



Rafe Wysham
Director

KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

To enable the development of quality, affordable, structurally safe and environmentally sound communities.

Notice of Hearing Examiner Final Decision Upon Reconsideration

4/7/2025

To: Interested Parties and Parties of Record

RE: Project Name: Administrative Appeals of Meadowview Preliminary Plat (PPLAT) #23-03239 & and Meadowview Shoreline Conditional Use Permit (CUP-SHORELINE) #23-03929

Applicant: Sequoia Spring III LLC
18300 Redmond Way, Ste 120
Redmond, WA 98052

Appellant: David Shorett
1049 Hawley Way
Bainbridge Island, WA 98110;
Donald Fenton
13103 Lake Shore Dr NW
Poulsbo, WA 98370;
Friends of Island Lake
NO CONTACT INFORMATION PROVIDED

Application: Administrative Appeal; Preliminary Plat; Shoreline Conditional Use Permit

Permit Number: 24-04549 (Appellant Appeal) & 24-04555 (Applicant Appeal) & 23-03239 (PPLAT) & 23-03929 (CUP-SHORELINE)

The Kitsap County Hearing Examiner has **APPROVED** the Applicant's Motion for Reconsideration for minor adjustments to the conditions of approval, and **GRANTED in part** the Appellants' Motion for Reconsideration for substantial adjustments to the conditions of approval of the final decision issued for **Permits 24-04549 & 24-04555: Administrative Appeals of Meadowview Preliminary Plat (PPLAT) #23-03239 and Meadowview Shoreline Conditional Use Permit (CUP-SHORELINE) #23-03929** and **Permits 23-03239 Meadowview Preliminary Plat (PPLAT) and 23-03929 Meadowview Shoreline Conditional Use Permit (CUP-SHORELINE)** on 2/26/2025, subject to the conditions outlined in this Notice and included Decision Upon Reconsideration and Final Decision issued on 2/26/2025.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

#23-03239 CC:

Applicant: Core Design Inc, permits@coredesigninc.com

Subject Property Owner of Record: Ben Paulus - Blue Fern, ben@bluefern.com

Applicant Authorized Agent: Anna Drumheller - Blue Fern, anna@bluefern.com

Engineer: Holli Heavrin - Core Design Inc, HHeavrin@coredesigninc.com

Surveyor: Core Design Inc, permits@coredesigninc.com

Interested Parties: Andy Larson – WSDOT, andrew.larson@wsdot.wa.gov; Beth & TK Mac, macbethact1@gmail.com; Beverly Parsons, bevandpar@gmail.com; Bradley & Marni Otremba, marni_42086@yahoo.com; Bruce Piercy, wbpiercy@comcast.net; Bryan Telegin - Telegin Law, bryan@teleginlaw.com; Carol Price, carol9price@comcast.net; Chris Clark, chris@cotni.org; Chris Fry, afrymail@mac.com; Cindy Allpress, cindyallpress@gmail.com; Coleen Shoudy, ceshoudy@gmail.com; Daryl & Marie Schruhl, 8984 NELS NELSON RD NW BREMERTON, WA 98311; David & Nina Morse, dmorse@wavecable.com; David Shorett dshorett@comcast.net; Debbie & Dan McGuire, drcmcguire92007@yahoo.com; Deborah Brennan, dbrennan2003@yahoo.com; Diane & Dave McReynolds, dianenorris@yahoo.com; Donald Fenton, dlfent@yahoo.com; Dorothy Gordon, dgordon@wavecable.com; Doug Hayman, seattleguitarman@hotmail.com; Elizabeth Nichols, dbnichols@centurytel.net; Garret Adkins, garret.s.adkins@gmail.com; Gus Phillips, 12851 Cedar Ave NW POULSBO, WA 98370; Jackie Kelly, jkelly@wavecable.com; Jana Otto, j_otto@wavecable.com; Jasmine Bay, jazzbay@gmail.com; Jeri & Jeffery Stockdale, j5stockda@netscape.net; Joann Wales, 12735 Plateau Cir NW SILVERDALE, WA 98383; Joe Crawford, flyjdc@aol.com; Joe Lax, joelax@wavecable.com; Joe Lubischer, jlubischer@gmail.com; John & Toni Center, jjccenter59@gmail.com; John Goyette, j102156@aol.com; Judith Kaylor, jakaylor@wavecable.com; Judith Krigsman, KRIGSMAN83@msn.com; Karen Mittet, karenmittet@yahoo.com; Kathie Lustig, kathie.lustig@icloud.com; Kathleen Pulici, kpulici@embarqmail.com; Kimberly Trask, 12955 Lake View Ave Nw POULSBO, WA 98370; Laurie Barker, laurlu220@gmail.com; Leslie Williams,

