

WHATCOM COUNTY HEARING EXAMINER

RE: Planned Unit Development) PUD2007-0001
Preliminary Long Subdivision) LSS2005-0004
SEPA Appeal) APL2008-0015
Application for)
)
Mayflower Equities) FINDINGS OF FACT,
“Monterey Heights”) CONCLUSIONS OF LAW,
) AND RECOMMENDATION TO
) WHATCOM COUNTY COUNCIL

SUMMARY OF APPLICATION, APPEAL, DECISION, AND RECOMMENDATION

Summary of Application: The Applicants, Mayflower Equities, Inc. are requesting Preliminary Long Subdivision and Planned Unit Development Approvals for the proposed creation of 51 single-family residential lots and six tracts, located on an approximately 31-acre site within the Urban Residential, UR-4 zoning designation. The Applicants propose developing the lots in three-phases over a ten-year period.

Recommendation: The Whatcom County Hearing Examiner recommends that the Whatcom County Council grant Preliminary Long Subdivision and Planned Unit Development Approval for the proposed 51-lot development subdivision.

Summary of Appeal: The Applicant appealed a SEPA Determination of Mitigated Non-significance issued by Whatcom County Planning and Development Services on May 7, 2008. The Appeal dealt with mitigation conditions regarding requests from Fire District No. 21 relating to concurrency requirements and the ability of the Fire District to provide an urban level of service for fire protection and emergency response services to this subdivision.

Decision: The Whatcom County Hearing Examiner dismisses the SEPA Appeal on the grounds that the Fire District and the Applicant have entered into a voluntary agreement. Under the terms of the Agreement, the Applicant will provide monetary mitigation to be used by the Fire District for capital facilities construction and agrees to a number of conditions regarding internal roadways and circulation design to ensure an adequate circulation system, allowing the Fire District to have adequate maneuvering and stopping areas necessary for District apparatus. Since the Parties have entered into a voluntary agreement resolving all of the issues regarding this subdivision, the SEPA Appeal is dismissed as being Moot.

FINDINGS OF FACT

INTRODUCTION

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

I.

Applicant: Mayflower Equities, Inc.

Agent: David Evans and Associates

Site Location/Address: The subject property is located at the northwest quadrant of the intersection of Selder Road and Birch Point Road, Blaine, WA

Legal Description: Located within a portion of the NW¼ of Sec 23, T40N, R1W, W.M. Assessor's Parcel No. 405123 134404

Zoning: Urban Residential (UR4)

Comprehensive Plan: Birch Bay Urban Growth Area (UGA)

Subarea: Birch Bay

Number of Lots: 51 single-family lots and eight tracts

Reserve Area: 383,371-square feet

Total Acreage: 31.09-acres

Roads: Public

Water Supply: Birch Bay Water and Sewer District

Sewage Disposal: Birch Bay Water and Sewer District

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District No. 503

Topography: The site is described as generally flat.

Vegetation: Vegetation consists of pasture grass areas with some trees and shrubs.

Adjacent Land Use: North: Residential
South: Residential
East: Residential
West: Undeveloped Land

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

Variances: No Variances requested.

SEPA Review: Mitigated Determination of Non-significance, issued February 20, 2007
Revised Determination of Non-significance, issued March 7, 2007
Revised Mitigated Determination of Non-significance, issued May 7, 2008

Authorizing Ordinances:

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

Legal Notices: Posted – January 6, 2010
Mailed – December 23, 2010
Published – August 24, 2005, September 26, 2007, and January 7, 2010

Hearing Date: January 20, 2010

Parties of Record:

Mayflower Equities, Inc.
6151 Collingwood Place
Vancouver, B.C. V6N 1V2
CANADA

Douglas Robertson
Belcher Swanson Law Firm
900 Dupont Street
Bellingham, WA 98225

Craig Parkinson and Nick Vann
David Evans and Associates, Inc.
119 Grand Avenue, Suite D
Bellingham, WA 98225

Jon Sitkin
1500 Railroad Avenue
Bellingham, WA 98225

Kathy Berg
7585 Sterling Avenue
Birch Bay, WA 98230

RT (Bob) Macdonald
2104 Carmen Place
Port Coquitlam, BC V3C 1C6
CANADA

Shirley Reed
8343 Beach La Mar Drive
Blaine, WA 98230

Aldo Schipper
PO Box 28986
Bellingham, WA 98228

Roger McCarthy
Division of Engineering

Tyler Schroeder and Amy Keenan
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Project Statement, dated August 20, 2007
 - 1-2 Supplemental Application
 - 1-3 Long Plat Application Checklist
 - 1-4 Letter of Completeness, dated September 4, 2007
 - 1-5 Agency Distribution
 - 1-6 Copy of Mailing Labels
 - 1-7 Plat Certificate
 - 1-8 Water and Sewer availability letter, dated March 12, 2007 from Birch Bay Water and Sewer District

