August 12, 2016`

CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER

REPORT AND DECISION

Project: Winslow Grove Preliminary Long Subdivision, Special Use Review and SEPA Appeal

File Number: PLN50381 SUB/SUR

Applicant: DeNova Northwest LLC
6830 S. 220 Street
Kent, WA 98032

Owner: Westwood LLC
120 130th Avenue SE
Bellevue, WA 98005

Location: 7629 Weaver Road

Request: Preliminary long lot subdivision approval to subdivide four (4) parcels, totaling 8.77 acres, into 19 single-family lots. Portions of two aquatic critical areas and their buffers are located on the subject property. An outfall of the proposed stormwater system requires Special Use Review (SUR) to encroach into a critical area buffer in accordance with BIMC 16.20.

\SEPA Review: A Mitigated Determination of Non-Significance (MDNS) was issued on June 23, 2016, with the 14-day appeal period ending on July 8, 2016. A timely appeal was filed by the applicant, challenging three of the MDNS conditions.

FINDINGS OF FACT

A. Site Characteristics

Tax Assessor Information	
Tax Lot Number	272502-2-066-2001, 272502-2-065-2002, 272502-2-064-2003, 272502-2-063-2004
Owners of Record	Westwood LLC
Lot Size	4 parcels totaling 8.77 acres
Land Use	Single-family residential
Terrain	Generally flat; slopes gently to the southwest and

	southeast; average grade is 4 percent
Soils	Kapowsin gravelly sandy loam
Existing Site Development	Single-family residential
Access	Weaver Road
Public Services and Utilities	City of Bainbridge Island sewer and water services
Zoning/Comprehensive Plan Designation	R-2; OSR-2
Surrounding Zoning/Comprehensive Plan Designation	R-2, OSR-2; R-0.4, OSR-0.4; R-3.5, OSR-3.5 (See Figure 2)
Surrounding Uses	Single-family residential, multi-family residential; active recreation (Rotary Park); agriculture

B. Procedural History

1. The City held a pre-application conference with the applicant on December 8, 2015, with a preliminary subdivision application received on January 19, 2016. The project was noticed for public comment on February 19, 2016.

2. Review by planning staff revealed that additional information and revisions were required in order to comply with applicable subdivision design standards and landscaping requirements, with a request for revisions sent to the applicant on March 22, 2016. Revisions to the drainage plan required submittal of a Special Use Review (SUR) application to allow the location of a portion of the stormwater system in a critical area buffer. The applicant submitted a SUR application on May 4, 2016.

3. The applicant submitted revisions to the preliminary plat drawing set and additional information as requested on May 12, 2016 and June 17, 2016. A Re-Notice of Application/SEPA comment period was issued for the preliminary subdivision and SUR on May 20, 2016, with the 14-day comment period ending on June 3, 2016. No comments were received.

4. The City issued its MDNS on June 23, 2016. The applicant appealed three conditions of the decision. After further consultation, two of the contested conditions were revised in a manner satisfactory to both the City and the applicant, leaving only MDNS condition no. 8 unresolved and subject to appeal.

5. BIMC 2.16.170 offers a process for consolidated administrative review at the applicant's option when a proposed development or use of land will require more than one permitting approval. Under consolidated review a single decision-maker makes all discretionary land use decisions required by the application. The subdivision and SUR proposals are being reviewed here under consolidated project review at the request of the applicant. In addition, state law requires that the applicant's administrative SEPA appeal be consolidated with the hearing on the underlying permits.

6. The consolidated public hearing on the applicant's preliminary plat and special use review applications and SEPA threshold determination appeal was held by the City's Hearing Examiner on July 26, 2016. The record on the SEPA appeal was held open until August 5, 2016, for receipt of further submissions from the parties.

C. Commenting Issues

7. The Bainbridge Island Fire Marshal commented that future development shall comply with the adopted fire code and applicable NFPA standards; fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles, and approved signs or markings that include the words "No parking – fire lane – tow away zone" shall be provided. The project is designed and conditioned to address these comments. As required by BIMC 2.16.125.G.3, the City's Development Engineer reviewed the preliminary subdivision proposal and provided recommended conditions of approval.

8. Nine public comments were received, focused on tree removal/retention, attributes and maintenance of open space/critical areas buffers, traffic and pedestrian safety, fencing, stormwater and wildlife habitat and connectivity. Comments identified an initial concern that the majority of trees onsite were being removed, including those in the roadside buffer along Weaver Road. Later revisions to the tree retention plan and landscape plan depict a number of additional trees to be retained, including all significant trees and the tree stand along Weaver Road (requiring re-alignment of the internal road) and several significant trees along the northern property boundary. An arborist report evaluated 635 trees on site, 559 of which will be retained in Open Space Tract A.

