BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of
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Maureen Barta
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)
For Approval of a Preliminary Plat
)
No. SUBDIV 09-01
Turtle Ridge Preliminary Plat
FINDINGS, CONCLUSIONS,
AND DECISION

SUMMARY OF DECISION
The request for a preliminary plat to subdivide 8.8 acres into nine single-family residential lots on property located on the west side of Caseco Lane, approximately 400 feet south of Bay Street, in Port Orchard, Washington, is GRANTED. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD
Request:
Maureen Barta requests a preliminary plat to subdivide an 8.8-acre parcel into nine single-family residential lots. The property subject to the request is located on the west side of Caseco Lane, approximately 400 feet south of Bay Street, in Port Orchard, Washington.

Hearing Date:
The Hearing Examiner opened an open record hearing on the request on May 21, 2009. By request of the parties, the hearing was continued to September 3, 2009, and then continued again by agreement of the parties to September 24, 2009, to allow consideration of additional information in the record.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Tom Bonsell, City Planner
Frederick Kegel, P.E., for Applicant
Mark Dorsey, City Public Works Director
Michael Saltwick
Daniel Case

Exhibits:
The following exhibits were admitted into the record:
1. Pre-Application meeting letter, dated April 24, 2008
2. Application submittal including:
   A. Transmittal letter, received February 27, 2009

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B. Preliminary Plat Application, received February 27, 2009
C. Contact Information, received February 27, 2009
D. Property Owners List Verification with map, list of names and addresses, and three sets of mailing labels, received February 27, 2009
E. Project Narrative, received February 27, 2009
F. Legal Description
G. Environmental Checklist, received February 27, 2009
H. Storm Drainage Report, received February 27, 2009
I. Traffic Impact Analysis, received February 27, 2009
J. Geotech Study, received February 27, 2009
K. Preliminary Plat drawing, received February 27, 2009
L. Six drawings for Turtle Ridge Preliminary Plat: Caseco Court Roadway Plan Storm Drainage, Profile Sheet, Details & Specifications, Notes & Detention Details, Existing & Proposed Topography Grading Plan Clearing Plan, and Temporary Erosion Control Plan

3. Kitsap County Parcel Search Map and Property report for information verification, dated March 5, 2009
4. Application Transmittal letter, dated March 5, 2009
5. Determination of Completeness, dated March 12, 2009
6. Aerial Map, dated March 26, 2009
7. Notice of Application and Mitigated Determination of Nonsignificance, dated April 3, 2009
8. SEPA Distribution List and packet of distributed materials, dated April 3, 2009
9. Affidavit of Mailing & Posting: Notice of Application and MDNS, dated April 2, 2009
10. Affidavit of Publication: Notice of Application and MDNS, dated April 3, 2009
11. Comment letter re: DNS signed by 29 people, received April 10, 2009
12. Comments from South Kitsap Fire & Rescue – Greg Rogers, received March 24, 2009
13. Comments from Port Orchard Assistant Engineer Andrea Archer, received May 4, 2009
14. Building Limitation map
15. List of Properties accessing Caseco Lane
16. Affidavit of mailing and posting of Notice of Public Hearing, with notice and mailing list attached, dated May 8, 2009
17. Affidavit of publication of Notice of Public Hearing, with notice attached, dated May 8, 2009
18. City of Port Orchard Resolution No. 2040: Approving with conditions the Berg Preliminary Plat and Planned Residential Development (for background information), issued August 25, 2003
19. Caseco Lane Short Plat map (for background information)
20. City of Port Orchard Resolution No. 2004: Allowing an exemption to the five-dwelling unit limitation to Caseco Lane (for background information), issued January 27, 2003
21. Plat of Berg’s First Addition (for background information)
22. Staff Report, prepared for May 21, 2009