- 2 Revised Site Plan
- 3 Phasing Plan, dated 12/23/2009
- 4 Agency Comments
- 5 Motion for Status Hearing, dated December 9, 2009, from Doug Robertson
- 6 Motion for Status Hearing, dated October 9, 2009, from Doug Robertson
- 7 Email, dated August 15, 2008, from Amy Keenan, re: project status
- 8 Letter, dated August 7, 2008, from Doug Robertson re: project status
- 9 Letter, dated October 8, 2007, from Jon Sitkin, with Interim Order on LUPA Decision , dated October 2, 2007, attached
- 10 Fax cover sheet from Richard Langabeer to Martin Blackman, dated January 29, 2007, with attachments:
 - 10-1 Email from Marilyn Bentley to Richard Langabeer, dated September 19, 2005
 - 10-2 Letter, dated September 8, 2005, from Richard Langabeer to Marilyn Bentley
 - 10-3 Memorandum, dated July 25, 1991, to Shirley Van Zanten from John Tyler re: Bay Ridge Estates, Birch Bay
 - 10-4 Agreement Assigning and Granting Rights and Reservations in Real Property, dated March 15, 1990
 - 10-5 Declaration of Rights, Reservations, Restrictions and Covenants of Bay Ridge Estates
 - 10-6 Consent to Serve as Registered Agent, dated August 16, 1989
 - 10-7 Letter, date unclear Ju 29, 1991, from R.T. Macdonald, to Mrs. Van Zanten and Executive Council
 - 10-8 Letter, dated July 30, 1991, from Shirley Van Zanten to Mr. Macdonald
 - 10-9 Email, dated August 16, 2005, from Royce Buckingham to Marilyn Bentley
 - 10-10 Email, dated August 16, 2005 from Bentley to Frank and Sandy Urner
 - 10-11 Property Report: Notice and Disclaimer by Office of Interstate Land sales Registration, US Dept of HUD
 - 10-12 Letter dated October 4, 2006, from Douglas Robertson to Marilyn Bentley
 - 10-13 Notes: Meeting With Langabeer, dated July 13, 2005
 - 10-14 Memo, dated June 8, 2005 to Frank Urner from RT Macdonald re: Agenda Item for June 13, 2005
 - 10-15 Memo, dated August 29, 2005, from RT Macdonald to Marilyn Bentley
 - 10-16 Bellingham Herald article, "Senate Oks money for Birch Bay and Blaine sewer works"
 - 10-17 Notice of Application for Preliminary Long Subdivision
 - 10-18 Property Report-Notice and Disclaimer

- 10-19 Letter, dated January 27, 2006, from Birch Bay View Homeowners Association to Hal Hart re: Road Repair/Resurfacing
- 11 Email correspondence between Staff and Applicant's Attorney re: scheduling
- 12 Legal Notice of Public Hearing, dated January 7, 2010
- 13 Certificate of Mailing, dated December 23, 2009
- 14 Certificate of Posting, dated January 6, 2010
- 15 Mailing to property owners re: PUD Public Hearing
- 16 Legal Notice of Application, dated September 26, 2007
- 17 Legal Notice of Application, dated August 24, 2005
- 18 Certificate of Mailing, dated August 19, 2005
- 19 Certificate of Mailing, dated September 28, 2007
- 20 Letter of Concern, dated September 5, 2005, from Doralee Booth
- 21 Declaration of Covenants
- 22 Lot of Record Confirmation
- 23 Request for Hearing Examiner's Decision, dated January 11, 2010 from RT Macdonald
- 24 SEPA Appeal form, Appellant: Mayflower Equities, dated June 2, 2008, with Appellant's Statement attached
- 25 Revised MDNS, dated May 7, 2008
- 26 SEPA Legal Notice, dated May 7, 2008
- 27 Email correspondence between Doug Robertson, Jon Sitkin, Tyler Schroeder, and Magner
- 28 Email correspondence from David Stalheim re: previous SEPA appeal case, dated October 14, 2009
- 29 Letter, dated July 25, 2008 from Carole Magner to Doug Robertson and Mayflower Equities
- 30 Letter dated July 22, 2008 from Douglas Robertson to Martin Blackman and Hearing Examiner

- 31 Email, dated October 29, 2007, from Martin Blackman and Roger McCarthy to Magner
32 Revised Staff Report, dated January 20, 2010
- 33 Applicant's Response to Staff Report in Preparation of hearing, dated January 19, 2010, from
Douglas Robertson, with Declaration of Service attached
- 34 Letter of Concern, dated January 13, 2010, from Eileen Herring
- 35 Updated Phasing Plan
- 36 Revised Staff Report tracking the changes, dated January 20, 2010
- 37 Conservation Easement to be "Attachment A" to the Staff Report
- 38 Wetland Mitigation Plan, dated June 26, 2006, prepared by ATSI
- 39 Engineering Requirements (Conditions of Approval)
- 40 Final Staff Report, dated January 27, 2010, with copy of the recorded Conservation Easement
Agreement attached (Exhibit 40-1)
- 41 Email correspondence between Staff and Attorney Robertson and Sitkin re: settlement
agreements and canceling second hearing
- 42 Letter dated February 3, 2010, from Jon Sitkin and Doug Robertson re: SEPA Appeal and
Fire District No. 21
- 43 Copy of Recorded Mitigation Agreement re: Fire Protection and Emergency Response
Service Capital Facility Charge, dated February 3, 2010
- 44 Concurrency Letter from Fire District No. 21, dated February 3, 2010 to Tyler Schroeder re:
Mayflower Equities, Inc. "Monterey Heights"
- 45 Compliance with Section 5 (a) and (b) of Mitigation Agreement, dated February 3, 2010

II.

The Applicants and the Whatcom County Technical Review Committee have resolved all issues regarding the approval of the proposed Preliminary Long Subdivision and Planned Unit Development. The Technical Review Committee has recommended approval of the Subdivision and Planned Unit Development, subject to conditions. The Applicant does not object to any of the conditions as set forth in the Revised Staff Report, dated January 27, 2010.

III.

The Hearing Examiner has reviewed the documentary record and conducted a public hearing on the proposed Subdivision and Planned Unit Development. The Hearing Examiner finds that the facts set forth in the Revised Staff Report are factually accurate and are supported by the record as a whole. The Hearing Examiner hereby adopts the factual findings set forth in the Revised Staff Report, dated January 27, Exhibit No. 40 in the Hearing Examiner file, a copy of which is attached hereto and incorporated herein by this reference, as Findings of Fact, herein.

IV.

The subject parcel consists of an approximately 31-acre site, zoned Urban Residential. The site is encumbered with a significant amount of regulated wetland area. The Applicants have obtained, and Planning and Development Services has approved, a Wetland Delineation and Mitigation Report. The Wetland Report and mitigation recommendations have been approved by a Critical Areas Technical Administrator.

V.

There were written and oral public comments on the proposed Subdivision. These comments were directed at protection of the wetlands, and comments and questions regarding recreational facilities proposed for this site subject to a prior subdivision approval. Staff has concluded, and the Hearing Examiner has agreed, that this is a new subdivision proposal and that the prior recreational facilities cannot be required of this subdivision based on an earlier subdivision approval, which has expired.

VI.

