ordinance  
WCC 21, Subdivision Regulations  
WCC Title 22, Land Use and Development Procedures  
WCC 23, Shoreline Management Program  
WCC Title 24, Health Regulations

Legal Notices:

- Published and Mailed, Notice of Application and Optional DNS, March 29, 2019
- Posted – Notice of Public Hearing, February 25, 2021
- Mailed – Notice of Application, February 17, 2021
- Published – Notice of Application, February 25, 2021

Hearing Date: March 10, 2021

Parties of Record

Brar, *et. al.*  
PO Box 2840 Road  
Sumas, WA 98295

Jaime White  
Whatcom Land Use Consulting, LLC  
2215 Midway Lane, Suite 203  
Bellingham, WA 98226

Jeromy DeMeyer, Surveyor – NW Surveying  
407 5<sup>th</sup> St.  
Lynden, WA 98264

Maddie Ottley  
Whatcom County  
Planning and Development Services – Conservation Program on Agricultural Lands Planner  
– CPAL  
5280 Northwest Dr  
Bellingham, WA 98226

Craig Ostrom, Planner III, Current Planning  
Whatcom County  
Planning and Development Services  
5280 Northwest Dr  
Bellingham, WA 98226

Erin Page, Critical Areas Planner  
Whatcom County  
Planning and Development Services  
5280 Northwest Dr  
Bellingham, WA 98226

Ryan Ericson, *former* PDS Natural Resources  
Whatcom County  
Planning and Development Services

Garth Thompson  
820 36<sup>th</sup> St.  
Bellingham, WA 98229

Stephanie Skinner & Brian O’Niel  
[briannoneill@cablespeed.net](mailto:briannoneill@cablespeed.net)  
[sws2985@gmail.com](mailto:sws2985@gmail.com)

Dean & Suzanne Collins  
5563 Sand Rd.  
Bellingham, WA 98226

Ken & Joni Parks  
5505 Sand Rd.  
Bellingham, WA 98226

#### Exhibit List

1. Preliminary Subdivision App, fee responsibility, agent authorization, receipt, contact list
2. Project Narrative
3. Original Preliminary Map

4. Revised Preliminary Map
5. Notice of Application and Optional SEPA
6. Determination of Completeness
7. LOR Determination – EXE2017-00070
8. Preliminary Stormwater Report
9. Preliminary Traffic and concurrency Information Application
10. ECE2019-00013-traffic-concurrency-exemption
11. Land Disturbance Application and map
12. Plat Certificate-Subdivision Guarantee
13. Natural Resources Site Assessment July 2018
14. Approved-OSS-and-soil-infiltration-evaluation
15. Approved Well Site Inspections-20201001
16. Water Availability denial forms
17. Agency Comments
18. Letters of Concurrency – Fire and School
19. Agency Distribution List
20. Legal Notice
21. Bellingham Herald and published notice from Bellingham Herald
22. Mailing Noticing List and Signed Certificate of Mailing
23. Vicinity Map
24. Public Comment – Initial Public Comments 04/2019
25. Public Comment – Garth Thompson folder
  - a. 05/06/2019 - email-frm-garth-thompson-to-craig-ostrom-20190506
  - b. 07/24/2019 - 1st-email-frm-garth-thompson-to-staff-and-barbara-brenner-20190724
  - c. 07/24/2019 - 2nd-email-frm-garth-thompson-to-staff-and-barbara-brenner-and-attachment-20190724
  - d. 7/24/2019 - 3rd-email-frm-garth-thompson-to-ecology-and-barbara-brenner-20190724
  - e. 09/04/2019 - email-from-garth-thompson-to-craig-ostrom-20190904
  - f. 10/18/2019 - email-frm-garth-thompson-to-Tyler-Schroeder-director-executive-staff-