9. Comments specified a concern that the development would adversely affect downstream conditions in Hirawaka Creek and that the stormwater modeling calculations were inaccurate. The City's Development Engineer found that the preliminary long subdivision conforms to regulations concerning drainage stated in BIMC Chapters 15.20 and 15.21 and will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of downstream properties. The project will add about 100,000 square feet of new impervious surfaces to the site, thus triggering the full menu of minimum requirements under the DOE stormwater manual designed to maintain peak flows at or below predevelopment rates. Some onsite dispersion of flows to open space areas is anticipated.

10. Concern was expressed regarding the impacts of solid board fencing on the aesthetic quality of the neighborhood and wildlife connectivity. The Development Engineer found that solid board fencing is not required around the proposed stormwater ponds. The Mitigated Determination of Non-Significance (MDNS) includes a condition that prohibits use of solid board fencing throughout much of the site in order to maintain wildlife habitat connectivity, reduce aesthetic impacts and increase compatibility with adjacent uses.

11. The project will generate 171 additional daily vehicle trips. A traffic impact analysis demonstrated that the project's peak hour trips would minimally impact the City's road system. The site has convenient arterial access north from Weaver Way to High School Road and south to Wyatt Way. All roads serving the site will operate at an acceptable level of service after plat development. The City has issued a Certificate of Concurrency concluding that the capacity of transportation facilities affected by the proposed development will be adequate to maintain a satisfactory level of service standard after accommodating the impacts of the development. The applicant voluntarily offered a non-motorized trail easement along the southern boundary.

D. Regulatory Compliance

12. The applicable standards for Hearing Examiner approval of a preliminary subdivision

application are stated at BIMC 2.16.125.H:

> *H. Decision Criteria for Preliminary Long Subdivisions. The hearing examiner's decision shall include findings of fact that the application meets all the requirements of the following subsections:*
>
> > *1. The preliminary long subdivision may be approved or approved with modification if:*
> >
> > > *a. The applicable subdivision development standards of BIMC Titles 17 and 18 are satisfied; and*
> > >
> > > *b. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and*
> > >
> > > *c. The preliminary long subdivision has been prepared consistent with the requirements of the flexible lot design process, unless a flexible lot standard has been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; and*
> > >
> > > *d. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and*
> > >
> > > *e. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and*
> > >
> > > *f. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:*
> > >
> > > > *i. The long subdivision conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and*
> > > >
> > > > *ii. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and*
> > > >
> > > > *iii. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and*
> > > >
> > > > *iv. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and*
> > > >
> > > > *v. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the*

site; and

vi. The long subdivision conforms to the "City of Bainbridge Island Engineering Design and Development Standards Manual," unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and

g. The subdivision conforms to the requirements of this chapter and the standards in the "City of Bainbridge Island Design and Construction Standards and Specifications," unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17; and

h. The proposal complies with all applicable provisions of this code, unless the provisions have been modified as part of a housing design demonstration project pursuant to BIMC 2.16.020.Q; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and

i. The proposal is in accord with the city's comprehensive plan.

2. A proposed subdivision shall not be approved unless written findings are made that the public use and interest will be served by the platting of such subdivision.

13. Regarding critical areas, the Winslow Grove property contains the southern end of a large regulated wetland that extends north to High School Road plus a segment of a regulated stream, Hirakawa Creek, that lies near the eastern wetland edge, with associated buffers. All on-site critical areas and their buffers will be included in Open Space Tract A, to be protected in perpetuity through an open space management plan recorded with the final plat. A proposed 12-inch storm drain to be located within the stream buffer requires special use review and approval, as provided below. According to the site's delineation report, the wetland is classified as Category III and requires an 80 foot water quality buffer and 70 foot habitat buffer (150 feet total) in addition to a 15 foot building setback.

14. BIMC 16.20.130.B.1 specifies the categories for classifying fish and wildlife habitat conservation areas. The wetland delineation report submitted with the application classifies the stream as a Type Np water (non-fish bearing). Other regional resources classify the onsite stream as a Type F water (fish-bearing), as does the project's habitat management plan. No definitive evidence of fish presence has been provided, and downstream barriers to fish passage suggest that the onsite segment may not in fact contain fish. BIMC 16.20.130.C.2, Table 2, prescribes for Type F streams a 100 foot water quality buffer and 50 foot habitat buffer (150 feet total) plus a 15 foot building setback.

15. All land divisions and land uses proposed on a site that includes fish and wildlife habitat conservation areas must comply with the procedures and development standards stated at BIMC 16.20.130.C.8. All required buffers are to be designated within an easement or covenant recorded with the final plat. The onsite stream buffer is included in Open Space Tract A. The common boundary

between the required buffer and adjacent lands will be identified using low impact fencing.

16. Pursuant to BIMC 16.20.130.C, construction of utilities may be permitted in fish and wildlife habitat conservation areas or their buffers only when no practicable or reasonable alternative location is available and the utility corridor meets the applicable vegetation installation, replacement and maintenance requirements. No trees greater than 12 inches will be disturbed as a result of the storm drain installation and maintenance. The utility corridor will be revegetated with appropriate native or equivalent vegetation at not less than pre-construction vegetation densities in accordance with the project's habitat management and mitigation plan.