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23. Email from Alison O'Sullivan to James Weaver regarding the need for a hydrogeologist report, dated April 17, 2009
24. Email from Steve Dutton to James Weaver requesting a postponement of the hearing, dated May 20, 2009
25. Order of Continuance, dated May 26, 2009
26. Affidavit of Publication for reissued Notice of Application and MDNS, Port Orchard Independent, dated August 7, 2009
27. SEPA Distribution list with packet of distributed materials for reissued MDNS, dated August 7, 2009
28. Affidavit of Mailing and Posting for reissued Notice of Application and MDNS, with notice and mailing list attached, dated August 10, 2009
29. Email to Fred Kegel (applicant's engineer) and Steve Dutton (applicant's agent) re: date for hearing continuance cancelled, dated August 12, 2009
30. SEPA comments from Lisa Spahr, Dept. of Natural Resources, dated August 12, 2009
31. Email: Dorsey, Weaver re: Kegel plan submission for Caseco Lane, dated August 11, 2009
32. Email from Steve Dutton to Tom Bonsell and James Weaver, and account of subsequent phone conversation between Fred Kegel and Tom Bonsell, dated August 26, 2009
33. Statement from Steve Dutton, requesting to have hearing on September 24, 2009, dated August 31, 2009
34. Order of Continuance, dated August 31, 2009
35. Letter from Steve Dutton re: process and procedure agreements for hearing, received September 8, 2009
36. Affidavit of mailing and posting of notice of continued open record hearing, dated September 11, 2009
37. Affidavit of publication of notice of continued open record hearing, dated September 11, 2009
38. Recorded easement between Wilkins Distributing Co. and Daniel J. Case, dated October 8, 1992
39. Recorded Easement and Road Maintenance Agreement between Daniel J. Case and Gerald and Dorothy Schlie, dated August 6, 1990
40. Statutory Warranty Deed for Lot C, City of Port Orchard Short Plat S-1099R-1, TPN: 262401-3-043-2000, recorded with Utility Easement, dated August 27, 2004
41. Comment letter from Charles Hallsted on Turtle Ridge Development regarding Caseco Lane improvements, with attachments, received September 14, 2009
42. Correction letter from Charles Hallsted regarding map included with comment letter dated 9/11/09, with correct map attached, received September 14, 2009
43. City of Port Orchard Resolution No. 1971 Adopting Road Standards, dated March 22, 2002
44. Case Short Subdivision drawing – Auditor’s Certificate No. 8907120138, dated July 12, 1989
45. Amended Case Short Subdivision drawing – Auditor’s Certificate No. 9009180064, dated September 18, 1990

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The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

**FINDINGS**

1. Maureen Barta (Applicant) requests a preliminary plat to subdivide an 8.8-acre parcel into nine single-family residential lots. The property subject to the request is located on the west side of Caseco Lane, approximately 400 feet south of Bay Street, in Port Orchard, Washington.\(^1\) *Exhibit 2.B; Exhibit 2.C; Exhibit 2.E; Exhibit 2.F; Exhibit 46, Revised Staff Report, page 1.*

2. The City of Port Orchard (City) received the preliminary plat application on February 27, 2009. The City determined that the application was complete on March 12, 2009. On April 3, 2009, the City mailed notice of the application to owners of property surrounding the subject property, posted notice on the subject property, and published notice of the application in the *Port Orchard Independent*. On May 8, 2009, the City mailed notice of the May 21, 2009, open record hearing associated with the application to surrounding property owners and interested parties, posted notice on-site, and published notice in the *Port Orchard Independent*. By agreement of the parties, the hearing was continued to September 24, 2009. The City provided notice of the continued hearing by mailing notice to surrounding property owners and interested parties, posting notice on-site, and publishing notice in the *Port Orchard Independent* in accordance with City ordinances and regulations. *Exhibit 2.A; Exhibit 5; Exhibit 4; Exhibit 7; Exhibit 9; Exhibit 10; Exhibit 16; Exhibit 17; Exhibit 26; Exhibit 27; Exhibit 28; Exhibit 46, Revised Staff Report, page 5.*

3. The City acted as lead agency to analyze the environmental impacts of the proposed preliminary plat as required by the State Environmental Policy Act (SEPA). The City

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\(^1\) Frederick Kegel, PE, testified for the Applicant that he received an email version of the staff report dated September 4, 2009. City staff explained that the version received by Mr. Kegel is essentially identical to the staff report dated September 8, 2009, which is identified as Exhibit 46. *Exhibit 46, Revised Staff Report; Testimony of Mr. Kegel.*

\(^2\) The property is identified by tax parcel number 272401-4-064-2001. A legal description is included with the plat application material. *Exhibit 2.B; Exhibit 2.F; Exhibit 46, Revised Staff Report, page 1.*
determined that with conditions, the proposed plat would not have a significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) on April 3, 2009. The five MDNS conditions address stormwater permits, erosion control measures, public access, park fees, and geologically hazardous slopes. The City reissued the MDNS on August 7, 2009, to correct the total number of lots listed on the initial MDNS. The City received a comment letter regarding the initial MDNS, signed by 29 residents of Caseco Lane. The letter expressed concern that the MDNS did not address potential impacts to a bald eagle nesting area and that the addition of new homes would create traffic safety problems for the existing Caseco Lane homeowners. The letter recommended that Caseco Lane be improved to City street standards and be transferred to City ownership.  

The City received no comments or appeal of the revised MDNS. Exhibit 7; Exhibit 11; Exhibit 27; Exhibit 46, Revised Staff Report, page 5.

