

WHATCOM COUNTY HEARING EXAMINER

re: The application by **S.C. Division I, Inc.**
for a second revision to South Cape at
Sandy Point – Phase II
Long Subdivision, Shoreline Substantial
Development and Shoreline Variance

LSS1988-00002
SHR1989-00008
SHV1989-00007

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The applicant is requesting a second revision to the preliminary approval for the South Cape at Sandy Point Long Subdivision (March 20, 1992), the amendment to preliminary approval (July 25, 2014); and the revision to the preliminary approval of the South Cape at Sandy Point Long Subdivision (April 17, 2019). The applicant has proposed to materially alter the previous approvals with a re-design of the plat for creation of seven lots and an open space tract. The proposal is to be served by public water, public sewer is proposed to be provided by the Lummi Sewer and Water District. The second revision requested will reduce the lot size, road length and impervious surfaces allowed, and require sewage service from the Lummi Sewer District instead of the previously approved on-site septic system (OSS).

Decision: The requested revision to the preliminary Long Subdivision is granted, subject to the conditions of approval.

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.

Applicant: S.C. Division I, LLC
106 LBJ Freeway, #700
Dallas, TX 75234-6099

Authorized Agent: Dannon Traxler
Traxler & Langabeer P.S.
2701 Meridian St
Bellingham, WA 98225

Site Address: 0 Saltspring Drive
A portion of the NE ¼ of Section 17, Township 38
Ferndale, WA 98248

Legal Description: North, Range 1 East, W.M.

Assessor's Parcel Number (s): 380117-492411

Zoning: S 9.6

Comprehensive Plan: Suburban

Shoreline Designation: Rural

Number of Lots: Seven lots and reserve tract

Total Acreage: Approximately 14.4 acres (including submerged lands)

Roads: Private Roads

Water Supply: Sandy Point Improvement Company

Sewage Disposal: Lummi Sewer and Water District

Fire Protection: Whatcom County Fire District # 17

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Ferndale School District

Topography: The south cape of Sandy Point is a narrow peninsula of land running east-west with no major topographic features. From a small ridge near the center of the cape, the land slopes down to sea level along both sides and throughout its length.

Adjacent Land Uses: North: Single & Multi-Family and Sandy Point Marina basin entrance
East: Single Family Residential
South: Strait of Georgia
West: Strait of Georgia

Utilities Easements: Necessary utility easements will be established prior to recording the final plat.

Variances: SHV1989-00007

SEPA Review: Mitigated Determination of Non-significance issued on December 31, 2018

Authorizing Codes, Policies, Plans, And Programs:

- State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
- Revised Code of Washington Chapter 58.17
- Whatcom County Comprehensive Land Use Plan.
- Whatcom County Code (WCC) 2.11, Hearing Examiner
- WCC Chapter 12.08, Development Standards
- WCC 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 Shoreline Master Program (1986 Edition)
- WCC Chapter 16.16, Critical Areas
- WCC Chapter 2.24A, Whatcom County Code Interim Zoning Ordinance
- WCC Title 20, Official Whatcom County Zoning Ordinance
- WCC Title 21 (Ord. 85-42), Subdivision Regulations
- WCC Title 21(Ord. 2013-049), Subdivision Regulations
- WCC Title 24, Health Regulations
- Business Rules of the Whatcom County Hearing Examiner (BRWCHE)

Legal Notices: Mailed – Notice of Public Hearing, August 13, 2021
Published – Notice of Public Hearing, August 25, 2021
Online Publication of Agenda and Zoom links, August 25, 2021

Hearing Date: September 7, 2021 – 1:30 p.m.

Parties of Record:

Dannon Traxler – Agent
Langabeer & Traxler P.S.

2701 Meridian St.
Bellingham, WA 98225

Royce Buckingham – Prosecuting Attorney
Whatcom County
311 Grand Ave.
Bellingham, WA 98225

Amy Keenan – Senior Planner
Whatcom County PDS
5280 Northwest Drive
Bellingham, WA 98226

Lyle Anderson
5118 Heronswood Drive
Blaine, WA 98230

Robert Kaye
6915 Holeman Ave.
Blaine, WA 98230

Parties who submitted written comment:

Kassi Clark – clark@kasabella.com

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Veronika Von Vegesack
4078 Sucia Drive, Ferndale WA 98248

Hearing Examiner Exhibit List:

1. SEPA Mitigated Determination of Non-Significance 12.31.2018
 2. Hearing Examiner Decision - Revised South Cape - Phase 2 Preliminary Approval 4.27.2019
 3. Preliminary Exhibit List - South Cape Phase 2.22.2019
 4. Revised Application 3.8.2021
 5. Revised SEPA Checklist 3.8.2021
 6. Address Labels - Properties within 1000 feet 3.8.2021
 7. South Cape Plat Phase 2 - Revised FEMA Habitat Assessment and Planting Plan 3.8.2021
 8. Preliminary Site Plan 3.8.2021
 9. Preliminary Plat Map with Calculations 3.8.2021
 10. Revised Application Receipt 3.11.2021
 11. Vicinity Map 3.23.2021
 12. Notice of Application 3.23.2021
 13. Legal Notice Verification 3.22.2021
 14. Combined Distribution List 3.22.2021
 15. Legal Notice 3.8.2021
 16. Revised Preliminary Pat Map 6.4.2021
 17. Public Comments 2021
 18. Interested Parties 8.20.2021
 19. Health Department Memo 6.22.2021
 20. Public Works - Flood Memo 8.26.2021
 21. Public Works - Engineering Services Memo 7.19.2021
 22. Geological Hazards - Revised Conditions 8.25.2021
 23. Second Revision Staff Report 8.27.2021
 24. Preliminary Exhibit List 8.27.2021
 25. Certificate of Posting 8.23.2021
 26. Certificate of Mailing 8.13.2021
 27. Legal Notice 8.23.2021
 28. Public Comment – Lyle Anderson 9.1.2021
 29. Public Comment – Lyle Anderson 9.2.2021
- Appendix A – Attached comment to email

II.

The Applicant is requesting a second revision to allow for redesign of the 2019 preliminarily approved subdivision, Phase II. The first revision was approved on April 17, 2019. Tract A will be subdivided into seven lots with an open space tract consistent with the previous approval. The lots will be reduced in size and are proposed to be between 9,600 and 12,500 square feet. The road design has been modified to serve the smaller development. The road impervious surface and length will be reduced. All seven lots will have at least 60 feet frontage for direct access onto the private road. The road will be 20 feet paved with 1-foot gravel shoulders through the first four lots. The remainder of the road will be paved 18 feet with 1-foot gravel shoulders.

Sewage service from the Lummi Sewer District (instead of the previously approved on-site septic system) will be required.

No other changes are proposed and the previous conditions of Approval not affected by these changes will remain in place.

All of the changes proposed reduce the environmental impacts of the project.

III.

The Whatcom County Technical Review Committee has recommended approval of the second revision of Phase II Long Subdivision. The Applicant has indicated there are no factual inaccuracies in Staffs findings and no objection to the Conditions of Approval requested by Staff. The Revisions requested herein result from a Settlement Agreement which resolves pending Appeals of the Shoreline permit modifications approved in the first Revision request on April 17, 2019.

IV.

WCC 2.11.220 allows the Hearing Examiner to issue subpoenas and compel

attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined. There was public comment at the Hearing, both speaking at the hearing and via email received.

V.

The findings of fact of Technical Review Committee, as set forth in the Staff Report (exhibit 23), dated August 27, 2021, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

VI.

WCC 23.60.190(B) allows local government to find “good cause” to apply different expiration timelines different than the standard time limits in WCC 23.60.190(A) (1) & (2). The Hearing Examiner has the authority to determine appropriate expiration dates for the Shoreline Permits revised by the Revisions approved herein. This Plat Application was originally approved in 1992 and the final phase is yet to be completed. Staff has recommended the Shoreline Permits revised by this Decision be given an expiration date of September 7, 2022. The Applicant has requested an additional 2 years. In a Solomon like Manner the Hearing Examiner concludes that an expiration date of March 15, 2023 for the shoreline permits revised by this Decision is appropriate.

IV.

Any Conclusion of Law below 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.

The proposed Application for the modifications to the approved preliminary long subdivision can be approved if consistent with the Subdivision Regulations of WCC 22.05.110. Subject to the Conditions of Approval attached to the granting of this Permit

Decision, the proposal is consistent with the Subdivision Regulations. A revision to the Preliminary Long Subdivision should be granted, subject to the Conditions of Approval recommended by the Technical Review Committee.

II.

The Hearing Examiner finds that the changes to the Shoreline Permits are within the scope and intent of the original permits and reduce the environmental impacts of the project.

The Washington State Department of Ecology must get notification of the Shoreline Permit Revisions approved by the Hearing Examiner, as being within the scope and intent of the original permits. Such notification shall be provided by Shoreline Staff of Whatcom County Planning and Development Services.

III.

WCC 23.60.190(B) allows local government to find “good cause” to apply different expiration timelines different than the standard time limits in WCC 23.60.190(A) (1) & (2). The Hearing Examiner has the authority to determine appropriate expiration dates for the Shoreline Permits revised by the Revisions approved herein. This Plat Application was originally approved in 1992 and the final phase is yet to be completed. Staff has recommended the Shoreline Permits be given a complete construction expiration date of September 7, 2022. The Applicant has requested 2 years to complete construction. In a Solomon like manner the Hearing Examiner concludes that a complete construction date of March 15, 2023 for the shoreline permits is appropriate and that the Decision should state that the Shoreline Permits shall expire if the construction authorized is not completed on or before March 15, 2023.

IV.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A second revision is granted to the long subdivision, shoreline substantial permit and shoreline variance for Assessor's Parcel No. 380117-492411 addressed as 0 Saltspring Drive, Ferndale, Washington. The Shoreline Permits shall expire if the construction authorized is not completed on or before March 15, 2023. The second revision is granted subject to the following conditions:

SEPA

Development

1. Each lot shall be limited to 4000 square feet of development. The development envelop includes a single driveway, primary residential structure of 2800 square feet, decks, pathways, or patios, and ornamental landscape or lawn as determined by the cumulative impact in the Natural Resources Assessment and FEMA Habitat Assessment dated April 2017 and revised May 2018.
2. Open space and community access areas shall be placed in a separate tract.
3. Hard shoreline stabilization to protect future development or land is prohibited.
4. Overwater structures are prohibited.
5. In accordance with the conceptual mitigation plan all areas outside of utilities, septic systems, road way, and approved development envelope shall be planted in native vegetation.

Mitigation

6. Mitigation for all impacts shall be installed prior to final plat approval.
7. The mitigation area shall be monitored for 10 years.
8. An agreement to maintain mitigation areas shall be completed prior to final plat approval.
9. Mitigation areas shall be placed in a separate tract.

10. Shorebird and waterfowl habitat signs shall be installed on tract A.
11. Limit human activity in the open area space during April 1 through May 30 and August 1 through September 30.

Public Access

12. Community access shall be required in accordance with the February 14, 1992 Washington State Shoreline Hearings Board – Stipulated Settlement and Agreed Order of Remand and Dismissal.
13. Annual Winter Bird Surveys shall be allowed to occur in the Open Space Area.

Current Planning

14. The use and location of development, as shown on plans date stamped June 4, 2021, shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner, except as modified herein.
15. 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.
16. Lots 1-7, Phase II shall meet the requirements of WCC 2.24.300 Minimum Lot Size and shall be at least 9,600 square feet consistent with the definition of Minimum Lot Size in WCC 20.97.240. The lots shall be measured from the ordinary high water mark.
17. A note shall be placed on the face of the plat which reads:

WHATCOM COUNTY RECOGNIZES THAT THE SANDY POINT SPIT WAS FORMED BY SEDIMENTS CARRIED FROM THE NORTH BY SOUTHERLY LITTORAL DRIFT CURRENTS AND THAT THE EXISTING CANAL ENTRANCE IMMEDIATELY NORTH OF THE SUBDIVISION MAY DIMINISH OR CUT OFF THIS SEDIMENT SUPPLY. THIS NOTE IS INTENDED TO INFORM POTENTIAL LOT PURCHASERS OF THIS SITUATION. THIS NOTE SHALL SERVE AS NOTICES TO LOT PURCHASERS THAT EROSION MAY REDUCE THE SIZE OF LOTS OVER TIME.

