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CITY OF PORT ORCHARD
PLANNING DEPARTMENT

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD**

In the Matter of the Application of)
)
Doug Skrobut, on behalf of)
GEM 1, LLC)
)
)
For a Preliminary Plat _____)

No. SUBDIV 10-01

McCormick North Phase III

FINDINGS, CONCLUSIONS,
AND DECISION

SUMMARY OF DECISION

The City staff and Applicant agreed to a draft Development Agreement for the McCormick North Phase III Preliminary Plat. A Development Agreement must be approved by the City Council, a process that had not yet been completed at the time of the hearing on the preliminary plat application. To be approved, the preliminary plat application must be consistent with City Code, as modified by the Development Agreement, as well as with the requirements of state law in Chapter 58.17 RCW. The purpose of the hearing on the preliminary plat application was to collect the evidence from the City, the Applicant and the public so that the Hearing Examiner could make a decision on the preliminary plat application based upon the evidence presented.

The Hearing Examiner reviewed the application for compliance with the Development Agreement and RCW 58.17, and conditionally **APPROVES** the preliminary plat. The approval is contingent upon a separate approval of the draft Development Agreement by the City Council. If the draft Development Agreement is approved by the City Council, the approval of the preliminary plat will be final on the date of City Council approval of the Development Agreement. If the City Council does not approve the draft Development Agreement, the preliminary plat application also will not be approved.

SUMMARY OF RECORD

Request:

Doug Skrobut, on behalf of Gem 1, LLC, requests a preliminary plat to subdivide 129 acres into 159 single-family lots with two future development tracts; a mixed use future development tract; 18 future commercial development tracts; and open space, common open space, utility, and stormwater tracts. The property subject to the request is located on a site bounded by Feigley Road SW on the west and SW Old Clifton Road to the south with unincorporated Kitsap County to the north and the McCormick North Phase I Preliminary Plat to the east within Port Orchard, Washington. The City and Applicant have agreed to a draft Development Agreement that applies to the preliminary plat.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 7, 2010.

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Testimony:

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

Tom Bonsell, City Associate Planner
Ellen Ferguson, City Administrative Assistant
James Weaver, City Development Director
Doug Skrobut, Applicant's Authorized Agent

Exhibits:

The following exhibits were admitted into the record:

1. Application submittal, including the following documents:
 - A. Application, received March 11, 2010
 - B. Contact information, received March 11, 2010
 - C. Authorization letter, dated September 28, 2009
 - D. Letter from Doug Skrobut to Development Director James Weaver regarding procedural and substantive issues due to the application transfer from Kitsap County to the City of Port Orchard, dated October 20, 2009
 - E. Legal Description, prepared by Gerald Retzlaff, Goldsmith Land Development Services, dated September 21, 2009
 - F. Project location and description, dated October 15, 2009
 - G. Preliminary plat drawings, received October 27, 2009
 - Sheet 1, Cover Sheet
 - Sheet 2, Existing Conditions
 - Sheet 3, Overall (sic) Preliminary Plat
 - Sheet 3-S, South Portion
 - Sheet 3-N, North Portion
 - Sheet 4, Conceptual Utility and Road Plan: Overall
 - Sheet 4-S, Conceptual Utility and Road Plan: South Portion
 - Sheet 4-N, Conceptual Utility and Road Plan: North Portion
 - Sheet 5, Conceptual Road 1 Plan & Profile
 - Sheet 6, Conceptual Road 1 Plan & Profile
 - Sheet 7, Conceptual Road 5 Plan & Profile
 - Sheet 8, Conceptual Road 5 Plan & Profile
 - Sheet 9, Conceptual Road 6 Plan & Profile
 - Sheet 10, Conceptual Road 6 Profile
 - Sheet 11, Conceptual Road 6 Profile
 - H. Site Plan, received October 27, 2009
 - I. Vicinity map, received October 27, 2009
 - J. Conditional Water Availability letter – City of Bremerton, Public Works, dated August 20, 2009
 - K. SEPA Checklist, dated March 3, 2010

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- L. Wetland and Stream Delineation Report, GeoEngineers, dated December 2, 2008
 - M. Traffic Impact Analysis, Transpogroup, dated November 4, 2008
 - N. Sewer Capacity Availability letter – City of Port Orchard Public Works, dated May 8, 2009
 - O. Parking Plan, received March 11, 2010
 - P. Property Owners List verification, map, and labels, received March 11, 2010
 - Q. Preliminary drainage control plan and downstream analysis, Goldsmith Land Development Services, dated October 2009
2. Application transmittal Request for Review, dated March 16, 2010
 3. Kitsap County Assessor Property Report & Parcel Maps, viewed March 15, 2010
 4. Memo from Greg Rogers, South Kitsap Fire & Rescue to Tom Bonsell, dated March 18, 2010
 5. Letter of Determination of Completeness from Tom Bonsell, dated July 15, 2010
 6. Kitsap County South Kitsap UGA/ULID #6 Sub-Area Plan, dated December 8, 2003
 7. Memorandum from Andrea Archer, City Assistant Engineer to Tom Bonsell, dated August 24, 2010
 8. Memorandum from Andrea Archer, City Assistant Engineer to Tom Bonsell, dated August 23, 2010
 9. Notice of Application/SEPA Threshold Determination, dated September 3, 2010
 10. Affidavit of mailing and posting of Notice of Application and SEPA Threshold Determination with attachments, dated September 3, 2010
 11. Affidavit of publication of Notice of Application and SEPA Threshold Determination with attachment, dated September 3, 2010
 12. Distribution list for agencies receiving NOA/SEPA Determination with attachments, dated September 3, 2010
 13. Email from Tom O'Brien, South Kitsap School District #402, to Ellen Ferguson, dated September 16, 2010, with email string
 14. Affidavit of mailing and posting of Notice of Public Hearing, dated September 17, 2010
 15. Affidavit of publication of Notice of Public Hearing, dated September 17, 2010
 16. Mitigated Determination of Nonsignificance, dated September 20, 2010
 17. Draft Development Agreement between the City of Port Orchard and GEM1 LLC, with attachments, dated September 7, 2010
 18. Site plan showing additional parking for proposed park along Road 6, received September 20, 2010
 19. E-mail from Doug Skrobut to Gregory Jacoby regarding the Development Agreement for McCormick Woods Phase III Preliminary Plat, dated September 24, 2010, with email string
 20. Staff report by Associate Planner Tom Bonsell, for October 7, 2010 hearing
 21. Staff Report and Recommendation to the Hearing Examiner, Conditions of Approval – Response Matrix, dated October 1, 2010
 22. Figure 4-5, “L” Intersection, Very Low Volume Local Roads, Kitsap County Department of Public Works, dated August 10, 2007, Appendix F to Development Agreement
 23. Revised – McCormick North Phase III Development Agreement

