

**WHATCOM COUNTY HEARING EXAMINER**

RE: PRELIMINARY LONG SUBDIVISION ) LSS2006-0006  
Application for )  
)  
*LMS Blaine, L.L.C.* ) FINDINGS OF FACT,  
*“The Meadows at Semiahmoo”* ) CONCLUSIONS OF LAW,  
) AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The project consists of a five (5) lot clustered single-family residential subdivision including one buildable reserve tract and a non-buildable shoreline reserve tract located on a 27.61-acre site within the Long-Term Urban Growth Area. The subject site is zoned Urban Residential, UR(4). The proposal includes associated infrastructure improvements including an access road designed, to minimize impacts to wetlands and provide access to the upland usable portion of the property. The project is associated with the Shoreline Substantial Permit (SHR2006-00012) and Shoreline Variance (SHV2009-00008).

Decision: The requested permits are granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

**PRELIMINARY INFORMATION**

Applicant: LMS Blaine, L.L.C.

Applicant Representative: Francis Eustis – Ronald T. Jepson and Associates

Property Location: Drayton Harbor Road west of Harborview Road

Legal Description: Section 13 Township 40 North, Range 01 West, W.M.  
Assessor’s Parcel No. 405113 427181

Adjacent Water Body: Drayton Harbor and its associated wetlands

Shoreline Designation: Rural / Aquatic

Statewide Significance: No

Zoning: Urban Residential [UR4]

Comprehensive Plan: Long Term Urban Growth Area

Subarea: Blaine/Birch-Bay

Number of Lots: Four (4) cluster single family lots, one buildable reserve lot and one non-buildable tract

Reserve Area: 20.92 acres (buildable) and 1.05 acres (non-buildable shoreline tract)

Total Acreage: 27.61 acres

Roads: Private

Water Supply: Public (Birch Bay Water and Sewer District)

Sewage Disposal: On site septic systems

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District

Topography: The site is described as fairly flat acreage

Vegetation: Vegetation consists mostly of native and non-native grasses with small patches of shrubs. There are also emergent and estuarine wetlands and a small stream which are present on site.

Adjacent Land Uses: North: Drayton Harbor  
East: Vacant Residential Property  
South: Existing Mobile Home Park  
West: Residential Property

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

Variations: Shoreline Variance for shoreline associated wetland impacts due to the private road

AUTHORIZING ORDINANCES

Revised Code of Washington Chapter 58.17  
Whatcom County Comprehensive Land Use Plan  
Whatcom County Code Chapter 12.08, Development Standards  
Whatcom County Code Chapter 15, Building Code  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,  
Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 21, Subdivision Regulations  
Whatcom County Code Title 23, Shoreline Management Program  
Whatcom County Code Title 24, Health Regulations

SEPA Review: Determination of Non-significance (DNS) issued on July 31, 2009 by  
Whatcom County Planning and Development Services (WCPDS)

Legal Notices: Published - May 3, 2007, January 13 and April 15, 2010  
Posted – April 15, 2010  
Mailed – January 8 and April 9, 2010

Hearing Date: April 28, 2010

Parties of Record:

Ed Legaspi – LMS Blaine, L.L.C.  
5805 South Grove Street  
Tacoma, Washington 98409

Frances Eustis – Ronald T. Jepson and Associates  
222 Grand Avenue, Suite C  
Bellingham, Washington 98225

Steven Harmon  
4985 Drayton Harbor Road  
Blaine, WA 98230

David Willsie  
23702 -111<sup>th</sup> Place West  
Woodway, WA 98020

Jon Sitkin  
1500 Railroad  
Bellingham, WA 98225

Roger McCarthy  
Division of Engineering

Chad Yunge and Tyler Schroeder  
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
  - 1-1 Change of Ownership Memo, dated February 19, 2010
  - 1-2 Supplemental Applications
  - 1-3 Letter of Completeness, May 3, 2007
  - 1-4 Agency Distribution List
  - 1-5 Fire/School District Concurrency Letter
  - 1-6 Preliminary Traffic Info
  - 1-7 Preliminary Stormwater
  - 1-8 Brief Project Description
- 2 Shoreline Staff Report, dated April 19, 2010
- 3 Neighboring Property Comment letters
- 4 Vicinity Map, Preliminary Plat Map, Preliminary Site Plan
- 5 Property Owner Mailing Labels
- 6 Preliminary Plat Staff Report, dated April 16, 2010
- 7 Agency Comments
- 8 DNS, dated July 31, 2009
- 9 Email, dated June 4, 2007 from Oliver Grah to Steven Harmon re: Critical Areas Review
- 10 Letters, dated June 7, 2007 and March 6, 2008, from Jon Sitkin and Fire District 21 to Wayne Fitch
- 11 Whatcom County Code, Old Code, 2005-2007, Chapter 20.20
- 12 Quit Claim Deed

- 13 CCRs
- 14 Conservation / Mitigation Easement
- 15 Preliminary Stormwater Site Plan, dated May 19, 2009
- 16 Large Vicinity Map, Preliminary Plat Map, Preliminary Site Plan (Same as Exhibit 4)
- 17 Wetland Delineation Report, dated December 2005
- 18 Deeds / Lot of Record Application
- 19 Letter of Incompleteness, dated April 4, 2006
- 20 Letter of Completeness for Vesting Only, dated March 15, 2006 from LSS2006-0006 and SHR2006-0012
- 21 Water Verification, April 24, 2007
- 22 Septic Soils Data – Subdivision Application
- 23 Same Maps, different size, as Exhibit 4 and 16
- 24 Aerial Map
- 25 Vicinity Map
- 26 Zoning Map
- 27 SEPA Checklist
- 28 Certificate of Mailing of Notice of Application for SHV2009-0008, dated January 8, 2010
- 29 Certificate of Mailing of Notice of Public Hearing, dated April 9, 2010
- 30 Certificate of Posting, dated April 15, 2010
- 31 Legal Notice of Application, dated May 3, 2007
- 32 Legal Notice of Application, dated January 13, 2010
- 33 Legal Notice of Public Hearing, dated April 15, 2010

- 34 Email Correspondence between Staff
- 35 Email from Jon Sitkin to Tyler Schroeder, dated April 26, 2010 re: signed agreement
- 36 Mitigation Agreement regarding Fire Protection and Emergency Response Service Capital Facility Charge, dated April 28, 2010

## **II.**

The Applicant requests approval of a Preliminary Long Subdivision consisting of five clustered single-family residential lots, “The Meadows at Semiahmoo Long Plat,” LSS2006-0006, and includes one buildable reserve tract and a non-buildable shoreline reserve tract located on a 27.61-acre site within the Long-Term Urban Growth Area. The subject site is zoned Urban Residential, UR4. The proposal includes associated infrastructure improvements including an access road designed to minimize impacts to wetlands and provide access to the upland usable portion of the property. The project is associated with the Shoreline Substantial Permit (SHR2006-00012) and Shoreline Variance (SHV2009-00008).