18. A note shall be placed on the mylar which reads :

THE BUILDING SETBACK LINES DEPICTED ON THIS PLAT CONFORM WITH REGULATIONS IN EFFECT AS OF JUNE 29, 1989. PRIOR TO CONSTRUCTION ON ANY LOT WITHIN THIS PLAT, THE APPLICANT IS CAUTIONED TO CHECK WITH THE DIVISION OF BUILDINGS AND CODE TO DETERMINE THE EXACT LOCATION OF SETBACK LINES AS OF THE TIME OF

APPLICATION FOR BUILDING PERMIT. ZONING OR SHORELINE REGULATIONS MAY CHANGE AND SETBACK LINES MAY NOT ALWAYS BE SHOWN ON THE PLAT.

19. All easements existing and proposed shall be shown on the final plat map.
20. Construction shall conform to the revision application materials, revised SEPA checklist, and revised site plan.
21. The documents creating and empowering the community association shall provide that the association shall assume ownership and maintenance responsibilities for all community owned property no later than the point where 80% of the lots have been sold unless the applicant chooses to transfer ownership before 80% of the lots are sold, the owner of all unsold lots, be it the applicant, developer, or another party, shall be responsible for providing contributions to the community association for each lot, equivalent to the contributions which would be made by each lot owner if the unsold lots were in individual ownership. The developer, applicant, or subsequent owner of the unsold lots shall be responsible for providing that contribution to the same maximum level as would be generated by 80% of the total lots after sale to individuals. The association shall be empowered to collect dues for the construction and/or maintenance of all community owned property. Unsold lots shall mean any lots not sold to individuals for the purpose of construction of single-family homes.
22. Any and all legal documents regarding the community association shall be approved as to form by the Whatcom County Prosecuting Attorney's Office prior to the filing of the final mylar.

Shorelines

23. Overhead wiring is not permitted. Onsite electrical and communication services shall be placed underground.
24. Clearing of vegetation is allowed in the approved 4,000 square foot building envelope. Exposed soils should be reseeded at the first available opportunity, not to exceed one year after disturbance.
25. Water Mark (OHWM) in accordance with the Department of Ecology's methodology for determining the Ordinary High Water Mark. The preliminary plat shall reflect a minimum setback of 15 feet between the OHWM and the roadway in "Tract A" (situated between Lots 2 and 5). The preliminary plat shall reflect a minimum setback of 15 feet between the roadway and the dwelling units on Lots 3, 4, and 5. The building setback from the roadway shall be 25 feet for Lots 1 through 5. The setback between the OHWM and the dwelling units shall be 45 feet for all 7 lots. These setbacks shall be based on right of way width of 40 feet for the roadway. The setback specified in this No.4 shall supersede any contrary provision of any other stipulation herein
26. Shoreline permits granted herein shall not include Lot 11 (as shown on the preliminary approval plat map). No dwelling unit or construction including fill

shall be allowed on Lot 11 unless approved in writing by the Department of Ecology.

27. There shall be a 30-foot community easement along the shoreline in accordance with Section 6.15(4)(B)(1)(b) of the Whatcom County Shoreline Management Program solely for the use and benefit of the residents of this subdivision. Access to this easement area shall be provided to lots 1 through 5 of South Cape at Sandy Point Phase 1 and lots 1 through 6 of South Cape at Sandy Point Phase 2 through lot 6 and lot 7 of South Cape at Sandy Point from Tract A.
28. A Community recreation and open space area, a minimum of 30' in width measured landward from the line of Mean Higher High Water, shall be provided along all shorelines in the development. Easements for public access may be granted by the developer, but are not required.
29. A note shall be placed on the face of the plat that clearly delineates the community recreation and open space area and that it is for the use of all residents in the subdivision.
30. Tract A shall be owned and maintained by the private community association that is to be incorporated upon filing of the final plat. The community association shall have restrictions and covenants, articles of incorporation and bylaws filed with the final mylar. Documents of the community association shall be prepared by the developer and submitted to the Division of Buildings and Code for their approval prior to filing of the final plat. These documents shall then be filed with the final plat.
31. A plat note stating the development area maximum shall be placed on the face of the plat:

THE MAXIMUM BUILDING ENVELOPE FOR EACH LOT IS 4,000 SQUARE FEET OUTSIDE OF SIDE SETBACK AND SHORELINE SETBACK. AREA OF PRIMARY RESIDENCE SHALL BE A MAXIMUM OF 2800 SQUARE FEET EXCLUDING NORMAL APPURTENANCES.

32. A plat note shall be included defining normal appurtenances:

NORMAL APPURTENANCES ARE A SINGLE DETACHED BUILDING OR CARPORT, DECKS, PATIO OR SIMILAR STRUCTURES, UNDERGROUND UTILITIES, STAIRS, AND PATHWAY TO THE BEACH AS SHOWN ON THE PLAT.

33. Community trails shall be included on the final plat.
34. Each lot is allowed a 4 foot wide single pathway to the beach which will be the minimum length necessary to connect the home to the community path.
35. Structures extending from a second story, roofs or coverings, decks, verandas, patios, or other similar structures shall not extend into the building setback or beyond the common line setback.

The following plat note shall be included prohibiting the following

36. Development:

ACCESSORY DWELLING UNITS ARE NOT ALLOWED. ALL OVERWATER STRUCTURES ARE PROHIBITED

37. The following plat note shall be included for view corridors to and from the water:

SIDE SETBACKS ESTABLISHED SUCH THAT 30% OF THE LOT WIDTH IS LEFT OPEN AND FREE OF STRUCTURES OVER 30 INCHES IN HEIGHT. ONE SIDE MUST BE THE MINIMUM SETBACK FOR THE ZONE.

38. The plat shall show a deed condition informing any potential buyer of the dangers inherent in the site. The plat shall include in-line automatic shut-off valves on the main natural gas service gas storage tanks. The intent of this stipulation is that wood frame, single family structures will address the potential seismic hazards associate with liquefaction at this site and ensure compliance with the seismic hazard standards set forth in the Current Whatcom County Shoreline Management Program, the Washington State Shoreline Management Act or any other enactment. Foundation design shall not interfere with natural seasonal extreme high tide or storm surge ecological processes and follow recommendations in the Coastal Engineer's report.

39. A note shall be placed on the mylar and upon all deeds to lots within this plate noting that the tidelands are owned by the United States government in trust for the Lummi Tribe and that the tidelands may only be used by owners of property in the plat after appropriate arrangements have been made with the Tribe.

40. The approved Inadvertent Discovery Plan (IDP) shall be on-site during all construction related to this project and shall be followed if cultural resources or human remains are encountered.

41. Upon approval of the revision to the April 17, 2019 preliminary plat approval and approval of the revision to the shoreline permits, all parties agree that satisfaction of the Stipulated Settlement is full and complete for SHB N. 89-74 and SHB No. 90-3, dated February 5, 1992. The parties are no longer bound by the Stipulated Settlement, and vested rights are now protected and controlled by WCC Title 22.

42. The proposal shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the following:

- a. WAC, Chapter 173-201, "Water Quality Standards for Waters of the State of Washington" administered by the Department of Ecology.
- b. Hydraulic Project Approval, administered by the Washington State

Department of Fisheries.

- c. Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act, administered by the Army Corps of Engineers.

- 43. Disposal of oil, hazardous materials, and solid waste onto shoreline is prohibited.

Critical Areas

Habitat Conservation Areas

- 44. Prior to final plat approval the applicant shall apply for a mitigation case with a detailed 24x36 landscape plan drawing with specific plant type and the location shall be submitted and approved prior to mitigation installation.
- 45. An agreement to maintain mitigation areas shall be completed prior to final plat approval.
- 46. An assignment of savings or bond shall be submitted for the 125% of cost of maintenance and ten years of monitoring.
- 47. Mitigation for all impacts shall be installed as approved in the mitigation plan completed by NES dated March 8, 2021 prior to final plat approval.
- 48. A 24 x36 as-built landscape plan drawing shall be submitted and approved prior to final plat approval.
- 49. The mitigation area shall be monitored for a ten period following an approved as-built landscape plan. A monitoring report is due to Whatcom County for years 1, 2, 3, 5, 7 and 10 or until determined by Whatcom County to meet all the performance standards outlined in the prepared and approved mitigation plan and conditions of approval.
- 50. Mitigation areas shall be placed in a separate tract. The following plat note shall be included:

TRACT "B" IS FOR PERPETUAL HABITAT CONSERVATION AREA MITIGATION FOR ALL UPLAND DEVELOPMENT APPROVED THROUGH LSS1988-00002. NO FURTHER MITIGATION IS REQUIRED FOR DEVELOPMENT WITHIN THE APPROVED BUILDING ENVELOPE.

- 51. Access shall be granted in the open space area for seasonal bird surveys. The CC&R's shall include a provision to allow temporary access for continued scientific research. The provision should address calendar date range of access, time of day, parking, any conditions for prior notification to the Homeowner Association, or other needs of the Homeowner Association. If the applicant cannot provide sufficient or satisfactory provisions for seasonal bird surveys, the Whatcom County Hearing Examiner shall review the provisions if the parties cannot agree.
- 52. The CC&R's shall also include a provision for ownership of tidelands.

53. The CC&R's shall include the Homeowners Association responsibility to maintain mitigation areas free of invasive species.
54. The CC&R's shall also include a provision for control of dogs within the subdivision. Dog owners, family, and guests must place the dog(s) on a leash outside of the homeowner's property. Homeowners must prevent dog(s) from leaving the homeowner's property with a fence or similar device.

Dogs shall not be allowed within any mitigation site. A shoreline permit from Whatcom County is required to install the fence.
55. Prior to final plat approval signs shall be placed at approved intervals designating Habitat Conservation Areas. Applicant must receive approval of sign design prior to installation

Geological Hazards

56. The following plat note shall apply:

THIS LONG PLAT HAS BEEN REVIEWED FOR THE PRESENCE OF CRITICAL AREAS IN ACCORDANCE WITH RCW 36.70A.030. GEOLOGICALLY HAZARDOUS AREAS (COASTAL EROSION, TSUNAMI, AND SEISMIC HAZARDS) WERE FOUND TO EXIST WITHIN THE BOUNDARIES OF THE LONG PLAT, AND INSUFFICIENT LOT DEPTH DOES NOT ALLOW FOR SUITABLE BUILDING SETBACKS TO AVOID POTENTIAL ADVERSE IMPACTS. SITE-SPECIFIC GEOLOGIC HAZARD MITIGATION MEASURES SHALL BE REQUIRED AT THE TIME OF BUILDING PERMIT APPLICATION, AND SHALL ADDRESS ALL AFOREMENTIONED GEOLOGIC HAZARDS.

57. The following plat note shall apply:

FREE-STANDING PILE FOUNDATIONS SHALL BE REQUIRED TO ALLOW FLOW- THROUGH OF STORM-SURGE, EXCEPT ON LOTS 4, 5 AND 6 WHICH WILL BE REVIEWED AT THE TIME OF FUTURE DEVELOPMENT. All FOUNDATION ELEMENTS SHALL ALSO BE DESIGNED IN CONSIDERATION OF POTENTIAL SHORELINE RETREAT AND EROSIONAL IMPACTS. FUTURE HARD-SHORE STABILIZATION SHALL NOT BE PERMITTED FOR THE DEFENSE OF SINGLE-FAMILY RESIDENCES.