4. The eastern portion of the property is located in the R 4.5 zone. The western portion of the property is zoned Greenbelt. Surrounding properties to the north and east are zoned R 4.5. Property to the west is zoned Greenbelt. Property to the south is zoned R 8. The subject property and surrounding properties to the north and east are designated Low Density Residential by the City Comprehensive Plan. Property to the south is designated Medium Density Residential. Property to the west is designated Open Space / Conservation. Exhibit 2.B; Exhibit 2.E; Exhibit 46, Revised Staff Report, page 1.

5. The R4.5 zone allows for development at a density of up to 4.5 dwelling units per net usable acre. The primary purposes of the R-4.5 zone are to “(a) provide for an urban residential environment that is consistent with the traditional image of the Port Orchard area and (b) to implement comprehensive plan goals and policies for housing quality, diversity, and affordability, and to efficiently use residential land, public services, and energy.” Port Orchard Municipal Code (POMC) 16.13.120(1). The R4.5 zone requires a minimum lot size of 6,000 square feet; maximum lot coverage of 45 percent; and minimum landscaping site coverage of 55 percent. POMC 16.40.025 Table 9. The proposed development of nine lots on 8.8 acres would result in density of 1.02 dwelling units per acre. The average lot size would be 42,590 square feet. Exhibit 2.B.

6. The purpose of the Greenbelt district (Gb) zone is to preserve and protect natural areas that are unique in character and insure that natural systems will be maintained. POMC 16.13.110(1). Residential development is allowed within the Gb zone at a density of one dwelling unit per two acres, with no minimum lot size requirement. The Gb zone allows

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3 The letter responded to the initially issued MDNS. The City received no comments or appeal of the revised MDNS. Thus, the comments are technically moot.

4 Net usable site area is defined as “the total site area less sensitive environmental features (equal to gross useable site area) and dedications as these areas are defined elsewhere in this code.” POMC 16.40.640.

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maximum lot coverage of 15 percent, with minimum landscaping site coverage of 85 percent. *POMC 16.40.025, Table 9.*

7. The City Comprehensive Plan contains goals and policies relevant to the proposed development. Housing Element goals and policies promote affordable housing through innovative standards, infill development, increased densities, and a variety of attractive housing choices for mixed income levels. Land Use Element goals and policies promote the vitality of the City with creative design, preservation of environmentally sensitive areas, a mixture of land uses, and an awareness of private property rights. *City Comprehensive Plan; Exhibit 46, Revised Staff Report, page 2.*

8. The property is developed with a single-family residence. The existing residence would be retained on proposed Lot 7. The eastern portion of the property is relatively flat. However, the western portion of the property features ravines with steep slopes, associated with the salmon-bearing stream Ross Creek. Ross Creek is located approximately 200 feet off-site to the west. As a salmon-bearing stream, Ross Creek requires a 100-foot wide stream buffer, which extends onto the property. According to the Environmental Checklist prepared by the Applicant, the steepest slope onsite is 70 percent. Allen L. Hart, Engineering Geologist, prepared a Geotechnical Engineering Report on behalf of the Applicant, re-titled and re-issued on February 17, 2009. The report concludes that the slopes are geologically hazardous areas, requiring a minimum 25-foot wide native vegetation buffer at the top of the slopes. The plat drawings included with the application packet depict the top of slope, with a natural vegetation buffer and building setback. As depicted on the plat maps, proposed Lots 1, 2, 3, 4, 5, and 6 would include sections of the slopes and associated buffers. The Revised City Staff Report states that the slope setback buffers and proposed stormwater controls would ensure that the proposed plat have at most a negligible impact on Ross Creek. *Exhibit 2.H; Exhibit 2.J; Exhibit 2.K; Exhibit 2.L; Exhibit 46, Revised Staff Report, page 4.*

9. The City proposed a condition of approval requiring that plat residents each have a 1/9 undivided interest for maintenance and use within the critical areas easement. The proposed condition also notes that if a survey demonstrates that the Ross Creek stream buffer does not reach to the top of slope, the critical areas buffer may be revised. Frederick Kegel, PE, testified for the Applicant that the proposed condition addresses his concern regarding the location of the 100-foot wide stream buffer. Mr. Kegel noted that what is required is compliance with the Critical Areas Ordinance. Mr. Kegel further testified that a 1/9 interest is not applicable because each homeowner would own to the property line. However, Tom Bonsell, City Planner, testified that the City’s Critical Areas Ordinance requires that the critical areas be set aside in a tract or by easement. The City and Applicant agreed that the proposed condition should be amended to state that the easement be included within the Home Owners Association CC&Rs, and that the HOA be responsible for maintenance and use within the easement area. *Exhibit 46, Revised Staff Report, page 6; Testimony of Mr. Kegel; Testimony of Mr. Bonsell.*

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10. The City proposed a condition of plat approval requiring that the Applicant provide a public access easement across the property, through the Ross Creek critical area, to the western property line. Mr. Kegel requested that the condition be amended to state “if public access is feasible in the opinion of the Public Works Engineer.” Exhibit 46, Revised Staff Report, page 6; Testimony of Mr. Kegel.