## **III.**

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #6, dated April 16, 2010, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

Public comment, both in writing and at the public hearing, raised concerns about drainage issues specially related to the neighboring property to the north of the proposed Preliminary Plat Approval. These concerns were addressed both in the Staff Report of the Technical Review Committee, dated April 16, 2010, recommending to the Hearing Examiner approval of the Preliminary Long Subdivision, and also by the Division of Engineering at the Public Hearing.

The owner of a neighboring mobile home park, a twenty acre property to the south, provided comment regarding a boundary line adjustment with the developer. The Hearing Examiner agreed to add a Condition of Approval requiring an agreement between the owners resolving the boundary line adjustment prior to Final Plat Approval.

The Attorney representing Fire District No. 21 requested the Hearing Examiner leave the record open until the recorded Mitigation Agreement was finalized and submitted to the Hearing Examiner. The Hearing Examiner agreed to honor this request. On April 28, 2010, the Hearing Examiner’s Office received a copy of the recorded Mitigation Agreement.

#### **IV.**

The Applicant and Whatcom County Fire Protection District No. 21 have entered into a Voluntary Mitigation Agreement regarding the Fire Protection and Emergency Response Service Capital Facility Charge. Pursuant to the terms of the Agreement, the Fire District is to issue a Letter of Concurrency for the proposed development. The Agreement has been recorded and places obligations on the Developer and upon future purchasers of lots to pay mitigation fees at the time of the issuance of a building permit.

#### **V.**

Testimony at the hearing established that there was a property line discrepancy between the Applicant's property and the property to the south containing a mobile home park on 20-acres, with an additional single-family residence. The Applicant indicated at the hearing that they were agreeing with the property line claimed by the property owner to the south and that pursuant to a survey and a boundary line adjustment any issues regarding this boundary line will be resolved prior to Final Plat Approval. Both Parties agreed that the Conditions of Approval for the proposed Long Subdivision should include a Condition requiring resolution of the boundary line issue prior to Final Plat Approval.

#### **VI.**

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

### **CONCLUSIONS OF LAW**

#### **I.**

The Whatcom County Technical Review Committee has recommended approval of the requested Preliminary Long Subdivision for the proposed construction of a five lot clustered single-family residential subdivision.

Findings of Fact and Conclusions of Law for the Preliminary Long Subdivision is set forth in the Staff Report, Exhibit #6, dated April 16, 2010. The Applicant has indicated no objection to any of the conditions proposed in the Staff Report, Exhibit #6.

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or inaccurate or failed to properly support preliminary approval.

The Hearing Examiner hereby adopts by this reference the Findings of Fact and Conclusions of Law reached by the Technical Review Committee in the Staff Report, Exhibit #6,

a copy of which is attached hereto and incorporated herein by this reference.

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

**DECISION**

Preliminary Long Subdivision Approval is hereby granted to LMS Blaine, L.L.C. granting preliminary approval for a cluster long subdivision, “The Meadows at Semiahmoo Plat,” consisting of five clustered single-family residential lots, including one buildable reserve tract and one non-buildable shoreline reserve tract, to be located on Assessor’s Parcel No. 405113 427181, located approximately 420-feet northwest of the intersection of Drayton Harbor Road and Harborview Road, subject to the following conditions:

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. A valid Letter of Concurrency from Whatcom County Fire District No. 21, pursuant to WCC 20.80.212, is required prior to final approval of the proposed plat. An Agreement between the Applicant and Whatcom County Fire District No. 21 has been admitted into the file as Exhibit No. 36. The Parties shall comply with this Voluntary Mitigation Agreement.
5. Approval of this preliminary subdivision shall become invalid unless a final plat is submitted in proper form for Final Plat Approval within five years of the date of preliminary subdivision approval. This expiration date may be extended pursuant to WCC 21.05.030(5).
6. The Applicant shall obtain all necessary permits prior to construction.
7. The cluster subdivision provisions shall apply to this land division and the following note shall be placed on the face of the original drawing (mylar), unless modified by Whatcom County PDS:

**CLUSTER NOTES:**

- THIS FIVE (5) LOT LAND DIVISION HAS BEEN APPROVED AS A CLUSTER SUBDIVISION PURSUANT TO WHATCOM COUNTY CODE TITLE 20.20, ORD2005-041§ Exh. A, 2005. THE FOLLOWING NOTES



SHALL BE CONSIDERED A DEED RESTRICTION AND SHALL CONSTITUTE A BINDING AGREEMENT BETWEEN WHATCOM COUNTY AND ALL PRESENT AND FUTURE OWNERS OF RECORD. SAID NOTES SHALL BE INCLUDED WITHIN ALL DEEDS AND CONTRACTS OF CONVEYANCE AND MAY ONLY BE AMENDED BY MUTUAL AGREEMENT BETWEEN SAID PARTIES PURSUANT TO THE ZONING IN EFFECT AT THE TIME. ANY ALTERATION OF THE RESERVE TRACT, BOUNDARIES OR CLUSTER NOTES PURSUANT TO WCC TITLE 21.06.030 REQUIRES THE REVIEW AND FILING FOR RECORD OF A NEW ORIGINAL DRAWING.

- LOT(S) 1, 2, 3 AND 4 HAVE BEEN DESIGNATED AS THE CLUSTERED LOT(S) AND ARE SUBJECT TO THE FOLLOWING RESTRICTIONS:

A. EACH CLUSTERED LOT HAS BEEN ASSIGNED ONE DENSITY.  
B. EACH CLUSTERED LOT MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE, SINGLE FAMILY DWELLING UNIT.

- LOT RESERVE TRACT A AND B HAVE BEEN DESIGNATED AS THE RESERVE TRACTS AND IS SUBJECT TO THE FOLLOWING RESTRICTIONS:

A. RESERVE TRACT A HAS BEEN ASSIGNED ONE (1) DENSITY AND MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE SINGLE FAMILY DWELLING UNIT.

B. RESERVE TRACT B HAS NO RESIDENTIAL DENSITY.

C. BASED ON DENSITY CALCULATIONS MADE FOR THE ORIGINAL 27.61 ACRE PARENT PARCEL LOCATED WITHIN THE UR ZONE, LONG-TERM URBAN GROWTH AREA, THE RESERVE TRACTS HAS NO REMAINING RESIDENTIAL DENSITIES.