Fire Conditions

58. The applicant shall demonstrate that flow from the water system is adequate for fire protection as required by the Whatcom County Deputy Fire Marshal.
59. Fire hydrants need to be shown on the site plan within 600 feet of all building sites.
60. Access road width at fire hydrant location(s) need to be 26 feet wide for 40 feet long centered on the hydrant.
61. All roads and turnarounds shall meet the Whatcom County Road Development standards and Whatcom County Fire Marshal's Standards.

Public Works – Flood Division

62. 100 year coastal flood zone boundaries shall be identified on the face of the plat.
63. All future development on the individual proposed lots are required to follow the habitat protection requirements and/or recommendations outlined in the Habitat Assessment prepared by Northwest Ecological Services, LLC submitted on May 25, 2018 and revised 2021.
64. Flood proofing requirements, according to [Whatcom County Code](#) Chapter 17.16, will be required and must be met prior to approval of a future building permit.
65. The following note shall be placed on the final plat:

SPECIAL FLOOD HAZARD AREA NOTE: A PORTION OF THIS SUBDIVISION IS LOCATED WITHIN A FEMA DESIGNATED SPECIAL FLOOD HAZARD AREA (SFHA). DEVELOPMENT WITHIN A DESIGNATED SFHA IS SUBJECT TO WHATCOM COUNTY CODE TITLE 17 AND THE ASSOCIATED REQUIREMENTS OF THE ENDANGERED SPECIES ACT PURSUANT TO ORDINANCE 2019-005-EXH A AND TITLE 16.16.400 (ORD 2017-077) UNLESS FUTURE CHANGES TO WHATCOM COUNTY CODE DICTATE OTHERWISE.

Public Works – Engineering Services

66. All development shall comply with Whatcom County Development Standards (WCDS).
67. WCC 12.08 – Construction Standards; 1984 WCDS Section 2.
 - a. The County Engineer has approved the applicant's request for private roads, per Whatcom County Code 21.05.050(7) and WCDS 505.E.
 - b. The private road shall be paved 20-foot wide with one-foot gravel shoulders with layout as shown per submitted South Cape at Sandy Point Phase 2 Proposed Site Layout by Ronald T. Jepson & Associates (stamped Received 6/4/2021 by the County).
 - c. The proposed turnaround at the end of the road meets WCDS.
 - d. The Fire Marshall's office requires a 26-foot wide road width at fire hydrant locations.
 - e. All road, drainage facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction.
68. WCC 12.16 – Revocable Encroachment Permit. A Revocable Encroachment Permit will be required for any work in the County right-of-way.
69. WCC 12.60 – Road Naming System. Addresses for each lot will be provided by Engineering. Applicant shall pay current lot addressing fees prior to recording. Proposed road name, South Cape Road, must be approved by Engineering. A map of the lots at a 1"=400' scale shall be provided to PWES for address assignment. 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 Ch. 5

Road Standards. Mailbox locations shall be shown on final construction plans if shared locations are required.

70. Whatcom County Code 20.78 – Transportation Concurrency Management. The project is exempt from Concurrency determination since it will generate fewer than nine new PM Peak trips. The concurrency exemption number is ECE2019-00008.
71. WCC 20.80.630 – Stormwater and Drainage; WCDS Chapter 2.
 - a. An engineered stormwater design report addressing conveyance, detention, and water quality measures according to the current Stormwater Management Manual for Western Washington must be approved by PWES prior to any land disturbance.
 - b. Applicant must propose a method to protect compost amended vegetated filter strips (CAVFS) from road traffic/parking.
 - c. Certified Record Drawings and a Stormwater Maintenance Security for the installation of any new drainage system/facility shall be provided and approved by the PWES upon construction completion.
 - d. A declaration of covenant and grant of easement will be required for flow control and treatment facilities, and on-site stormwater management BMPs.
72. WCC 21.06 – Final Long Subdivision; WCDS Chapter 4. Map data, lot closures, title report, CC&R's, record drawings, securities, survey monuments, and recorded easements will be required for final plat approval.

Health Department

73. Approved Public Water Availability Form for each lot from the Sandy Point Improvement Company must be submitted prior to final plat approval.
74. Water infrastructure serving each lot must be installed and approved by the Sandy Point Improvement Company prior to final plat approval.
75. Verification of sewer installation and approval from the Lummi Nation will be required prior to final plat 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

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; or for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to 23.60.150(E), RCW 90.58.180, and WAC 461-08.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22.05 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 17th day of September 2021.

Michael Bobbink

Michael Bobbink, Whatcom County Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

August 27, 2021

The application by S.C. Division I, Inc. for a second revision to South Cape at Sandy Point – Phase II Long Subdivision, Shoreline Substantial Development and Shoreline Variance		S 8-89, SV 7-89 and LS 2-88 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicant is requesting a second revision to the preliminary approval for the South Cape at Sandy Point Long Subdivision (March 20, 1992), the amendment to preliminary approval (July 25, 2014); and the revision to the preliminary approval of the South Cape at Sandy Point Long Subdivision (April 17, 2019).

The applicant has proposed to materially alter the previous approvals with a re-design of the plat for creation of seven lots and an open space tract. The proposal is to be served by public water, public sewer is proposed to be provided by the Lummi Sewer and Water District.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: S.C. Division I, LLC.
106 LBJ Freeway #700
Dallas, TX 75234-6099

Agent/
Representative: Dannon C. Traxler
Langabeer and Traxler
Bellingham, WA 98225

Site
Location/Address: Saltspring Drive at Mayne Lane, Sandy Point
A portion of the NE ¼ of Section 17, Township 38

<u>Legal Description:</u>	North, Range 1 East, W.M.
<u>Assessor's Parcel Number:</u>	380117 492411
<u>Zoning:</u>	S 9.6
<u>Comprehensive Plan:</u>	Suburban
<u>Shoreline Designation:</u>	Rural
<u>Subarea:</u>	Lummi Reservation
<u>Number of Lots:</u>	Seven lots and reserve tract
<u>Total Acreage:</u>	Approximately 14.4 acres (including submerged lands)
<u>Roads:</u>	Private Roads
<u>Water Supply:</u>	Sandy Point Improvement Company
<u>Sewage Disposal:</u>	Lummi Sewer and Water District
<u>Fire Protection:</u>	Whatcom County Fire District No. 17
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Ferndale School District
<u>Topography:</u>	The south cape of Sandy Point is a narrow peninsula of land running east-west with no major topographic features. From a small ridge near the center of the cape, the land slopes down to sea level along both sides and throughout its length.
<u>Vegetation:</u>	Vegetation consists mostly of weeds and brush.
<u>Adjacent Land Uses:</u>	North: Single and multi-family and Sandy Point Marina basin entrance East: Single family residential South: Strait of Georgia West: Strait of Georgia
<u>Utilities Easements:</u>	Necessary utility easements will be established prior

to recording the final plat.

Variances: SV 7-89

SEPA Review: Mitigated Determination of Non-significance issued on December 31, 2018

B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
6. Whatcom County Environmental Policy Administration Chapter 16.08
7. Whatcom County Shoreline Master Program (1986 Edition)
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code Chapter 2.24A, Whatcom County Code Interim Zoning Ordinance
10. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
11. Whatcom County Code Title 21 (Ord. 85-42), Subdivision Regulations
12. Whatcom County Code Title 21 (Ord. 2013-049), Subdivision Regulations
13. Whatcom County Code Title 24, Health Regulations

III. SITE DESCRIPTION

The project area consists of one parcel constituting approximately 14.4 acres of land (including submerged lands) at the southern end of Sandy Point described as Tract A. The northern portion of the site is bounded by the Sandy Point Canal and the western and southern portion of the site is bounded by Georgia Strait and Lummi Bay. For purposes of development, approximately 7.2 acres are above the ordinary high water mark (OHWM). The site is located within a Special Flood Hazard Area (SFHA) for a Marine Shoreline which is an area subject to flooding by the base flood (100 year flood).

The site is generally characterized by low weedy vegetation with large areas of unvegetated sand. There are some trees located along the eastern border of the project along Mayne Lane. Native vegetation is located near the shoreline at the OHWM.

Property to the north and east of the site is mostly characterized by small lot single family residential development with some smaller multi-family developments.

IV. PROJECT PROPOSAL

On March 8, 2021, the applicant submitted a second revision to the South Cape – Phase II preliminary approval. The subdivision initially received preliminary approval (South Cape at Sandy Point Long Subdivision) on March 20, 1992, an amendment received preliminary approval on July 25, 2014 and a first revision, authorizing Phase II development, was approved on April 17, 2019.

The second revision is requested to allow for redesign of the 2019 preliminarily approved subdivision (Phase II). Tract A will be subdivided into seven lots with an open space tract consistent with the previous preliminary approval; however, the seven lots will be reduced in size and is proposed to be served public sewer from the Lummi Sewer and Water District. The road design has also been modified to serve the smaller development. Public water will continue to be provided by the Sandy Point Improvement Company.

As shown on the preliminary plat map date stamped on June 4, 2021 the lots are proposed to be between 9,600 and 12,500 square feet in size (net lot size). All seven lots will have at least 60 feet frontage for direct access onto the private road. The road will be 20 feet paved with one-foot gravel shoulders through the first four lots (from the intersection of Mayne Lane). The remainder of the road will be paved 18 feet with one-foot gravel shoulders as shown the submitted site plan.

Development of these lots will be subject to the conditions of preliminary approval for the original subdivision and the amendment to preliminary approval, except as amended herein.

Summary of Previous Determinations

The original proposal contained a shoreline substantial development and a shoreline variance for development of a community dock, road and utilities to serve the proposed subdivision. The shoreline variance was requested to reduce the shore setback for the road from 50 feet to 45 feet and to eliminate the requirement to provide a 30 foot wide community access strip along all shorelines in the development. The adjacent water bodies are Georgia Strait, Lummi Bay and Sandy Point Canal, and pursuant to RCW 90.58.030(2) (e) the area lying seaward of extreme low tide is designated as a "Shoreline of State-Wide Significance." The Shoreline Designation for these areas is Rural.

The Whatcom County Council approved the shoreline permits which were then appealed to the Washington State Shorelines Hearings Board by the Washington State Department of Ecology and William R. Mitchell and Connie Mitchell. On February 14, 1992 all parties entered into a Stipulated Settlement and an Agreed Order of Remand and Dismissal. The shoreline permits were remanded to the Whatcom County Council to reissue the shoreline permits consistent with the revised preliminary plat, and 6 additional conditions, and one modified condition agreed upon

by all parties. Council issued final approval of the shoreline permits and preliminary plat approval of the 1988 plat application on May 20, 1992.

A phased approach to the 1992 preliminary plat approval was granted by the Whatcom County Hearing Examiner on July 25, 2014. Phase I of the phasing plan included five lots, served by public water and sewer, and located along Mayne Lane a public road. Phase II shall be submitted in complete form for final recording within ten years of the Amendment to Preliminary Approval (LSS 2-88).

The Hearing Examiner granted preliminary approval of Phase II on April 17, 2019 which allowed redevelopment of Tract A into seven residential lots.