Staff has proposed limiting signage at the entrances to the proposed Subdivision to one sign. The proposed Subdivision will be created in three-phases. Phase One will be served by a cul-de-sac off of Selder Road. Phase Two lots will all have direct access to Skyvue Road. Phase Three will be serviced by a dead-end cul-de-sac off of Selder Road. The Applicants have requested signage at both the entrance to the portion of the Subdivision served by Selder Road, and later to the portion of the Subdivision served by the cul-de-sac off of Skyvue Road. The Fire District has also requested a sign at each of these locations. For public convenience and for public safety, it is appropriate for each of the cul-de-sacs to be individually signed prior to final approval for that phase. No signage for Phase Three should be allowed prior to the construction of the interior cul-de-sac road proposed.

VII.

The SEPA Determination for this proposal was issued and then re-issued a number of times. A Revised Mitigated Determination of Non-significance was issued by Whatcom County Planning

and Development Services on May 7, 2008. The mitigation conditions included in the Determination dealt with comments and concerns received from Whatcom County Fire District No. 21 regarding the District's ability to provide adequate services to the proposed Subdivision without monetary contributions to the District's Capital Facilities Fund.

The issues regarding the authority for and appropriateness of the Fire District's request for impact fees has been a long and contentious issue. The Washington State Court of Appeals, Division 1, has entered a Decision regarding the issue and the Fire District is apparently seeking review of the Appeals Court determination in the Supreme Court.

Fire District No. 21 and the Applicants have entered into a voluntary agreement settling all of the issues raised by the Appeal of the SEPA Mitigated Determination of Non-significance. Whatcom County Planning and Development Services has requested that the Hearing Examiner not exercise substantive authority under SEPA, as would be required by the condition attached to the May 7, 2008, Mitigated Determination of Non-significance. This request was based on the Appeals Court Decision overruling Whatcom County Superior Court regarding issues raised by the Fire District's requests.

Since Fire District No. 21 and the Applicants have entered into a voluntary agreement resolving the issues surrounding the conditions attached to the Mitigated Determination of Non-significance, and since the issues raised are still in the Courts, there is no issue requiring resolution arising from the SEPA Determination. The Hearing Examiner should enter an Order dismissing the SEPA Appeal and require conformance with the Mitigation Agreement entered into between the Parties on February 3, 2010, as a Condition of Approval in the underlying Preliminary Long Subdivision and Planned Unit Development.

VIII.

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 issues raised by the SEPA Determination of Mitigated Non-significance have been resolved by Mitigation Agreement entered into between the Developer and Fire District No. 21. Whatcom County Planning and Development Services has requested that the Mitigation Conditions not be attached to the Conditions of Approval for the underlying Subdivision and Planned Unit Development. The Hearing Examiner concludes that the issue is moot because of the Agreement on these issues reached between the Fire District and the Developer and, therefore, no ruling on the Appeal or the appropriateness of the Mitigation Conditions is required.

II.

The Technical Review Committee of Whatcom County Planning and Development Services has recommended preliminary approval of the Long Subdivision and Planned Unit Development Application, subject to numerous conditions, including those proposed by Whatcom County Health Department, Whatcom County Planning and Development Services, the Building Official, the Critical Areas Technical Administrator, and Whatcom County Public Works.

III.

Subject to the recommended Conditions of Approval, the proposed Subdivision and Planned Unit Development will meet all of the requirements under the Whatcom County Code for the preliminary approval.

IV.

Subject to the recommended Conditions of Approval attached hereto, the proposed Subdivision will be in the public interest and makes appropriate provisions for the public health, safety, and general welfare as required by RCW 58.17.110.

The Hearing Examiner should recommend to the Whatcom County Council approval of this Preliminary Long Subdivision and Planned Unit Development subject to conditions.

V.

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

DECISION

The Whatcom County Hearing Examiner has concluded that the issues raised by the Appeal of the SEPA Determination by the Developer are moot as a result of a voluntary Mitigation Agreement entered into between the Developer and Fire District No. 21. The Appeal is dismissed.

RECOMMENDATION

The Whatcom County Hearing Examiner hereby recommends that the Whatcom County Council grant approval for Preliminary Long Subdivision, LSS2005-0004, and Planned Unit Development, PUD2007-0001, to Mayflower Equities, Inc., seeking approval for a proposed 51-lot, three-phased, single-family residential subdivision on a 31-acre parcel, located in the northwest quadrant of the intersection of Selder Road and Birch Point Road, Blaine, Washington, Assessor's Parcel No. 405123 134404, subject to the following Conditions of Approval:

A. Planning Division

1. The use and location on the site shall not be amended or changed, except when in conformance with WCC 21.05.110, or 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 cul-de-sac off of Selder Road and one site identification sign at the entrance to the Phase Three development, off of Skyvue Road. The site identification signs shall not exceed 32-square feet each and shall not be installed until such time as the cul-de-sac road has been completed and that Phase has been submitted for Final Approval.
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. Due to lack of circulation within the interior streets, Whatcom County Fire Marshal's Office approval will be required at the time of building permit submittal.
4. Approval of this preliminary subdivision shall become invalid unless a final plat for the first phase 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).
5. A playground facility shall be designated within the boundaries of the subject site prior to final approval and shall be shown on the face of the mylar. An approved plan for the playground shall be submitted to and approved by Planning and Development Services. The playground shall be installed prior to final plat approval. Playground amenities shall be at a minimum of \$5,000.
6. An Applicant requesting final approval of a subdivision shall submit to the Administrative Official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the County Engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
7. The Applicant shall obtain all necessary permits prior to construction.
8. A cluster subdivision note shall be on the face of the mylar. The note will be provided through the checkprint process.
9. The Applicant has proposed and the Technical Review Committee has approved a ten year phasing plan. Each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each phase per WCC 21.05.030(5)(b).
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 dated October 4, 2007, unless modified by that Department or appealed to the appropriate agency.
2. Prior to final approval, the Applicant must provide proof that sewer infrastructure serving each lot has been installed, and that it has been inspected and approved by the sewer service provider.
3. Prior to final approval, the Applicant must provide proof that water infrastructure serving each lot has been installed, and that it has been inspected and approved by the water service provider.