law9111@comcast.net; Lindsay Ingram, lindsytom@gmail.com; Luci Delesbore, itsluci@yahoo.com; Mandy Oens, mandyoens@aol.com; Matthew Evinger - DOE Shoreline, Matthew.Evinger@ecy.wa.gov, MEVI461@ECY.WA.GOV; Michael & Coleen Shoudy, mshoudy@wavecable.com; Mike Schmitt, seaguy1954@gmail.com; Noah & Laura Izzard, pdstar12@aol.com; Pamela Zahm, 12727 PLATEAU CIR NW SILVERDALE, WA 98383; Paul Fry, Frydad22@gmail.com; Peter Bieber, Railhead1956@yahoo.com; Richard & Rose McCracken, mccrrose1961@gmail.com; Robert Roseen, roseen@waterstone-eng.com; Robin Salthouse, historyarchives@yahoo.com; Rocco Cappeto, rcappeto@comcast.net; Rod Malcolm - Suquamish Tribe, rmalcom@suquamish.nsn.us; Ronald Selvidge, rselvidge22@gmail.com; Sarah Cooke, cookess@comcast.net; Scott McDaniel – CKSD, scottmcd@ckschools.org; Staci Jocson, hsjocson@hotmail.com; Stephanie Jolivette – DAHP, stephanie.jolivette@dahp.wa.gov; Steven & Cynthia Peterson, speterson@bandwagon.net; Steven & Deborah Voyce, 12903 IRONWOOD NW POULSBO, WA 98370; Suzanne Benko Olguin Rainwater, scbenko@gmail.com; Terrence & Maria Oleary, toleary@gmail.com; Tommy & Kathleen Wadlow, 1233 NW ISLAND LAKE RD POUSLBO, WA 98370; Wayne Gulla, wrgulla@earthlink.com; William & Lindsay Ingram, lindsytom@gmail.com

#23-03929 CC:

Applicant: SEQUOIA SPRING III LLC, max@bluefern.com

Subject Property Owner of Record: Ben Paulus - Blue Fern, ben@bluefern.com

Applicant Authorized Agents: Anna Drumheller - Blue Fern, anna@bluefern.com;
Core Design Inc, permits@coredesigninc.com

Engineer: Holli Heavrin - Core Design Inc, HHeavrin@coredesigninc.com

Interested Parties: Caleb Scarlett, tarheelcaleb@gmail.com; Diane & Dave McReynolds, dave_mcreynolds@yahoo.com; Beth & TK Mac, macbethact1@gmail.com; Beverly Parsons, bevandpar@gmail.com; Bruce Piercy, wbpiercy@comcast.net; Bryan Telegin - Telegin Law, bryan@teleginlaw.com; Carol Price, carol9price@comcast.net; Cindy Allpress, cindyallpress@gmail.com; Coleen Shoudy, ceshoudy@gmail.com; David Shorett, dshorett@comcast.net; Deborah Brennan, dbrennan2003@yahoo.com; Diane & Dave McReynolds, dianenorris@yahoo.com; Donald Fenton, dlfent@yahoo.com; Dorothy Gordon, dgordon@wavecable.com; Garret Adkins, garret.s.adkins@gmail.com; Jackie Kelly, jkelly@wavecable.com; Jana Otto, j_otto@wavecable.com; Jasmine Bay, jazzbay@gmail.com; Joe Crawford, flyjdc@aol.com; Joe Lax, joelax@wavecable.com; Joe Lubischer, jslubischer@gmail.com; John & Toni Center, jjccenter59@gmail.com; John Goyette, j102156@aol.com; Judith Krigsman, KRIGSMAN83@msn.com; Kathie Lustig, kathie.lustig@icloud.com; Kathleen Pulici, kpulici@embarqmail.com; Leslie Williams, law9111@comcast.net; Luci Delesbore, itsluci@yahoo.com; Mandy Oens, mandyoens@aol.com; Matthew Evinger - DOE Shoreline, MEVI461@ECY.WA.GOV; Michael & Coleen Shoudy, mshoudy@wavecable.com; Mike Schmitt, seaguy1954@gmail.com; Noah & Laura