Determination/Decision	Date
SEPA DNS	May 11, 1989
Whatcom County Buildings and Code Staff Report: Shoreline Applications (S 8-89 and SV 7-89)	June 28, 1989
Whatcom County Buildings and Code Technical Committee Report and Recommendation LS 2-88	June 30, 1989
Whatcom County Hearing Examiner Recommendation to Council (S8-89, SV 7-89 and LS 2-88)	October 5, 1989
Whatcom County Council Decision (S-89, SV 7-89 and LS 2-88)	November 15, 1989
Washington State Shoreline Hearings Board – Stipulated Settlement and Agreed Order of Remand and Dismissal	February 14, 1992
Whatcom County Council Decision (S 8-89 and SV 7-89)	March 20, 1992
Whatcom County Council Supplemental Decision on Remand (S 8-89, SV 7-89, LS 2-88)	March 20, 1992
Whatcom County Hearing Examiner Decision: Amendment to Preliminary Approval (LS 2-88)	July 25, 2014
County Council Final Approval and Recording of South Cape at Sandy Point, Phase 1	May 6, 2015
Revised South Cape - Phase 2 Preliminary Approval	April 17, 2019

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: Original legal notices for this project were published on July 19 and 26, 1989, posted on August 16, 1989 and mailed on August 1, 1989.

Notice of Application: A revised notice of application was published in the newspaper and mailed to parties of record, agencies and property owners within 1,000 feet of the subject property on March 7, 2014.

Notice of Application: A revised notice of application for Phase II development was published in the newspaper, mailed to parties of record, agencies and property owners within 1,000 feet of the subject property and posted online on August 24, 2018.

A final Notice of Application was issued after receipt of this revision request. The notice was published in the newspaper, mailed to parties of record, agencies and property owners within 1,000 feet of the subject property and posted online on March 23, 2021.

2021 Public Input: During the current revised public comment period for the Notice of Application, the County received several comments. A brief summary of comments and staff response (in italics) is below:

Concerns Regarding Future Ownership of Tract B – In the second revision request the applicant indicated that Tract B ownership will be transferred to the Lummi Nation when the subdivision has been completed. The applicant also requested a note be placed on the face of the plat acknowledging that Lummi Nation would not be responsible to any County regulations, open space or otherwise once Lummi Nation takes title to Tract B.

PDS has no authority over transfer of land after completion of the subdivision and the applicant can transfer land after final plat approval. The conditions of approval will reflect the requirements of open space as well as continuing monitoring of mitigation associated with the subdivision.

Concerns Regarding Sandy Point Dredging – Request the public hearing for the dredging project and the subdivision be consolidated.

The Sandy Point dredge project is a separate application and cannot be consolidated with this revision application. The public will be notified of the open record public hearing associated with the dredging project when a date has been determined.

SEPA Checklist Errors – Concerns regarding adequacy of the submitted SEPA checklist.

The applicant submitted a revised SEPA Checklist, substantially similar to the SEPA Checklist submitted for the previous revision. After staff review it was determined the existing MDNS adequately mitigates for environmental impacts. The adequacy of the existing MDNS and SEPA checklist was not appealed.

Notice of Application Posting – There were some concerns regarding the amount and quality of information posted online during the revised Notice of Application comment period.

Although not required by Whatcom County Code, PDS attempts to provide the Notice, submitted application, site plans and location map online for the public. PDS continues to provide all of the application materials submitted upon request.

Traffic Mitigation – Request for slower speed limits and bicycle and/or pedestrian facilities.

As reviewed through the previous submittal, the project will generate less than nine new PM peak trips and is exempt from a concurrency determination per WCC 20.78 – Transportation Concurrency Management. Traffic and pedestrian improvements are not required.

Easement Access For All – Request for public access to Tract B.

The property is not in public ownership. The Whatcom County Shoreline Master Program, 1986 Edition did not require general public access for subdivisions. The 1986 Edition only required community access; the project is subject to conditions of approval which require community access only.

View Concerns – Concerns regarding view impacts from new single family residences.

Whatcom County does not have a view protection ordinance; however, the 1992 zoning code does include a development standard that no structure or combination of structures obstruct more than 65% of the applicable view. This standard will be reviewed at the time of building permit submittal.

Adequate Fire and EMS Services – Concerns regarding the ability of fire and EMS services.

The second revised Notice of Application was sent to Whatcom County Fire District 17 for comment and review. PDS received no comments regarding this notice.

Bird Surveys – As noted during the last comment period, there was comments expressing the desire to maintain the annual bird surveys.

The existing MDNS conditions apply to this proposal. The MDNS provides a SEPA mitigating condition to allow for the annual bird surveys to continue (Condition #13). In addition, there is a recommended condition of approval (Condition #51) to have a bird survey access plan developed by the applicant with input from the Audubon Society prior to final plat approval. The CC&R's will address the elements of this access plan.

2018 Public Input: During the initial Phase II revised public comment period for the Notice of Application in 2018, the County received several comments. A brief summary of comments and staff response (in italics) is below:

Please note conditions of approval from the 2019 Hearing Examiner decision may have different conditions number in this document.

OSS Approval - Two commenters focused on the environmental impacts of OSS. One comment questioned if a sewer system was in close proximity shouldn't Whatcom County require the applicant to connect. The Lummi Nation had concerns the current proposed project was not following the conditions of the original shoreline

permit approval requiring connection to the public sewer.

The applicant has requested a revision to the shoreline permit and preliminary subdivision approval to allow the use of OSS. The use of OSS for subdivision is allowed under the subdivision code in effect at the time of original subdivision approval, when served by public water and the lots are greater than 9,600 square feet. The Whatcom County Health Department required full design applications prior to preliminary approval and has issued approval of the OSS designs, pending Assessor's Parcel Number (APN) assignment.

Response to 2019 Preliminary Approval. As conditioned (Condition #60), construction of the OSS will occur prior to final plat approval. It is the opinion of the Whatcom County Health Department a fully functioning OSS system is similar to public sewer for protecting the environment.

Update response. As a conditioned (condition #75) this revision proposes to connect to the Lummi Sewer and Water District for all seven lots for public sewer. The applicant is required to install sewer lines as part of the plat infrastructure prior to final approval. The applicant will be required to provide approved public sewer availability prior to final approval. Public sewer infrastructure serving each lot must be installed, and approved by Lummi Sewer and Water prior to final approval

Public Access - Generally the comments requested the existing public access be allowed to continue. The Lummi Nation emphasized potential trespass on tribal tidelands.

The original preliminary approval and the revision request proposed a community access easement only. The project has been conditioned to allow bird surveys to continue as a mitigating condition of SEPA for protection of shorebirds and water fowl (Condition #13).

The shoreline substantial permit and shoreline variance permit are conditioned to discuss the ownership of tidelands in the Covenants, Conditions, and Restrictions (CC&R's) (Condition #40).

Mitigation – Concerns regarding the level of detail provided for the required mitigation plan.

As conditioned (Condition #34), the applicant is required to submit a detailed final landscape plan and install the mitigation prior to final plat approval. Maintenance and survival of the mitigation will be ensured through ongoing monitoring and a bond or assignment of savings.

Water Source – One commenter asked about water availability and status of water shares.

The applicant is required to install water lines as part of the plat infrastructure prior to final approval. The applicant will be required to provide approved public water availability prior to final approval. Public water infrastructure serving each lot must be installed and approved by Sandy Point Improvement Company prior to final approval.

Archeology – A single comment from a concern citizen recommend required archaeology review.

Archaeological review was completed for the original long plat and no significant cultural resources were identified. The revision proposes development within the scope of the original report review area. The Lummi Tribe did not recommend an archaeological assessment; however, an inadvertent discovery plan (IDP) (Attachment A) was requested for this project. The IDP has been developed and as conditioned (Condition #31), will apply to construction related to this project.

Vesting/Process – Commenters requested current standards be applied to the subdivision and questioned whether the revision is vested to those regulations in effect at the time of the 1988 application.

Washington State has statutory vesting laws for long plat and shoreline permit applications. Whatcom County, working with the applicant, has used SEPA substantive authority to require mitigation for impacts current using best available science, land management practices, and public safety. The applicant has also agreed to meet current engineering principles for developing single family houses in flood hazards and geologic hazard areas as well as using current Development Standards for roads and stormwater.

Flood – Commenters are concerned about development in the flood plain.

The revision has been conditioned to require flow through foundations and to meet current flood standards at the time of building permit submittal (Condition #44).

Notice of SEPA Threshold Determination: The SEPA Mitigated Determination of Non-significance (MDNS) for this project was issued on December 31, 2018. There was no appeal of the MDNS; however several comments were received by the public and agencies. The following is summary of the comments and staff response (in italics):

Public Access – Comments were similar to those expressed during the notice of application comment period. The concern focuses on development of the natural shoreline which has been open to the public for access.

The property is not in public ownership. The Whatcom County Shoreline Master Program 1986 Edition did not require general public access for subdivisions. The 1986 Edition only required community access and the project is subject to conditions of approval which required community access only.

Marine Bird Surveys – There was a significant number of comments expressing the desire to maintain the annual bird surveys.

A SEPA mitigating condition was added to allow for the annual bird surveys to continue (Condition #13). In addition, there is a recommended condition of approval (Condition #51) to have a bird survey access plan developed by the applicant with input from the Audubon Society prior to final plat approval. The CC&R's will address the elements of this access plan.

OSS – Comments were similar to those expressed during the notice of application comment period. Water quality is a significant concern.

Response to SEPA comments are found in the Notice of Application OSS staff response.

Shoreline/Sea Level Rise – Commenter showed concern for shoreline resiliency with the threat of sea level rise.

Future shoreline developments are subject to updated development standards five years after final plat approval. Current regulations do not address sea level rise.

Flood - Comments were similar to those expressed during the notice of application comment period

Response to SEPA comments are found in the Notice of Application Flood staff response.

Archaeological/IDP (DAHP) – Lummi Nation requested an inadvertent archeological plan be developed.

The project has been conditioned to require compliance with the prepared IDP (Condition #31).

Bulkheads/Hard Armoring – The Lummi Nation commented that the SEPA condition prohibiting hard stabilization is not sufficient to protect tribal ownership of the tidelands from trespass. They are concerned landowners may receive hard stabilization in the future.

The revision has been conditioned to require flow through foundations. The buildings will be placed on a piling structure to allow storm surge and extreme tide events to flow under the homes. A plat note will be included on the face of the plat, as well as the CC&R's, prohibiting future bulkheads and/or hard stabilization (Condition #44).

Shoreline Permit Revision – Washington State Department of Ecology (Ecology) provided comment on the revision process. Ecology expressed final approval by the

State is required in approving or denying the revisions to the shoreline variance permit.

Whatcom County agrees with Ecology's process discussion. As required by WCC 22.05 and WCC Title 23, the Whatcom County Hearing Examiner will make a recommendation to Ecology to either approve or deny the revised shoreline variance. Whatcom County will route the Hearing Examiner's decision to Ecology for final determination.

1986 SMP prohibits Utilities in Hazardous Areas – Ecology commented on three areas of the Shoreline Master Program 1986 Edition. The first is the definition of hazard area, second the utility development regulations prohibit OSS in hazardous areas, and third that the utility development policy for locating utilities in the shoreline jurisdiction should be located outside of hazard areas.

Whatcom County agrees the revision is in a hazardous area. The proposed project was been conditioned to meet engineering principles for abating the hazard to a reasonable level of risk (Condition #43).

Ecology states Section 6.19.B.2 The WC SMP 1986 Edition prohibits utilities such as onsite septic.

Whatcom County does not concur with this determination. This section of code states "Utility Development" is prohibited. The definition of "Utility Development" is (Appendix C, SMP, 1986):

Including but not limited to facilities for distributing, processing, or storage of water, sewage, solid waste, electrical including electronic communications, and their administrative structures, as well as pipeline for oil and gas, and fire-fighting facilities.

Whatcom County has determined the use of "facility" and the examples provided indicate a moderate to high intensity of use such as municipal sewage or water treatment facilities and not a low intensity uses such as sewage treatment for single family residences. The proposed use is in the Suburban Residential zone, the only outright permitted use is single family dwellings and accessory uses which includes other things normal and appurtenant to suburban residential uses. Moderate to high density uses including multi-family residential are prohibited. The proposed subdivision density is one unit per acre.