17. The proposed 110-foot stormwater outfall is subject to a special use review pursuant to BIMC 16.20.160.G. The outfall pipe is required at this location to achieve the proper hydraulic fall for gravity discharge. Due to siting of the associated detention tank and the property's topography, it is not practicable to discharge stormwater from the west side of the subject property to an alternative location. The proposed use is thus consistent with the spirit and intent of Chapter 16.20 in that it is the minimum necessary to achieve the project action, avoids site clearing and vegetation removal, provides adequate mitigation to compensate for adverse impacts to the stream buffer, and will cause no adverse impacts to the wetland or the its buffer that cannot be mitigated.

18. BIMC 16.20.160(E), Table 8, provides that land division is a permitted activity on sites with wetlands and wetland buffers so long as homesites lie outside regulated areas. If all applicable standards are met and no variances are requested, the density from the wetland area can be transferred elsewhere within the property. The proposed subdivision provides protection to the wetland and its buffer through dedicated open space, with all homesites and improvements to be located outside of critical areas. The subject property contains 8.77 acres (382,021 square feet). Based on its underlying R-2 zoning, the site's allowable density is 19 lots.

19. Regarding compliance with the City's subdivision design standards (BIMC Chapter 17.12), all subdivisions within the City are required to be configured in accordance with the flexible lot design requirements stated at BIMC 17.12.020. The Winslow Grove subdivision complies with the flexible lot design standards. All home sites and plat infrastructure are located outside critical areas and required buffers and setbacks. Lot areas, dimensions, and other design characteristics will comply with the requirements of BIMC Title 18. Specific details are recited in the staff report.

20. The subdivision will rely on public water and sewer services, both of which have capacity to accommodate the subdivision. Because the subdivision is to be served by a public sewer system, the minimum lot size standard is 5,000 square feet when located outside critical areas and their buffers. Each lot will be in excess of 5,000 square feet, with lots ranging in size from approximately 8,900 to 17,000 square feet. Minimum lot width will be 50 feet. The maximum lot coverage permitted for lots in the R-2 zone is 20 percent. The proposed maximum lot coverage of approximately 4,280 square feet per lot equals this maximum allowable coverage.

21. The City's Development Engineer has reviewed and approved the plat's proposed new road and cul-de-sac and found their design to be in accordance with the "City of Bainbridge Island Design and Construction Standards and Specifications." Existing roadway character is to be maintained where practical, which may be accomplished through the reduction of roadway width, the minimization of curb cuts, and the preservation of roadside vegetation. The new road design minimizes impervious

surfaces by incorporating a cul-de-sac to serve all 19 lots. No new transit stops are recommended because existing stops are already located in the vicinity of the subject property on both High School Road (to the north) and Wyatt Way (to the south).

22. The City's Development Engineer found that the streets and pedestrian ways proposed by the applicant will be adequate to accommodate anticipated traffic. A public access easement for a pedestrian walkway is planned within the roadside buffer along Weaver Road. A non-motorized trail easement is proposed along the southern boundary of the subdivision to provide bicycle and pedestrian access as well as a link in the City's non-motorized transportation network.

23. To provide compliance with the tree retention, protection and replacement requirements of BIMC 18.15.010.C, an arborist report was submitted with the revised preliminary subdivision application (Tree Solutions, Inc.; May 9, 2016). The report includes an inventory and evaluation of 635 on-site trees, 559 of which are located within the critical areas, their buffers or setbacks and thus slated for retention. Pursuant to BIMC 18.15.010.E.1 and 2, roadside buffers apply to residential subdivisions. The site landscape plan shows a 25 foot full screen buffer that demonstrates compliance with the planting requirements of BIMC 18.15.010.D.4.

24. The City's applicable Comprehensive Plan policies largely track the regulatory scheme summarized above. The Planning and Community Development staff report supplies a thorough and adequate discussion of the relevant Plan policies and is adopted herein by reference. The plat's compliance with Comprehensive Plan policies as implemented by the City's development and critical areas regulations will result in appropriate provisions for the public health, safety and general welfare and the public use and interest.

E. SEPA Threshold Determination Appeal

25. The standards applicable to deciding an administrative appeal of a SEPA threshold determination are supplied by state law. WAC 197-11-660(1), which the City has adopted by reference at BIMC 16.04.155, reads as follows:

> *(1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:*
>
> > *(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.*
> >
> > *(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.*

(c) Mitigation measures shall be reasonable and capable of being accomplished.
(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.
(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

26. For our review purposes the key language is found at WAC 197-11-660(1)(d), which states that a mitigation measure "*may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal.*" Attribution implies a causal connection. The question presented by the applicant's appeal is whether the requirement within MDNS condition no. 8 for removal of invasive plant species from the site's wetland buffer and their replacement with native vegetation will actually operate to mitigate any development impacts caused by the applicant's proposal.