D. THE RESERVE TRACTS SHALL NOT BE FURTHER DIVIDED IN ANY MANNER EXCEPT AS MAY BE PROVIDED BY W.C.C. 20.20.320 OR AS AMENDED IN THE FUTURE.

E. THE RESERVE TRACTS MAY BE RETAINED BY THE SUBDIVIDER, CONVEYED TO THE RESIDENTS OF THIS SHORT PLAT, OR CONVEYED TO A THIRD PARTY. THE RESERVE TRACTS CONTAIN 80.4% OF THE GROSS AREA OF THE PARENT PARCEL (APPROXIMATELY 22 ACRES). AS THIS PROPERTY IS SUBJECT TO THE URBAN RESIDENTIAL ZONE, ANY FUTURE ALTERATIONS, AMENDMENTS, OR ADJUSTMENTS TO ANY PART OF THIS PLAT SHALL NOT RESULT IN THE MINIMUM RESERVE AREA (TRACT) BEING REDUCED BELOW THE MANDATORY 80% REQUIREMENT.

8. No land comprising any part of a proposed land division in the unincorporated area of

Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

9. The Applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated November 12, 2009 unless modified by that Department or appealed to the appropriate agency.
10. Proof of public water availability to serve the entire project is required prior to preliminary approval. The current proposal is to provide water from Birch Bay Water and Sewer District. Prior to final approval, applicant must provide proof that water infrastructure serving each lot has been installed, and that it has been inspected and approved by the Birch Bay Water & Sewer District.
11. An On-site Sewage System (OSS) subdivision application has been approved by WCHD. In addition, proposed drainfield locations have been identified over the approved soils, meeting setbacks to property lines. There will be no further requirements prior to final plat approval.
12. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated May 24, 2007 unless modified by the Chief Plans Examiner or appealed to the appropriate agency.
13. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the applicable code sections of current codes (current code as of submittal is, 2003 International Building Code (IBC), Section 105.2) regarding nonexempt structures. Nonexempt structures may include fences, retaining walls, concrete vaults and other poured-in-place concrete structures, some retention/detention structures, bridges, permanent signs and the like.

All information, details, conditions and specifications which determine the building envelope for each individual lot, including but not limited to easements, shall be clearly indicated on the face of the approved, recorded plat and/or subdivision plan(s), no exceptions.

Plans that may be required for proposed structures for given project may include but not be limited to. (Suggested scales)

- a. Site plan (1/10<sup>th</sup> scale)
- b. Foundation plan (1/4" =1' scale)
- c. Floor plan (plan views) (1/4" =1' scale)
- d. Elevation plans (1/4" =1' scale)
- e. Structural plans (1/4" =1' scale)

- f. Section views (1/2" = 1' scale)
  - g. Details (special construction and or connections) (1/2" = 1' scale)
14. The Applicant shall comply with the conditions of the Whatcom County Watershed Office in the memo dated June 11, 2007 unless modified by the Whatcom County Watershed Office or appealed to the appropriate agency.
15. A Temporary Erosion and Sediment Control (TESC) Plan, per Water Resources Special Management Area (WCC 20.80.735) and Stormwater Special District (WCC 20.80.635), shall be reviewed and approved by the Watershed Staff prior to beginning any clearing activity. ESC measures shall be inspected when installed. Depending on the site, this inspection may occur prior to, during, or after land disturbance. Contact the Watershed Staff to arrange inspection. Details for submittal are found in the Whatcom County Development Standards Chapters 2 and 3. The plan shall contain a site plan and narrative including, but not limited, to the following components:
- A TESC Site Plan (drawn to scale) is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington :
    - 1) Depiction of all areas where soil disturbance will occur
    - 2) Depiction of all areas where vegetation is to be removed. Clearing activity limits shall be marked and inspected on site.
    - 3) Depiction and description of the type and location of ALL TESC BMPs to be utilized on site; also, a WA DOE NPDES Stormwater General Permit may be required (for cumulative land disturbance one acre or greater). Contact Department of Ecology at 360.738.6250 for more info.
  - A TESC Maintenance Plan is required be prepared by a Professional Civil Engineer, licensed in the State of Washington:  
Include a narrative describing, in detail, the TESC BMP maintenance plan. BMPs shall be inspected and reinstalled, if necessary, after each phase of construction. The BMP maintenance plan shall include each anticipated inspection and the position title of the staff responsible for performing the maintenance.
  - A Street Sweeping Plan is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington Street and Bonding and Securities required per Whatcom County Development Standards Section 212 and Section 306:

In order to protect surface waters and stormwater conveyance systems all streets shall be kept free of sediment for the duration of construction including subsequent development of individual lots. Street sweeping shall be conducted on a regularly scheduled basis.

A narrative describing the equipment, the disposal of sediment, and frequency of

sweeping shall be submitted prior to Final Plat Approval.

- A Pumping Plan is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington Pumping Plan for Sediment or Storm Water Pond and Bonding and Securities required per Whatcom County Development Standards Section 212 and Section 306:

Provide a narrative describing, in detail, measures planned to ensure capacity of the pond during the wet season. These may include; but are not limited to, pumping turbid water to a truck and removing it from the site to another approved site, pumping turbid water to an approved dispersion/ infiltration system on or off site. The name, contact info, and contract for pumping services contractor shall be on file with the technical administrator.

- Stormwater Special District and Water Resource Special Management Area Plat Notes shall apply to this land division and the following note shall be placed on the face of the original drawing (mylar), unless modified by Whatcom County PDS:

STORMWATER SPECIAL DISTRICT AND WATER RESOURCE SPECIAL MANAGEMENT AREA NOTE:

THE LOTS WITHIN THIS PLAT ARE LOCATED IN AN AREA DESIGNATED AS A STORMWATER SPECIAL DISTRICT AREA AND WATER RESOURCE SPECIAL MANAGEMENT AREA. ANY DEVELOPMENT OF SAID LOTS SHALL BE SUBJECT TO THOSE REGULATIONS PURSUANT TO WCC 20.80.636 AND WCC 20.80.735.