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- Appendix A, McCormick North Mater Plan Phase III, Urban Village, dated September 8, 2008, with replacement Appendices for Development Agreement
- Appendix B, Legal Description, dated September 10, 2008
- Appendix C, Building Height per Kitsap County Code Title 17 (Converted to R20 per Port Orchard Annexation)
- Appendix D, Road Channelization Road 6, Sheet RD-6
- Appendix D-1, Additional Parking for Proposed Park Along Road 6, Sheet PK-1
- Appendix E, McCormick north Phase III Road Sections, revised October 6, 2010
- Exhibit 1, Open Space to be dedicated to the City of Port Orchard
24. Staff Report and Recommendation to the Hearing Examiner, Conditions of Approval – City Proposed Resolutions, dated October 6, 2010
 25. Draft Development Agreement, revised October 6, 2010
 26. City Council Work Study Session Minutes, May 18, 2010, page 2; City Council Work Study Session Agenda for June 15, 2010, and meeting minutes

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

FINDINGS

Preliminary Plat Application and Public Notice

1. Doug Skrobot, on behalf of GEM 1, LLC (Applicant), requests a preliminary plat to subdivide 129 acres. The preliminary plat consists of 159 single-family lots and two future development tracts within the R20 zone; a mixed use future development tract within the Mixed Use Development zone; 18 future commercial development lots within the Employment Industrial and Office zone¹; and open space, utility, and stormwater tracts.² The Applicant's Environmental Checklist further describes the proposal as including approximately 50 acres for approximately 585,000 square feet of business park development, and approximately seven acres for village center/mixed use development. The remaining 30 acres includes open space, critical areas, and storm water tracts. The property subject to the request is located on a site bounded by Feigley Road SW on the west and SW Old Clifton Road to the south with unincorporated Kitsap County to the north and the McCormick North Phase I Preliminary Plat to the east within Port Orchard,

¹ The Project Description (Exhibit 1.F) and the Staff Report (Exhibit 20, page 1) described the project as 159 residential "units." The preliminary plat, Exhibit 1.G, Sheet 3, and conditions No. 11 and 12 referenced lots. This decision will refer to residential lots. The Staff Report, Exhibit 20, page 1, describes 18 non-residential lots for commercial development. The preliminary plat, Exhibit 1.G, Sheet 3, references tracts. This decision will refer to commercial lots

² Condition No. 33 provides: "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 from the final design to meet all requirements of City of Port Orchard Municipal Code." *Exhibit 20, Staff Report, page 15.*

Washington.³ *Exhibit 1.A; Exhibit 1.G, Sheet 3; Exhibit 1.H; Exhibit 1.K, page 2; Exhibit 20, Staff Report, page 1.*

2. The City of Port Orchard (City) received the preliminary plat application on March 11, 2010.⁴ The City determined that the application was complete on July 15, 2010. On September 3, 2010, 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. On September 17, 2010, the City mailed notice of the 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*. *Exhibit 5; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 13; Exhibit 14; Exhibit 15; Exhibit 20, Staff Report, page 12; Testimony of Mr. Bonsell; Testimony of Ms. Ferguson.*

SEPA Review

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), Chapter 43.21C Revised Code of Washington (RCW).⁵ The City reviewed the Applicant's environmental checklist. The City determined that, with conditions, the proposed plat would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) on September 20, 2010. The 18 MDNS conditions address stormwater permits, erosion control measures, public access, road development standards, wetland/stream and native vegetative screening buffers, street parking, pedestrian access, and student access to schools. No appeal of the MDNS was received prior to the appeal deadline of October 4, 2010. *Exhibit 12; Exhibit 16; Exhibit 20, Staff Report, page 12.*

³ The property is identified by tax parcel numbers 052301-4-014-2009, 052301-4-015-2008, 052301-4-016-2007, 052301-4-017-2006, 052301-4-018-2005, 052301-4-013-2009, 042301-3-009-2009, 042301-3-007-2001. *Exhibit 25, Draft Development Agreement, page 3.* The Applicant's preliminary plat cover sheet, Exhibit 1.G, Sheet 1; Application, Exhibit 1.A; Environmental Checklist, page 3, Exhibit 12; and Kitsap County Parcel Search, Exhibit 3, reference tax parcel number 052301-4-013-2000. This decision will reference the tax parcel numbers in the draft Development Agreement. A legal description is provided in Exhibit 1.E.