D. Natural Resources Division – Critical Areas Administrator

1. An updated site plan must be submitted which indicates the location of the wetlands, buffers, split rail fencing, and conservation easement.
2. A recorded copy of the conservation easement must be submitted at the time of Final Plat approval, in the form presented to the Whatcom County Hearing Examiner [Exhibit No. 40-1] at the time of the Preliminary Plat Approval Hearing. The conservation easement for Reserve Tract H may be subject to amendment to conform to the size, shape, or character of the indentified critical area altered by natural processes and/or operation of law in favor of the grantor, as determined by the Administrator or other body with jurisdiction.
3. An Assignment of Savings or Performance Bond must be submitted which covers the cost of mitigation installation and a minimum of five years monitoring.
4. The mitigation must be installed and an as-built report submitted to the County prior to final plat approval.

E. Building Division

1. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated October 4, 2007 unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

2. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the 2006 International Building Code (IBC), Section 105.2 regarding nonexempt structures.
3. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
5. 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.

F. Fire

1. The Applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated October 4, 2007 unless modified by the Deputy Fire Marshal or appealed to the appropriate agency.
2. Fire flow is 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.
5. Fire District No. 21 and the Developer have agreed that the terms of the Mitigation Agreement, dated February 3, 2010, regarding Fire Protection and Emergency Response Service Capital Facility Charge and associated agreements be adopted as a Condition of Approval. [As set forth in Exhibit No. 43 in the Hearing Examiner's file]. These Parties shall comply with the Agreement unless they amend it by mutual agreement.

G. Public Works – Engineering Division

1. All development shall comply with Whatcom County Development Standards (WCDS).
2. Sight distance at all access road intersections shall meet Whatcom County Development Standards.
3. A preliminary traffic analysis has been submitted and accepted.

4. Interior roads shall be built to Urban Standards per Ch.5 Road Standards. Road Standards are based on the Average Daily Traffic (ADT) generated by the project. The cul-de-sac road widths are 24 ft. wide curb-to-curb when trip generation is equal to or less than 160 ADT and 28 ft. wide over 160 ADT. All plat roads, except the private road easement to lots 30, 31, 32, & 33, shall be dedicated to Whatcom County. All public roads will end in a cul-de-sac. The intersection of Treevue Road and the new extension of Skyvue Road to meet County Road Intersection Design Standards.
5. Lots 25 and 26 shall share a common driveway easement at the access point to Skyvue Road.
6. Construct $\frac{3}{4}$ Urban Local Access Standard frontage improvements on the existing portion of Skyvue Road, which is currently 16 ft. wide paved. Construct $\frac{3}{4}$ Urban Neighborhood Collector Standard frontage improvements on Selder Road, which is currently 20 ft. wide paved. Improvements to be centered on rights-of-way centerline, unless otherwise approved. Frontage improvements to include full length of project fronting Skyvue and Selder Roads. Dedicate a 30 ft. half width for road rights-of-way along the north property boundary adjacent to Skyvue Road.
7. Offsite traffic impacts to be mitigated by the voluntary traffic mitigation for project generated trips to be applied to additional Selder Road improvements. These off-site improvements may include extending the curb/gutter and sidewalk from where the project frontage improvements end on Selder Road to the intersection of Birch Pt. Road. Offsite Selder Road improvements may consist of widening the travel lane to 11 ft., a 5 ft. A.C. paved shoulder/bike lane, cement concrete curb/gutter, 5 ft. wide cement concrete sidewalk, travel lane edge line striping and appropriate stormwater system. Mitigation extents or standards shall be designed and approved in coordination with Whatcom County Engineering Division, and shall result in total developer maximum cost equivalent to a voluntary traffic impact mitigation fee of \$104,200. The mitigation improvements shall be completed prior to Phase 3 final plat approval.
8. Road and drainage construction of infrastructure, frontage improvements, and off-site Selder Road improvements to be completed for the three phases per the phasing plan by DEA dated 12/23/2009 and revised 01/19/2010. These construction improvements shall be completed for each phase prior to recording that phase based on the DEA phasing plan.
9. A Preliminary Stormwater Design Report has been submitted for review and accepted.
10. A Final Engineered Stormwater Design Report that addresses conveyance, detention, and water quality measures by a Washington State Licensed Civil Engineer submitted for approval by Whatcom County Engineering prior to any construction activity onsite.
11. All signing and striping shall be installed per MUTCD Standards at the Developer's expense.

12. Provision for maintenance of the private road and the stormwater systems not within the public rights-of-way will be required as set forth in Whatcom County Development Standards.
13. Prohibit vehicle access from lots directly to Selder Road except at the approved public access road.
14. A Revocable Encroachment Permit will be obtained for work within the county right-of-way.
15. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
16. 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)]
17. 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 fees shall be paid prior to recording.
18. 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 road/stormwater plans and a letter of certification from a licensed engineer must be submitted to the County Engineer prior to acceptance of any roads into the County Road System.
19. The 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 as per Chapter 5 Road Standards of the WCDS.

DATED this 18th day of February 2010.

Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

January 27, 2010

The application of **Mayflower Equities, Inc.** for a Long Subdivision and Planned Unit Development (Monterey Heights)

LSS2005-00004
PUD2007-00001, APL2008-00015
FINDINGS, CONCLUSIONS, AND
RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The project consists of 51 single-family residential lots with six tracts located on an approximately 31 acre site within the Urban Residential (UR(4)) zoning designation.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mayflower Equities, Inc.
6151 Collingwood Place
Vancouver, BC V6N 1V2

Agent: David Evans and Associates
119 Grand Avenue, Suite D
Bellingham, WA 98225

Site Location/Address: The subject property is located at the northwest quadrant of the intersection of Selder Road and Birch Point Road.

Legal Description: Located within a portion of the NW ¼ of Section 23, Township 40 N, Range 1 W WM.