Izzard, pdstar12@aol.com; Peter Bieber, Railhead1956@yahoo.com; Richard & Rose McCracken, mccrarose1961@gmail.com; Robert Roseen, roseen@waterstone-eng.com; Robin Salthouse, historyarchives@yahoo.com; Rod Malcolm - Suquamish Tribe, rmalcom@suquamish.nsn.us; Ronald Selvidge, rselvidge22@gmail.com; Sarah Cooke, cookess@comcast.net; Scott McDaniel – CKSD, scottmcd@ckschools.org; Staci Jocson, hsjocson@hotmail.com; Steven & Cynthia Peterson, speterson@bandwagon.net; Suzanne Benko Olguin Rainwater, scbenko@gmail.com; Terrence & Maria Oleary, toleary@gmail.com; Wayne Gulla, wrgulla@earthlink.com

#24-04549 CC:

Applicant (Subject Property Owner of Record): Ben Paulus - Blue Fern, ben@bluefern.com; SEQUOIA SPRING III LLC, max@bluefern.com

Applicant Authorized Agents: Anna Drumheller - Blue Fern, anna@bluefern.com

Applicant's Authorized Representatives: Duana Koloušková (Attorney, Johns Monroe Mitsunaga Koloušková, PLLC), kolouskova@jmmklaw.com; Peter Durland (Attorney, Johns Monroe Mitsunaga Koloušková, PLLC), durland@jmmklaw.com

Other Permit Contacts: Michelle Branley, michelle@bluefern.com; Core Design Inc, permits@coredesigninc.com

Appellants: David Shorett, dshorett@comcast.net; Donald Fenton, dlfent@yahoo.com; Friend of Island Lake, NO CONTACT INFORMATION PROVIDED

Appellants' Authorized Representative: Bryan Telegin (Attorney, Telegin Law), bryan@teleginlaw.com

DCD Staff: Darren Gurnee, dgurnee@kitsap.gov; Will Sullivan, wsullivan@kitsap.gov

County Authorized Representative: Lisa Nickel - Kitsap County Pros, lnickel@kitsap.gov

Interested Parties: Diane & Dave McReynolds, dianenorris@yahoo.com; Diane & Dave McReynolds, dave_mcreynolds@yahoo.com; Coleen Shoudy, ceshoudy@gmail.com; Garret Adkins, garret.s.adkins@gmail.com; Jasmine Bay, jazzbay@gmail.com; Joe Crawford, flyjdc@aol.com; John & Toni Center, jjcenter59@gmail.com; Leslie Williams, law9111@comcast.net; Ronald Selvidge, rselvidge22@gmail.com

#24-04555 CC:

Applicant (Subject Property Owner of Record): SEQUOIA SPRING III LLC, max@bluefern.com; Ben Paulus - Blue Fern, ben@bluefern.com

Applicant Appellants: Anna Drumheller - Blue Fern, anna@bluefern.com; Michelle Branley, michelle@bluefern.com

Applicants' Authorized Representatives: Duana Koloušková (Attorney, Johns Monroe Mitsunaga Koloušková, PLLC), kolouskova@jmmklaw.com; Peter Durland (Attorney, Johns Monroe Mitsunaga Koloušková, PLLC), durland@jmmklaw.com

Other Permit Contact: Core Design Inc, permits@coredesigninc.com

DCD Staff: Darren Gurnee, dgurnee@kitsap.gov; Will Sullivan, wsullivan@kitsap.gov

County Authorized Representative: Lisa Nickel - Kitsap County Pros,

lnickel@kitsap.gov

Interested Parties: Leslie Williams, law9111@comcast.net; Ronald Selvidge, rselvidge22@gmail.com; Joe Crawford, flyjdc@aol.com; John & Toni Center, jjccenter59@gmail.com; Diane & Dave McReynolds, dianenorris@yahoo.com; Coleen Shoudy, ceshoudy@gmail.com; Garret Adkins, garret.s.adkins@gmail.com; Donald Fenton, dlfent@yahoo.com; Diane & Dave McReynolds, dave_mcreynolds@yahoo.com; Jasmine Bay, jazzbay@gmail.com

Additional:

Adjacent Property Owners within 800' radius

Health District

Public Works

Parks

Navy

DSE

Kitsap Transit

Central Kitsap Fire District

North Kitsap Fire District

Central Kitsap School District

North Kitsap School District

Puget Sound Energy

Water Purveyor: WATER DIST - SILVERDALE

Sewer Purveyor: KPUD1

Point No Point Treaty Council

Suquamish Tribe

Port Gamble S'Klallam Tribe

Squaxin Island Tribe

Puyallup Tribe

Skokomish Tribe

WA Dept of Fish & Wildlife

WA Dept of Transportation/Aviation

WA State Dept of Ecology-SEPA

WA State Dept of Ecology-Wetland Review

WA State Dept of Transportation

Department of Archaeological Historic Preservation

Department of Natural Resources

Prosecutor's Office

Assessor's Office

DCD

Kitsap Sun

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

RE: Meadowview)	
)	
Preliminary Plat 23-03239)	DECISION UPON RECONSIDERATION
Shoreline Conditional Use 23-03929)	
Admin. Appeals 24-04549 and 24-04555)	
)	
)	

Both Appellant and Applicant have made requests for reconsideration and clarification. The Applicant’s requests are relatively minor and innocuous and have been agreed upon by the Applicant. They are approved on that basis. The Appellants’ requests are more substantial. They are addressed in detail below. Each Appellant request is quoted in italics and assessed in corresponding legal analysis. The resulting condition revisions are identified in track change at the end of this decision.

This Decision Upon Reconsideration is based upon the Appellants’ and Applicant’s March 4, 2025 and March 5, 2025 motions for reconsideration, respectively, the County responses to both Applicant and Appellants motions, the Applicant’s response to the Appellants’ motion and the Appellants’ reply.

Appellants Recon A: *The Examiner should reconsider and/or clarify the requirements of Condition 9 to the MDNS concerning use of the beach and dock.*

Request granted in part.

1 Final Decision¹ at 22:11-14, FOF 5C provides that a condition will be imposed providing that “*if*
2 *more than four trespasses per month occur for over a six month period . . . the HOA shall remove*
3 *the dock or the County may do so at HOA expense.*” Appellant correctly identify that this sentence
4 is inconsistent with the actual condition, which sets the enforcement standard at eight times per
5 month for three consecutive months. To eliminate this inconsistency, the sentence is FOF 5C is
6 corrected to provide “if more than eight trespasses per month occur for over a three month period . . .
7 the HOA shall remove the dock or the County may do so at HOA expense.” Condition No. 9 as
8 currently written more accurately reflects the realities of ability to enforce private trespass. The
9 HOA doesn’t have complete control over who uses its beach and dock facilities. Eight trespasses
10 per month more accurately reflects a situation where the HOA is not making any reasonable effort to
11 prevent trespass. Trespasses averaging less than two per week are unlikely to materially create any
12 harm to the lake environment.

13 Appellants also request that Condition No. 9 make dock removal mandatory by the HOA upon
14 exceeding the trespass threshold. That request is approved as detailed in the revised condition at the
15 end of this decision.

16 Appellants request that Condition No. 9 be enforceable by other Island Lake residents. That request
17 is denied. Enforcement of plat conditions is properly left to the County. The County is in the best
18 position to decide when enforcement of plat conditions is in the public interest.

19 Appellants request the Condition No. 9 be binding on the Applicant, Sequoia Springs III LLC.
20 SEPA conditions must be reasonable per RCW 43.21C.060. It is not reasonable to make a property
21 owner perpetually responsible for real property after that owner has sold the property. The
22 responsibility for use of property in conformance with applicable law rests upon the current owner
23 and any tenants residing on that property. Condition No. 9 will be clarified to provide that the owner
24 of the property shall be responsible for compliance. This reflects the fact that some covenants don’t
25 transfer ownership to an HOA until a certain number of lots have been sold, etc.

26 The Applicant in response to the Appellants’ reconsideration request has contested the revisions to
Condition No. 9 arguing the current condition is sufficient to ensure that the dock is not used as
feared by Island Lake residents. The Applicant also argues that condition already exceeds
constitutional proportionality because the proposed use doesn’t exceed prior camp use of the beach
and dock. In this regard the Applicant is not found to be using the correct baseline. The baseline to
be used for evaluating environment impacts is the current condition of the existing environment. *See*
King County v. Friends of Sammamish Valley, 556 P.3d 132, 147 (Wash. 2024). The current
condition of the existing environment is that no one is lawfully using the beach or dock of the project
site. The project site was sold in October 2021. Tr. 15. Presumably camp use ceased sometime
prior to that date. The Applicant has since abandoned that use by its proposal to place fencing and
no trespassing signs around the beach and dock. Given these two factors, the existing condition of
the environment is a lake that is not adversely affected by beach and dock use at the project site.