16. The Applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal set forth in the memorandum, dated May 7, 2007, unless modified by the Deputy Fire Marshall or appealed to the appropriate agency.
17. Fire flow shall be a minimum 500 gpm at 20 psi. Hydrants shall be located within 600 feet of the building areas.
18. Fire Department access shall meet the requirements of the Whatcom County Development Standards for Roads.
19. The Applicant shall comply with all of the conditions of the Whatcom County Natural Resources Division, memorandum, dated July 2, 2009, unless modified by the Natural Resources Staff or appealed to the appropriate agency.
20. The Applicant shall comply with the Washington State Department of Fish and Wildlife Management Recommendations for the Drayton Harbor Heron Colony, dated August 13,

2008.

21. A final mitigation plan which lists the specific plants to be included in the mitigation must be submitted prior to final approval. Mitigation must be installed and inspected prior to final approval. An Assignment of Savings for the cost of mitigation maintenance and monitoring must be received prior to final approval.

22. The wetlands, buffers, and mitigation areas must be protected by a Conservation Easement recorded prior to or at the time of mylar recording.

A discussion of the Conservation Easement and the restrictions on its use must be included in the CC&Rs.

23. The Applicant shall comply with all of the conditions set forth by the Whatcom County Division of Engineering memo dated November 20, 2009 unless modified by the Division of Engineering or appealed to the appropriate agency.
24. All development shall comply with Whatcom County Development Standards. Sight distance at all access road intersections shall meet Whatcom County Development Standards.

A preliminary traffic analysis has been submitted.

25. The Applicant has requested a private road serving this plat. The private road is serving acreage tracts and shall be built at a min. to rural private road standards. The Applicant is proposing an asphalt paved road 18 ft. wide. County Engineering agrees with the private road request and the 18 ft. wide paved road.

Dedicate additional 10 ft. of road rights-of-way along both sides of Drayton Harbor Rd., for a total width of 60 ft.

A min. 4 ft. wide gravel shoulder shall be constructed on the land side or south side of Drayton Harbor Rd. along the project frontage, as depicted on sheet C-3 of the Preliminary Site Plan dated 11-9-09 by Ronald T. Jepson & Associates.

Provide provision for maintenance of the private road.

26. All signing and striping shall be installed per MUTCD standards at the developer's expense.
27. A Preliminary Stormwater Site Plan Rreport, dated May 19 2009, has been submitted by Ronald T. Jepson & Assoc. Full dispersion for treatment and flow control is proposed for the project.

28. A final Engineered Stormwater Design Report that addresses conveyance, flow control, and water quality measures by a Washington State Licensed Civil Engineer to be submitted, prior to construction for approval by Whatcom County Engineering.
29. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
30. A Revocable Encroachment Permit will be obtained for work within the county rights-of-way.
31. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
32. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar. [WAC 332-130-050(1)(b)]. An agreement setting the boundary line between the Applicant's property and the 20-acre property to the south, or in lieu of such an agreement, a Court Order setting the boundary line, shall be submitted to and approved by Whatcom County Planning and Development Services prior to Final Plat Approval.
33. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for address assignment. Address fee shall be paid prior to recording.
34. All road, stormwater 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. As-built stormwater plans and a letter of certification from a licensed engineer must be submitted to the County Engineer.
35. Developer shall provide a plat layout to the post office to get approved mailbox location(s). The location and use of mailboxes shall not interfere with county road traffic.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 20<sup>th</sup> day of May 2010.

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Michael Bobbink, Hearing Examiner

## WHATCOM COUNTY

Planning & Development Services  
5280 Northwest Drive,  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



**David Stalheim**  
Director

**J.E. "Sam" Ryan**  
Assistant Director

### WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

April 16, 2010

The application of <b>Ed Legaspi of LMS Blaine, LLC</b> for a Long Subdivision, Shoreline Substantial and Shoreline Variance (The Meadows at Semiahmoo)		LSS2006-00006, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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#### **I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The project consists of a five (5) lot clustered single-family residential subdivision including one buildable reserve tract and a non-buildable shoreline reserve tract located on a 27.61-acre site within the Long-Term Urban Growth Area. The subject site is zoned Urban Residential, UR(4). The proposal includes associated infrastructure improvements including an access road designed, to minimize impacts to wetlands and provide access to the upland usable portion of the property. The project is associated with the Shoreline Substantial Permit (SHR2006-00012) and Shoreline Variance (SHV2009-00008).

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

#### **II. PRELIMINARY INFORMATION**

##### A. BACKGROUND INFORMATION

Applicant: LMS Blaine, LLC, Ed Legaspi  
5805 South Grove Street  
Tacoma, WA 98409

Agent: Francis Eustis  
Ronald T. Jepson & Associates, PS  
222 Grand Avenue, Suite C  
Bellingham, WA 98225

Site Location: The subject property is located approximately 420 feet Northwest of the intersection of Drayton Harbor Road and Harborview Road.



<u>Legal Summary:</u>	Located within a portion of the NE ¼ of the SE ¼ of Section 13, Township 40 N, Range 01W WM.
<u>Assessor's Parcel Number:</u>	405113427181
<u>Zoning:</u>	Urban Residential, UR(4)
<u>Comprehensive Plan:</u>	Long Term Urban Growth Area
<u>Subarea:</u>	Blaine/Birch-Bay
<u>Number of Lots:</u>	Four (4) cluster single family lots, one buildable reserve lot and one non-buildable tract
<u>Reserve Area:</u>	20.92 acres (buildable) and 1.05 acres (non-buildable shoreline tract)
<u>Total Acreage:</u>	27.61 acres
<u>Roads:</u>	Private
<u>Water Supply:</u>	Public (Birch Bay Water and Sewer District)
<u>Sewage Disposal:</u>	On site septic systems
<u>Fire Protection:</u>	Whatcom County Fire District No. 21
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Blaine School District
<u>Topography:</u>	The site is described as fairly flat acreage
<u>Vegetation:</u>	Vegetation consists mostly of native and non-native grasses with small patches of shrubs. There are also emergent and estuarine wetlands and a small stream which are present on site.
<u>Adjacent Land Uses:</u>	North: Drayton Harbor East: Vacant Residential Property South: Existing Mobile Home Park West: Residential Property
<u>Utilities Easements:</u>	Necessary utility easements will be established prior to recording the final plat
<u>Variances:</u>	Shoreline Variance for shoreline associated wetland

impacts due to the private road

SEPA Review: Determination of Non-significance issued July 31,  
2009 (SEP 2009-00087).

### 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, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 23, Shoreline Management Program
10. Whatcom County Code Title 24, Health Regulations

### III. SITE DESCRIPTION

The subject property is a 27.61-acre site, consisting of one parcel, and is located on the south side of Drayton Harbor approximately 420 feet northwest of the intersection of Drayton harbor Road and Harborview Road. The property is an rectangular shaped lot that has approximately 520 feet of frontage on Drayton Harbor Road.