11. Patty Henderson sent an email to the City, dated September 23, 2009. Ms. Henderson expressed concern that development of the proposed plat would increase stormwater runoff and landslide potential along slopes. She expressed concern for loss of habitat and sadness at the potential loss of evergreen and deciduous trees observed from her home. Mr. Bonsell responded for the City that Ms. Henderson’s residence is not adjacent to the proposed plat. He testified that the property subject to the plat application contain slopes that face west. The slopes that Ms. Henderson expressed concern about face north. Exhibit 47; Testimony of Ms. Henderson.

12. Mr. Kegel prepared a Storm Drainage Report on behalf of the Applicant, dated February 2009. Stormwater runoff from the eastern and northeastern portion of the property drains north to a ravine, then flows offsite to apparent wetlands adjacent to Ross Creek. The southern portion of the property drains to the south to an existing storm drainage system. The Applicant proposes using grass bio-filtration swales, infiltration/dispersion trenches on individual lots, and pervious pavement to enhance stormwater runoff water quality. The geotechnical report addresses proposed development of a detention pond on the property to control runoff from the roadway areas. The geotechnical report concludes that an approximately 5,000 cubic foot stormwater retention pond would be feasible. However, the report states that the recommended option would allow runoff to disperse through lawn or wooded areas adjacent to the roadway rather than being collected in ditches and routed to detention ponds. The report recommends that any detention pond be located a minimum of 60 feet from the top of slope, and farther away if possible. The stormwater facility would be designed to comply with the State’s stormwater manual. The storm drainage report states that individual lot infiltration/ dispersion trenches would be located 50 feet from the top of slopes greater than 30 percent gradient. The main stormwater outfall would be located 120 feet from the top of slopes, consistent with the geotechnical report recommendations. Exhibit 2.H, pages 3 – 6; Exhibit 2.J; Exhibit 46, Revised Staff Report, page 4.

13. Proposed condition No. 1 requires that the Applicant obtain a stormwater general permit for any disturbance of one acre or more. Proposed condition No. 23 reiterates this requirement with additional information. Mr. Kegel testified that the proposed development would not disturb more than one acre because initial development would only include that necessary for the road improvements. Mr. Kegel agreed that the total disturbance would be over one acre as individual lots are developed. Mark Dorsey, City Public Works Director, testified that the permit is project-specific, and cannot be
segmented. He explained that the Applicant would hold the permit, and transfer to each individual lot holder. Mr. Dorsey proposed amending condition No. 23 to include a note on the final plat map. *Exhibit 46, Revised Staff Report, pages 5 and 7; Testimony of Mr. Kegel; Testimony of Mr. Dorsey.*

14. The western portion of the property is forested, with significant trees. Those trees would be protected from development. In addition, some significant trees are located in the portion of the property proposed for development. The Applicant proposes retaining trees where possible. City code defines significant trees as an existing tree that (1) is healthy with a diameter at breast height (DBH) of 18 inches or more with adequate live crown for tree vigor and aesthetics; (2) any tree identified as providing wildlife habitat for threatened or endangered species; or (3) any tree of historical or cultural significance as defined within the City Comprehensive Plan. *POMC 16.08.712.* City code provides that significant trees shall be retained in all zones within any required buffer area or required landscape planting area to the extent practical and feasible. *POMC 16.50.180.* Significant trees must be protected. The City code provides incentives to retain significant trees. When the required number of significant trees cannot be retained, the code calls for replacement. *POMC 16.50.190, .200, .210, .220.* The Applicant would provide a final tree retention and replacement plan consistent with City code prior to approval of any clearing and grading permits. Lisa Spahr, Forest Practice Coordinator for Washington State Department of Natural Resources, sent a letter to the City stating that no forest practice application is needed because timber located within 1.5 tree length of a structure is not considered forestland. *Exhibit 2.E; Exhibit 30; Exhibit 46, Revised Staff Report, pages 3, 4, 6.*