Assessor's Parcel Number: 405123 134404

<u>Zoning:</u>	Urban Residential 4 units/acre (UR(4))
<u>Comprehensive Plan:</u>	Birch Bay Urban Growth Area
<u>Subarea:</u>	Birch Bay
<u>Number of Lots:</u>	51 single family lots and eight tracts
<u>Reserve Area:</u>	383,371 square feet
<u>Total Acreage:</u>	31.09 acres
<u>Roads:</u>	Public
<u>Water Supply:</u>	Birch Bay Water and Sewer District
<u>Sewage Disposal:</u>	Birch Bay Water and Sewer District
<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 mostly flat.
<u>Vegetation:</u>	Vegetation consists mostly of pasture grass areas with some trees and shrubs.
<u>Adjacent Land Uses:</u>	North: Residential East: Residential South: Residential West: Undeveloped land
<u>Utilities Easements:</u>	Necessary utility easements will be established prior to recording the final plat.
<u>Variances:</u>	No variances requested
<u>SEPA Review:</u>	Mitigated Determination of Non-significance issued February 20, 2007 Revised Determination of Non-significance issued March 7, 2007 Revised Mitigated Determination of Non-significance issued May 7, 2008

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 24, Health Regulations

III. SITE DESCRIPTION

The subject property is approximately 31-acre site, and is located on the west side of Selder Road northwest of the intersection with Birch Point Road in Blaine, WA. The property is an irregular shaped lot that has approximately 660 feet of frontage on Selder Road and over 800 feet of frontage on Birch Point Road.

As previously stated, the terrain is described as a mostly flat with gentle slopes. The site is predominately vegetated with grasses with some areas of trees and shrubs. Property surrounding the site is zoned UR(4) with mostly single-family residences and undeveloped land. Immediately north and west of the project site there are several smaller lot single family home sites.

IV. PROJECT PROPOSAL

The Monterey Heights development is a 51 lot single-family residential development with six tracts which includes reserve area, stormwater detention, and wetland buffer and easements. Approximately 885,880 square feet will be set-aside as reserve tract/open space. The residential lots range from 6,000 square feet to 13,044 square feet. Access to the site will be provided off Selder Road. Water and sewer service will be provided by the Birch Bay Water and Sewer District.

The subdivision is proposed to be phased with phase one consisting of lots #1-14, phase two consisting of lots #15-24 and the final phase consisting of #25-51. The subdivision is proposed to be completed within ten years of preliminary approval.

Assessor's parcel number 405123 134404 is a lot of record as established by the lot of record confirmation letter dated September 28, 2007.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on August 24, 2005. Notice was also mailed to property owners within 300 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received several written comments from the neighboring subdivision and from the representative of the Bay Ridge Community Club.

The comment letters were mostly focused on requiring the applicant to provide several recreational amenities as part of a previously approved phased subdivision. It has been determined by staff that the previously approved subdivision has since expired and the conditions applicable to that plat are no longer valid. The applicant has submitted a new subdivision application, Monterey Heights, and as such is not bound to complete the recreational amenities.

Notice of SEPA Threshold Determination: The Notice of Decision for the SEPA determination was issued several times. The original Mitigated Determination of Non-significance was issued on February 20, 2007. Due to comments received, from the applicant's attorney, indicating that the mitigating conditions of trails and playgrounds were inappropriate, a revised determination was made. That Revised Determination of Non-significance was issued on March 7, 2007. Due to comments received from Whatcom County Fire District # 21, indicating that the District is not able to provide concurrency to the project, a Revised Mitigated Determination of Non-significance was issued on May 7, 2008. All notices were sent to state and local agencies, and Parties of Record for the project. Separate from the comments acknowledged above, the County received one written comment.

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

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. As indicated above, three SEPA determinations were made by Whatcom County. The current determination, dated May 7, 2008, is a Mitigated Determination of Non-Significance. The mitigating conditions are to address the lack of required fire protection services, and are as follows;

1. Prior to preliminary approval of a plat (LSS, PUD, or BSP permits), Fire District #21 shall provide a letter to Whatcom County and the applicant that specifies whether adequate capacity exists for fire

protection to serve the development, and if not, what arrangements will be necessary to ensure that adequate services are provided prior to final plat approval. The applicant and Fire District #21 shall enter into a binding agreement regarding any arrangements, which are incorporated by reference into this SEPA condition.

2. Prior to final approval of the plat (LSS, PUD, or BSP permits), a letter of provision of adequate services is required from the Fire District that all pre-arranged agreements associated with the preliminary approval have been met.

At this time, staff recommends that the Hearing Examiner **not** adopt the above SEPA determination as a condition of approval, pursuant to WAC197.11.660 and WCC16.08.160, Substantive Authority. According to WAC197.11.660(g);

If, during project review, a GMA county/city determines that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations or comprehensive plan adopted under chapter [36.70A](#) RCW, or in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action under RCW [43.21C.240](#), the GMA county/city shall not impose additional mitigation under this chapter.

This recommendation is supported by the Whatcom County Comprehensive Plan and the Birch Bay Community Plan, which at the time of application submittal indicated that Fire District #21 has adequate current capacity to provide for future growth. Also, Whatcom County Code (WCC) requires that applications for development contain written verifications of the availability of fire protection services, pursuant to WCC 21.05.120(3)(b). The Fire District has submitted a written verification of fire protection service for this proposal dated July 6, 2005 stating that the site is located within the service area of Fire District #13, currently Fire District #21, and the district does provide fire protection services and will serve the property site identified as Monterey Heights.

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 October 4, 2007 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The Whatcom County Plans Examiner required conditions for the above permit.

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.

A critical areas technical administrator reviewed and approved the wetland report and mitigation. The report concluded that there are six Category IV wetlands identified and delineated on site. Title 16 requires a standard 100 foot buffer from the edge of Category IV wetlands. The applicant is proposing to fill 0.42 acres of wetlands, as well as disturbing a portion of wetland buffer. A mitigation report was submitted by the applicant and approved by the critical areas technical administrator.

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

C. 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 Residential Rural zone. Flexibility from these requirements may only be obtained through the planned unit development process. The requirements for the UR(4) zoning district are listed in the table below.

Lot Site Requirements

District	Density	Minimum Lot Size		Minimum Reserve Area
		Conventional	Cluster	
UR-4: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	4 dwelling units/1 acre	8,000 sq. ft.	6,000 sq. ft.	20%

The site is 31.09 acres in size with a gross density of four units per acre. The applicant is proposing 51 residential lots with the additional lots being assigned to Reserve Tract 'H'. The average lot size for the proposal is 6,958 square feet with the smallest lot at 6,000 square feet.