The property is fairly flat and the vegetation consists mostly of native and non-native grasses with small patches of shrubs. There are emergent and estuarine wetlands and a small stream which are present on site. The property also fronts along Drayton Harbor. Property surrounding the site is larger residential tract properties.

### IV. PROJECT PROPOSAL

The Meadows at Semiahmoo development is a five (5) lot cluster single-family residential development with one buildable reserve tract and one non-buildable shoreline reserve tract. The project is designed to minimize the impacts to wetlands, including shoreline associated wetlands, on site. A great blue heron colony has recently been established in the vicinity of the development. Approximately 1.05 acres will be set aside as a reserve tract between Drayton Harbor Road and Drayton Harbor. Also, approximately 20.92 acres of the property will be buildable reserve tract. This reserve tract will have a building envelope outside of critical areas and there associated buffers of approximately 1.37 acres located on the southeast section

of the property. The clustered residential lots range from 1.22 acres to 1.67 acres and are located along the western property line and on the upland area of the property. Access to the site will be provided off Drayton Harbor Road. The private road alignment will require a crossing of a shoreline associated wetland. The proposed location of the private road is the least impactful configuration. Water service will be provided by Birch Bay Water and Sewer District. All lots will have individual on-site septic systems.

Assessor's parcel number 400511 342181 and based on the deed history submitted is a lot of record.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for the Long Subdivision and Shoreline Substantial permit proposal was published on May 7, 2007. The Shoreline Variance notice was published on January 13, 2010. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received several written comments. A summary of the comments and a response follows:

- Concerns of drainage

The project has been designed and reviewed for consistency in regards to Stormwater and drainage. A Preliminary Stormwater Site Plan report, dated May 19 2009, has been submitted by Ronald T. Jepson & Assoc. The project is proposing to use full dispersion for treatment and flow control.

A condition of approval is that a final Engineered Stormwater Design Report that addresses conveyance, flow control, and water quality measures by a Washington State licensed civil engineer to be submitted, prior to construction, for approval by Whatcom County Engineering.

- Concerns of wetland impacts

The project has been designed to minimize wetland impacts to the greater extent possible. The upland area of the property will be used for the construction of the single family residences. The private road is proposed to cross a shoreline associated wetland. Please see the shoreline variance (Appendix A) for information regarding the variance requirements.

- Concerns regarding adequate fire protection

Whatcom County Fire District #21 (North Whatcom Fire and Rescue Services)

submitted a number of comment letters indicating that the proposal will have a impact on the concurrency level of the Fire District, including adverse affects to the fire district's timely response to request for service. Please see Section VII(G) of this staff report for a discussion and conditions of approval which requires concurrency in regards to fire protection.

Notice of SEPA Threshold Determination: The Notice of Decision for the Determination of Non-Significance (DNS) for this project was issued on July 31, 2009. The notice was also sent to state and local agencies, and Parties of Record for the project. During the public comment period for the DNS, the County received a comment letter from the Department of Ecology.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and to individuals who provided written correspondence to the County. The notice was included in a one-time newspaper publication.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on July 31, 2009 and no appeals were filed (SEP2009-00087).

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Building 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.

The Whatcom County Chief Plans Examiner submitted a memo dated May 24, 2007 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The Whatcom County Plans Examiner required conditions for the above permit, located in Section IX Conditions of this report.

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

## **B. Critical Areas (Title 16)**

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 above application has been routed to critical areas staff in conformance with WCC16.16 (Critical Areas Ordinance). A wetland delineation has been submitted which indicates that wetlands and habitat conservation areas exist on the property.

The Whatcom County Natural Resources Senior Planner submitted a memo dated July 2, 2009 with information required prior to preliminary approval and conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Whatcom County Natural Resources department unless modified by the Natural Resources department or appealed to the appropriate agency.

The applicant has submitted the Washington State Department of Fish and Wildlife Management Recommendations for the Drayton Harbor Heron Colony, dated August 13, 2008.

The Whatcom County Natural Resources Department required conditions for the above permit, located in Section IX Conditions of this report.

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

## **D. Water Resources Special Management Area (WCC 20.80.735) and Stormwater Special District (WCC 20.80.635)**

WCC Chapter 20.80.735 and 20.80.635 of the Whatcom County Code implement requirements to verify that all Stormwater discharges are controlled and treated and Best management practices are implemented.

The applicant shall comply with the conditions of the Whatcom County Watershed office in the memo dated June 11, 2007 unless modified by the Whatcom County Watershed office or appealed to the appropriate agency.

The Whatcom County Watershed office required conditions for the above permit, located in Section IX Conditions of this report.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.735 and 20.80.635.*

**E. Urban Residential Zone Site Requirements (WCC Chapter 20.20)**

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.20.252, establishes the basic density and lot size requirements for residential development in the Urban Residential zone. The zoning requirements for the Urban Residential zoning district are listed in the table below.

**Urban Residential Site Requirements**

District	Gross Density	Minimum Lot Size Conventional / Cluster	Minimum Reserve Area
UR: All densities outside short-term planning areas	1 dwelling unit/ 5 acres	5 acres / 12,500 sq. ft. with public water or sewer	80%

The overall site is 27.61 acres. The property is being proposed to be served by Public water and separate on-site sewage systems. The gross density of the property for this proposal is 1 dwelling unit per 5 acres. The minimum reserve area is required to be 80%. The reserve tract is being proposed to be 20.95 and 1.05 and will be approximately 80.4 % of the total property area.

*The applicant is proposing a 5 lot subdivision with a buildable reserve tract and a unbuildable shoreline reserve tract which is consistent with the gross density and minimum reserve area requirements. The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.20.*

**F. Lot Clustering and reserve tract (WCC Chapter 20.20)**

The proposed subdivision is requesting to implement the Lot Clustering technique as outlined in the Whatcom County Code, WCC 20.20.300, as adopted pursuant to ORD2005-041. This section includes the following code citations; WCC20.20.305, WCC20.20.310 and WCC20.20.320, as follows:

**20.20.305 Lot clustering.**

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

2. The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.
3. Lot clustering is required for residential land divisions when:
  - (a) The property is located within a short-term planning area and public water and sewer are not available; or
  - (b) The property is located within a long-term planning area.