15. Caseco Lane, a private road, would provide the sole access to the proposed plat. The Applicant would construct a cul-de-sac to provide interior plat access to proposed Lots 2 – 9. Proposed Lot 1 would be directly accessed from Caseco Lane. Heath and Associates, Inc. prepared a Level 1 Traffic Impact Analysis on behalf of the Applicant, dated February 2009. The analysis describes Caseco Lane as very steep, with grades of up to 15 percent or more. Caseco Lane has a posted speed limit of 15 mph. The two-lane roadway features lanes widths of 10 to 11 feet. The traffic analysis reviewed potential traffic impacts to the Bay Street / Caseco Lane intersection. The analysis concludes that development of the proposed plat would result in 16 new AM peak hour trips and 12 new PM peak hour trips. According to the traffic impact analysis, no traffic mitigation is required. *Exhibit 2.E; Exhibit 21; Exhibit 43; Exhibit 46, Revised Staff Report, page 4.*

16. City ordinances and regulations require that all plat access roads be constructed to Access Road standards. Access road standards require a 28-foot wide paved roadway, curb and gutter, and parking on both sides of the street. City Council Resolution No. 1971, passed March 25, 2002, limits development of private roads to serve only five dwelling units and only short plats, unless an exemption is specifically approved by the City Council. If approved, the Resolution provides that the private road would not be maintained by the

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17. After passage of Resolution No. 1971, the City Council passed Resolution No. 2004 on January 27, 2003. Resolution No. 2004 specifically exempted Short Plat S-1123 from the five dwelling unit limit. The property subject to the current preliminary plat request was one of the lots resulting from that short plat. The Resolution states that it does not provide for any further new access from the original lots. Exhibit 20, Resolution No. 2004.

18. Greg Rogers, Fire Prevention Technician for South Kitsap Fire and Rescue, sent a letter to the City commenting on the proposed plat. Mr. Rogers stated that all houses built within the proposed plat must include fire sprinklers. The letter also states that all access roads must be paved and a minimum of 20 feet wide. Exhibit 12.

19. In the Project Narrative, the Applicant requests a variance from City road standards for the proposed internal cul-de-sac, to allow the road to be constructed without curbing or sidewalks. The Project Narrative states that allowing the requested variance would minimize impervious surfaces, reducing stormwater runoff. Mr. Kegel testified for the Applicant that a variance would be requested from the City Council. Mr. Kegel requested that proposed condition of approval No. 15 be amended to state that access roads be constructed to road standards, “unless waived by the Fire Department.” Mr. Kegel testified that the Applicant would also request that the City Council waive road standards included in conditions of approval Nos. 30, 31, 34, 35, and 36. Mr. Bonsell testified that proposed condition No. 30 repeats proposed condition No. 11. Mr. Bonsell requested that condition No. 11 be deleted, but that the numbering remain the same. Exhibit 2.E; Testimony of Mr. Kegel.

20. Charles Hallsted, Caseco Lane resident, sent a letter to the City on behalf of other Caseco Lane property owners, dated September 11, 2009. Mr. Hallsted stated that the Applicant proposed improving Caseco Lane by widening the roadway, installing new asphalt, removing vegetation and soil to improve visibility, installing guard rail, widening the intersection at the top of the hill, and correcting sink holes and patches. The letter is signed by 17 of 20 Caseco Lane property owners. Another exhibit includes signatures from 19 of the 20 owners. According to the letter, the majority of Caseco Lane property owners would not object to the proposed development if the improvements are included as conditions of plat approval. Mr. Hallsted sent a follow-up letter dated September 14, 2009, with corrected attachments. Exhibit 41; Exhibit 42; Exhibit 48.

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5 The Hearing Examiner noted that he is not authorized to amend any existing easements between Caseco Lane property owners. He can only determine whether the proposed plat complies with City and state criteria.

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21. School bus stops serving student residents of Caseco Lane are located at the end of Caseco Lane. Mr. Kegel testified that Applicant would ensure safe walking conditions for students and pedestrians by providing a fog line along the road or other walkway. Testimony of Mr. Kegel.

22. There is no transit service provided in the area of the proposed plat. The City of Port Orchard provides water and sewer service to Caseco Lane, and would extend service to the proposed development. Exhibit 2.B; Exhibit 2.E; Exhibit 2.I.

23. Michael Saltvick testified at the open record hearing. He explained that he is the Caseco Lane property owner who declined to sign the letter regarding road improvements. Mr. Saltvick testified that Caseco Lane is currently unsafe. He noted that it already serves 19 homes, with another under construction. He testified that additional development would only be acceptable if the proposed road improvements are constructed. Mr. Saltvick testified that he hopes the rural character of the road is maintained. He further testified that he would support a City Council waiver of road standards and is likely to sign on to the agreement in the near future. Daniel Case, Caseco Lane property owner, testified in support of the proposed plat. Exhibit 41; Exhibit 42; Exhibit 48; Testimony of Mr. Saltvick; Testimony of Mr. Case.