27. The stated purpose of MDNS condition no. 8 is to "mitigate for the impacts from light, glare, noise and human presence on the on-site wetland." The condition also imposes a requirement for a "wetland buffer enhancement plan, including a seven (7) year maintenance and monitoring plan," which shall "include mitigation, maintenance and monitoring actions; plant species, size and spacing; and success criteria the same or similar to those provided in the *Winslow Grove Habitat Management and Mitigation Plan* (Confluence Environmental Company, April 19, 2016)."

28. No one has suggested that removing invasive plants from a wetland buffer and replacing them with native vegetation is not a virtuous public goal. There is no serious doubt that the habitat value of the buffer eventually would be enchanced by such a program. If plat development were to degrade vegetation in a way to cause a decrease in existing habitat values in the buffer, restoration of the type envisioned by condition no. 8 would likely be justified. But the rationale offered by the City for the condition is not based on loss of habitat to plat development but rather the need to "mitigate for the impacts from light, glare, noise and human presence on the on-site wetland." So the question becomes whether the mitigation imposed possesses some rational nexus to the problem to be solved. If it does not, its imposition cannot be justified under SEPA even though such mitigaton may have other commendable qualities.

29. As Christopher Berger's August 5, 2016, memorandum points out, the screening functions identified as supporting the need for conditon no. 8 "are a product of the physical, and not biological, characteristics of the buffer" and the City has failed to demonstrate that the existing invasive vegetation constitutes a less effective physical screen that the native materials proposed as a replacement. In fact, it seems likely that replacement of existing mature invasives with new native plantings will result in a decreased level of screening in the short term. The *Winslow Grove Habitat Management and Mitigation Plan* referenced in condition no. 8 as regulatory guidance calls for installation of plants from one-gallon containers, the shrubs to be separated by six feet on center and the trees on twenty foot centers. These are, in other words, small plantings well separated from one another that will require a number of years to grow to effective screening size, in the interim resulting in a decreased level of screening.

30. Ms Carr's July 26, 2016, memorandum does not successfully address the question of why the existing invasives would provide inferior screening capacity compared with new native vegetation. It

reiterates the undisputed habitat values of native vegetation buffers but fails to credibly link these values to the screening function. While it asserts that some such connection exists, no causal process is described nor is site-specific evidence offered to support such a conclusion. The burdens imposed by condition no. 8 cannot be justified by mere speculation. Thus, based on the record as a whole, the City's imposition of MDNS condition no. 8 was clearly erroneous and must be overturned. The adverse habitat consequences of retaining invasive plants in the wetland buffer, whatever they may actually be, are unrelated to the screening function rationale cited by the City in support of its condition. The remedial actions specified within condition no. 8 have not been demonstrated as attributable to, or mitigation for, the adverse light, noise and intrusion impacts of the plat proposal identified by and relied upon by the City.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this subdivision proceeding and is authorized under City ordinances to make a final decision on the Winslow Grove preliminary subdivision application. Subdivision public hearing notice requirements have been met.

2. As documented with the findings stated above, the plat application for Winslow Grove meets the decisional criteria stated at BIMC 2.16.125.H for preliminary plat approval. It complies with the applicable land use and subdivision development standards of BIMC Titles 17 and 18, and, as conditioned, makes appropriate provisions for the public health, safety and general welfare and for the public use and interest, including all items listed in RCW 58.17.110. The proposed development will be consistent with the City's comprehensive plan.

3. The residential lots proposed within the preliminary long subdivision conform to the requirements of the flexible lot design process. The open space set aside will ensure the long term protection of critical areas and their buffers while providing adequate space for residential development at the density allowed by the zoning.

4. The City Engineer's recommendation for preliminary approval contains determinations that the City's decisional criteria for drainage, streets and pedestrian ways, road standards and utilities can be met, and such determinations are supported by substantial evidence within the record.

5. The standards for special use review approval stated at BIMC 16.20.160.G have been met by the proposal and its mitigation plan. No practical alternative exists for locating the stormwater outfall outside the stream buffer and all adverse impacts resulting from its placement will be mitigated.

6. The applicant's SEPA appeal challenging MDNS condition no. 8 must be granted. The City has failed to establish a causal nexus between the proposed mitigation requirement and the environmental impacts it seeks to reduce or avoid, as required by WAC 197-11-660(1)(d). Imposition of a condition under SEPA authority unrelated to its targeted impacts was clearly erroneous.