*The purpose of lot clustering for this development is for both open space and possible future development. At the time the subdivision application was submitted (vesting date) the property was located with a long-term planning area and public sewer was not available, therefore, the lot clustering technique is required for this proposed land division.*

**20.20.310 Design standards.**

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

1. Clustered building lots may be created only through the subdivision or short subdivision process.
2. Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
3. Within short-term planning areas where public water and sewer are not available and within long-term planning areas, all clustered building lots shall be grouped together in a single cluster. In all other cases, where practical, the majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the reserve tract to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

4. Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the reserve tract for the purpose of future approved development.

*The clustered lots are being created through the subdivision process. The clustered building lots as designed to be located on the upland areas outside of the natural features (wetlands) and physical constraints of the site. The clustered building lots are located in the Southwestern corner of the property and will allow for future development opportunities is consistent with future zoning.*

#### **20.20.320 Reserve tract.**

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

- A. After a site is initially subdivided pursuant to this chapter, the "reserve tract" may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.
- B. The "reserve tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record.
- C. The "reserve tract" may be further subdivided only through the long subdivision process and only under one of the following circumstances:
  - a. The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.20.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or
  - b. When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or



- c. The site is within a short-term planning area and public water and sewer serve the proposed development of the reserve tract.

*This shall be noted if and when the parcel is proposed to be further subdivided.*

- D. The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat. The number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts."

*This requirement will be added as a condition of approval and must be correctly shown on the original drawing (mylar). The proposed subdivision is for five (5) residential lots and based on the gross density of 1 dwelling unit/5 acres there are no remaining building sites, based on the assigned density at the time of application submittal (vesting date).*

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

*This requirement will be added as a condition of approval and must be recorded as a deed restriction or correctly shown on the original drawing (mylar).*

*The Technical Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.20.*

## **G. Concurrency (WCC Section 20.80.212)**

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

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.

2. No county facilities will be reduced below applicable levels of service as a result of the development.

### **Water**

There is an public water for this project, supplied by Birch Bay Water and Sewer District and Whatcom County has no indication at this time that the District facilities will be reduced below applicable levels of service as a result of the development.

### **Sewage Disposal**

There is no public sewage disposal available for this site. The applicant is proposing on-site septic systems.

### **Schools**

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

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

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

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

The applicant submitted a will-serve letter for this proposal dated October 28, 2005 from the Blaine School District #503. The school district received notice of the proposal as well as the SEPA distribution and made no further comments.

### **Fire Protection**

The subject site is located within Fire Protection District No. 21. The Fire District signed a Letter of Availability for this proposal dated October 28, 2005. This letter indicated that the Fire district will provide fire protection to serve the approve project. The letter goes on to indicate that the Fire District is affected by this project and the Fire District may make additional comment or have conditions on the proposed project.

After the submittal of the proposed development Whatcom County Fire District No. 21 submitted a 14 page letter indicating that any major growth and development anywhere within the fire district will affect the service provided to the residents of the entire Fire District.

A condition of approval is that a valid letter of concurrency is submitted to Whatcom County Planning and Development Services prior to final approval of the proposed plat.

The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated May 7, 2007 unless modified by the Deputy Fire Marshall or appealed to the appropriate agency.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212 and the International Fire Code.*

## **H. Subdivision Regulations (Title 21)**

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

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

i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such subdivision and dedication; and

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

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

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

*Eighty percent of the parent parcel will be set aside as open space. The remaining lots are over one acre in size and will allow for lot-by-lot open space/recreation for use of the residents.*

*The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.*

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

*The subdivision is proposed to access directly off Drayton Harbor Road via a private road.*

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

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

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

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

*The Blaine School District was notified of the project and provided a letter of availability dated October 28, 2005; therefore, the Technical Review Committee has determined that the proposal is providing adequately for schools.*

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

*The Whatcom County Comprehensive Plan adopted in May of 1997 applied the Urban Growth designation to the subject site. Applicable goals of the Urban Growth designation are as follows:*

**GOAL 2A:** Ensure provision of sufficient land in all designations to accommodate the growth needs of Whatcom County and protect the qualities which make the county a desirable place to live.

**Policy 2A-1:** Concentrate urban levels of development within designated urban growth areas.

**Policy 2A-3:** Provide a range of land uses which considers locational and market factors as well as required quantities of land.

**Policy 2A-7:** Provide sufficient and appropriately located residential, commercial, and industrial lands.

Policy 2A-10: Recognize the importance of tourism and its influence on the need for land for various types of development.

Goal 2Z: Recognize Birch bay as a major unincorporated county growth area.

Policy 2Z-4: Recognize the resort nature of Birch Bay including the significant second home factor when analyzing land supply for urban growth area boundaries.

GOAL 2C: Channel growth to areas where adequate services can be provided.

GOAL 2M: Protect and encourage restoration of habitat for fish and wildlife populations.

Policy 2S-2: Land within a UGA but outside a Short Term Planning Area shall retain its current zoning until a new joint plan is identified and the Short Term Planning Area is moved, but with the following additional limitations on development which shall be included in the County development regulations:

No sewer shall be extended outside a Short Term Planning Area. Water lines shall not be extended to serve urban levels of development outside a Short Term Planning Area. Exceptions may be made in cases where human health is threatened as determined by the County Health and Human Services Department (the use of interties for emergency purposes will be allowed to the extent that other needed approvals are given; (2) where vested rights currently exist - the city/district will provide the County detailed maps specifying the location and nature of the vested rights; (3) to help meet regional supply needs, as discussed under the CWSP, so long as the purveyor has sufficient quantities of water to meet needs in its entire UGA as determined by the purveyor and agreed to by the County.

All development in urban growth areas shall be done in a manner which will not preclude development at urban levels of density when the area is annexed into the city.

No residential development shall occur at greater than one unit per five acres.

All residential development on parcels greater than 20 acres shall be clustered on no more than 20 percent of the property.

*The project is located outside of a Short Term Planning Area with public water currently available through the Birch Bay Water and Sewer and therefore consistent with all of the above policies. The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.*

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

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

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

## **I. 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 submitted a memo dated November 12, 2009 with the following comments.

### Water:

Proof of public water availability to serve the entire project is required prior to preliminary approval. The current proposal is to provide water from Birch Bay Water and Sewer District. Prior to final approval, applicant must provide proof that water infrastructure serving each lot has been installed, and that it has been inspected and approved by the Birch Bay Water & Sewer District.

### Sewage:

An On-site Sewage System (OSS) subdivision application has been approved by WCHD. In addition, proposed drainfield locations have been identified over the approved soils, meeting setbacks to property lines. There will be no further requirements prior to final plat approval.

NOTE: Care needs to be taken during road and utility installation to prevent disturbance of proposed OSS sites.