Lot Width/Depth Requirements WCC 20.20.255

District	Width at Street Line		Width at Building	Min. Mean Depth
	Conventional	Cluster		
UR(4)	30 ft.	30 ft.	60 ft.	70 ft.

Several lots within the proposed subdivision do not meet the requirements of WCC 20.20.255; however the applicant is proposing a planned unit development which allows for the modification of minimum lot size, width at street line and building and minimum mean depth. The applicant is requesting the following modifications which have been reviewed and approved by the Technical Review Committee.

PUD Reductions WCC 20.85.109

Element	Standard	Requested Reduction	Proposed Lots
Lot Width	60 feet	50 feet	All Lots
Lot Depth	70 feet	50 feet	All Lots
Front Setback	20 feet	10 feet	15, 16, 17
Road Width	28 feet	24 feet	N/A
Width at Street Line	30 feet	15 feet	1, 2, 3, 7, 8, 9, 25, 26, 32, 33, 34, 40, 41

The requirement for the “reserve tract” is twenty percent in the UR(4) zone which can be on multiple tracts. The project is proposing to set aside thirty-two percent of the site in eight separate tracts which is equal to approximately 430,182 square feet (see the following table) per WCC 20.20.252. Reserve Tract H has been designated for future development and therefore can not included in the calculations for the required Minimum Reserve Area (25%).

Reserve Tract Calculations

Tract	Size (sq.ft.)
Tract 'B'	11,258
Tract 'C'	18,926
Tract 'D'	332,642
Tract 'E'	16,698
Tract 'F'	3,847
Total % for Reserve Tract	383,371 (28%)
Tract 'A' (Stormwater)	16,119
Tract 'G' (Playground)	5,448
Tract 'I' (Stormwater)	25,244
Tract 'H' (Future Development)	455,698

WCC 20.20.310 provides design standards for the creation of new lots in cluster subdivisions. The proposal must comply with all requirements of this section.

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

1. Clustered building lots may be only created through the subdivision or short subdivision process.

The applicant is proposing a 51-lot residential long subdivision.

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.

The site is designed to preserve the area subject to critical area buffers.

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.

This proposal is within the short term planning area and has access to both water and sewer through the Birch Bay Water and Sewer District. The requirement for the "reserve tract" is twenty percent in the UR(4) zone which can be on multiple tracts. The applicant has designed the subdivision with sixty-five percent open space contained in nine reserve tracts with the residential lots and infrastructure encompassing the remainder of the site.

3. 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. (Ord. 90-45, 1990).

The majority of the clustered lots are accessed by one main road terminating in a cul-d-sac and a smaller road with a cul-d-sac that accesses the remaining 14 lots. The Reserve Tract 'H' which contains the assigned densities has adequate access to roads.

WCC 20.20.320 provides design standards for the reserve tract for a new cluster subdivision. The proposal must comply with all requirements of this section.

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 agricultural, forestry, open space or future development purposes. All "reserve tracts" created through the subdivision process shall be subject to the following provisions:

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

As conditioned, a note reflecting this requirement will be required on the face of the original drawing.

2. The reserve tract may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record.

The proposal does not use the reserve tracts as current building sites, and they have not been included in overall density. Please refer to the top of page 11 for assigned density/units on Reserve Tract H.

3. The reserve tract may be further subdivided only through the long subdivision process and only under 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) above 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.
 - 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 on the reserve tract.

As conditioned, a note reflecting this requirement will be required on the face of the original drawing.

4. For sites located within urban growth areas, wells, sewage disposal systems, and associated easements may be located on the reserve tract only if:
 - a. The applicant demonstrates to the Whatcom County health department that there is not adequate space on the clustered lots for such facilities and/or easements; and
 - b. A note is placed on the face of the plat stating that, prior to filing a final plat with the county auditor that divides the reserve tract for urban density development:
 - i. Owners of clustered lots and the reserve tract shall hook up to public water and sewer; and
 - ii. Easements and restrictive covenants for wells and/or sewage disposal systems on the reserve tract shall be extinguished, with health department approval; and
 - iii. Wells on the reserve tract shall be decommissioned in accordance with Washington Department of Ecology regulations and sewage disposal systems on the reserve tract shall be abandoned.

The intent of this provision is to ensure that the reserve tract can be developed to its fullest potential, and such development will not be restricted by the existence of wells, sewage disposal facilities and easements associated with these facilities.

The proposal does not have wells, sewage disposal systems or associated easements located on the reserve tracts.

4. The purpose of the reserve tract as stated in WCC [20.20.320](#), paragraphs (1), (2), (3) and (4), 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.

The parent parcel is approximately 31.09 acres. According to the UR(4) zoning designation, the property has an overall density of 124 units. The long plat application is to utilize 51 lots. Based upon the density calculations for the proposal and netting out the 51 lots to be approved, there shall be allocated to reserve Tract H 30 additional densities/units available for possible future development if consistent with other applicable regulations, including but not limited to the Critical Areas Ordinance. No other reserve tracts have been allocated additional densities/units for future development.

As conditioned, a note reflecting this requirement will be required on the face of the original drawing.

5. That the above state requirements (2) to (5) 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.

As conditioned, a note reflecting this requirement will be required on the face of the original drawing.

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

D. Concurrency (WCC Section 20.80.212)

WCC Section 20.80.212 states that no subdivision shall be approved with out 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

A letter of water availability was received from the Birch Bay Water and Sewer District. For more analysis regarding water see Section VII.I. Health Department of this report.

Sewage Disposal

A letter of sewer availability was received from the Birch Bay Water and Sewer District. For more analysis regarding water see Section VII.I. Health Department of this report.

Schools

The applicant submitted a will-serve letter for this proposal dated May 20, 2005 from the Blaine District #503. The school district received notice of the proposal and made no further comments.