⁴ Doug Skrobot, the Applicant's authorized agent, testified that McCormick North consists of three phases, with Phase I and II already approved by Kitsap County. *Testimony of Mr. Skrobot.* On February 23, 2009, McCormick North, Phase III was submitted to Kitsap County as a Master Planned Development. The site was annexed into the city of Port Orchard as part of the McCormick Woods Annexation on July 8, 2009. *Exhibit 20, Staff Report, page 3.*

⁵ A Final Environmental Impact Statement (FEIS) was issued in August 1985 for the McCormick Woods Masters Plan; a draft Supplemental Environmental Impact Statement for the Draft South Kitsap UGA/ULID #6 Sub-Area Plan was issued on October 26, 2001, as an integrated SEPA/GMA document phased environmental review under WAC 197-11-060(5); a final Supplemental Environmental Impact Statement for the South Kitsap UGA/ULID #6 Sub-Area Plan was issued on January 9, 2002. *Exhibit 12, NOA, page 2.*

Zoning and Comprehensive Plan

4. The 129 acres has four zoning designations: R20; Employment Industrial and Office zone (Eo); Mixed Use Development zone (Mxd); and Greenbelt (Gb). Surrounding property to the north is zoned Urban Reserve (1 DU per 10 Acres). Property to the west is zoned R-8. Property to the south is zoned Urban Medium Kitsap County (10-18 DU per acre). Property to the east is zoned Greenbelt. The property also has four Comprehensive Plan designations: Residential High Density; Employment Industrial; Commercial; and Greenbelt. Property to the north has a Comprehensive Plan designation of Urban Reserve. Property to the east is designated Greenbelt. Property to the south is designated Urban Medium within Kitsap County. Property to the west is designated Residential Medium Density. *Exhibit 1.G, Sheet 2; Exhibit 1.K, page 8; Exhibit 20, Staff Report, page 2.*
5. The purpose of the R20 zone is to: (a) Allow high density residential development in urban locations where public services and facilities are most available; (b) Implement comprehensive plan goals and policies for housing quality, diversity, and affordability; and (c) Efficiently use residential land, public services, and energy. *Port Orchard Municipal Code (POMC) 16.13.140(1)*. The R20 zone allows a minimum lot size of 2,178 square feet; maximum lot coverage of 85 percent; and minimum landscaping site coverage of 15 percent. The R20 zone allows for development at a density of up to 20 dwelling units per net usable acre.⁶ The proposed development within the R20 zone would be ten to 17 dwelling units per acre. *POMC 16.40.025; Exhibit 1.F, page 2; Exhibit 20, Staff Report, page 7.*
6. The purpose of the Employment Industrial and Office zone (Eo) is to: (a) Provide for the location and grouping of industrial and related enterprises and activities involving manufacturing, assembly, fabrication, processing, bulk handling and storage, research facilities, warehousing, and heavy trucking; (b) Provide land for those types of professional, research, business, service, and similar uses which are based in office structures and which require separate sites or developments from other more commercial and retail activities; and (c) Protect the land base for economic development and employment opportunities. *POMC 16.13.160(1); Exhibit 20, Staff Report, page 7.*
7. The purpose of the Mixed Use Development zone (Mxd) is to: (a) Provide a permissive and alternative zoning procedure for innovative, pedestrian oriented mixed use site and building developments or physical design proposals that are capable of providing substantial value to the community over conventional zone districting; and (b) Implement comprehensive plan goals and policies for housing diversity, affordability, and to efficiently use land, public services, and energy. The mixed use district may vary the height, use, organization, design, intensity, size or other feature of the proposed

⁶ 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 16.40.040.*

development, but shall not vary from the environmental, market, community impact, infrastructure, design, and other objectives of this title and the comprehensive plan. *POMC 16.13.170(1); Exhibit 20, Staff Report, pages 7 and 8.*

8. The purpose of the Greenbelt zone (Gb) 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 maximum lot coverage of 15 percent, with minimum landscaping site coverage of 85 percent. *POMC 16.40.025; Exhibit 20, Staff Report, page 7.*
9. 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. The City staff identified Comprehensive Plan Goal 2 Policies HS-7, HS-10; and Goal 4, Policy HS-19 as relevant to the proposal and found the proposed project in compliance with the City's Comprehensive Plan. *City Comprehensive Plan; Exhibit 20, Staff Report, page 4.*
10. Kitsap County approved the Kitsap UGA/ULID #6 sub-area plan for the McCormick Woods area in December of 2003. The City adopted this sub-area plan by reference as part of the 2009 City Comprehensive Plan update. The City staff found the proposed project in compliance with sub-area plan. *Exhibit 20, Staff Report, page 5.*

Development Agreement

11. Revised Code of Washington (RCW) 36.70B.170 (1) allows a local government to enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A development agreement must set forth the development standards and other provisions that will govern the development of the real property for the duration specified in the agreement. James Weaver, City Planning Director, testified that the City Attorney presented a draft Development Agreement governing development the subject property to the City Council's Work Study Sessions on May 18, and June 15, 2010. *RCW 36.70B.170(1); Exhibit 26; Testimony of Mr. Weaver.*
12. The Applicant testified that if the draft Development Agreement is approved by the City Council, the following standards would apply to development of the preliminary plat:
 - The minimum residential lot size would be 1500 square feet.
 - The City's significant tree retention regulations would not apply for 15 years from date of final plat approval.

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- The Kitsap County Code Title 12 Drainage Standards and 2002 Kitsap County Stormwater Management Manual with 2007 updates would be used for water quantity aspects of stormwater control, while standards in the 2005 Department of Ecology Stormwater Control Manual and Kitsap County Low Impact Development Ordinance would be used to review water quality control aspects of stormwater control.
- Building heights in the R20 zone would be calculated according to the Kitsap County Code.
- Roads would be developed based on the 2007 Kitsap County Road Standards.
- Land uses would be subject to the underlying City Zoning designation and associated land use code as identified in Chapter 16.30 POMC, as adopted on the Vesting Date.⁷
- Additional open space would be provided beyond that required in the City code.