CONCLUSIONS

Jurisdiction
The City of Port Orchard Hearing Examiner has authority to conduct an open record hearing on a preliminary plat application, and to grant, modify and grant, or deny the application based on evidence in the record. Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.110; POMC 16.01.021(3).

Criteria for Review
The Port Orchard Municipal Code (POMC) provides that whenever any subdivision of land is proposed, the subdividing owner or his or her authorized agent shall apply for and secure approval of the proposed subdivision in accord with the standards and procedures set forth in POMC Chapter 16.72. POMC 16.72.060. Chapter 16.72 POMC contains specific requirements for preliminary plat application submittal; payment of an application filing fee; preparation of a report by City staff to accompany the application; consideration of the application at an open record public hearing conducted by the Hearing Examiner; and preparation of written findings, legal conclusions, and a decision on the application by the Hearing Examiner after the close of the public hearing. POMC 16.72.140, .160, .180, .190, .200.

In addition, Revised Code of Washington (RCW) Section 58.17.110 provides that a proposed subdivision shall not be approved unless:

(A) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways,

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transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds 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

(B) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110.

Conclusions

1. **With conditions, the proposed plat complies with Port Orchard Municipal Code Chapter 16.72.** Maureen Barta submitted the preliminary plat application on February 27, 2009. The City reviewed the proposal for environmental impacts, and determined that with conditions the proposed plat would not result in probable significant adverse environmental impacts. The City issued a Mitigated Determination of Nonsignificance on April 3, 2009. The City re-issued the MDNS with the correct number of lots on August 7, 2009. The City prepared a staff report responding to the proposed plat. The Hearing Examiner held an open record hearing on the plat request. Members of the public submitted comments on the proposed plat and testified at the open record hearing. The proposed plat would feature nine lots on the 8.8-acre parcel, for a development density well below the maximum 4.5 dwelling units per acre. The property contains geologically hazardous areas. Stream buffers associated with Ross Creek extend onto the property. Conditions of approval are necessary to ensure that the Applicant establishes a critical areas easement from the top of slopes to the western property line, and to ensure that development around the slopes complies with required setbacks. Conditions of approval are also necessary to ensure that stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the most current City of Port Orchard Developer’s Handbook. There are significant trees located on the property. Conditions of approval are necessary to ensure that the Applicant provides a final tree retention and replacement plan. **Findings 1 – 14.**

2. **With conditions, the proposed plat would comply with the approval criteria provided in RCW 58.17.110.** The property contains steep slopes and critical areas buffers associated with Ross Creek. Conditions of approval are necessary to ensure that critical areas are set aside in an easement. The Applicant would retain most significant trees on-site, and would replace trees to be removed. The Applicant would address water quality through the use of pervious pavement throughout the plat and grass bio-filtration swales, infiltration/dispersion trenches on individual lots. The Applicant would construct a detention pond to control runoff from the roadway areas. Conditions of approval are necessary to ensure that stormwater quantity control, quality treatment, and erosion and sedimentation control are designed in accordance with the most current City of Port Orchard Developer’s Handbook; that any retention facility be located at least 200 feet from the top of any slope greater than 33 percent; and that the design of the infiltration

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facilities comply with Section 5.3.5 of the City of Port Orchard Stormwater Design Manual. Caseco Lane, a private road, would provide the sole access to the proposed plat. Pursuant to City Resolution No. 1971, private access roads may only serve five dwelling units or fewer, and may only serve short plats. The Applicant Representative testified that the Applicant would request a waiver of City road standards. Only the City Council may exempt the Applicant from the requirements provided in Resolution No. 1971. Conditions of approval are necessary to ensure that the Applicant either obtain City Council approval of a variance from road standards, or comply with the City road standards. The Applicant would install a fog line or other pedestrian walkway for students accessing school bus stops. The City of Port Orchard provide water and sewer service to the proposed plat. The proposed plat would benefit the public use and interest by creating residential lots for City residents, ensuring improvements to Caseco Lane, and setting aside critical areas and associated buffers. Conditions of approval are necessary to ensure that the Applicant improve Caseco Lane consistent with the improvements agreed to by neighboring Caseco Lane property owners. Findings 8 – 23.

DECISION

Based on the above findings and conclusions, the request for a preliminary plat to subdivide 8.8 acres into nine single-family residential lots on property located on the west side of Caseco Lane, approximately 400 feet south of Bay Street, in Port Orchard, Washington, is GRANTED, with the following conditions: 6

SEPA Mitigations from MDNS:

1. A construction stormwater general permit (NPDES) from the Department of Ecology must be obtained for any disturbance one acre (43,560 Square feet) or more of land through clearing, grading, excavating, or stockpiling of fill material. Department of Ecology permit information may be obtained at:

2. Erosion control measures must be installed and inspected by City Staff prior to any site development activity.

3. Pursuant to the goals and policies of the Comprehensive Plan, the final plat map shall indicate a public access easement, dedicated to the city of Port Orchard located on the western portion of the property within the Ross Creek critical area extending from the sixty-foot topographic elevation line to the westernmost property line of parcel 272401-4-064-2001, if public access is feasible in the opinion of the Public Works Engineer.