¹ The Final Decision is the February 25, 2025 Final Decision of the above-captioned permit hearing and SEPA appeal.

1 Condition No. 9 is necessary to prevent environmental harm that could result from failure of the
2 owner of these areas to enforce the proposed no trespass signs.

3 The Applicant also argues that conditions cannot be based upon the premise that plat limits will be
4 ignored, relying upon the unpublished case of *Conservation Nw. v. Okanogan Cnty.*, 194 Wash.
5 App. 1034 (2016). *Conservation Nw.* does not stand for this ruling, instead holding that SEPA
6 review “...should consider all environmental impacts, whether resulting from legal or illegal
7 conduct...” Under *Conservation Nw.*, future trespass is a valid and required consideration in the
8 review of this proposal.

9 The County objects to Condition 9 on the basis that it purports to have no authority to enforce
10 private covenants. The case law it relies upon was for a covenant that made no mention of county
11 enforcement. *See Jones v. Town of Hunts Point*, 166 Wash. App. 452, 457, 272 P.3d 853, 856
12 (2011). That case doesn’t address the type of covenant required in Condition No. 9, which expressly
13 authorizes County enforcement. That type of covenant is a standard tool in HOA maintained
14 facilities such as private detention ponds, where preliminary plat conditions require covenants that
15 provide a city or county right to enter and repair stormwater facilities if the HOA fails to do so. The
16 covenants including a county or city as a third party prohibit their amendment without city or county
17 authorization.

18 The County also has liability and funding concerns associated with the condition. Those types of
19 concerns are associated with any public works project. The Condition 9 authorization to remove the
20 dock was wholly discretionary for the County. It served as an added enforcement tool that expanded
21 the enforcement options of the County. If the County didn’t want to take on that responsibility due
22 to funding or liability problems, it could avoid doing so just as for any other potential public works
23 project². However, the Examiner should refrain from disrupting County practices without significant
24 cause. The County impacts of the trespass issue can still be adequately mitigated by simply
25 imposing a condition that mandates removal by the dock/beach owner when the trespass threshold is
26 exceeded. Condition No. 9 will modified to remove the County’s added enforcement option of
removing the dock at applicant expense.

19 **Appellant Recon B:** *The Examiner should add a condition requiring the footbridge to be closed. If
20 not, a new cumulative impacts report is required.*

21 The Appellants request that a condition be added requiring the closing of a footbridge that connects
22 to the beach of the project site as referenced in FOF 5C. A condition will be added as requested to
23 the portion of the bridge on the project site.

24 ² It is acknowledged that under the public duty doctrine, the County can be held liable if it has actual knowledge of a
25 hazardous and dangerous condition and fails to enforce. *See, e.g. Atherton Condo. Apartment-Owners Ass’n Bd. of
26 Directors v. Blume Dev. Co.*, 115 Wash. 2d 506, 531, 799 P.2d 250, 265 (1990). Should overuse of the dock create a
health hazard, the County could conceivably find itself in a position where it must expend County funds to remove the
dock if the HOA doesn’t have the funds to do so. As revised by removing the option of County dock removal, the
County’s liability is left at the same level as it is for any other plat condition designed to protect public safety.

1 **Appellant Recon C:** *The Examiner should require Sequoia Springs to evaluate the feasibility of*
2 *dispersion as a preferred BMP, in conjunction with its new infiltration feasibility analysis.*

3 The Appellants request reconsideration of Examiner approval of the Applicant's proposed
4 infiltration trenches. The Appellants argue that there should be more trenches required as opposed to
5 the proposed conveyance to off-site detention ponds. As acknowledged in the Order for
6 Reconsideration of this appeal, the Final Decision was in error in calculating required dispersion
7 area as a third of the project site. As noted in the Applicant reconsideration briefing, the minimum
8 area for such dispersion would be 15% of the project area. As quoted from page 6 of the Applicant's
9 response brief below, the 15% only serves as a minimum, with significant additional demands on
10 area as follows:

11 *What is misleading about this simplistic calculation is that each device has specific*
12 *requirements, as previously noted, for separation, location, and slope. Id. at 696*
13 *(dispersion trench detail). Not only can the flow paths for trenches not cross one*
14 *another, but also each dispersion trench needs to be a minimum of 50 feet from*
15 *another trench. Id. at 679. Each trench and flow path must be parallel with the*
16 *contours to ensure drainage flows are maintained in a gentle downward direction,*
17 *and the flow path for a dispersion trench cannot exceed a 20% slope. Id. [Department*
18 *of Ecology Stormwater Manual, p. 696] Given all these parameters, full dispersion*
19 *was deemed infeasible.*