Fire Protection

The subject site is located within Fire Protection District #21. Fire District #21 has submitted a written verification of fire protection service for this proposal dated July 6, 2005. This letter states that the site is located within the service area of Fire District #13, currently Fire District #21, and the district does provide fire protection services and will serve the property site identified as Monterey Heights.

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.

In addition, 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..."

At the time of permit submittal, no such ordinance was 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."

Although adopted after the date of the application, Ordinance No. 2009-071, incorporates the Fire District #21 Capital Facilities Plan (CFP) into the Whatcom County Comprehensive Plan. Whatcom County intends to implement the Comprehensive Plan and the CFP through the County's SEPA

authority and/or concurrency ordinance.

As such, if the Hearing Examiner finds that a condition of approval is required for the project to meet the requirements for concurrency prior to final plat approval, an adequate amount of mitigation is now officially recognized through the Whatcom County Comprehensive Plan and Fire District #21 CFP.

The Whatcom County Deputy Fire Marshal submitted a memo dated October 4, 2007 with conditions of approval for this proposal.

E. Planned Unit Development (WCC 20.85)

WCC Chapter 20.85 regulates policies and procedures for review and approval of a planned unit development (PUD). Section 20.85.335 states that a determination shall be made based upon the following criteria:

1. Conservation of natural elements and features;

The proposal has been designed so that impacts to critical areas have been minimized. Buffer impacts have also been minimized and mitigation has been proposed and approved by the Critical Areas Technical Administrator.

2. Harmony of selected uses to each other;

The proposed use is for single-family residences. The area to the north and south is developed with existing single-family residences. The proposed use and design is compatible with the surrounding uses.

3. Grouping and design of buildings, service, parking areas, circulation and open space as an integrated unit such that a safe, efficient and convenient PUD is created;

Single family residences will be built on individual lots per the Whatcom County Code. However, as conditioned, the proposal does meet the design requirements and development standards and ensures that a safe, efficient and PUD is created.

4. Harmony of the proposed PUD with the existing and proposed characteristics of its surroundings, with emphasis and due consideration given to air, water, soil pollution, flood protection, and aesthetics;

The surrounding area is characterized by single family residences on small lots. The Birch Bay Subarea Plan (updated in 2004) and the Whatcom County Code calls for the area to be developed a low density

residential characterized by UR(4) zoning with lot sizes between 6,000 and 8,000 square feet. The proposal has been designed to minimize impacts on critical areas and as conditioned is consistent with the neighborhood.

5. Conformance with the policies, goals and objectives of the Comprehensive Plan;

The Comprehensive Plan designates the project site as Birch Bay Urban Growth Area with a density of four units per acre. The following policies and goals are applicable to this proposal.

Goal 2A: Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.

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

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

Goal 2AA: Recognize Birch Bay, Sudden Valley Provisional Urban Growth Area, and the Columbia Valley/Kendall area as county urban growth area, not associated with existing cities.

Policy 2AA-3: Recognize the resort nature of Birch Bay and Columbia Valley/Kendall, including the significant second home factor when analyzing land supply for urban growth area boundaries.

Policy 2AA-5: Recognize the impacts of tourist development on local residents in the Birch Bay, Sudden Valley, and Columbia Valley and provide for mitigation of those impacts.

The proposal meets the goals and policies of the Whatcom County Comprehensive Plan.

6. Adequate provisions of utilities and circulation to serve the project and, where appropriate, contribute to overall development of urban areas;

The site is served by Birch Bay Water and Sewer for potable water and sewage disposal. The project has access on to Selder Road and as designed meets the requirements of Whatcom County code.

7. The exceptions granted by this chapter are warranted by creative design utilizing good design principles and provision of amenities incorporated in the planned unit development and its program;

The proposal is modifying the lot depth and width requirements. The reductions will allow preservation of the on-site wetlands while allowing the applicant to create buildable lots. An additional site identification sign has been requested pursuant to WCC 20.85.116, based on consideration of the needs of emergency vehicles. These signs will be located at both entrances to the subdivision (Selder and Skyvue). These signs will allow for improved identification for emergency vehicles and is acceptable to the county, as conditioned.

8. That the system of ownership, and means of developing, preserving and maintaining open space and other common facilities is acceptable to the county; and

As conditioned, the ownership, means of development, and preservation of open space and other common facilities is acceptable to the County.

9. Where expanded land uses as allowed by WCC 20.85.053 are requested for an application, the criteria of WCC 20.85.054 are met, and where a phasing plan is proposed, the criteria of WCC 20.85.117(3) are met; and

The applicants did not request expanded land uses but may do so per WCC 20.85.053. A phasing plan has been proposed per WCC 20.85.117(3) and is shown on the Phasing Plan exhibit prepared by David Evans and Associates, Inc. dated 12-23-09 and revised 01-19-10.

10. Promotion of creativity and affordability in residential, commercial and industrial development.

Allowing the reduction in lot width and depth allows a more creative subdivision design while also protecting critical areas.

F. 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:

Approximately sixty-five percent of the parent parcel will be set aside as reserve area and as conditioned; a playground must be constructed for the use of the lots within the subdivision. The playground is proposed to be located on Tract 'G'.

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:

Lots 1 through 51 of this plat shall be served by the proposed public interior roads which access directly off of the west side of Selder 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, with required mitigation and as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.

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

The Blaine School District was notified of the project and provided a letter of availability; therefore, the Technical Review Committee has

determined that the proposal is providing adequately for schools.

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

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.

WCC 21.05.030(5)(b) allows for project phasing. The applicant is proposing a ten year phasing plan with three separate phases which is allowed with the provision that each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each phase.

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

G. 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 October 4, 2007 with the following comments.

Sewage:

- Prior to final approval, applicant must provide proof that sewer infrastructure serving each lot has been installed, and that it has been inspected and approved by the sewer service provider.

Drinking Water:

- 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 water service provider.