4. Prior to final plat recordation park fees in the amount of $300.00 for each lot shall be submitted to the City of Port Orchard.

6 Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

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5. Geologically hazardous slope buffers shall be marked in the field for inspection and approval by the department prior to beginning work. The field marking of all buffers shall remain in place until construction is completed and final approval is granted by the department. Permanent marking may be required and reconfiguration of final plat lot boundaries as determined necessary to protect critical areas or its buffer may be required.

**Zoning**

6. All conditions identified by City Departments and other agencies must be met prior to final plat approval.

7. Prior to commencement of construction activities, tree protection fencing must be installed to the satisfaction of the Planning Department in conformance with the tree retention plan and POMC 16.50.210.

8. The Tree retention plan shall show replacement of significant trees at a ratio of 3 to 1 in conformance with POMC 16.50.220.

9. Prior to approval to issuance of any clearing and grading plan, significant trees slated for removal shall be marked in the field for inspection by the City Planning Department. In addition, the Applicant shall provide a tree retention plan that indicates trees to be retained. Prior to commencement of clearing activities, the applicant shall install orange construction fencing protecting areas that are to remain undisturbed.

10. All future single-family residence constructed within this subdivision shall meet the dimensional bulk zoning requirements in effect at the time of building permit submittal.

11. **DELETED.**

12. The Applicant shall create a critical areas easement or tract in conformance with the City’s adopted CAO from the top of slope to the most western property line. The location of the easement or tract shall be shown on the face of the Final Plat drawing and included within the HOA CC&Rs with language stating that the residents of the plat shall be responsible for maintenance and use within the easement area in compliance with the Critical Areas Ordinance. If it can be shown by survey that the Ross Creek stream buffer does not reach top of slope, (See CAO Chapter 3 section 3 (1)(C)), the location of the critical areas buffer may be revised.

**Fire Prevention Code**

13. Per the original agreement of the Berg Plat and the Fire District, the alternate material and methods for the grades exceeding 12% was to install a fire sprinkler system within all houses built within the development. This alternative is acceptable to the Fire District and shall be a condition of the plat.

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14. A minimum fire flow of 1,000 gallons per minute, measured at a residual pressure of 20 p.s.i., is required for one- and two-family dwellings not exceeding 3,600 gross square feet. All other buildings (including larger one- and two-family dwellings) require a minimum fire flow of 1,500 gallons per minute and may require more depending on building size and type of construction as per Appendix III-A of the Fire Code.

15. Before construction may begin on any lot, fire department vehicle access must be provided. Access roads shall be provided for all structures more than 150 feet from a public access road. Access roads shall be a minimum of 20 feet in unobstructed width, be designed and maintained to support the imposed loads of fire apparatus (45,000 pounds) and must have a surface that provides all-weather driving capabilities, unless waived by the Fire Department.

Public Works Conditions

General

16. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer’s engineer shall be prepared in accordance with City standards and shall be submitted to City of Port Orchard for review and acceptance. No construction shall be started prior to said plan acceptance.

17. Approval of the preliminary plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of City of Port Orchard Municipal Code.

18. Prior to approval of the construction plans, all off-site, ingress/egress and utilities easements, and/or permission must be recorded and submitted to the City. Please refer to Condition 29 for additional project requirements in connection with project site access.

Stormwater

19. The information provided demonstrates this proposal is a *Major Development* as defined in the most current City of Port Orchard Developer’s Handbook at the time of complete application, and as such will require a Stormwater Permit from Public Works.

20. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the most current City of Port Orchard Developer’s Handbook. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with City of Port Orchard Ordinances in effect at the time of application.

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21. The Washington State Department of Fish and Wildlife (WDFW) may require a Hydraulic Project Approval. The proponent is responsible to comply with all requirements set forth by WDFW.

22. The project proponent shall be responsible for installing any necessary off-site downstream drainage improvements as identified within the downstream capacity analysis. Procurement of any permits and/or easements necessary to install said off-site improvements shall be the responsibility of the project proponent. As indicated above, prior to approval of the construction plat, all easements must be recorded and submitted to the City.