20191018

- g. 10/18/2019 – Response-email-frm-Tyler-Schroeder-to-garth-thompson-director-executive-staff- 20191018
- h. 10/25/2019 – email-frm-garth-thompson-to-staff-and-response-20191025
- i. 12/05/2019 - email-frm-garth-thompson-to-staff-director-executive-20191205
- j. 12/11/2019 - email-frm-garth-thompson-to-executive-and-staff-20191211
- k. 12/05/2019 - email-frm-garth-thompson-to-staff-director-executive-and-responses-20191205
- l. 03/11/2020 - email-frm-garth-thompson-to-staff-director-council-and-attachments-20200311
- m. 3/17/2020 – email-frm-garth-thompson-to-staff-20200317
- n. 04/01/2020 - email-frm-garth-thompson-to-staff-director-and-response-20200401
- o. 04/02/2020 - email-frm-garth-thompson-to-staff-and-council-20200402
- p. 04/07/2020 - email-frm-garth-thompson-to-staff-and-attachment-20200407
- q. 04/08/2020 - response-to-1st-email-frm-garth-thompson-to-staff-20200408
- r. 04/08/2020 – 1st-email-frm-garth-thompson-to-staff-director-council-and-attachment-20200408
- s. 04/08/2020 – 2nd-email-frm-garth-thompson-to-staff-director-council-20200408
- t. 04/08/2020 – 3rd-email-frm-garth-thompson-to-staff-director-council-20200408
- u. 04/08/2020 – 4th-email-frm-garth-thompson-to-staff-director-council-20200408
- v. 04/16/2020 – email-frm-garth-thompson-to-staff-director-council-20200416
- w. 04/21/2020 – email-frm-garth-thompson-to-staff-and-attachment-20200421
- x. 04/22/2020 – email-frm-garth-thompson-to-staff-and-attachments-20200422
- y. 05/06/2020 – email-frm-garth-thompson-to-craig-ostrom-20200506
- z. 10/21/2020 – email-frm-garth-thompson-to-staff-20201021
- aa. 10/23/2020 – email-frm-garth-thompson-to-craig-ostrom-20201023 bb.

- 26. Parties of Record updated spreadsheet
- 27. Draft CC&R's
- 28. Purchase of Development Rights exhibits
- 29. SEPA Checklist and Determination of Non-Significance
- 30. Final Staff Report
- 31. NR Critical Areas Preliminary Approval Memo 2/25/2021
- 32. Revised 2nd CA NOAR requirements-email-20200603
- 33. Approved-mitigation-plan-20200224
- 34. Approved-red-lined-wetland-delineation-20190528

35. Combined Staff memos
36. Hearing Examiner Exhibits List
37. E-mail and Exhibits of Garth Thompson submitted 3/9/21

## II.

The proposed project area consists of a 76.01-acre parcel East of Sand Road and approximately 3300 feet north of the intersection of Sand Road and Smith Road. The property is currently developed with one single family residence and barn and has been used in the past for various agriculture uses, contains critical areas including wetlands and irrigation ponds and is mostly vegetated in a mix of deciduous & evergreen trees around the wetlands, with the bulk of the farm fields east of the wetlands.

The Applicants are seeking a Preliminary Long Subdivision and associated infrastructure to subdivide approximately 76.01 acres subject to APO in the Rural [R5A] zoning district into a five-lot cluster subdivision. The project would consist of four clustered lots and one approximate 64.57-acre APO Reserve Tract. Access would be direct to Sand Road via shared access easements for ingress, egress, and utilities for the cluster lots. Access for the APO Reserve Tract would be direct to Sand Road. The remaining densities have been transferred to Whatcom County via the Purchase of Development Rights Program, leaving one density on the Reserve Tract and a permanent protective easement for agriculture.

## III.

The proposed cluster lots vary in size between 1.87 to 4.98 acres net located north to south along the public road, Sand Road, with the agriculture fields east the wetlands separating the two areas. Potable water is proposed to be served by private shared wells located on the cluster lots. Sanitary sewer would be accomplished by individual on-site septic systems.

Sand Road is a County maintained road with Rural Local Access classification and an average daily traffic count of 920. Sand Road has a typical crown cross section with 11-foot wide travel lanes and 2-foot gravel shoulders. According to road mitigation determination per

the Development Standards, Sand Road has sufficient width to support the additional proposed traffic.

There was no appeal of the SEPA Threshold Determination.

#### **IV.**

The Land Use Division of Whatcom County Planning and Development Services Staff through their Technical Review Committee recommended approval of the Long Subdivision application, subject to conditions. Their Findings of Fact and Conclusions of Law are set forth in a "Staff Report," Exhibit No. 30, dated March 3, 2021, in the Hearing Examiner's file.