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

## **J. Engineering (WCC Title 12.08)**

The purpose of the Development Standards is to ensure that Road and Stormwater provisions are designed with appropriate consideration for existing and project roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety.

The site is accessed from Drayton Harbor Rd., which is a rural minor collector road approximately 19-20 ft. in width of pavement. The last traffic count on Drayton Harbor Rd. in 2000 was 1631 ADT.

The Whatcom County Engineering Department submitted a memo dated November 20, 2009 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Whatcom County Engineering Department unless modified by the Engineering Department or appealed to the appropriate agency.

The Whatcom County Engineering Department required conditions for the above permit, located in Section IX Conditions of this report.

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

## **VIII. RECOMMENDATION**

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

As stated above the Technical Review Committee recommends approval of the Long Subdivision application, subject to the following conditions:

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division**

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. A valid letter of concurrency, from Whatcom County Fire District #21, pursuant to WCC 20.80.212 is required prior to final approval of the proposed plat.

5. Approval of this preliminary subdivision shall become invalid unless a final plat is submitted in proper form for final plat approval within five years of the date of preliminary subdivision approval. This expiration date may be extended pursuant to WCC 21.05.030(5).
6. The applicant shall obtain all necessary permits prior to construction.
7. The cluster subdivision provisions shall apply to this land division and the following note shall be placed on the face of the original drawing (mylar), unless modified by Whatcom County PDS:

CLUSTER NOTES:

1. THIS FIVE (5) LOT LAND DIVISION HAS BEEN APPROVED AS A CLUSTER SUBDIVISION PURSUANT TO WHATCOM COUNTY CODE TITLE 20.20, ORD2005-041§ Exh. A, 2005. THE FOLLOWING NOTES SHALL BE CONSIDERED A DEED RESTRICTION AND SHALL CONSTITUTE A BINDING AGREEMENT BETWEEN WHATCOM COUNTY AND ALL PRESENT AND FUTURE OWNERS OF RECORD. SAID NOTES SHALL BE INCLUDED WITHIN ALL DEEDS AND CONTRACTS OF CONVEYANCE AND MAY ONLY BE AMENDED BY MUTUAL AGREEMENT BETWEEN SAID PARTIES PURSUANT TO THE ZONING IN EFFECT AT THE TIME. ANY ALTERATION OF THE RESERVE TRACT, BOUNDARIES OR CLUSTER NOTES PURSUANT TO WCC TITLE 21.06.030 REQUIRES THE REVIEW AND FILING FOR RECORD OF A NEW ORIGINAL DRAWING.

2. LOT(S) 1, 2, 3 AND 4 HAVE BEEN DESIGNATED AS THE CLUSTERED LOT(S) AND ARE SUBJECT TO THE FOLLOWING RESTRICTIONS:

- A. EACH CLUSTERED LOT HAS BEEN ASSIGNED ONE DENSITY.
- B. EACH CLUSTERED LOT MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE, SINGLE FAMILY DWELLING UNIT.

3. LOT RESERVE TRACT A AND B HAVE BEEN DESIGNATED AS THE RESERVE TRACTS AND IS SUBJECT TO THE FOLLOWING RESTRICTIONS:

- A. RESERVE TRACT A HAS BEEN ASSIGNED ONE (1) DENSITY AND MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE SINGLE FAMILY DWELLING UNIT.
- B. RESERVE TRACT B HAS NO RESIDENTIAL DENSITY.
- C. BASED ON DENSITY CALCULATIONS MADE FOR THE ORIGINAL 27.61 ACRE PARENT PARCEL LOCATED WITHIN THE UR ZONE, LONG-TERM URBAN GROWTH AREA, THE RESERVE TRACTS HAS NO REMAINING RESIDENTIAL DENSITIES.
- D. THE RESERVE TRACTS SHALL NOT BE FURTHER DIVIDED IN ANY MANNER EXCEPT AS MAY BE PROVIDED BY W.C.C. 20.20.320 OR AS AMENDED IN THE FUTURE.
- E. THE RESERVE TRACTS MAY BE RETAINED BY THE SUBDIVIDER, CONVEYED TO THE RESIDENTS OF THIS SHORT PLAT, OR CONVEYED TO A THIRD PARTY. THE RESERVE TRACTS CONTAIN 80.4% OF THE GROSS AREA OF THE PARENT



PARCEL (APPROXIMATELY 22 ACRES). AS THIS PROPERTY IS SUBJECT TO THE URBAN RESIDENTIAL ZONE, ANY FUTURE ALTERATIONS, AMENDMENTS, OR ADJUSTMENTS TO ANY PART OF THIS PLAT SHALL NOT RESULT IN THE MINIMUM RESERVE AREA (TRACT) BEING REDUCED BELOW THE MANDATORY 80% REQUIREMENT.

10. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

## **B. Health Department**

1. The applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo November 12, 2009 unless modified by that Department or appealed to the appropriate agency.
2. Water: Proof of public water availability to serve the entire project is required prior to preliminary approval. The current proposal is to provide water from Birch Bay Water and Sewer District. Prior to final approval, applicant must provide proof that water infrastructure serving each lot has been installed, and that it has been inspected and approved by the Birch Bay Water & Sewer District.
3. Sewage: An On-site Sewage System (OSS) subdivision application has been approved by WCHD. In addition, proposed drainfield locations have been identified over the approved soils, meeting setbacks to property lines. There will be no further requirements prior to final plat approval.

## **C. Building Division**

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated May 24, 2007 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
2. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project.
3. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the applicable code sections of current codes (current code as of submittal is, 2003 International Building Code (IBC), Section 105.2) regarding nonexempt structures.

4. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
5. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
6. Nonexempt structures may include fences, retaining walls, concrete vaults and other poured-in-place concrete structures, some retention/detention structures, bridges, permanent signs and the like.
7. All information, details, conditions and specifications which determine the building envelope for each individual lot, including but not limited to easements, shall be clearly indicated on the face of the approved, recorded plat and/or subdivision plan(s), no exceptions.
8. Plans that may be required for proposed structures for given project may include but not be limited to. (Suggested scales)
  - a. Site plan (1/10<sup>th</sup> scale)
  - b. Foundation plan (1/4" =1' scale)
  - c. Floor plan (plan views) (1/4" =1' scale)
  - d. Elevation plans (1/4" =1' scale)
  - e. Structural plans (1/4" =1' scale)
  - f. Section views (1/2" =1' scale)
  - g. Details (special construction and or connections) (1/2" =1' scale)