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

VIII. RECOMMENDATION

A Technical Review Committee meeting was convened with the applicant to discuss the proposal. 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, except when in conformance with WCC 21.05.110, or without further approval of the Whatcom County Hearing Examiner.
2. Signage for the site shall be limited to two site identification signs at both entrances to the site, per WCC 20.85.116 and WCC 20.80.470 (4). The subject signs shall be limited to 64 square feet each. Due to lack of circulation within the interior streets, Whatcom County Fire Marshall's office approval will be required at time of building permit submittal.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless a final plat for the first phase 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).
5. A playground facility shall be designated within the boundaries of the subject site prior to final approval and shall be shown on the face of the mylar. An approved plan for the playground shall be submitted to and approved by Planning and Development Services. The playground shall be installed prior to final plat approval. Playground amenities shall be at a minimum of \$5,000.
6. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat

approval, or has received cost estimates and performance guarantees to assure completion thereof.

7. The applicant shall obtain all necessary permits prior to construction.
8. A cluster subdivision note shall be on the face of the mylar. The note will be provided through the checkprint process.
9. The applicant has proposed and the Technical Review Committee has approved a ten year phasing plan. Each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each phase per WCC 21.05.030(5)(b).
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 dated October 4, 2007, unless modified by that Department or appealed to the appropriate agency.
2. Prior to final approval, applicant must provide proof that sewer infrastructure serving each lot has been installed, and that it has been inspected and approved by the sewer service provider.
3. 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 water service provider.

D. Natural Resources Division – Critical Areas Administrator

1. An updated site plan must be submitted which indicates the location of the wetlands, buffers, split rail fencing, and conservation easement.
2. A recorded copy of the conservation easement must be submitted at the time of Final Plat approval, in the form adopted by the Whatcom County Hearing Examiner at the time of Preliminary Plat approval.¹ The conservation easement

¹ See Exhibit #1 for Conservation Easement template.

for Reserve Tract H may be subject to amendment to conform to the size, shape, or character of the indentified critical area altered by natural processes and/or operation of law in favor of the grantor, as determined by the administrator or a court of competent jurisdiction.

3. An Assignment of Savings or performance bond must be submitted which covers the cost of mitigation installation and a minimum of 5 years monitoring.
4. The mitigation must be installed and an as-built report submitted to the County prior to final plat approval.

E. Building Division

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated October 4, 2007 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
2. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the 2006 International Building Code (IBC), Section 105.2 regarding nonexempt structures.
3. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
5. 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.

F. Fire

1. The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated October 4, 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.

5. ***Prior to final plat approval, the applicants shall provide written verification from Fire District 21 affirming that adequate fire protection services, as defined by Whatcom County, will be available.***²

G. Public Works – Engineering Division

1. All development shall comply with Whatcom County Development Standards (WCDS).
2. Sight distance at all access road intersections shall meet Whatcom County Development Standards.
3. A preliminary traffic analysis has been submitted and accepted.
4. Interior roads shall be built to Urban Standards per Ch.5 Road Standards. Road standards are based on the Average Daily Traffic (ADT) generated by the project. The cul de sac road widths are 24 ft. wide curb-to-curb when trip generation is equal to or less than 160 ADT and 28 ft. wide over 160 ADT. All plat roads, except the private road easement to lots 30, 31, 32, & 33, shall be dedicated to Whatcom County. All public roads will end in a cul de sac. The intersection of Treevue Road and the new extension of Skyvue Road to meet county road intersection design standards.
5. Lots 25 and 26 shall share a common driveway easement at the access point to Skyvue Road.
6. Construct $\frac{3}{4}$ Urban Local Access Standard frontage improvements on the existing portion of Skyvue Road, which is currently 16 ft. wide paved. Construct $\frac{3}{4}$ Urban Neighborhood Collector Standard frontage improvements on Selder Road, which is currently 20 ft. wide paved. Improvements to be centered on rights-of-way centerline, unless otherwise approved. Frontage improvements to include full length of project fronting Skyvue and Selder Roads. Dedicate a 30 ft. half width for road rights-of-way along the north property boundary adjacent to Skyvue Road.
7. Offsite traffic impacts to be mitigated by the voluntary traffic mitigation for project generated trips to be applied to additional Selder Road improvements. These off-site improvements may include extending the curb/gutter and sidewalk from where the project frontage improvements end on Selder Road to the intersection of Birch Pt. Road. Offsite Selder Road improvements may consist of widening the travel lane to 11 ft., a 5 ft. A.C. paved shoulder/bike lane, cement concrete curb/gutter, 5 ft. wide cement concrete sidewalk, travel lane edge line striping and appropriate

² If the Hearing Examiner finds that a condition of approval is required for the project to meet the requirements for concurrency prior to final plat approval, an adequate amount of mitigation is now officially recognized through the Whatcom County Comprehensive Plan and Fire District #21 CFP. (ORD2009-071)

stormwater system. Mitigation extents or standards shall be designed and approved in coordination with Whatcom County Engineering Division, and shall result in total developer maximum cost equivalent to a voluntary traffic impact mitigation fee of \$104,200. The mitigation improvements shall be completed prior to Phase 3 final plat approval.

8. Road and drainage construction of infrastructure, frontage improvements, and off-site Selder Road improvements to be completed for the three phases per the phasing plan by DEA dated 12/23/2009 and revised 01/19/2010. These construction improvements shall be completed for each phase prior to recording that phase based on the DEA phasing plan.
9. A Preliminary Stormwater Design Report has been submitted for review and accepted.
10. A Final Engineered Stormwater Design Report that addresses conveyance, detention, and water quality measures by a Washington State licensed civil engineer submitted for approval by Whatcom County Engineering prior to any construction activity onsite.
11. All signing and striping shall be installed per MUTCD standards at the developer's expense.
12. Provision for maintenance of the private road and the stormwater systems not within the public rights-of-way will be required as set forth in Whatcom County Development Standards.
13. Prohibit vehicle access from lots directly to Selder Road except at the approved public access road.
14. A Revocable Encroachment Permit will be obtained for work within the county right of way.
15. Erosion control plans shall be submitted and approved prior to any clearing or grading on the site.
16. 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)]
17. 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 fees shall be paid prior to recording.

18. 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 road/stormwater plans and a letter of certification from a licensed engineer must be submitted to the County Engineer prior to acceptance of any roads into the County Road System.

19. 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 as per Ch. 5 Road Standards of the WCDS.

Report prepared for the Technical Review Committee by:

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