A Preliminary Stormwater Site Plan Report was submitted by the applicants, and the Public Works Engineering Staff has reviewed and accepted the preliminary design, with redlines which are documented in the Staff Report.

The Applicants through their agent stated that the factual information in the Staff Report was accurate and that the Applicants had no objections or concerns with the recommended Conditions of Approval in the staff report.

Comments were received from the public in advance. Concerns surrounded in general: impacts on wildlife and habitat resources; increase of traffic or noise conditions; land disturbance violations and unpermitted fill on-site; and, location and orientation of cluster lots along the road in regards to visual representation of future homes and shooting rights.

During the hearing additional concerns were raised, about the accuracy and legality of the positions taken in the Staff Report, specifically regarding: proposed Covenants, Conditions & Restrictions ("CCRs"); a Bald Eagle nesting site; land disturbance violations and unpermitted fill; the distances set for the setbacks; easements that exist not showing on the site plan; and the quality of the soil and concerns the evaluators did not have access to historical knowledge of conditions.

Most of the concerns submitted in writing or made orally were addressed by Staff in the Staff Report, or in testimony from the staff at the hearing. The statements of fact put forward in the Staff Report are hereby adopted, through this reference, by the Hearing Examiner as part of the Findings of Fact herein. However, given the concerns expressed and the testimony elicited, some additional specific findings will be made as to facts:



1. ***In re:* Land disturbance violations, unpermitted fill, and accuracy of soil evaluation** – Almost all of the concerns expressed regarding soil raise issues that preceded the long plat application. In the case at hand the factual record examines the fact applicable to the long plat, and not code-enforcement issues which were never timely reported to the County if they were unpermitted or in violation of permits. The complained of fill was prior to the plat application or was dealt with in the proposed mitigation plan. The County did in fact have knowledge of the historical nature of the land and its soil composition. Particularly helpful was the testimony of Erin Page, based on her 20 years plus of experience in the field and master’s degree level education in the subject, who detailed her review of historical data bac to the 1960s and her methodology to take into account concerns about soil and any change. See *also* Exhibit 31, NR Critical Areas Preliminary Approval Memo. It was also testified that given the unique character of the land, Erin Page, used more conservative judgment than usual to ensure compliance with wetland identification standards. All of her evaluations and judgment about substantive facts as reflected in the Staff Report are adopted as facts by the Hearing Examiner by this reference.
2. ***In re:* Bald Eagle nesting site** – The county was aware of the Bald Eagle Site and required US Fish & Wildlife to give indication of a permit needed, which it did not due to the distance of the nesting site from the development- approximately 660 feet.
3. ***In re:* Ditch/drain easement not showing on the Site Plan** – Testimony by Jeromy DeMeyer, a State Licensed Surveyor, established that all easements were reflected on the Site Plan.
4. ***In re:* Distances set for the buffer setbacks** – Maddie Ottley testified as to the appropriateness of the setbacks outlined in the table on page 13 of the Staff Report under the “Wetland designation, rating, mapping” section, and how it conformed with Table 1 of WCC 16.16.630(D), identifying the West Side as being moderate intensity use, and the east side being high intensity use. She further

testified as to the lack of applicable regulations regarding the distance of the residence from farm fields.

5. *In re*: **CCRs** – Testimony was given by the agent that the CCRs are merely proposed ones, and testimony was given from Craig Ostrom that CCRs cannot trump the County’s requirements or other law.

## **V.**

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. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated March 3, 2021, Exhibit No. 30, 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. Consequently, the Hearing Examiner must grant Preliminary Subdivision Approval to the Brar Brothers Farm Estates for a Five Lot Cluster Long Plat, LSS2019-0001, of approximately 76.01 acres, addressed as 5560 Sand Road, Bellingham, WA, APN 390429 142334.

The project will comply with applicable Whatcom County and Washington State regulations. And the Committee recommends approval of the Long Subdivision application, and the Hearing Examiner concurs with the Technical Review Committee, as prepared by the Land Use Services Division of Whatcom County Planning and Development Services.