DECISION

The applicant's SEPA threshold determination appeal is GRANTED with repect to MDNS condition no. 8. The application for the Winslow Grove Preliminary Long Subdivision and Special Use Review

(PLN50381 SUB/SUR), as depicted on the revised plans dated July 21, 2016, is APPROVED, subject to the following conditions of final plat approval:

SEPA Conditions

1. The following note shall be placed on the final plat: "Prior to any clearing or grading on individual lots, a clearing, grading or building permit shall be obtained by the City."
2. No clearing or grading for roads, drainage or stormwater facilities, trails or other subdivision improvements shall occur until a plat utilities permit has been approved by the City for the phase in which the work is to be completed.
3. All work shall adhere to the City's seasonal work limitations between October 1 and April 30 of any year. During this period, no soils shall remain exposed and unworked for more than two (2) days. From May 1 to September 30, no soils shall remain exposed and unworked for more than seven (7) days.
4. Prior to any construction, a temporary erosion and sedimentation control plan (TESCP) shall be submitted and approved by the City. Construction shall be restricted to the dates occurring between May 1 and September 30 unless a wet weather erosion control plan is submitted and approved by the City prior to construction.
5. All graded materials removed from the subject property shall be hauled to and deposited at City approved locations (Note: local regulations require that a grade/fill permit is obtained for any grading or filling of 50 cubic yards of material or more if the grading or filling occurs on sites that have not been previously approved for such activities. A SEPA Threshold Determination is required for any fill over 100 cubic yards on sites that have not been previously received a SEPA determination).
6. The limits of clearing and grading shall be clearly marked in the field and inspected by Department of Planning and Community Development staff prior to start of any clearing, grading or other site work.
7. To mitigate impacts on air quality during earth moving activities, contractors shall conform to Puget Sound Clean Air Agency regulations to ensure all reasonable precautions are taken to avoid dust emissions.
8. DELETED.
9. In order to mitigate for the effects of the proposed stormwater outfall within the buffer of Hirawaka Creek, implementation of the *Winslow Grove Habitat Management and Mitigation Plan* (Confluence Environmental Company, April 19, 2016) is required. The success criteria for invasive species percent cover (see Table 2 – Success Criteria) shall be $\leq$ 15 (not the $\leq$ 25 listed in the table). A performance and maintenance surety is required in accordance with BIMC 16.20.180 unless mitigation actions are complete prior to final subdivision approval.
10. No construction staging is permitted in Open Space Tract A.
11. Construction limit fencing around the proposed 12 inch storm drain outfall and dispersion tee within Open Space Tract A shall be installed and inspected by Department of Planning and Community Development staff prior to start of any site work or construction activity.

12. No pesticides, herbicides or fertilizers may be used in Open Space Tract A.
13. Placement of fill dirt, lawn clippings, wood chips, and other yard waste, garbage or debris in Open Space Tract A is prohibited.
14. All trees within Open Space Tract A are required to be retained in perpetuity. Hazard tree removal may be allowed only with City approval and appropriate replanting.
15. Tree protection fencing is required for protection of trees on adjacent properties pursuant to BIMC 18.15.010.4.
16. All trees noted "Preserve and Protect Existing Trees, As Shown" on the Landscape Plan (Jeffrey B. Glander & Associates, May 11, 2016) and Tree Retention Plan (AES Consultants, June 16, 2016) shall be protected with tree protection fencing pursuant to recommendations in the arborist report (Tree Solutions Inc.; May 9, 2016), detail 1/C1.2 on the TESC Plan (Browne Wheeler Engineers, Inc.; April 29, 2016) submitted with the Plat Utility permit and BIMC 18.15.010.C.4.
17. If trees required to be retained are not retained or if protection measures are not fully implemented, requirements for unauthorized removal provided in BIMC 18.15.010.C shall apply.
18. Tree protection fencing shall be installed as shown on the TESC Plan and inspected by Department of Planning and Community Development staff prior to start of any site work or construction activity. Additional tree protection fencing shall be provided for trees with critical root zones in close proximity to proposed construction activity including, but not limited to, Tree 627, 673, 700, 501-515, 535-538.
19. The arborist report (Tree Solutions Inc.; May 9, 2016) shall be amended to include verification that any utility trenching and site grading work performed within the critical root zone of trees to be retained and trees on adjacent properties to be protected will not be detrimental to the health of the tree and/or create a hazard tree. The amended report shall provide the same tree reference numbers as shown on the Tree Retention Plan and be submitted to the Department of Planning and Community Development prior to approval of the plat utility permit.
20. Any utility trenching and site grading work performed within the critical root zone of trees to be retained and trees on adjacent properties to be protected shall be monitored by a certified arborist. Any tree requiring monitoring shall be flagged in the field and inspected by Department of Planning and Community Development staff prior to start of any site work or construction activity.
21. Any non-exempt tree harvesting shall require a Forest Practices Permit from the Washington Department of Natural Resources. The conditions of approval of the subdivision (PLN50381SUB) shall become conditions of the Forest Practices Permit.
22. No solid board fencing is permitted along the southern property boundary nor within or along the frontage of the required roadside buffer, except as shown on the exhibit A attachment to exhibit 18. As shown in the exhibit A attachment, a split rail fence will be provided between Open Space Tract A and adjacent building lots 5 through 11, and Open Space Tract B, as well as between the trail easement and Open Space Tract B. Nothing in this condition is intended to limit the location of solid board fencing elsewhere within the subdivision, including but not limited to side yard lot lines, nor to limit the City's ability to install fencing along the border of

Stormwater Tract C.