In addition, the Vested Development Standards⁸ would be valid for a period of fifteen years from the Effective Date,⁹ unless extended or terminated as provided by the Development Agreement. *Exhibit 22; Exhibit 23; Exhibit 25, Sections 3 and 4; Testimony of Mr. Skrobut.*

13. The Applicant and City staff agreed to three proposed changes to the draft Development Agreement (Exhibit 25) during the course of the hearing on the preliminary plat to clarify road standards. This would be accomplished by adding Exhibit 22, (Appendix F: Kitsap County 2007 Adopted Road Standards; “L Intersection – Very Low Volume Local Roads”) to the draft Development Agreement appendixes to modify Exhibit 1.G Sheet 4. A reference to Appendix F is added to Section 3.e and 3.e.(2) of the draft Development Agreement. In addition, a revised set of Appendixes A-E, and a new Exhibit 1 was submitted for the record as part of the revised Development Agreement. Taken together, Exhibits 22, 23 and 25 make up the draft Development Agreement to be reviewed by the City Council. *Exhibit 22; Exhibit 23; Exhibit 25; Testimony of Mr. Skrobut.*

⁷ The draft Development Agreement defines “Vesting Date,” as follows: “‘Vesting Date’ refers to the date on which Kitsap County issued a Notice of Complete Application for the McCormick North Phase III Master Plan project – Kitsap County File Number 09 65893 (March 13, 2009), as set forth in paragraph D, above.” *Exhibit 25, Section 1(a)(10).*

⁸ The draft Development Agreement defines “Development Standards” as follows: “‘Development Standards’ means the development requirements set forth in this Section 3 of this Agreement, the SEPA conditions, and all of the regulations duly adopted by the City, either as a part of the Port Orchard Municipal Code, or adopted therein by reference, and any administrative regulations duly adopted by the City, that relate to the use, alteration or development of real property within the City. Development Standards does not include Construction Standards or the applicable fees in effect at such time as grading, building, or other applicable permit applications are submitted and deemed complete by the City.” *Exhibit 25, Section 1.a.(5).*

⁹ The draft Development Agreement defines “Effective Date,” as follows: “‘Effective Date’ means the effective date of the Adopting Ordinance.” *Exhibit 25, Section 1(a)(6).*

Description of Property

14. The western portion of the site is a square with the southwest corner formed by the intersection of Feigley Road SW and SW Old Clifton Road. The northern half of this square would contain 159 single-family residential lots, with the south half reserved for future residential development. The middle portion of the site is an adjacent rectangle extending north from SW Old Clifton Road. Most of this rectangle would feature commercial lots as well as open space and stormwater control tracts, with a mixed use tract in the southeast corner. The eastern portion of the site consists of a stormwater control tract in the form of a triangle extending to the east from the northern half of the site. The Applicant has designated the following tracts in the proposed preliminary plat: A-1 (Access & Utility Tract for Lots 20-26); A-2 (Access & Utility Tract for Lots 53-58); A-3 (Access & Utility Tract for Lots 131-135); COS-1 through 14 (Common Open Space); OS-1 through 4 (Open Space with Critical Areas & Buffers); FD-1, 2 (Future Development Tracts); MXD-1 (Mixed Use – Future Development Tract); EO-1 through 18 (Employment/Office - Future Development Tracts); RD-1, 2, 3 (Stormwater Control Facility Tracts); U-1 (Utility Tract). *Exhibit 1.G, Sheet 3; Exhibit 1.H.*

Access, Roads, Traffic, and Parking

15. A proposed Road 1 with a 50-foot wide right-of-way off Feigley Road SW would provide access to the residential subdivision and continue east to a “T” intersection with proposed Road 6. Road 6 with a 75-foot wide right-of-way would provide access from the south to the commercial tracts from SW Old Clifton Road. The road would be constructed as a sub-collector with two lanes, shoulders and ditches on both sides, and a walkway on the east side. It would continue northeast and then north to the northern property boundary to serve properties located north of the plat. The Applicant would provide interior plat access to proposed Lots 1 – 147 along proposed Roads 2, 3 and 4, including curb, gutter and sidewalk (one side), with parking proposed on one side only. Road 5 would provide additional access to the commercial lots, extending northeast from Road 1 and running generally parallel to Road 6. Road 5 would be constructed with a 50-foot wide right-of-way, including curb, gutter and sidewalk on both sides. The Applicant would construct half street improvements, including paving, curbs, gutters and sidewalks along SW Old Clifton Road. *Exhibit 1.F; Exhibit 1.G, Sheet 3-S; Exhibit 1.G, Sheet 3-N; Exhibit 1.H; Exhibit 20, Staff Report, page 17.*
16. City ordinances require that all plat roads be constructed to Access Road standards (Resolution 1971), unless modified by City Council approval of a development agreement. As set out in the draft Development Agreement, all roadways within the proposed plat would be constructed as urban public roads in accordance with the Kitsap County Road Standards and draft Development Agreement Appendix D, D-1, and F, to provide uniformity of appearance and a common maintenance standard with the

McCormick North development. Specified standards would apply to Roads 1-6.¹⁰
Exhibit 20, Staff Report, pages 10 and 11; Exhibit 25.

17. Transpo Group prepared a Transportation Impact Analysis (TIA) on behalf of the Applicant. The TIA was prepared for the proposed master plan required by Kitsap County Code (KCC) 17.428. The proposed project at that time was for the development of approximately 680 multi-family residential units, a 585,000 square foot business park, and six acres of retail space with all access provided by an extension of Campus Parkway to the north of SW Old Clifton Road (Road 6). The analysis concludes that development of the proposed plat would result in a total new trip generation of 14,740 and 1,421 Weekday PM peak hour trips. The TIA recommended various mitigation conditions involving traffic signals and turn lanes on intersections with SW Old Clifton Road and shoulder improvements to Sunnyslope Road. The current proposal would provide additional access from Feigley Road. *Exhibit 1.G, Sheet 3-S; Exhibit 1.M; Exhibit 12, Environmental Checklist, page 11.*
18. A separate Development Agreement between GEM1, LLC and Kitsap County was approved on April 25, 2005, for transportation improvements required for the development of the ULID #6 Sub-Area in Kitsap County. There is no public transit serving the site. *Exhibit 1.F; Exhibit 1.K, page 10; Exhibit 1.M.*
19. Goldsmith Land Development Services prepared a parking plan that identifies 162 garage spaces, 162 driveway spaces, and 62 street designated parking spaces for the residential development. Mr. Bonsell testified that the proposed parking plan meets City code requirements. *Exhibit 1.O; Exhibit 20, Staff Report, page 9; Testimony of Mr. Bonsell.*