## II.

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

### **DECISION**

The Hearing Examiner hereby grants Preliminary Approval of the proposed Preliminary Long Subdivision for a five-lot cluster subdivision. The project will consist of four clustered lots and one approximate 64.57-acre APO Reserve Tract, to be located on Assessor's Parcel No. 390429 142334, addressed as 5560 Sand Road, Bellingham, WA subject to the following conditions:

#### **Current Planning Division**

1. The use and location on the site as shown on the site plans, dated September 21, 2020, 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 other than the normal clarification of notation and redlines through the check-print review process.
2. Signage for the subdivision 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 final plat is submitted in its 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 22.25, and Whatcom County Administrative Manual. 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 Cluster Lots shall be as stated by WCC 20.80.210(5)(b) as modified by the Fire Marshal's Office.
8. The Reserve Area Easement shall be clearly delineated on the face of the subdivision map and display the gross minimum lot size of 75% of the parent parcel acreage.
9. 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.

10. The Reserve Tract contains two areas, Area "A" Proposed Homesite Area, and area "B", and area designated as outside of the Reserve Area Easement as depicted on the preliminary subdivision map dated September 21, 2020. Area "A" is approved for the homesite area for a single-family residence. Area "B" has not been reviewed for development.
11. No development shall occur on area "B" without a complete review of all applicable departments at the time of application for that development consistent with Whatcom County Code.
12. A note shall be displayed on the plat indicating Area "B" has not been reviewed for development and that any development application is subject to full review at the application for that project permit application.
13. The following APO Cluster note shall be placed on the face of the plat:

**AGRICULTURE PROTECTION OVERLAY (APO) CLUSTER & RESERVE AREA NOTE:**

1. THIS FIVE (5) LOT SUBDIVISION HAS BEEN APPROVED AS AN AGRICULTURE PROTECTION OVERLAY (APO) CLUSTER SUBDIVISION PURSUANT TO WHATCOM COUNTY CODE TITLE 20.36 AND WCC 20.38. THE FOLLOWING NOTES SHALL BE CONSIDERED A DEED RESTRICTION AND SHALL CONSTITUTE A BINDING AGREEMENT BETWEEN WHATCOM COUNTY AND ALL PRESENT AND FUTURE OWNERS OF RECORD. SAID NOTES SHALL BE INCLUDED WITHIN ALL DEEDS AND CONTRACTS OF

CONVEYANCE AND MAY ONLY BE AMENDED BY MUTUAL AGREEMENT BETWEEN SAID PARTIES PURSUANT TO THE ZONING IN EFFECT AT THE TIME. ANY ALTERATION OF THE RESERVE TRACT, BOUNDARIES OR CLUSTER NOTES PURSUANT TO WCC TITLE 21 AND WCC 20.36.320 REQUIRES THE REVIEW AND FILING FOR RECORD OF A NEW ORIGINAL DRAWING.

2. LOTS 1, 2, 3, AND 4 HAVE BEEN DESIGNATED AS THE CLUSTERED LOTS AND ARE SUBJECT TO THE FOLLOWING RESTRICTIONS:
  - A. LOTS 1-4 HAVE BEEN ASSIGNED ONE DENSITY EACH.
  - B. EACH LOT MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE, SINGLE FAMILY DWELLING UNIT.
  - C. LOTS 1-4 HAVE NO REMAINING DENSITIES.
  
3. LOT FIVE (5) HAS BEEN DESIGNATED AS THE AGRICULTURE RESERVE TRACT CONTAINING THE RESERVE AREA EASEMENT AND IS SUBJECT TO THE FOLLOWING RESTRICTIONS:
  - A. IT HAS BEEN ASSIGNED ONE DENSITY.
  - B. IT HAS BEEN DESIGNATED AS BUILDABLE AT PROPOSED HOMESITE AREA "A" ONLY AND MAY BE UTILIZED FOR THE CONSTRUCTION OF A SINGLE-FAMILY DWELLING UNIT AT SITE "A". A TOTAL OF 2.64 ACRES ARE LOCATED OUTSIDE THE RESERVE AREA EASEMENT BETWEEN SITE "A" AND "B".
  - C. AREA "B" HAS NOT BEEN REVIEWED FOR DEVELOPMENT AND SHALL BE REVIEWED AT THE TIME OF APPLICATION FOR ANY PROJECT PERMIT APPLICATION.
  - D. BASED ON DENSITY CALCULATIONS MADE FOR THE ORIGINAL 76.01-ACRE PARENT PARCEL LOCATED WITHIN THE RURAL (R5A), THE PARENT PARCEL HAS NO RESIDENTIAL DENSITIES REMAINING PER AFN 2020-1205013.
  - E. IT SHALL NOT BE FURTHER DIVIDED IN ANY MANNER EXCEPT AS MAY BE PROVIDED BY WCC 20.36.320.
  - F. IT MAY BE RETAINED BY THE SUBDIVIDER, CONVEYED TO THE RESIDENTS OF THIS SHORT PLAT, OR CONVEYED TO A THIRD PARTY.
  - G. THE RESERVE AREA EASEMENT CONTAINS 75% OF THE NET AREA OF THE PARENT PARCEL (AT LEAST 61.79-ACRES). AS THIS PROPERTY IS SUBJECT TO THE RURAL ZONE, ANY FUTURE ALTERATIONS, AMENDMENTS, OR ADJUSTMENTS TO ANY PART OF THIS SHORT PLAT SHALL NOT RESULT IN THE MINIMUM RESERVE AREA EASEMENT