23. To mitigate typical impacts (e.g.; human/pet disturbance; potential encroachment) to the open space area, low-impact fencing and signage is required to delineate the perimeter of Open Space Tract A in accordance with BIMC 17.12.030.A.8.

24. On-site mobile fueling from temporary tanks is prohibited unless the Applicant provides and is granted approval for a Permit and Best Management Plan that addresses proposed location, duration, containment, training, vandalism and cleanup. (Reference 1. Uniform Fire Code 7904.5.4.2.7 and 2. Department of Ecology Stormwater Management Manual, August 2001, see Volume IV "Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment".) (WAC 173-304)

25. All construction activities shall comply with noise limitations in residential zones per BIMC 16.16.020.

26. The contractor is required to stop work if any historical or archaeological artifacts are uncovered during excavation or construction and immediately notify the Department of Planning and Community Development and the Washington Office of Archeology and Historic Preservation.

27. The Applicant shall provide the following trail easements and built trails as shown on the exhibit A attachment to exhibit 18: a 15-foot wide trail easement along the southern property boundary extending from Weaver Road then to the west edge of the new plat road's cul-de-sac, which 15-foot trail easement will be co-extensive with the 20-foot wide storm pond access road easement. Unless later replaced by the City, the constructed 10-foot wide storm pond access road shall also serve as the public trail in the location shown on the exhibit A attachment. An additional 15-foot wide trail easement corridor shall be provided along the southern property boundary, extending from the west edge of the storm pond access road easement, then to the western property boundary. Both trail easements shall be granted and conveyed to the City.

Project Conditions

28. The Project shall comply with the following conditions of the City's Development Engineer:

General

a. Civil improvement plans shall be submitted with an application for a plat utility permit to COBI for review and approval to construct all necessary infrastructure serving the divided lots. No additional building permits will be issued prior to completion of the civil improvements or until performance bonding is established to cover unfinished work.

b. DELETED.

Pedestrian Access

c. A public access easement for the pedestrian walkway located in the landscape buffer on Lot 1, "the walkway", shall be dedicated on the face of the plat.

d. The walkway shall be Americans with Disabilities Act (ADA) compliant and include a firm and stable surface of concrete, chip seal or crushed stone treated with a stabilizer and shall extend to

connect to an existing concrete walk at the intersection of Rosario Place and Weaver Road NE.

e. The walkway width shall be a minimum of 5 feet consistent with the City of Bainbridge Island Design and Construction Standards sidewalk specifications and contain clear widths no less than 32 inches for a maximum length of 24 inches where utility poles obstruct the full width walkway.

f. An ADA compliant ramp with raised truncated domes shall be provided at the intersection of the plat road and the walkway.

g. A trail easement along the southern boundary of the project shall be dedicated to the City for non-motorized trail connectivity consistent with the Comprehensive Plan and Non-Motorized Transportation Plan (NMTP). The easement shall be dedicated on the face of the plat.

Roads

h. Prior to final plat approval the plat drawings shall be amended to reflect road right-of-way and utilities easements for storm and sewer at the intersection of the new plat road and Weaver Road NE to accommodate both horizontal layout of edge of road and shoulder radii that terminate at a point of tangency with the existing edge of pavement and the sewer and storm drain alignments that cross through Lot 19.

i. The new plat road shall meet the standard specification for a Residential Suburban Optional roadway, per DCSS Dwg. No. 7-065 and employ two-way traffic turnouts every 300 feet per Dwg. Nos. 7-066 and 7-067.

j. The new plat road shall include 'NO PARKING – FIRE LANE – TOW AWAY ZONE' signage prohibiting parking on street and within turnouts.

k. The dead-end street shall include a firetruck and vehicle turnaround meeting City standards and Bainbridge Island Fire Department requirements.

l. Landscaping along the eastern portions of the project shall not obstruct the stopping sight distance triangle of an approaching vehicle and a vehicle at the stop line of the new plat road at the intersection with Weaver Road NE.

m. The preconstruction condition of Weaver Road NE fronting the property shall be photo documented to the satisfaction of the City engineer prior to issuance of any permit. Prior to approval of final plat or release of any performance assurance damage to the road caused by heavy construction equipment and traffic shall be fixed by the permit holder.

n. Shoulder improvements along the southbound lane of Weaver Road NE are required as a condition of development to include construction of a 3-foot wide gravel shoulder and reconstruction of a drainage ditch.