Whatcom County believes the appropriate definition for this proposed revision is "Residential Development" (Section 6.15, SMP, 1986) which is similar to the zoning definition of suburban development. The definition of "Residential Development" is:

Buildings, earth modifications, subdivision, and use of land primarily for human residence, including but not limited to single-family house, mobile

homes and parks, condominiums, apartment, and duplexes; together with accessory uses common to normal residential use. Camping sites or clubs, motel, hotels, and other transient housing are not included in the definition (Appendix C, SMP, 1986).

As such, it is appropriate that Section 6.15 Residential, govern this development. There are only two utilities discussed in this section; storm drainage facilities for projects involving five or more dwellings and onsite electrical and communication services for projects involving five or more units shall be placed underground. Unlike a community septic systems, which is consider "Utility Development" the subdivision revision request will install individual OSS serving a single dwelling unit. OSS serving a single dwelling is a normal residential appurtenance in rural counties. Both Zoning regulations and the SMP 1986 Edition allow for normal residential uses. The Whatcom County Health Department applied current OSS design standards for this proposed project. The design of the OSS has been required to incorporate appropriate technology for flooding events.

Ecology references a policy for location of "Utility Development" outside of hazardous areas.

Ecology suggests the policy for locating Utility Development outside of hazardous areas in 6.19 must be applied as the definition of "should" in the shoreline jurisdiction means the action is required; Whatcom County does not concur with this analysis. A policy helps to guide the interpretation of regulations. In order to apply a policy a development must be subject to the regulations in the same section. The regulations in Section 6.19 address Utility Development. This proposed action is residential development subject to regulation in Section 6.15 Residential; the policy in the "Utility Development" section applies to the waterline, stormwater, electric, and communication services in this subdivision revision.

In the 1986 Edition the word "should" is not defined. Within the shoreline jurisdiction the word "should" means that the particular action is required unless there is a demonstrated, compelling reason, based on a policy of the Act and this chapter, against taking the action. Policy's with the word "should" in the Section Residential Development would be required.

OSS Design Inconsistent with State and County Health Regulations – Ecology expressed concerns with the 75 foot setback for on-site septic systems.

The OSS designs have been approved by the Whatcom County Health Department for each lot pending assignment of APN's. The approved systems will treat the effluent to a greater treatment level for the soils than required by the current WC Title 24. This allows the systems to administratively be approved closer than 100 feet to an open body of water.

Settlement Agreement [Stipulated Settlement and Agreed Order of Remand and

Dismissal, and Supplemental Decision on Remand (Stipulated Settlement)] Requires Amendment – Ecology expressed concerns the Settlement Agreement needs to be amended.

Whatcom Count PDS staff consulted with our Prosecuting Attorney in response to this concern. A memo was issued by Royce Buckingham, Senior Deputy Civil Attorney, on February 13, 2019 (Attachment B). Whatcom County has determined that the requested revisions are conditions of the shoreline permits and therefore a revision to the Stipulated Settlement is not necessary.

The applicant has proposed a revision to the original preliminary approvals and agreements which does not pursue the following items of the stipulated settlement: Sandy Point Improvement Report, overwater structures, and out dated engineering principles.

Through the revision process the applicant made a determination not to pursue all rights stated in the agreement; in addition the applicant has agreed that using modern engineering principles is desirable for the community. A recommended condition of revised subdivision approval is all parties agree that the Stipulated Settlement has been satisfied with revision approval and is no longer binding on the parties (Condition #32).

This issuance of these revised preliminary plat and shoreline permits shall constitute full and complete satisfaction of the Stipulated Settlement, per paragraphs 1 and 2 of the Stipulated Settlement. The Stipulated Settlement shall no longer control, and revisions to and development of the long subdivision and shoreline permits shall proceed under the provisions of WCC Title 22.

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 applicant submitted an Environmental Checklist at the time of the original plat submittal dated January 22, 1989. The Whatcom County responsible official issued a Determination of Non-Significance (DNS) on May 11, 1989 for the following proposal: Subdivision to create 26 residential lots; proposal includes a community dock in the existing marina, a shoreline permit (S 8-89) and shoreline variance (SV 7-89). The DNS was not appealed.

A revised SEPA checklist was submitted with the revision to the long subdivision and shoreline permit applications. After reviewing the checklist Whatcom County determined there were potential impacts not contemplated in 1989 and issued a revised SEPA threshold determination of MDNS on December 31, 2018. No appeal of the SEPA MDNS was filed.

A new checklist was received on March 8, 2021. Staff reviewed the proposal, the revised checklist, public comments and the existing MDNS. It was determined that environmental impacts have been adequately addressed and the mitigating conditions are still applicable to the revised subdivision. The conditions associated with the MDNS issued on December 31, 2018 have been determined appropriate.

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.

The Whatcom County Public Works Engineering Services Department reviewed the proposal and on December 10, 2018 the department issued comments and recommended conditions of approval for the revision. The Department reviewed the revised conditions and submitted a new memo with minor revisions on July 19, 2021.

The applicant has requested a private road which was approved by the County Engineer pursuant to Whatcom County Development Standards Section 505.E. The project will generate less than nine new PM peak trips and is exempt from a concurrency determination per WCC 20.78 – Transportation Concurrency Management.

The applicant submitted a Preliminary Stormwater Site Plan (Cascade Engineering Group, P.S., Inc, May 2018). The site is located outside of the NPDES Phase II Area, the Lake Whatcom Watershed Overlay, and the Stormwater Special District, and pursuant to WCC 20.80.630(d) the stormwater for the site has been designed in accordance with the 2012 *Stormwater Management Manual for Western Washington, 2014 amendment (DOE Manual)*. A final stormwater report will be required prior to construction.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with 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 June 19, 2018 with conditions of approval. The Fire Marshal's Office is not requesting changes to the previous recommended conditions of approval.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of WCC Title 15.

C. Critical Areas (Title 16)

The above long plat application has been routed to the Natural Resource Division for review. 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 long subdivision and shoreline permits are vested to the date of application in 1988. No Critical Areas ordinance existed at this time. For the revision, the review of the five Washington State critical areas, as defined in RCW 36.70A.030, occurred as part of the SEPA review process. The review under SEPA utilized best available science and included all critical areas identified by the Whatcom County 2017 Critical Areas Ordinance.

Wetlands

The project area was investigated for presence of wetlands; no wetlands were found in the upland project area. Fringe estuarine wetlands are present within the project areas.

Frequently Flooded Areas

Frequently flooded areas are primarily regulated under Title 17. Review of potential adverse impacts to frequently flooded areas was addressed in the Natural Resource Assessment and FEMA Habitat Assessment dated April 2017, revised May 2018, and the planting plan was revised March 2021. Adverse impacts to habitat within the frequently flooded areas were identified by the qualified professional.

The conceptual mitigation plan in the revised Assessment Report date stamped March 8, 2021 has been approved. The mitigation plan will ensure no significant adverse impacts to habitat or species within frequently flooded areas. To ensure success of the proposed mitigation the site will be monitored for ten years and includes adaptive management strategies to ensure mitigation is successful (Condition #7).

Critical Aquifer Recharge Areas

The proposed revisions have been reviewed for stormwater treatment in accordance with the current Western Washington Stormwater manual. The proposed revisions include an agreement from Lummi Water and Sewer District to provide public sewer. No further review required.

Geologically Hazard Areas

Whatcom County staff Geologist provided initial analysis on March 14, 2019. A revised memo was received on August 24, 2021 with the following analysis:

The conditions of approval outlined in the memorandum dated March 14, 2019, have been re-assessed following review of the revised site plan received June 4, 2021. The original conditions of approval considered coastal erosion hazards posed to future development along the southern shoreline of the proposed long plat. While three of the originally proposed parcels have been removed from the southern shoreline, the two remaining parcels on the southern shoreline have been reconfigured to allow three parcels in the same footprint. Lot reconfiguration is achieved by reducing the shoreline width of the two original parcels from ~120 feet to ~80 feet for each of the three proposed parcels. While the three lots that have been removed from the proposal were arguably the most proximal to coastal erosion hazards, the reduced lot width for the three reconfigured parcels may limit the ability for future single-family residential development to maximize avoidance of coastal erosion hazards to a small degree. For this reason, the original conditions of approval outlined in my memorandum dated June 4, 2021, are still considered applicable for the revised project proposal.

Habitat Conservation Areas (HCA)

Review of potential adverse impact to fish and wildlife habitat conservation areas was addressed in the Natural Resource Assessment and FEMA Habitat Assessment dated April 2017, revised May 2018, and the planting plan was revised and submitted on March 8, 2021. Adverse impact to fish and wildlife habitat conservation areas was identified by the qualified professional.

Specifically, the assessment identified potential impacts to shorebirds, waterfowl, and upland spit/dune vegetation. The applicant submitted on March 8, 2021 a conceptual mitigation plan as a Memorandum to the Natural Resource Assessment and FEMA Habitat Assessment dated May 2018. This memorandum has been approved which will ensure no substantial adverse impacts to habitat or species within fish and wildlife habitat conservation areas. The proposed mitigation

includes habitat enhancement including installation of native plant species outside of the 4,000 square foot reduced building envelope (Condition #5).

To avoid future impacts the report recommends infiltrating stormwater, time restrictions of use during bird migration periods, prohibiting hard shoreline stabilization and prohibiting overwater structures. During SEPA review an MDNS was issued with conditions to meet the report recommendations. To ensure success of the proposed mitigation the site will be monitored for ten years and adaptive management strategies have been included to ensure mitigation success. (SEPA conditions #5-11).

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of RCW 36.70A.030.

D. Flood Hazard Area (WCC Title 17)

WCC Title 17 contains standards that regulate development within a flood hazard area as established in WCC 17.04.050. The subject property is within a flood hazard zone. The proposal was routed to Public Works – River and Flood for review on consistency with the Flood Damage Prevention Code (Title-17).

On December 10, 2018 and January 15, 2019 River and Flood staff submitted memos with recommended conditions of approval. River and Flood staff reviewed the revision and submitted a new memo on August 27, 2021 with the following discussion:

This memorandum provides a review of the subject permit for compliance with the Whatcom County Flood Damage Prevention Code (WCC Title-17) and the associated requirements of the Endangered Species Act (ESA).

The subject permit for a 7-lot long plat has been reviewed for compliance with the Flood Damage Prevention Code (Title-17) and the associated requirements of the Endangered Species Act (ESA).

Based on the submitted site map and FEMA Digital Flood Insurance Rate Map (DFIRM), Lots 1 through 7 are located within a Special Flood Hazard Area (SFHA) or more specifically Flood Zone AE with a Base Flood Elevations ranging from 13.0 to 14.0 feet (NAVD88).

Please be advised that flood proofing requirements, according to [Whatcom County Code](#) Chapter 17.16, will be required and must be met prior to approval of a future building permit. We advise that the project agent/representative and architect/engineer work with us throughout the design process to assure all necessary requirements are being met prior to submitting the final drawings for a building permit.

A revised Habitat Assessment (HA) for Phase 2 was completed by Northwest Ecological Services, LLC and submitted February 2021 [date stamped March 8, 2021] demonstrating project compliance with ESA. The HA provided an Effects Determination of May Affect, Not Likely to Adversely Affect (NLAA). I concur with this determination under the condition that all future development on the individual proposed lots are required to follow the habitat protection requirements and/or recommendations outlined in the HA.

Based on the above, we have no further concerns and/or conditions at this time. Any changes to the proposal and/or future development on the proposed lots will be subject to another review for compliance with Title-17 and the ESA.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of Title 17.

E. Shoreline Master Program

The above revisions request has been routed to the Natural Resource Division for review. The Shoreline Master Plan and Shoreline Management Act contain standards that regulate development impacts to shorelines. The revision to the long subdivision and shoreline permits is vested to its date of original application in 1988. Whatcom County Shoreline Master Program 1986 edition is the applicable shoreline master program. The applicant has requested to maintain both materially substantial and non-substantial revisions to the 1992 shoreline substantial development permit and shoreline variance permits as approved April 17, 2019, except for the request to use OSS for the subdivision. Requesting public service reverts the method of managing effluent to the 1992 preliminary plat approval requiring the use of public sewer.