23. A note on the final plat shall state that the site plan indicates that greater than 1 acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: http://www.ecy.wa.gov/programs/wqs/wq_stormwater/construction/ or by calling Josh Klimek at 360-407-7451, email jokl461@ecy.wa.gov. This permit is required prior to issuance of the Stormwater Permit.

24. The design of the infiltration facilities will be according to Section 5.3.5 of the City of Port Orchard Stormwater Design Manual. Soils exploration shall be performed at the proposed location of the facilities before final design to determine the infiltration rate and depth to seasonal high ground water table and/or impermeable layer. The soil report shall include Particle-Size Analysis performed by ASTM Test Method D-422-63, soil log elevation, and location. The storage volume of the facility shall be adjusted to reflect the true infiltration rates with a safety factor of two applied. A Soils Engineer shall prepare the above information.

25. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

26. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer’s stamp to Public Works.

27. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects

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of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

28. The owner or homeowners association (HOA) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Prior to final plat approval, applicant shall submit, for review and approval by the City, Declaration of Covenant Associated with Maintenance and Operation of Storm Drainage Facilities that guarantees the City that the system will be properly maintained. Wording must be included in the covenant that will allow the City to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner or HOA and giving him/them a reasonable time to do the necessary work. Should City forces be required to do the work, the owner or HOA will be billed at the current City rates. Concurrent with recording of the final plat, the above-described covenants shall be recorded with the County Auditor.

29. City of Port Orchard will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in City of Port Orchard's judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.

Traffic and Roads
30. Roads internally serving the plat or providing external access to and from the City's public roadways shall be constructed in accordance with the City's adopted road development standards, Resolution No. 1971; and shall at a minimum be constructed in conformance with Section 7 - Road Construction Standards to the standard of an Access Road pursuant to the City of Port Orchard Developers Handbook 2004 for Development Standards.

31. Construction of handicap access facilities within existing or proposed City right-of-way shall conform to the requirements of the Americans with Disabilities Act.

32. Lots 2-9 shall access from interior roads only. This note shall appear on the face of the final plat map.

33. The property owners (within the plat) shall be responsible for the maintenance of all proposed landscaping within the right-of-way and all private storm drainage facilities. A note to this effect shall appear on the face of the final plat map and the accepted construction plans.

34. Wheelchair ramps shall be provided on both sides of the site approach. Include on the plan set curb ramp details that meet the requirements of the Americans with Disabilities

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Act per WSDOT Standard Plan F-40, as applicable, cement concrete sidewalk and approach details.

35. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.

36. All work, equipment & materials for street lighting installations shall meet and be in compliance with all requirements of the City of Port Orchard Road Standards, Project Contract Provisions of Plans and Specifications accepted for construction by City of Port Orchard, MUTCD Manual on Uniform Traffic Control Devices, NEMA National Electrical Manufacturer’s Association, NEC National Electrical Code, WSDOT Standard Specifications & Standard Plans, and the Occupational Safety & Health Administration (OSHA).

Sewer
37. All sanitary sewer system improvements shall comply with West Sound Utility District Standards or the most current City of Port Orchard Developer’s Handbook.

38. An easement for the sewer line within the plat is required to be recorded prior to issuance of construction permits.

Water
39. All water system improvements shall comply with West Sound Utility District Standards or the most current City of Port Orchard Developer’s Handbook.

40. An easement for the water line within the plat is required to be recorded prior to issuance of construction permits.

Miscellaneous
41. The Applicant shall construct road improvements to Caseco Lane as described in Exhibit 41, as follows:
   1. Widen roadway from Dan Case’s driveway to end of curve at 10+45; new asphalt, shoulder, and ditch correction.
   2. Removal of selective vegetation and pile soil to improve visibility around the curve.
   3. Install guard rail on outside of curve to prevent any cars from driving off.
   4. Widen the intersection at the top of hill with asphalt, should and ditch improvement. This will start at the fire hydrant and go down the hill approximately 60 feet.
   5. Correct the sink holes and patches at the beach end of Caseco.

42. The Applicant shall ensure safe walking conditions for students and pedestrians by providing a fog line or other pedestrian walkway along Caseco Lane.

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43. This plat is approved conditioned upon a waiver of the road standards otherwise applicable to plats as defined in Ordinance 1971. The City Council alone has the authority to waive road standards and must waive those standards identified in Conditions Nos. 31, 34, 35, and 36 pursuant to City Council Resolution No. 1971 in order for this plat to proceed. In considering request for a waiver regarding road standards for the proposed plat, the City Council will only review those proposed waivers. No other aspect of the proposed plat would be reviewed or modified by the City Council unless there is an appeal of the decision of the Hearing Examiner as provided in PORM 2.76.140.

Decided this 5th day of October 2009.

THEODORE PAUL HUNTER
Hearing Examiner