Critical Areas

20. The western portion of the site slopes toward a ravine containing Un-named Creek Tributary 0215. The ravine begins on-site in the north portion of the R20 Zone, turns northeasterly off-site and returns on-site to the north boundary of the plat. The ravine

¹⁰ The draft Development Agreement provides:

- (1) Roads 1 through 5 shall have 6 foot wide sidewalks in accordance with WSDOT Standard Plans. Road 1 shall include a center turn lane between Roads 5 and 6.
- (2) Roads 2-4 are intended to provide ingress/egress to the R20 zone (High density residential) parcels. The roads shall include curb, gutter, 6 foot sidewalks on both sides, 7 foot parking lane on one side, and 11 foot drive lanes, as depicted in Appendix E and Appendix F.
- (3) Road 5 is intended to provide ingress/egress to the Eo Zone (employment – industrial and office) parcels. The road shall include curb, gutter, 6 foot sidewalks both sides, 12 foot center turn lane, and 11 foot drive lanes, as depicted in Appendix E.
- (4) Road 6 is intended to provide ingress/egress to the Eo Zone (employment – industrial and office) parcels. In addition to the median or 12 foot wide center turn lane, two 11 foot wide drive lanes, and 6 foot sidewalks on both sides, as depicted in Appendix E, Road 6 shall also include covered stormwater conveyance with thickened edge, and a cul-de-sac installed to City standards at the north terminus of the roadway.

Exhibit 25, Draft Development Agreement, Section 3.e.

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contains slopes of approximately 30 percent or greater and has been set aside in an open space tract that includes critical areas and associated buffers. The ravine encompasses the western boundary of the Eo zone. *Exhibit 1.G, Sheet 2; Exhibit 1.Q, page 4-1; Exhibit 20, Staff Report, page 3.*

21. GeoEngineers Inc. prepared a Wetland and Stream Delineation Report (WSDR) for the Applicant dated December 2, 2008. The WSDR was prepared under the Kitsap County Critical Areas Ordinance. A 8,539 square foot Category III wetland, Wetland A, was identified approximately 300 feet north of SW Clifton Road and 750 feet east of Feigley Road SW. A buffer width of 80 feet is required under the Kitsap County Code. Development for the proposed project would occur within 200 feet of the wetland. Anderson Creek and Wetland P, with a 100 foot wide buffer, are located along the eastern boundary of the site in Tract OS-4. These critical areas were previously delineated, reviewed and approved as part of the McCormick North Phase I Preliminary Plat and Master Plan. *Exhibit 1.G, Sheet 2, note 11; Exhibit 1.G, Sheet 3; Exhibit 1.G, Sheet 3-S; Exhibit 1.K, page 4; Exhibit 1.L.*
22. The WSDR identified two segments of a stream (Un-named Creek Tributary 0215) on site. The stream originates in the southwestern portion of the site and is oriented southwest to northeast. It discharges into Sinclair Inlet approximately one mile north of the site. The southern segment of Stream 1 is classified a Type Ns system and is approximately one to two feet wide and 705 feet in length. The southern segment originates on-site within parcel 052301-4-017-2006 and flows north. A 50-foot wide stream buffer perpendicular from the OHWM is required. The northern segment of Stream 1 is classified a Type F system and is approximately two to four feet wide and 996 feet in length. This stream segment enters the site from the west and flows along the bottom of a ravine, approximately 80 to 100 feet deep. A 150-foot wide buffer perpendicular to the OHWM or 25 feet beyond the top of the ravine, whichever is greater, is required. Development for the proposed project would occur within 200 feet of the stream. The Applicant would install split rail fencing adjacent to wetland/stream buffers and screening buffers on Tracts 9 – 17 and Lots 1 - 58. *Exhibit 1.K, page 4; Exhibit 1.L, pages 7 and 8; Exhibit 20, Staff Report, page 13.*

Drainage and Stormwater

23. Goldsmith Land Development Services prepared a preliminary Drainage Control Plan and Level One Downstream Analysis for the Applicant dated October 2009. The analysis identified three drainage basins on site. The northwest portion of the site, 4.1 acres, drains within the Bailey Creek Basin (EW-1 Basin). The mid-section of the site, 69.8 acres, includes Un-named Creek Trib. 0215 in the UNC Basin. This basin includes Wetland A, a Category III wetland, and a Type Ns Stream in the middle of the R-20 Zone in two proposed open space tracts (OS-1 and OS-2). To the north, the area drains westerly to Un-named Creek Trib. 0215, a Type F stream in a proposed open space tract (OS-3) that drains north to Sinclair Inlet. The easterly 55-acre portion of the site is

located in the Anderson Creek Basin. This area sheet flows east to Wetland P and towards the West Fork of Anderson Creek, which drains north to Sinclair Inlet. *Exhibit 1.Q, pages 4-1 and 6-1 to 6-3.*

24. The Goldsmith analysis includes a preliminary erosion and sedimentation control plan to reduce and prevent adverse impacts from the transport of sediment to streams, wetlands, and adjacent property. Implementation requirements utilizing Best Management Practices (BMPs) including clearing limits; cover measures; perimeter protection; traffic area stabilization; surface water control; and sediment retention are detailed in Section 8, of Exhibit 1.Q. *Exhibit 1.Q, Section 8.*
25. Three stormwater facilities would be constructed as part of the proposed stormwater control plan. One stormwater facility would be constructed within the Un-Named Creek Basin in Tract RD-1 in the north central portion of the R20 zone. For assessment purposes, the Goldsmith analysis assumes 85 percent impervious area in the 45.3 acre drainage basin (including 4.1 acres diverted from the Bailey Creek Basin). A second stormwater facility would be constructed within the Anderson Creek Basin in Tract RD-3 in the northeast corner of the site just east of Road 6. The plan and analysis assumes 85 percent impervious area in the 41.8 acre drainage basin (including 12.8 acres diverted from the UNC basin). A third smaller stormwater facility, also in the Anderson Creek Basin would be located in Tract RD-2 in the southeast corner of the site. All detention/retention facilities would be buffered with vegetation so as not to be visible from public right-of-ways. A homeowners association would be responsible for maintenance of the storm drainage facilities following construction. *Exhibit 1.G, Sheet 4-S and 4-N; Exhibit 1.Q, pages 1-2 and 7-2 to 7-3; Exhibit 20, Staff Report, pages 13 and 16; Exhibit 24, page 3.*