WCC 23.60.170 Revisions.

A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project which affects a project permit condition, the program or the Shoreline Management Act.

The applicant has requested in the revision dated March 08, 2021 for the plat of South Cape at Sandy Point Phase II be served by a public sewer owned and operated by Lummi Water and Sewer District. This request will materially alter the April 17, 2019 preliminary plat approval; however the request is to reinstate the 1992 preliminary plat approval that required plat to be served by public sewer.

The 2019 revision materially altered the 1992 preliminary plat approval and shoreline permits as follows: design, method of treating effluent, pursuit of in-water structures, ownership of road and utility infrastructure and length and width

of the road, language in plat notes, and use of updated engineering principles. Staff has updated the substantive change as provided below.

The applicant proposes further substantive revisions to the preliminary plat approval of the South Cape at Sandy Point. Development undertaken through the substantial development permit S 8-89 and shoreline variance SV 7-89 are subject to the following revisions to the preliminary plat approval:

- 1. Alter the site plan to reduce the total number of approved platted lots from 26 to 12. The application for revision is for a reduction in residential lots bringing the total to 12 lots for the subdivision.*
- ~~2. Remove the public sewer condition to allow OSS (S 8-89 and SV 7-89 condition #2).~~*
- 3. Remove the road conditions pertaining to road ownership, dimension standards, and construction timing to use of current standards. (S 8-89 and SV 7-89 condition #11, #12, and #26)*
- 4. Remove standard language for submitting engineered plans to the County Engineer to replace with updated language in the revision to South Cape at Sandy Point subdivision. (S 8-89 and SV 7-89 condition #13 and #15)*
- 5. Remove condition to require oil water separators and use the most current Stormwater Manual best management practices as condition in the revision to South Cape at Sandy Point subdivision. (S 8-89 and SV 7-89 condition #28)*
- 6. Remove the dimensional lot standard condition which is satisfied with the revision requesting fewer lots - a reduction of 14 lots from the 26 lots preliminarily approved in 1992. (S 8-89 and SV 7-89 condition #34)*
- 7. Remove conditions which require the use of out dated principles for construction of single family residences within hazardous areas. The applicant has agreed to use current engineering or management principles in construction of single family homes to meet current flood regulations and foundation design relating to geological hazards such as seismic, tsunami, and coastal erosion.*
- 8. Remove all conditions related to over-water and in-water structures; through the revision to the long subdivision and shoreline permits, the applicant has indicated the intent to not pursue the agreed terms in the Stipulated Settlement for a community dock or use of the Sand Point Beach Improvement report dated December 4, 1991 prepared by John E. Norman. (S 8-89 and SV 7-89 condition #5, #20, #22, #23, #25, #29, #37, and #38)*

The applicant proposes non-substantive revisions to the preliminary plat approval of the South Cape at Sandy Point. Development undertaken through the

substantial development permit S 8-89 and shoreline variance SV 7-89 are subject to the following revisions to the preliminary plat approval:

- 9. Remove all plat note conditions related to uses, geologic hazard, and flood hazard and replace with plat notes using modern language in the revisions to the preliminary approval of the South Cape at Sandy Point. (S 8-89 and SV 7-89 condition #31, #33, #35)*
- 10. Remove the conditions to install boundary line signs and replace with revision approval condition to require deed restrictions consistent with the CC&R's. (S 8-89 and SV 7-89 condition #19)*

An application for a revision to a shoreline permit shall be submitted to the administrator. The application shall include detailed plans and text describing the proposed changes.

The applicant applied on March 8, 2021 to revise the approved May 24, 2016 revision request to revise the preliminary plat approval of South Cape at Sandy Point Long Subdivision (March 20, 1992) and amend the July 25, 2014 preliminary plat approval and 1989 shoreline permits (S 8-89 and SV 7-89). The 2019 revision application included a narrative explaining the proposed project which requires the following revisions: creation of seven residential lots to bring the total of both phases to 12 instead of the original approved 26, use of community or OSS, request for a private road, and request for 20 foot road surface within in 40 foot easement.

The 2021 plat map accompanying the March 2021 revision request amended the April 17, 2019 preliminary plat map in lot configuration, further reduction in road length, and removed the area of on-site septic systems. The 2019 preliminary approved plat map amended the 1992 preliminary approved plat map; the 2019 preliminary plat map as identified: the reduced surface width and overall length of the road, reconfigured lots, individual OSS, and 30 foot community assess easement. A community dock was not requested in the revised applications or shown on the submitted site plan revised from the 1992 preliminary approved site plan. The shoreline structures required by the "Sandy Point Improvements" report were not requested in the revised applications or shown on the submitted site plan revised from the 1992 preliminary approved site plan.

The county decision maker that approved the original permit may approve the revision request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.

WCC 23.60.170 applies to shoreline permits and shoreline exemptions which have different county review authority. WCC 22.05.020 Project permit processing table identifies the Whatcom County Hearing Examiner as the decision maker for Type III (requires an open record hearing) shoreline substantial project permits and

shoreline variance project permits. WCC 22.05.020 project permit processing table identifies the Administrator as the decision maker for shoreline exemptions and Type II (does not require an open records hearing) shoreline substantial development permits.

The intent of WCC 23.60.170 is to limit the Shoreline Administrators approval authority for revisions to shoreline exemptions permits and administratively approved shoreline substantial development permits. This provision is not intended to hold Whatcom County to outmoded processes. The decision maker for the applicants request for revisions to the 1992 shoreline variance and shoreline substantial development is the Whatcom County Hearing Examiner as identified in WCC 22.05.020.

To be within the scope of the original approval the revisions have to meet all of the following:

1. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent over that approved under the original approval;

The proposed revisions decrease over-water construction by 100% from the original application.

2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;

The proposed revisions decrease ground coverage area through reduced road width and reduction in the overall length of the road.

3. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;

A Natural Resource Assessment and FEMA Habitat Assessment dated April 2017, revised May 2018, and revised 2021 identified impacts from the proposed development of the road, utilities, and future single family residential development. The assessment recommended restoring the degraded upland areas outside of the approved development with spit/dune vegetation planting. The original preliminary approved subdivision, shoreline substation development permit, and shoreline variance permit did not contemplate requiring landscaping. The mitigation is considered additional landscaping; mitigation is consistent with the applicable 1986 SMP edition (Goals and Objectives 2.9 Restoration).

4. The use authorized pursuant to the original approval is not changed.

The original approval was a residential long plat. The proposed use of a residential development has not changed. The act of subdivision is considered residential development as defined in the SMP 1986 edition (Appendix C Definitions).

“Residential Development – Buildings, earth modifications, subdivision and use of land primarily for human residence, including but not limited to single-family houses, mobile homes and parks, condominiums, apartment, and duplexes; together with accessory uses common to normal residential use. Camping sites or clubs, motels, hotels, and other transient housing are not included in this definition.”

The 2021 revision request retracts the approved 2019 revision request to change the method of treating effluent from a public sewer system to individual OSS.

5. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.

The original approval did not require any mitigation for the proposed development. As conditioned, the revisions to preliminary approval of the South Cape at Sandy Point Long Subdivision (March 20, 1992) and Amendment to Preliminary Approval (July 25, 2014) and shoreline permits will provide greater ecological function than the original approvals.

The revision request has been reviewed for stormwater treatment in accordance with the current Western Washington Stormwater Manual with a recommendation of approval from Whatcom County Engineering Development Review.

[The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of the Shoreline Master Program 1986 edition.](#)

WCC 23.60.190 Expiration

There are two expiration timelines for shoreline permits. A project must complete substantial progress within two years of the effective date of the permit per WCC 23.60.190(A)(1) and complete construction within five years of the effective date of the permit per WCC 23.60.190(2). An applicant may apply for a one year extension for reasonable cause to extend either expiration timeline.

The applicant submitted a revision its preliminary approval of the South Cape at Sandy Point Long Subdivision on May 24, 2016. Whatcom County determined that the submittal of the complete application to be substantial progress towards completing the project. Thus the revision request satisfied the two-year expiration timeline in condition #16 of the Hearing Examiner’s approval on reconsideration of the 2014 revision (dated July 25, 2014).

WCC 23.60.190(B) allows local government to find "good cause" to apply different expiration timelines different than the standard time limits in WCC 23.60.190(A)(1)&(2).

As part of Whatcom County Department of Planning and Community Development's recommendation for the 2014 preliminary plat approval, the Technical Committee recommend to the Hearing Examiner a definitive expiration date for shoreline permits S 8-89 & SV 7-89. The technical committee recommendation of a reasonable, yet simple 5 year expiration date provided the developer and the County clear expectations on the terms of expiration for shoreline permits that were granted approval 22 years before the 2014 preliminary plat approval. The Hearing Examiner agreed with the technical committee recommendation applying condition #16 of the Hearing Examiner's approval dated July 24, 2014. That approval granted the applicant authority to pursue final plat for phase I, the approval to pursue preliminary plat approval of phase II, and install all infrastructure for phase II within a 5-year period. In addition, the Hearing Examiner granted the option for a one-year extension, should the Hearing Examiner find good cause. No appeals were filed for 2014 preliminary plat approval.

Revisions Expiration Time Limits

Revisions to shoreline permits are regulated by WAC 173-27-100(3); codified locally as WCC 23.60.170(D). Revisions are not to be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permits.

In Condition #16 of the July 24, 2014 revised preliminary plat approval, the Hearing Examiner under the authority of the "good cause" provision of WCC 23.60.190(B), adopted a different expiration timeline than those set forth in statute or the locally approved shoreline master program. That action by the Hearing Examiner set an effective date of July 25, 2014 for S 8-89 and SV 7-89. There was no appeal of the decision, nor any notification of outstanding permits that needed to be obtained from other agencies, to warrant tolling of the effective date.

Permit Expiration

The applicant received written notification of the different shoreline permit expiration date in the Hearing Examiners July 25, 2014 decision, and the Hearing Examiner's April 17, 2019 decision. The 2019 Hearing Examiner decision accepted Whatcom County's Staff Report as findings of fact. That staff report, as revised at the request of the Hearing Examiner, explained the extension request process and that an extension request for shoreline permits S 8-89 and SV 7-89 had to be submitted prior to July 24, 2019.

Whatcom County did not receive an extension request prior to July 24, 2019. Further, Whatcom County has not received an extension request since July 24, 2019. In applying condition #16 from the Hearing Examiner's 2014 decision, absent an extension request, the shoreline permits S 8-89 and S 7-89 should have expired.

Technical Committee Recommendation

The Hearing Examiner does have the authority in WCC 23.60.190(C) to approve a permit condition to set a different expiration date for compliance. Should the Hearing Examiner decide to set a new expiration date as a condition of approving the current revision request, the technical committee recommends that the time period be the minimum reasonable time necessary to complete the authorized actions within the shoreline permit and no more one-year (i.e. September 7, 2022)

F. Suburban Residential District (WCC Chapter 2.24)

The South Cape Long Subdivision was approved by Whatcom County Council on May 20, 1992 pursuant to a decision and Stipulated Settlement. The original approvals were for a 26 lot subdivision on at the southern end of Sandy Point subject to the requirements of the S 9.6 zone. The original subdivision also included a community dock with 26 slips and a boat launch along the canal.

The applicant then requested a revision to preliminary approval of the South Cape at Sandy Point. The revision will alter preliminary design, method of treating sanitary sewer, ownership of road and utility infrastructure and length and width of the road, language in plat notes, and use of updated engineering principles. The revision was approved by the Whatcom County Hearing Examiner on April 17, 2019.