BEING REDUCED BELOW THE MANDATORY 75% REQUIREMENT.

H. THE RESERVE TRACT AND RESERVE AREA EASEMENT MAY BE DEVELOPED CONSISTENT WITH WCC 20.36 AND 20.38. A RESERVE TRACT RESTRICTIVE COVENANT PURSUANT TO WCC 20.36.320 IS RECORDED UNDER AUDITOR'S FILE NUMBER \_\_\_\_\_.

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.
15. Include the applicable stormwater note to be reflect findings based on the final approved stormwater report.
16. Include a plat note indicating that Proposed Homesite Area "A" is eligible for a single-family residence and Site "B" is restricted from single-family residential development.

### **Health Department**

17. *That* the buildable area on Lot 5 meets all required setbacks to the OSS and its reserve.
18. *That* the proposed stormwater dispersion area on Lot 4 meets the required setback to the OSS reserve area.
19. The applicant must stay in compliance with the state's groundwater exemption (RCW 90.44.050), regulated by the Department of Ecology.
20. The applicant will be required to place the following note pertaining to ESSB 6091, RCW 58.17 and Whatcom County Ordinance 2018-020 on the face of the plat:

THIS SUBDIVISION IS LOCATED IN AN AREA THAT IS GOVERNED BY CHAPTER 173-501 WAC AND IN WHICH INSTREAM FLOWS ARE NOT MET AND/OR ARE SUBJECT TO CLOSURE. IN COMPLIANCE WITH ESSB 6091 AND RCW 58.17 THE COUNTY HAS DETERMINED ADEQUATE POTABLE WATER IS AVAILABLE FOR THIS SUBDIVISION ON THE BASIS OF EVIDENCE SUPPLIED BY THE APPLICANT. THE SUBDIVISION HAS BEEN APPROVED UTILIZING A PERMIT-EXEMPT WELL CONSTRUCTED IN ACCORDANCE WITH RCW 18.104 AND DRILLED AFTER JANUARY 19, 2018. CONSISTENT WITH ESSB 6091 AND WHATCOM COUNTY ORDINANCE 2018-005, RESTRICTIONS ON WITHDRAWAL MAY BE APPLIED AT THE TIME OF BUILDING PERMIT ISSUANCE. THE

COUNTY'S ISSUANCE OF THIS SUBDIVISION APPROVAL SHOULD NOT BE RELIED UPON BY THE APPLICANT OR ANY SUCCESSOR IN INTEREST AS AN ASSURANCE, WARRANTY OR GUARANTEE OF THE FUTURE AVAILABILITY OF WATER TO SERVE THE SUBDIVISION.