Tree Retention

26. The site was previously logged and is now re-forested with a mix of deciduous trees, evergreen trees and scrub-shrub plant communities. City code defines a significant tree 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.* 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.* Kitsap County, in contrast, requires that a certain percentage of a site be retained as open space in which existing vegetation is protected. The draft Development Agreement provides that in order to accommodate the project as designed to Kitsap County standards prior to annexation, development on lots within McCormick North Phase III shall be exempt from the provisions of the Port

Orchard significant tree retention regulations (PMC 16.50.180 through 16.50.220, as now or hereafter amended) for a period of fifteen years from the date of final plat approval. *Exhibit 25, Draft Development Agreement, Section 3.b.*

Open Space

27. Two different types of open space are proposed. Open Space Tracts (OS-1 through 4) include critical areas and associated buffers. Common Open Space Tracts (COS-1 through 14) are areas provided as “green spaces” within or adjacent to developable areas and provide visual separators between lots, rights-of-way and land uses. The draft Development Agreement proposes the conveyance of land east of Road 6 to the City for inclusion into the regional McCormick Village Park. *Exhibit 1.F; Exhibit 1.G, Sheet 3; Exhibit 20, Staff Report, page 12; Exhibit 23, “Exhibit 1;” Exhibit 25, page 7.*

Water and Sewage

28. The City of Bremerton Public Works & Utilities issued a conditional water availability letter for the McCormick Woods North Phase 3 on August 20, 2009. Development of the proposed project and connection to the utility system must be completed in accordance with the City of Bremerton Department of Utilities Development and Construction Standards, APWA/DOT Specifications, AWWA Standards, and Title 15 of the Bremerton Municipal Code. The City of Port Orchard, Public Works Department issued a letter of sewer capacity available to serve 255-459 dwelling units proposed for the preliminary plat on May 8, 2009. *Exhibit 1.F; Exhibit 1.J; Exhibit 1.N.*

Fire Prevention

29. The South Kitsap Fire & Rescue Prevention Office reviewed project plans dated received March 16, 2010. Greg Rogers, Fire Prevention Manager sent a memo to the City dated March 18, 2010, providing proposed conditions including minimum fire flow of 1,000 gallons per minute; access road grade limitations and width requirements; minimum access road turning radius. *Exhibit 4; Exhibit 20, Staff Report, pages 14 and 15.*

Schools

30. Tom O’Brien, Director, Facilities and Operations for the South Kitsap School District #402, provided comments to the City via email on the Notice of Application and SEPA Threshold Determination. The District stated that it intends to build a second high school and new elementary school on district property located on the west side of Feigley Road SW, across from the proposed subdivision. Until that time, students in the preliminary plat would be transported by school bus to Sunnyslope Elementary School, Cedar Heights Junior High School and South Kitsap High School. The District requested pedestrian circulation within the proposed plat, a provision for a school bus stop, and a future crosswalk at the intersection of Feigley Road and Road 1. Mr. Bonsell testified that these concerns have been addressed as part of the MDNS SEPA conditions. The Applicant would pay school impact fees prior to the issuance of building permits for

residential dwelling units. *Exhibit 9; Exhibit 13; Exhibit 20, Staff Report, page 14; Testimony of Mr. Bonsell.*

Staff Recommendation and Conditions

31. City staff reviewed the preliminary plat application and found the proposal consistent with the City's Comprehensive Plan, the City Code, including POMC 16.13.111, -.141, -.161, -.171; POMC 16.108; POMC 16.40.010, -.025; POMC 16.45.010; POMC 16.50.190; POMC 16.55.020, -.030(1); and Title 14 POMC, and all other applicable City and State regulations except where modified by the Development Agreement, and recommended approval with conditions.¹¹ *Exhibit 20, Staff Report, pages 3, 4, 11 and 17; Exhibit 25; Testimony of Mr. Weaver.*

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 Hearing Examiner reviews the preliminary plat for consistency with City Code, Chapter 58.17 RCW and the draft Development Agreement (Exhibits 22, 23 and 25).

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, RCW 58.17.110(1) provides that a proposed subdivision shall not be approved unless 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, transit stops, potable

¹¹ At the hearing, the City and the Applicant agreed to changes to preliminary plat conditions Nos. 2, 8, 11, 12, 19, 23, 25, 34, 36, 41, 44, and 52. Mr. Skrobot testified that the Applicant agreed with these changes except for condition No. 19. *Exhibit 21; Exhibit 24; Testimony of Mr. Skrobot.* The Applicant proposed amending Condition No. 19 to state that all conditions must be consistent with City final plat requirements. The City did not agree to this proposed change, as a conflict could be created between what the condition states and what the code says. *Testimony of Mr. Skrobot; Testimony of Mr. Bonsell.* Agreed-upon changes are made in the conditions of approval. Condition 19 is left as it was originally drafted.

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 the public interest will be served by the platting of such subdivision and dedication.

Revised Code of Washington (RCW) 36.70B.170(1) provides:

A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards¹² and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

RCW 36.70B.170(1).