The applicant applied for another revision on March 8, 2021. The revision reduced the development area and included public sewer service from the Lummi Sewer and Water District.

WCC 2.24.300 Minimum Lot Size: Minimum lot sizes shall be:

Use District	Minimum Lot Size	Width At Street Line	Width at Building Line	Minimum Mean Depth
S 9.6	9,600 sq. ft.	35'	70'	100'

The second revision will result in single family residential lots greater than 9,600 square feet and will have at least 70 feet of frontage on South Cape Road. The proposed lots meet the requirements for minimum lot size, width at street line and building line, and minimum mean depth of 100 feet.

WCC 2.24.351 Building Setbacks: Minimum Building Setbacks shall be:

Use District	Front Yard	Rear Yard	One Side	Two Sides
S 9.6	30'	25'	5'	15'

Setbacks will be reviewed at the time of building permit. The setbacks will be consistent with Whatcom County Code, the Stipulated Settlement and Agreed Order of Remand and Dismissal (1992), the Supplemental Decision on Remand (1992), the Amendment to Preliminary Approval (2014) and the proposed revisions.

WCC 2.24.400 Lot Coverage: Maximum lot coverage including both primary and accessory structures shall be:

Use District	Interior Lot	Corner Lot
S 9.6	35%	40%

The lot coverage requirements will be reviewed at the time of building permit submittal.

WCC 2.24.650 View Protection: The enhanced general welfare and maintenance of residential values attributable to the enjoyment of scenic views shall be protected by limiting obstructions of the applicable view seen from the residence across the street or from the residence sharing the common rear boundary line as follows:

- (1) In Use Districts S 9.6 and S 12, no structure or combination of structures shall obstruct more than sixty-five percent (65%) of the applicable view.

The view protection provisions will be reviewed at the time of building permit submittal.

WCC 2.24.700 General Land Use Requirements and Locational Criteria:

WCC 2.24.702 The Zoning Officer shall check all site plans against his various physical information surveys and alert site owners in writing if the available information indicates the possible presence of any of the following:

- (1) Soils subject to regular flooding;
- (2) Soils subject to ponding;
- (3) Soils of low or variable shear strength;
- (4) Fractured rock;
- (5) Unconsolidated material;
- (6) Areas subject to tidal inundation;
- (7) Soils which serve as aquifer recharge areas;
- (8) Soils subject to low-bearing capacity; and
- (9) Soils subject to groundwater contamination or effluent surface contamination or effluent surface exposure, if developed with septic tanks.

As discussed in Section C of this report, the revision has been reviewed for the above land use requirements and locational criteria. The site does contain areas subject to tidal inundation and the applicant has been made aware of the situation. The applicant has completed a Habitat Assessment (HA) for the revision.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of Chapter 2, Interim Zoning Ordinance.

G. Subdivision Regulations (Title 21)

The applicant is requesting a revision to preliminary approval of the South Cape at Sandy Point, to permit Phase II development. The revision will alter preliminary design, method of treating sanitary sewer, ownership of road and utility infrastructure and length and width of the road, language in plat notes, and use of updated engineering principles.

Revisions or modifications to approved preliminary long subdivisions are subject to the process and requirements of WCC 21.5.110:

WCC 21.05.110 Modifications to approved preliminary long plats.

(1) The technical review committee may approve minor changes to a preliminary long plat. In order to qualify as a minor change, the proposal must not adversely impact neighbors or the environment, and the density, uses and basic design of the approved preliminary long plat must be maintained.

The Technical Review Committee has determined the requested second revision is not a minor change and a major modification is required.

(2) The hearing examiner or county council, whichever approved the original preliminary long plat, may approve major changes to the plat. Major changes are those that, in the opinion of the technical review committee, would adversely impact neighbors or the environment, alter the density, alter the uses, or alter the basic design of the preliminary long plat. The SEPA official shall review major changes and determine whether the original SEPA determination is still valid or a new determination required. The hearing examiner or county council shall hold a public hearing prior to issuing the decision. The appropriate city shall be notified of the request and given the opportunity to comment on major changes, if the land division is located within that city's urban growth area. (Ord. 2018-032 § 1 (Exh. E); Ord. 2009-007 § 1).

The Technical Review Committee has determined that the revisions requested do alter the density, uses and basic design and a major change is appropriate. The Hearing Examiner issued a determination regarding the phasing plan in 2014 and therefore, is the decision maker for this revision.

The Technical Review Committee and the SEPA Official reviewed the requested second revision to the long subdivision, shoreline substantial development and shoreline variance and have determined the mitigated conditions associated with the 2018 MDNS are appropriate.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of Title 21, for modifications to preliminarily approved long subdivisions.

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 referenced above in accordance with WCC Title 24 Health Code and Title 21 Land Division Regulations. WCHD recommends preliminary plat approval.

The applicant has indicated that the Sandy Point Improvement Company will provide public water to the proposed lots.

The applicant has indicated that public sewer will be provided to the lots by the Lummi Sewer and Water District.

The Technical Review Committee has determined that, as conditioned, the requested revisions are consistent with the requirements of WCC Title 24.

VIII. RECOMMENDATION

The Technical Review Committee has determined that subject to the following proposed conditions, the revisions to the long subdivision, shoreline substantial permit and shoreline variance are consistent with Whatcom County Code and the Stipulated Settlement and Agreed Order of Remand and Dismissal (1992), the Supplemental Decision on Remand (1992), the Amendment to Preliminary Approval (2014) and the Revision to the Preliminary Approval of the South Cape at Sandy Point Long Subdivision Approval, April 17, 2019.

IX. RECOMMENDED CONDITIONS OF APPROVAL

SEPA

Development

1. Each lot shall be limited to 4000 square feet of development. The development envelop includes a single driveway, primary residential structure of 2800 square feet, decks, pathways, or patios, and ornamental landscape or lawn as determined by the cumulative impact in the Natural

Resources Assessment and FEMA Habitat Assessment dated April 2017 and revised May 2018.

2. Open space and community access areas shall be placed in a separate tract.
3. Hard shoreline stabilization to protect future development or land is prohibited.
4. Overwater structures are prohibited.
5. In accordance with the conceptual mitigation plan all areas outside of utilities, septic systems, road way, and approved development envelope shall be planted in native vegetation.

Mitigation

6. Mitigation for all impacts shall be installed prior to final plat approval.
7. The mitigation area shall be monitored for 10 years.
8. An agreement to maintain mitigation areas shall be completed prior to final plat approval.
9. Mitigation areas shall be placed in a separate tract.
10. Shorebird and waterfowl habitat signs shall be installed on tract A.
11. Limit human activity in the open area space during April 1 through May 30 and August 1 through September 30.

Public Access

12. Community access shall be required in accordance with the February 14, 1992 Washington State Shoreline Hearings Board – Stipulated Settlement and Agreed Order of Remand and Dismissal.
13. Annual Winter Bird Surveys shall be allowed to occur in the Open Space Area.

Current Planning

14. The use and location of development, as shown on plans date stamped June 4, 2021, shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner, except as modified herein.

15. 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.
16. Lots 1-7, Phase II shall meet the requirements of WCC 2.24.300 Minimum Lot Size and shall be at least 9,600 square feet consistent with the definition of Minimum Lot Size in WCC 20.97.240. The lots shall be measured from the ordinary high water mark.
17. A note shall be placed on the face of the plat which reads:

WHATCOM COUNTY RECOGNIZES THAT THE SANDY POINT SPIT WAS FORMED BY SEDIMENTS CARRIED FROM THE NORTH BY SOUTHERLY LITTORAL DRIFT CURRENTS AND THAT THE EXISTING CANAL ENTRANCE IMMEDIATELY NORTH OF THE SUBDIVISION MAY DIMINISH OR CUT OFF THIS SEDIMENT SUPPLY. THIS NOTE IS INTENDED TO INFORM POTENTIAL LOT PURCHASES OF THIS SITUATION. THIS NOTE SHALL SERVE AS NOTICES TO LOT PURCHASERS THAT EROSION MAY REDUCE THE SIZE OF LOTS OVER TIME.
18. A note shall be placed on the mylar which reads :

THE BUILDING SETBACK LINES DEPICTED ON THIS PLAT CONFORM WITH REGULATIONS IN EFFECT AS OF JUNE 29, 1989. PRIOR TO CONSTRUCTION ON ANY LOT WITHIN THIS PLAT, THE APPLICANT IS CAUTIONED TO CHECK WITH THE DIVISION OF BUILDINGS AND CODE TO DETERMINE THE EXACT LOCATION OF SETBACK LINES AS OF THE TIME OF APPLICATION FOR BUILDING PERMIT. ZONING OR SHORELINE REGULATIONS MAY CHANGE AND SETBACK LINES MAY NOT ALWAYS BE SHOWN ON THE PLAT.
19. All easements existing and proposed shall be shown on the final plat map.
20. Construction shall conform to the revision application materials, revised SEPA checklist, and revised site plan.
21. The documents creating and empowering the community association shall provide that the association shall assume ownership and maintenance responsibilities for all community owned property no later than the point where 80% of the lots have been sold unless the applicant chooses to transfer ownership before 80% of the lots are sold, the owner of all unsold lots, be it the applicant, developer, or another party, shall be responsible for providing contributions to the community association for each lot, equivalent to the contributions which would be made by each lot owner if the unsold lots were in individual ownership. The developer, applicant, or subsequent owner of the unsold lots shall be responsible for providing that contribution to the same maximum level as would be generated by 80% of the total lots after sale to individuals. The association shall be empowered to collect dues

for the construction and/or maintenance of all community owned property. Unsold lots shall mean any lots not sold to individuals for the purpose of construction of single-family homes.

22. Any and all legal documents regarding the community association shall be approved as to form by the Whatcom County Prosecuting Attorney's Office prior to the filing of the final mylar.

Shorelines

23. Overhead wiring is not permitted. Onsite electrical and communication services shall be placed underground.
24. Clearing of vegetation is allowed in the approved 4,000 square foot building envelope. Exposed soils should be reseeded at the first available opportunity, not to exceed one year after disturbance.
25. Water Mark (OHWM) in accordance with the Department of Ecology's methodology for determining the Ordinary High Water Mark. The preliminary plat shall reflect a minimum setback of 15 feet between the OHWM and the roadway in "Tract A" (situated between Lots 2 and 5). The preliminary plat shall reflect a minimum setback of 15 feet between the roadway and the dwelling units on Lots 3, 4, and 5. The building setback from the roadway shall be 25 feet for Lots 1 through 5. The setback between the OHWM and the dwelling units shall be 45 feet for all 7 lots. These setbacks shall be based on right of way width of 40 feet for the roadway. The setback specified in this No.4 shall supersede any contrary provision of any other stipulation herein
26. Shoreline permits granted herein shall not include Lot 11 (as shown on the preliminary approval plat map). No dwelling unit or construction including fill shall be allowed on Lot 11 unless approved in writing by the Department of Ecology.
27. There shall be a 30-foot community easement along the shoreline in accordance with Section 6.15(4)(B)(1)(b) of the Whatcom County Shoreline Management Program solely for the use and benefit of the residents of this subdivision. Access to this easement area shall be provided to lots 1 through 5 of South Cape at Sandy Point Phase 1 and lots 1 through 6 of South Cape at Sandy Point Phase 2 through lot 6 and lot 7 of South Cape at Sandy Point from Tract A.
28. A Community recreation and open space area, a minimum of 30' in width measured landward from the line of Mean Higher High Water, shall be provided along all shorelines in the development. Easements for public access may be granted by the developer, but are not required.