Stormwater

o. The maximum individual lot impervious surface shall not exceed 3,600 square feet consistent with the long subdivision's stormwater mitigation systems unless demonstrated that stormwater

runoff from additional impervious surface meets the flow control requirements of BIMC 15.20 by employing additional on-site infiltration or retention BMPs. The condition shall be on the face of the plat.

p. A Stormwater Pollution Prevention Plan (SWPPP) is required prior to construction activities including clearing or grading or civil improvements. Stormwater quality treatment, erosion and sedimentation control shall be designed in accordance with BIMC 15.20. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.

q. Prior to final plat submittal, the applicant shall submit an operation and maintenance plan for the on-going maintenance of the storm drainage systems to the satisfaction of the City engineer to aid city operations and maintenance personnel in accepting and maintaining the dedicated infrastructure.

r. The lots meeting full dispersion in the western basin will discharge to Tract A through more than 100 feet of vegetation. The Declaration of Covenants, Conditions and Restrictions (CC&Rs) shall restrict alterations to the Open Space tract that would interfere with the natural overland dispersion of stormwater through full vegetation.

s. The face of the plat shall indicate the stormwater on-site will be disposed of via detention ponds to Weaver Road, a detention tank to Hirakawa Creek, and dispersion through Tract A to Hirakawa Creek.

t. An all-weather driveable surface access road with a minimum 12-foot width shall be provided to allow maintenance of the underground detention tank manholes and control structure.

u. A utility easement for stormwater access and maintenance purposes shall be dedicated to benefit the City for the stormwater facility and outfall in Tracts A and B.

v. At the time of building permit application for the individual lots, demonstration of compliance with applicable stormwater management requirements shall be required in accordance with BIMC 15.20 and 15.21. This note shall be listed on the face of the final plat.

w. Tract C and its stormwater facility, as well as all stormwater improvements in the right-of-way, and any other public stormwater improvements, will be dedicated to the City for ownership and maintenance. Any private stormwater facilities, such as storm lines conveying drainage on lots 1 through 19 into the public storm system, shall remain privately owned and maintained. Each property owner shall be responsible for maintenance of those private storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for stormwater system operation and maintenance will be required to be recorded before final plat submittal. The approved language for the Declaration of Covenant is found in BIMC Chapter 15.21, Exhibit A.

x. On-site Best Management Practices for soil management and Low Impact Development (LID) shall be employed per BMP T5.13 of the COBI adopted stormwater manual. Soil retention areas shall be identified in the SWPPP and protected with orange construction fence. Soil quality of compacted soil shall be established by ripping and scarifying soils with amendments and vegetation planting.

Utilities

y. Utility trenching and site grading work performed within the drip line or critical root zone of significant trees to be retained shall be monitored by a certified arborist.

z. A water line extension in Weaver Road NE with a Pressure Reducing Valve (PRV) shall be required as a condition of development as detailed through the Developer's Extension Agreement (DEA) process and documentation.

aa. All infrastructure facilities serving the plat to be inspected and accepted by the City shall be detailed in the DEA.

Permitting

bb. The proposed action(s), phased or concurrent, in their totality will result in more than one (1) acre of earth disturbance on the site and drain to waters of the State. The project requires a Construction Stormwater General Permit from the Washington State Department of Ecology. Under the permit the site shall be monitored for discharge of pollutants and sediment at all outfall/sampling locations. No land clearing or construction permits shall be issued prior to obtaining the State permit.

cc. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.

dd. Installation of improvements and creation of as-built engineered plans must be completed prior to approval of final plat. In lieu of completion of those improvements and as-builts consistent with the conditions of a preliminary plat approval, the City engineer may accept an assurance device, in an amount and in a form determined by the City, but not to exceed 125 percent of the established cost of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city engineer determines is appropriate after final plat approval.

29. A 25-foot full screen perimeter landscape buffer shall be maintained along the eastern subdivision boundary that is adjacent to Weaver Road. Native vegetation shall be retained to the extent possible.

30. The Weaver Road roadside buffer shall be maintained for the life of the project. An irrigation plan to meet the requirements of BIMC 18.15.010.H and I shall be submitted and approved by the City prior to final plat submittal.

31. All landscaping shall be installed, or a performance assurance device shall be submitted and approved, prior to final inspection on the plat utility permit. The installation of landscaping shall be verified by the Landscape Professional of record or owner and a landscaping declaration shall be signed.

32. The Weaver Road roadside buffer shall be maintained with a maintenance assurance device for

a period of three years. All plant material shall be managed by pruning so that plant growth does not conflict with public utilities, restrict pedestrian or vehicular access, or create a traffic hazard. Other than routine maintenance and trimming, no vegetation within the buffers shall be disturbed without approval of the Department of Planning and Community Development through an approved clearing, grading or civil plan. This note shall be included in the open space management plan and included on the face of the plat.

33. Requirements of tree retention pursuant to BIMC 18.15.010.C and the Tree Retention Plan (Exhibit 1b) shall be listed on the face of the plat.

34. DELETED.

35. Signs shall be erected in accordance with BIMC 17.28.020.37 and shall be spaced at no more than 50 foot intervals along the boundary between Tract A and lots 5 through 11. The signs shall be installed or assured prior to final plat approval and shall be maintained in perpetuity.

36. A final open space management plan must be submitted with the final plat application and approved by the City, and then recorded with the Kitsap County Auditor as part of the final plat. The final open space management shall be modified to include potential future uses in Tract A consistent with BIMC Chapter 16.20 and any alterations that would preclude or inhibit overland flow of stormwater. The open space management plan shall also contain the same restrictive language contained in BIMC 17.12.030 A.7.f regarding stormwater facilities within the open space areas.