**C. Critical Areas**

21. Future check-prints and site plans shall reflect the critical areas buffers according to the land use intensity adjacent to the critical area.
22. A separate Land Disturbance Permit will be required for the mitigation plantings, fencing and signage.
23. Prior to final approval of the plat, mitigation plantings, critical areas fencing and signage shall be installed and a mitigation as built report shall be approved under MIT2020-00012.
24. Applicant shall work with Whatcom County Natural Resources staff to determine the best placement of critical signage and fencing in relation to farming activities.
25. Prior to final approval, all known critical areas shall be placed in a protective conservation easement. The draft conservation easement and recordable site plan shall be routed to the critical areas administrator for signing PRIOR to recording at the Whatcom County Auditor's office. Applicant may draft their own, or, Whatcom County County's conservation easement document can be found online at: <http://whatcomcounty.us/DocumentCenter/View/2191/Conservation-Easement-PDF>
26. Prior to final approval, the landowner and owner of the assignment of savings surety account for the mitigation shall submit an "Agreement to Maintain Mitigation" form under MIT2020-00012.
27. Monitoring reports shall be submitted annually for five successful years following mitigation as-built approval under case number MIT2020-000012. Monitoring reports can be completed by the responsible party under the Agreement to Maintain Agreement. Monitoring forms are found online and can be submitted electronically to [epermits@co.whatcom.wa.us](mailto:epermits@co.whatcom.wa.us).
28. Prior to final approval, the landowner shall submit a CPAL monitoring report documenting implementation of the best management practices detailed within the approved Conservation Farm Plan dated July 23, 2019. In addition, the landowner shall submit a routine monitoring report to WCPDS every two years thereafter under case number frm2016-00001. The Whatcom Conservation District can help prepare and

submit the CPAL monitoring reports to WCPDS on the landowner's behalf.

29. Agricultural operations shall cease to be in compliance with WCC 16.16, and a new or revised Conservation Farm Plan will be required, if any of the conditions found within WCC 16.16.860 (D)(1-6) have occurred.
30. All future fill and grade, or building permits on the agricultural reserve tract or development or repair of the access road to the agricultural tract will require critical areas review. **THIS SHALL BE A PLAT NOTE**
31. Submitted checkprints should have the following DRAFT note placed on the plat, which may be amended prior to final approval:

**CRITICAL AREAS ORDINANCE (CAO) NOTE:**

LOTS 1-4 OF THIS LONG PLAT HAS BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2018-032 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR, AUDITOR'S FILE NO. \_\_\_\_\_ FOR THE CRITICAL AREAS AND ASSOCIATED BUFFERS. ANY FUTURE DEVELOPMENT ON LOT 5 OR THE AGRICULTURAL TRACT "B" SHALL RECEIVE FURTHER CRITICAL AREAS REVIEW.

**D. Fire Marshal's Office**

32. Due to lack of fire flow the following note shall be added to approval documents:

**FIRE PROTECTION SETBACKS**

AS THERE ARE NO PUBLIC OR PRIVATE FIRE PROTECTION FACILITIES AVAILABLE WITHIN 600 FEET OF LOTS WITHIN THIS SHORT PLAT, ALL BUILDINGS SHALL BE SET BACK AT LEAST 20 FEET FROM ALL SIDE AND REAR PROPERTY LINES FOR FIRE PROTECTION PURPOSES. PLEASE NOTE THAT DEVELOPMENT REGULATIONS MAY SUPERSEDE AND ALTER THIS SETBACK REQUIREMENT. ADDITIONALLY, NO SINGLE-FAMILY RESIDENCES OVER 4000 SQUARE FEET IN SIZE, OR DETACHED STORAGE BUILDINGS OVER 2500 SQUARE FEET IN SIZE WILL BE ALLOWED ON THE LOTS WITHOUT ADEQUATE FIRE PROTECTION. THE WHATCOM COUNTY FIRE MARSHAL HAS THE AUTHORITY TO SELECTIVELY OVERRIDE THIS RESTRICTION IN THE EVENT ADEQUATE FIRE PROTECTION FACILITIES BECOME AVAILABLE AS SPECIFIED BY THE FIRE CODE.

**E. Public Works Engineering Services**

33. All development shall comply with the Whatcom County Development Standards



(WCDS).

34. Applicant shall obtain a Revocable Encroachment Permit for any and all work in the County right-of-way, including driveway accesses as shown on the preliminary plat.
35. A map at 1"=400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
36. A final engineered stormwater design report that meets requirements of the current County-adopted Department of Ecology Stormwater Management Manual for Western Washington shall be submitted and approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington. The report shall comply with minimum requirements 1 through 9.
37. The plat shall reference the final stormwater report with engineered stormwater design for the lots. The plat shall identify allowable impervious area per lot and note any conservation and dispersion areas.
38. Revised signature blocks and notes shall be added to the final plat prior to approval.

### 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 15<sup>th</sup> day of March 2021.



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Rajeev D. Majumdar, Hearing Examiner *Pro-Tem*