#### **D. Watersheds**

1. The applicant shall comply with the conditions of the Whatcom County Watershed office in the memo dated June 11, 2007 unless modified by the Whatcom County Watershed office or appealed to the appropriate agency.
2. Temporary Erosion And Sediment Control (TESC) Plan – Per Water Resources Special Management Area (WCC 20.80.735) and Stormwater Special District (WCC 20.80.635)

A TESC plan shall be reviewed and approved by the Watersheds Staff prior to beginning any clearing activity. ESC measures shall be inspected when installed. Depending on the site this inspection may occur prior to, during, or after land disturbance. Call Watersheds staff to arrange inspection. Details for submittal are found in the Whatcom County Development Standards Chapters 2 and 3. The plan shall contain a site plan and narrative including, but not limited, to the following components:

3. A TESC Site Plan (drawn to scale) is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington :
  - 1) Depiction of all areas where soil disturbance will occur

- 2) Depiction of all areas where vegetation is to be removed. Clearing activity limits shall be marked and inspected on site.
- 3) Depiction and description of the type and location of ALL TESC BMPs to be utilized on site, also;

A WA DOE NPDES Stormwater General Permit may be required (for cumulative land disturbance one acre or greater). Contact Department of Ecology at 360.738.6250 for more info.

4. A TESC Maintenance Plan is required be prepared by a Professional Civil Engineer, licensed in the State of Washington:

Include a narrative describing, in detail, the TESC BMP maintenance plan. BMPs shall be inspected and reinstalled, if necessary, after each phase of construction. The BMP maintenance plan shall include each anticipated inspection and the position title of the staff responsible for performing the maintenance.

5. A Street Sweeping Plan is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington Street and Bonding and Securities required per Whatcom County Development Standards Section 212 and Section 306:

In order to protect surface waters and stormwater conveyance systems all streets shall be kept free of sediment for the duration of construction including subsequent development of individual lots. Street sweeping shall be conducted on a regularly scheduled basis.

A narrative describing the equipment, the disposal of sediment, and frequency of sweeping shall be submitted prior to final plat approval

6. A Pumping Plan is required to be prepared by a Professional Civil Engineer, licensed in the State of Washington Pumping Plan for Sediment or Storm Water Pond and Bonding and Securities required per Whatcom County Development Standards Section 212 and Section 306:

Provide a narrative describing, in detail, measures planned to ensure capacity of the pond during the wet season. These may include but are not limited to: pumping turbid water to a truck and removing it from the site to another approved site, pumping turbid water to an approved dispersion/ infiltration system on or off site. The name, contact info, and contract for pumping services contractor shall be on file with the technical administrator.

7. Stormwater Special District and Water Resource Special Management Area Plat Notes shall apply to this land division and the following note shall be placed on the face of the original drawing (mylar), unless modified by Whatcom County PDS;

STORMWATER SPECIAL DISTRICT AND WATER RESOURCE SPECIAL  
MANAGEMENT AREA NOTE:

THE LOTS WITHIN THIS PLAT ARE LOCATED IN AN AREA DESIGNATED AS A STORMWATER SPECIAL DISTRICT AREA AND WATER RESOURCE SPECIAL MANAGEMENT AREA. ANY DEVELOPMENT OF SAID LOTS SHALL BE SUBJECT TO THOSE REGULATIONS PURSUANT TO WCC 20.80.636 AND WCC 20.80.735.

**E. Fire Marshal**

1. The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated May 7, 2007 unless modified by the Deputy Fire Marshall or appealed to the appropriate agency.
2. Fire flow required. Fire flow shall be a minimum 500 gpm at 20 psi. Hydrants shall be located within 600 feet of the building areas.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

**F. Critical Areas**

1. The Whatcom County Natural Resources Senior Planner submitted a memo dated July 2, 2009 with information required prior to preliminary approval and conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Whatcom County Natural Resources department unless modified by the Natural Resources department or appealed to the appropriate agency.
2. The applicant shall comply with the Washington State Department of Fish and Wildlife Management Recommendations for the Drayton Harbor Heron Colony, dated August 13, 2008.
3. A final mitigation plan which lists the specific plants to be included in the mitigation must be submitted prior to final approval.
4. Mitigation must be installed and inspected prior to final approval.
5. An Assignment of Savings for the cost of mitigation maintenance and monitoring must be received prior to final approval.
6. The wetlands, buffers, and mitigation areas must be protected by a Conservation Easement recorded prior to or at the time of mylar recording.

7. A discussion of the Conservation Easement and the restrictions on its use must be included in the CC&Rs.

#### **G. Public Works – Engineering Division**

1. The applicant shall comply with all of the conditions set forth by the Whatcom County Division of Engineering in the memo dated November 20, 2009 unless modified by the Division of Engineering or appealed to the appropriate agency.
2. All development shall comply with Whatcom County Development Standards.
3. Sight distance at all access road intersections shall meet Whatcom County Development Standards.
4. A preliminary traffic analysis has been submitted.
5. The applicant has requested a private road serving this plat. The private road is serving acreage tracts and shall be built at a min. to rural private road standards. The applicant is proposing an asphalt paved road 18 ft. wide. County Engineering agrees with the private road request and the 18 ft. wide paved road.
6. Dedicate additional 10 ft. of road rights-of-way along both sides of Drayton Harbor Rd., for a total width of 60 ft.
7. A min. 4 ft. wide gravel shoulder shall be constructed on the land side or south side of Drayton Harbor Rd. along the project frontage, as depicted on sheet C-3 of the Preliminary Site Plan dated 11-9-09 by Ronald T. Jepson & Associates.
8. Provide provision for maintenance of the private road.
9. All signing and striping shall be installed per MUTCD standards at the developer's expense.
10. A Preliminary Stormwater Site Plan report, dated May 19 2009, has been submitted by Ronald T. Jepson & Assoc. Full dispersion for treatment and flow control is proposed for the project.
11. A final Engineered Stormwater Design Report that addresses conveyance, flow control, and water quality measures by a Washington State licensed civil engineer to be submitted, prior to construction, for approval by Whatcom County Engineering.
12. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
13. A Revocable Encroachment Permit will be obtained for work within the county rights-of-way.

14. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
15. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar. [WAC 332-130-050(1)(b)]
16. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for address assignment. Address fee shall be paid prior to recording.
17. All road, stormwater 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. As-built stormwater plans and a letter of certification from a licensed engineer must be submitted to the County Engineer.
18. Developer shall provide a plat layout to the post office to get approved mailbox location(s). The location and use of mailboxes shall not interfere with county road traffic.

Report prepared for the Technical Review Committee by:  
Tyler R. Schroeder  
Current Planning Supervisor