37. The following table indicating the required setbacks and lot coverage shall be recorded on the face of the final plat. A revised preliminary plat drawing meeting these requirements shall be submitted to and approved by the City prior to final plat submittal.

	Minimum
Building to Building	10 feet
Building to exterior subdivision boundary	15 feet
Building to internal street	15 feet
Building to trail, open space or access easement	10 feet
Building to Weaver Road (collector road)	30 feet
Maximum Lot Coverage per Lot	TBD at final

38. The final plat submittal shall include street names, the location of any traffic regulatory signs and approved mailbox locations from the United States Postal Service. The applicant is responsible for street names signs in accordance with the Manual on Uniform Traffic Control Devices and City requirements.

39. A plat certificate shall be provided with the final plat application.

40. School impact fees may be required. In the event school impact fees are adopted, the timing and amount for impact fee payments shall be set by applicable City regulations and State law, including the potential for deferred payment of impact fees set forth in RCW 82.02.050.

41. To meet the requests of the Fire Marshal, the building permits for the individual homes shall comply with the applicable fire code.

42. The applicant shall coordinate with the Fire Marshal to determine the location for required fire hydrants. Hydrants shall be installed or bonded for prior to the submittal of the final plat.

43. The final plat shall be submitted in substantial compliance with preliminary plat drawings provided in Exhibit 1 and as revised and provided in Exhibit 7, except to conform to the above conditions.

44. Conditions 12-14, 17, 29, 30, and 37 shall be listed on the final plat drawing.

ORDERED August 12, 2016.

Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The Hearing Examiner is authorized to make the City of Bainbridge Island's final decision on a preliminary subdivision application. A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

EXHIBIT LIST

WINSLOW GROVE SUBDIVISION/SPECIAL USE REVIEW and SEPA APPEAL

PLN50381 SUB/SUR

Staff Contact:
Christy Carr, Senior Planner

Public Hearing:
July 26, 2016

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Preliminary Long Subdivision application with supporting documents: A. Owner agent agreement B. Preliminary plat drawings (including drainage, utilities and landscape plan) C. Non-binding Commitment for Water and Sewer System Capacity D. Preliminary drainage/utilities plan E. SEPA checklist with Staff Comments F. Draft open space management plan G. Traffic Impact Analysis H. Limited soil characteristics investigation I. Title Report J. Lot closures K. Draft Declaration of Covenants, Conditions and Restrictions L. *Wetland Delineation Report for the Weaver Road Property* (Ecological Land Services, Inc. July 2015 M. Special Use Review Application N. SEPA checklist O. *Winslow Grove Habitat Management and Mitigation Plan* (Confluence Environmental Company, April 19, 2016) P. Site Plan	01/19/2016 (Received) 05/04/2016 (Received)
2	Notice of Application and SEPA comment period	02/19/2016 (Dated)
3	Revised Notice of Application and SEPA comment period	05/20/2016 (Dated)
4	Notice of Mitigated Determination of Non-Significance	06/23/2016 (Dated)
5	Applicant's Comments and Notice of Appeal of MDNS	07/07/2016 (Dated)
6	COBI Correspondence re: Preliminary Subdivision Application and Request for Information	03/22/2016 (Dated)
7	Revised Project Drawings	5/2016 thru 6/2016 (Dated)
8	Public Comments	02/22/2016 thru 03/04/2016 (Dated)
9	Arborist Report	05/12/2016 (Received)
10	Certificate of Concurrency	01//2016 Dated
11	Fire Marshal comments	01/23/2016 (Dated)

EXHIBIT LIST

WINSLOW GROVE SUBDIVISION/SPECIAL USE REVIEW and SEPA APPEAL

PLN50381 SUB/SUR

Staff Contact:
Christy Carr, Senior Planner

Public Hearing:
July 26, 2016

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
12	Development Engineer Comments	06/20/2016 (Dated)
13	Notice of Public Hearing and Certificate of Distribution	07/08/2016 (Published)
14	Notice of Hearing – Appeal of MDNS and Certificate of Distribution	07/13/2016 (Dated)
15	Staff Report	07/18/2016 (Dated)
16	COBI Memorandum re: MDNS Appeal – Revised Conditions	07/20/2016 (Dated)
17	Resume of Chris Berger, Senior Ecologist – Confluence Environmental Company	07/26/2016 (Admitted)
18	CH & Attorneys at Law – Letter re: Applicant's Comments and Request for Revision to Certain Preliminary Plat Conditions dated July 26, 2016.	07/26/2016 (Admitted)
19	Preliminary Plat of Winslow Grove Site Plans	07/26/2016 (Admitted)
20	Memo from Planner Christy Carr re: MDNS Condition 8	07/26/2016 (Dated)
21	Applicant's Response to Carr Memo re: MDNS Condition 8	08/05/2016 (Dated)