Conclusions

1. **With conditions, the proposed plat complies with Port Orchard Municipal Code Chapter 16.72.** The preliminary plat application was submitted on March 11, 2010. The proposed 129 acre plat would feature 159 single-family lots and two future development tracts for a combined total density range of 255-459 units. These would be developed on a gross developable area of approximately 39 acres (approximately 26 acres of net developable area) for a development density below the maximum 20 dwelling units per acre. The plat would also include 18 lots for commercial development and a lot for

¹² RCW 36.70B.170(3) provides: For the purposes of this section, "development standards" includes, but is not limited to:

- (a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
- (b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
- (c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
- (d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- (e) Affordable housing;
- (f) Parks and open space preservation;
- (g) Phasing;
- (h) Review procedures and standards for implementing decisions;
- (i) A build-out or vesting period for applicable standards; and
- (j) Any other appropriate development requirement or procedure.

mixed use future development. The site contains critical areas including wetlands and streams with buffers that would be protected in open space tracts. The City reviewed the proposal for environmental impacts, and determined that with SEPA conditions, the proposed plat would not result in probable significant adverse environmental impacts. The City staff prepared a Staff Report and reviewed the proposed plat and draft Development Agreement and recommended approval with conditions. *Findings 1-31.*

2. **With conditions, the proposed plat would comply with the approval criteria provided in RCW 58.17.110.** The proposed plat would provide residential housing and future commercial and mixed use development. The preliminary plat includes open space and critical areas tracts that would protect wetlands, streams and buffers. Tree retention would be governed by the Development Agreement. The Applicant would provide water quality treatment as required by the most current City of Port Orchard Stormwater Manual. Three stormwater detention/retention facilities would be constructed to control stormwater runoff. The Applicant would construct half-street improvements to SW Old Clifton Road and construct all internal roads serving the plat or providing access to the plat to the City's road development standards as modified by a Development Agreement approved by the City Council. Adequate parking would be provided through both off-street and on-street parking. The internal roads would provide sidewalks for pedestrian use. School buses would transport students to neighboring schools. Critical areas including streams, wetlands and buffers would be protected in open space tracts. The City of Bremerton Public Works & Utilities would provide water and the City has sewer capacity for the proposed project. The Applicant would convey to the City an area east of proposed Road 6 for inclusion into the regional McCormick Village Park. The Applicant would pay school mitigation fees. Conditions are necessary including those to ensure that critical areas and buffers are protected; that stormwater quantity control, quality treatment, and erosion and sedimentation control is designed in accordance with the most current City of Port Orchard Stormwater Manual (as modified by a Development Agreement approved by the City Council). *Findings 4-31.*

3. **With conditions, the proposed plat would comply with the draft Development Agreement which specifies the standards that apply to the development.** The draft Development Agreement includes some changes from City Code that would otherwise govern the preliminary plat. These changes include minimum residential lot size; tree retention; stormwater control standards; building heights; road cross sections; critical areas; zoning and uses; and dedication of additional open space. Conditions are necessary including those to ensure that critical areas and buffers are protected; that stormwater quantity control, quality treatment, and erosion and sedimentation control is designed in accordance with the most current City of Port Orchard Stormwater Manual (as modified by a Development Agreement approved by the City Council). If the draft Development Agreement is approved by the City Council, the Development Agreement standards would modify existing City Code land use and zoning requirements. If the

Development Agreement is not approved by the City Council, this preliminary plat would not be approved. *Findings 11, 12, 13 and 31.*

DECISION

Based on the above findings and conclusions, the request for a preliminary plat to subdivide 129 acres into 159 single-family units with two future development lots; a mixed use future development tract; 18 future commercial development lots; open space, common open space, utility, and stormwater tracts on a site bounded by Feigley Road SW on the west and SW Old Clifton Road to the south with unincorporated Kitsap County to the north and the McCormick North Phase I Preliminary Plat to the east within Port Orchard, Washington is **APPROVED, contingent upon City Council approval of the draft Development Agreement,**¹³ with the following conditions:¹⁴

SEPA Mitigations from MDNS:

1. Prior to issuance of any City of Port Orchard construction permit(s), a construction stormwater general permit must be obtained from the Department of Ecology for any land disturbance one acre (43,560 square feet) or more through clearing, grading, excavating, or stockpiling of fill material either in a single or multiphase project. Department of Ecology permit information may be obtained at: <http://www.ecy.wa.gov/programs/wa/stormwater/construction/>
2. All development must conform to the current Stormwater Manual for Water Quality/Quantity Mitigation approved at vested preliminary plat application, or as modified by the Development Agreement dated October 6, 2010.
3. Owner shall submit a Declaration of Covenant Associated with Maintenance & Operation of Storm Drainage Facilities prior to issuance of any construction permits.
4. Owner shall submit a Declaration of Covenant Associated with Performance of Erosion and Sediment Control Facilities prior to issuance of any construction permits.
5. All lots shall access from interior roads only.
6. No owner may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm water or storm drains. It is expressly understood that any

¹³ This contingent and conditional approval of the preliminary plat application will become a final decision on the date of approval of the draft Development Agreement by the City Council. If the draft Development Agreement is not approved by the City Council, the contingent approval of the preliminary plat is void.

¹⁴ Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

alteration of the water flows shall be completed only after approval by the City of Port Orchard Public Works Department.

7. Applicant shall comply with all conditions of the associated Development Agreement.
8. All detention/retention facilities shall be buffered adjacent to public right of ways with vegetation so not to be visible from public right of ways. Buffering plans shall be shown on the landscape plan submitted with the SDAP and shall conform to POMC 16.50.296, Roadway Corridors-Parkways (filtered screening).
9. All 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 1971; and shall at a minimum be constructed to the standard of an Access Road, unless modified by approval by the City Council of a development agreement. Prior to final plat approval, the Applicant shall submit road names for the interior roads to the City for review and approval.
10. Prior to issuance of the required SDAP or clearing and grading permits, the Applicant is required to contact the Department of Natural Resources (DNR) to determine if a Forest Practice Application (FPA) permit is required. If an FPA is required, no clearing or grading is permitted until the DNR has issued the FPA.
11. Prior to commencement of clearing and grubbing activities within Tracts 9-15 and Lots 1-21, the Applicant shall place orange construction fencing and/or silt fencing adjacent to the wetland/stream buffer, native vegetative screening buffers or at the edge of soil disturbance on Tracts 9-17 and on Lots 1-58.
12. The Applicant shall install split rail fencing or 6' high wood fencing adjacent to wetland/stream buffers and common open space tracts on Tracts 9-17 and Lots 1-58. On Tracts 11-15 and Lots 1-21, wetland/critical area informational signs shall be placed at intervals of not less than 100 feet.
13. Subsequent phase final plats will be evaluated for project specific SEPA threshold determinations and may require new SEPA threshold determinations prior to SDAP approvals.
14. On street parking on the east side of Road 6 shall be included, depicted, and provided as an engineered alternative for the associated Development Agreement.
15. Continuous and clearly marked pedestrian access shall be provided within the project and through the site, connecting with adjacent parcels, public rights-of-way, and existing pedestrian networks.