29. A note shall be placed on the face of the plat that clearly delineates the community recreation and open space area and that it is for the use of all residents in the subdivision.
30. Tract A shall be owned and maintained by the private community association that is to be incorporated upon filing of the final plat. The community association shall have restrictions and covenants, articles of incorporation and bylaws filed with the final mylar. Documents of the community association shall be prepared by the developer and submitted to the Division of Buildings and Code for their approval prior to filing of the final plat. These documents shall then be filed with the final plat.
31. A plat note stating the development area maximum shall be placed on the face of the plat:

THE MAXIMUM BUILDING ENVELOPE FOR EACH LOT IS 4,000 SQUARE FEET OUTSIDE OF SIDE SETBACK AND SHORELINE SETBACK. AREA OF PRIMARY RESIDENCE SHALL BE A MAXIMUM OF 2800 SQUARE FEET EXCLUDING NORMAL APPURTENANCES.
32. A plat note shall be included defining normal appurtenances:

NORMAL APPURTENANCES ARE A SINGLE DETACHED BUILDING OR CARPORT, DECKS, PATIO OR SIMILAR STRUCTURES, UNDERGROUND UTILITIES, STAIRS, AND PATHWAY TO THE BEACH AS SHOWN ON THE PLAT.
33. Community trails shall be included on the final plat.
34. Each lot is allowed a 4 foot wide single pathway to the beach which will be the minimum length necessary to connect the home to the community path.
35. Structures extending from a second story, roofs or coverings, decks, verandas, patios, or other similar structures shall not extend into the building setback or beyond the common line setback.
36. The following plat note shall be included prohibiting the following development:

ACCESSORY DWELLING UNITS ARE NOT ALLOWED. ALL OVERWATER STRUCTURES ARE PROHIBITED
37. The following plat note shall be included for view corridors to and from the water:

SIDE SETBACKS ESTABLISHED SUCH THAT 30% OF THE LOT WIDTH IS LEFT OPEN AND FREE OF STRUCTURES OVER 30 INCHES IN HEIGHT. ONE SIDE MUST BE THE MINIMUM SETBACK FOR THE ZONE.

38. The plat shall show a deed condition informing any potential buyer of the dangers inherent in the site. The plat shall include in-line automatic shut-off valves on the main natural gas service gas storage tanks. The intent of this stipulation is that wood frame, single family structures will address the potential seismic hazards associate with liquefaction at this site and ensure compliance with the seismic hazard standards set forth in the Current Whatcom County Shoreline Management Program, the Washington State Shoreline Management Act or any other enactment. Foundation design shall not interfere with natural seasonal extreme high tide or storm surge ecological processes and follow recommendations in the Coastal Engineer's report.
39. A note shall be placed on the mylar and upon all deeds to lots within this plate noting that the tidelands are owned by the United States government in trust for the Lummi Tribe and that the tidelands may only be used by owners of property in the plat after appropriate arrangements have been made with the Tribe.
40. The approved Inadvertent Discovery Plan (IDP) shall be on-site during all construction related to this project and shall be followed if cultural resources or human remains are encountered.
41. Upon approval of the revision to the April 17, 2019 preliminary plat approval and approval of the revision to the shoreline permits, all parties agree that satisfaction of the Stipulated Settlement is full and complete for SHB N. 89-74 and SHB No. 90-3, dated February 5, 1992. The parties are no longer bound by the Stipulated Settlement, and vested rights are now protected and controlled by WCC Title 22.
42. The proposal shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the following:
 - a. WAC, Chapter 173-201, "Water Quality Standards for Waters of the State of Washington" administered by the Department of Ecology.
 - b. Hydraulic Project Approval, administered by the Washington State Department of Fisheries.
 - c. Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act, administered by the Army Corps of Engineers.
43. Disposal of oil, hazardous materials, and solid waste onto shoreline is prohibited.

Critical Areas

Habitat Conservation Areas

44. Prior to final plat approval the applicant shall apply for a mitigation case with a detailed 24x36 landscape plan drawing with specific plant type and the location shall be submitted and approved prior to mitigation installation.
45. An agreement to maintain mitigation areas shall be completed prior to final plat approval.
46. An assignment of savings or bond shall be submitted for the 125% of cost of maintenance and ten years of monitoring.
47. Mitigation for all impacts shall be installed as approved in the mitigation plan completed by NES dated March 8, 2021 prior to final plat approval.
48. A 24 x36 as-built landscape plan drawing shall be submitted and approved prior to final plat approval.
49. The mitigation area shall be monitored for a ten period following an approved as-built landscape plan. A monitoring report is due to Whatcom County for years 1, 2, 3, 5, 7 and 10 or until determined by Whatcom County to meet all the performance standards outlined in the prepared and approved mitigation plan and conditions of approval.
50. Mitigation areas shall be placed in a separate tract. The following plat note shall be included:

TRACT "B" IS FOR PERPETUAL HABITAT CONSERVATION AREA MITIGATION FOR ALL UPLAND DEVELOPMENT APPROVED THROUGH LSS1988-00002. NO FURTHER MITIGATION IS REQUIRED FOR DEVELOPMENT WITHIN THE APPROVED BUILDING ENVELOPE.
51. Access shall be granted in the open space area for seasonal bird surveys. The CC&R's shall include a provision to allow temporary access for continued scientific research. The provision should address calendar date range of access, time of day, parking, any conditions for prior notification to the Homeowner Association, or other needs of the Homeowner Association. If the applicant cannot provide sufficient or satisfactory provisions for seasonal bird surveys, the Whatcom County Hearing Examiner shall review the provisions if the parties cannot agree.
52. The CC&R's shall also include a provision for ownership of tidelands.
53. The CC&R's shall include the Homeowners Association responsibility to maintain mitigation areas free of invasive species.
54. The CC&R's shall also include a provision for control of dogs within the subdivision. Dog owners, family, and guests must place the dog(s) on a leash outside of the homeowner's property. Homeowners must prevent dog(s) from leaving the homeowner's property with a fence or similar device.

Dogs shall not be allowed within any mitigation site. A shoreline permit from Whatcom County is required to install the fence.

55. Prior to final plat approval signs shall be placed at approved intervals designating Habitat Conservation Areas. Applicant must receive approval of sign design prior to installation

Geological Hazards

56. The following plat note shall apply:

THIS LONG PLAT HAS BEEN REVIEWED FOR THE PRESENCE OF CRITICAL AREAS IN ACCORDANCE WITH RCW 36.70A.030. GEOLOGICALLY HAZARDOUS AREAS (COASTAL EROSION, TSUNAMI, AND SEISMIC HAZARDS) WERE FOUND TO EXIST WITHIN THE BOUNDARIES OF THE LONG PLAT, AND INSUFFICIENT LOT DEPTH DOES NOT ALLOW FOR SUITABLE BUILDING SETBACKS TO AVOID POTENTIAL ADVERSE IMPACTS. SITE-SPECIFIC GEOLOGIC HAZARD MITIGATION MEASURES SHALL BE REQUIRED AT THE TIME OF BUILDING PERMIT APPLICATION, AND SHALL ADDRESS ALL AFOREMENTIONED GEOLOGIC HAZARDS.

57. The following plat note shall apply:

FREE-STANDING PILE FOUNDATIONS SHALL BE REQUIRED TO ALLOW FLOW-THROUGH OF STORM-SURGE, EXCEPT ON LOTS 4, 5 AND 6 WHICH WILL BE REVIEWED AT THE TIME OF FUTURE DEVELOPMENT. ALL FOUNDATION ELEMENTS SHALL ALSO BE DESIGNED IN CONSIDERATION OF POTENTIAL SHORELINE RETREAT AND EROSIONAL IMPACTS. FUTURE HARD-SHORE STABILIZATION SHALL NOT BE PERMITTED FOR THE DEFENSE OF SINGLE-FAMILY RESIDENCES.

Fire Conditions

58. The applicant shall demonstrate that flow from the water system is adequate for fire protection as required by the Whatcom County Deputy Fire Marshal.
59. Fire hydrants need to be shown on the site plan within 600 feet of all building sites.
60. Access road width at fire hydrant location(s) need to be 26 feet wide for 40 feet long centered on the hydrant.
61. All roads and turnarounds shall meet the Whatcom County Road Development standards and Whatcom County Fire Marshal's Standards.

Public Works – Flood Division

62. 100 year coastal flood zone boundaries shall be identified on the face of the plat.

63. All future development on the individual proposed lots are required to follow the habitat protection requirements and/or recommendations outlined in the Habitat Assessment prepared by Northwest Ecological Services, LLC submitted on May 25, 2018 and revised 2021.
64. Flood proofing requirements, according to [Whatcom County Code](#) Chapter 17.16, will be required and must be met prior to approval of a future building permit.
65. The following note shall be placed on the final plat:

SPECIAL FLOOD HAZARD AREA NOTE: A PORTION OF THIS SUBDIVISION IS LOCATED WITHIN A FEMA DESIGNATED SPECIAL FLOOD HAZARD AREA (SFHA). DEVELOPMENT WITHIN A DESIGNATED SFHA IS SUBJECT TO WHATCOM COUNTY CODE TITLE 17 AND THE ASSOCIATED REQUIREMENTS OF THE ENDANGERED SPECIES ACT PURSUANT TO ORDINANCE 2019-005-EXH A AND TITLE 16.16.400 (ORD 2017-077) UNLESS FUTURE CHANGES TO WHATCOM COUNTY CODE DICTATE OTHERWISE.

Public Works – Engineering Services

66. All development shall comply with Whatcom County Development Standards (WCDS).
67. WCC 12.08 – Construction Standards; 1984 WCDS Section 2.
 - a. The County Engineer has approved the applicant's request for private roads, per Whatcom County Code 21.05.050(7) and WCDS 505.E.
 - b. The private road shall be paved 20-foot wide with one-foot gravel shoulders with layout as shown per submitted South Cape at Sandy Point Phase 2 Proposed Site Layout by Ronald T. Jepson & Associates (stamped Received 6/4/2021 by the County).
 - c. The proposed turnaround at the end of the road meets WCDS.
 - d. The Fire Marshall's office requires a 26-foot wide road width at fire hydrant locations.
 - e. All road, drainage facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction.
68. WCC 12.16 – Revocable Encroachment Permit. A Revocable Encroachment Permit will be required for any work in the County right-of-way.
69. WCC 12.60 – Road Naming System. Addresses for each lot will be provided by Engineering. Applicant shall pay current lot addressing fees prior to recording. Proposed road name, South Cape Road, must be approved by Engineering. A map of the lots at a 1"=400' scale shall be provided to PWES for address assignment. 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 Ch. 5

Road Standards. Mailbox locations shall be shown on final construction plans if shared locations are required.

70. Whatcom County Code 20.78 – Transportation Concurrency Management. The project is exempt from Concurrency determination since it will generate fewer than nine new PM Peak trips. The concurrency exemption number is ECE2019-00008.
71. WCC 20.80.630 – Stormwater and Drainage; WCDS Chapter 2.
 - a. An engineered stormwater design report addressing conveyance, detention, and water quality measures according to the current Stormwater Management Manual for Western Washington must be approved by PWES prior to any land disturbance.
 - b. Applicant must propose a method to protect compost amended vegetated filter strips (CAVFS) from road traffic/parking.
 - c. Certified Record Drawings and a Stormwater Maintenance Security for the installation of any new drainage system/facility shall be provided and approved by the PWES upon construction completion.
 - d. A declaration of covenant and grant of easement will be required for flow control and treatment facilities, and on-site stormwater management BMPs.
72. WCC 21.06 – Final Long Subdivision; WCDS Chapter 4. Map data, lot closures, title report, CC&R's, record drawings, securities, survey monuments, and recorded easements will be required for final plat approval.

Health Department

73. Approved Public Water Availability Form for each lot from the Sandy Point Improvement Company must be submitted prior to final plat approval.
74. Water infrastructure serving each lot must be installed and approved by the Sandy Point Improvement Company prior to final plat approval.
75. Verification of sewer installation and approval from the Lummi Nation will be required prior to final plat approval.

Report prepared for the Technical Review Committee by:
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