16. Parcels within the project and Future Development Tracts FD-1, FD-2, RD-1, and MXD-1 shall require land use approval for further subdivision pursuant to Port Orchard Municipal Code Title 16.
17. Final construction drawings shall show Road No. 1 connecting to the pavement of Feigley Road. In addition, where Road No. 1 crosses the pedestrian path on the east side of Feigley Road, the path shall be well marked with raised paving or texturing material and cautionary signs visible to pedestrians and bicyclers utilizing the pathway.
18. That Applicant shall work in conjunction with the South Kitsap Schools to ensure adequate provisions are made student waiting areas for school bus pick-up, particularly at the Road 1/Feigley Road intersection.

Zoning

19. All conditions identified by City Departments and other agencies and conditions as modified by approval of a City Council development agreement, must be met prior to final plat approval.
20. Prior to issuance of building permits for residential dwelling units, school impact fees shall be paid in conformance with the requirements of POMC 16.70.160.
21. The Applicant, with SDAP submittal documents, shall submit landscape plans in conformance with POMC Chapter 16.50.
22. 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, unless modified by approval by the City Council of a Development Agreement.
23. All 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 1971; and shall at a minimum be constructed to the standard of an Access Road. This condition may be modified by approval by the City Council of the Development Agreement. Prior to final plat approval, the Applicant shall submit road names for the interior roads to the City for review and approval. It shall remain the sole responsibility expense of the Applicant to acquire the necessary easements and/or legal authority to use off-site private roadways and to construct all necessary improvements to bring them into compliance with the City's road standards, except as modified by approval by the City Council of the Development Agreement.
24. Vehicular access to residential lots shall have only one access point and shall access from interior streets only.
25. [Deleted]

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Fire Prevention

26. 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 the International Fire Code. No fire hydrants or location were indicated on the plans, fire hydrant locations shall be approved by the Fire District's Fire Prevention Office before any permits are approved for this site.
27. Hydraulic calculations or an on-Site fire flow test conducted shall be provided to the Fire District showing that adequate fire flow can be severed. This information will need to be provided and approved by the Fire District before the District can approve any building permits.
28. Fire department access must consist of the following:
 - a. The access road shall not exceed a 12% grade.
 - b. The unobstructed width of a fire apparatus access road shall be not less than 20 feet.
 - c. All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions or the turning around of fire apparatus.
 - d. The turning radius of a fire apparatus access road shall be a minimum of 35 feet inside diameter and 48 feet outside diameter.
29. Fire apparatus access roads shall also meet the requirements of the City of Port Orchard Fire Code Appendix D.
30. Should a Private Road serve more than two dwellings per the City of Port Orchard Fire Code, the new dwelling units will be required to be provided with a fire sprinkler system in all houses built. This requirement needs to be indicated and recorded on the Plat and plans.
31. Before construction may begin on any lot, fire department vehicle access must be provided in addition to the fire hydrants meeting the required fire flow. 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.

Public Works Conditions

General

32. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to City of Port Orchard for

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- review and acceptance. No construction shall be started prior to plan acceptance.
33. 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.
 34. Prior to approval of the construction plans, if needed all off-site easements must be recorded and submitted to the City.

Stormwater

35. The information provided demonstrates this proposal is a Major Development as defined in the City of Port Orchard Developer's Handbook at completion of application, and as such will require a Stormwater Permit from Public Works.
36. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the most current City of Port Orchard Stormwater Manual. 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 or as modified by the Development Agreement dated October 6, 2010.
37. 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.
38. 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.
39. 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/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.
40. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology.

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This approval must be completed prior to issuance of the Stormwater Permit.

41. The owner or homeowners association (HOA) shall be responsible for maintenance of the storm drainage facilities constructed in tract RD-1 for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities was required shall record a 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. This Public Works is required unless modified by the concurrently processed Development Agreement.
42. 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

43. Roads shall not exceed 12% grade.
44. Horizontal curves for public roads shall have minimum 181 foot centerline radii as outlined by the American Association of State Highway and Transportation Officials or as specified in the Kitsap County Road Standards (2007) and per designs enforced by the Development Agreement for McCormick North Ph. III. (Exhibits 22, 23 and 25, modified by Exhibit 1G, Sheet 4). Development Agreement for road standards shall prevail as standard, subject to approval by the City Engineer.
45. Construction of handicap access facilities within existing or proposed City right-of-way shall conform to the requirements of the Americans with Disabilities Act.
46. All lots shall access from interior roads only. This note shall appear on the face of the final plat map.
47. 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 Act per WSDOT Standard Plan F-40, as applicable, cement concrete sidewalk and approach details.


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48. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.
49. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Old Clifton and Road 6, as well as Feigley and Road 1. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the City of Port Orchard Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.
50. All work, equipment & materials for traffic signal and 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).
51. Any work within the City right-of-way shall require a permit to perform work on City right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted separately. The need for and scope of bonding will be determined at that time.
52. In lieu of half street improvements along (Old Clifton), including, but not limited to paving, curbs, gutters, and sidewalks, the Applicant shall dedicate 25 feet of right-of-way adjacent to Old Clifton road and shall create a clear and connected east west non motorized bicycle and pedestrian path internal to the preliminary plat adjacent to Road 1, as detailed in Exhibit 23, Appendix D.
53. Per Port Orchard Municipal Code Section 16.55.030, dead end streets shall end in cul-de-sacs.

Sewer

54. All sanitary sewer system improvements shall comply with City of Port Orchard Standards.

Decided this 20th day of October 2010.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

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