20 As noted in FOF 6B2b of the Final Decision, the criterion for defining feasibility is open ended. The
21 Applicant is well below maximum permitted density. The Applicant also proposes more than three
22 times the minimum required open space as determined in FOF 6C. Given these factors and the open
23 ended requirements for assessing filtration feasibility, deference is given the County negotiation of
24 acceptable amounts of dispersion trenches. For these reasons, the proposed dispersion trenches are
25 still found to result from an appropriate balancing of site constraints and economic feasibility. To
26 ensure the priority status of the trenches, a condition of approval will be added requiring that they be
added to the open space tracts to the extent consistent with the critical area and recreational functions
of those tracts.

19 **Appellant Recon D:** *The Examiner should amend and clarify the requirement for walking paths*
20 *along Island Lake Road.*

21 The Appellants request that Condition 7 be revised to require walkways from one side of the road to
22 both sides. Appellants also identify minor differences in language between the description of
23 Condition 7 in the Findings of Fact as compared to how it's written in the Conditions section of the
24 Final Decision.

25 As to the discrepancies in language, the Conditions section overrides any conflicting information in
26 the Findings of Fact. The Findings serve as background justification for the conditions, they do not
supersede those conditions. Condition 7 as written is found to sufficiently describe required
mitigation.

1 As to walking conditions on both sides of the road, the Applicant is being required to do more than is
2 customarily required to mitigate pedestrian impacts. This is solely based upon the disproportionate
3 impact of urban traffic in a fairly rural portion of an urban growth area. As such, the minimum
4 should be required to ensure pedestrian safety. There is nothing³ in the record to suggest that
5 providing walking paths on both sides of the road instead of one side is necessary to provide safe
6 walking conditions. RCW 46.61.250 doesn't require pathways on both sides of the road as asserted
7 by the Appellants. It only requires pedestrians to walk facing traffic when a shoulder is available to
8 do so. See RCW 46.61.250(2), requiring pedestrians to face traffic on a shoulder "*when a shoulder
9 is available in this direction.*"

7 The Appellants assert that the Examiner's findings regarding pedestrian safety improvements
8 necessitate an environmental impact statement absent full mitigation. The findings are sufficient to
9 require reasonable off-site mitigation but do not qualify as probable significant adverse impacts
10 triggering an environmental impact statement. Kitsap County subdivision standards, road standards
11 and its concurrency ordinance combine to address what is an acceptable (nonsignificant) level of
12 traffic impact to the County. Importantly its concurrency ordinance, Chapter 20.04 KCC, sets
13 acceptable levels of service standards that as determined in Finding 6D2 of the Final Decision have
14 been met.

12 Beyond concurrency requirements, acceptable levels of traffic impacts are those that can be
13 reasonably mitigated pursuant to other County transportation standards. Pertinent to this appeal is
14 the County's "Road Standards." Section 1.7A of those standards requires off-site safety
15 improvements "*based upon an assessment of the impacts of the proposed land development.*" As
16 identified in Footnote No. 3, the County has the burden of proof in demonstrating the need for off-
17 site improvements. The record only establishes sufficient cause for reasonable mitigation. That is
18 what is required by Condition No. 7, as modified by this reconsideration decision.

17 In its reconsideration response, the County asserts maintenance cost and liability issues with
18 maintaining any walkways along the road. It notes that it can only maintain a pathway if it meets the
19 County Road Standards regarding pedestrian design, apparently because any deviations would
20 qualify as defective and could serve as a source of liability. To avoid these types of liability
21 problems, Condition No. 7 will be clarified to just require shoulder improvements. The main
22 objective of Condition No. 7 is to help pedestrians avoid increased traffic caused by the development
23 on the travelled portions of the roadway. Shoulder improvements to the extent they can be
24 reasonably added should accomplish this purpose.

22 **Decision Upon Reconsideration**

23 ³ The Appellants note in their reply brief that the Examiner had no basis to conclude that requiring more would probably
24 fail nexus and proportionality since the County provided no pedestrian safety analysis. This misapplies the burden of
25 proof. To impose off-site pedestrian safety improvements it was up to the County to justify such a requirement. The
26 County has the burden of proof in establishing that a condition is necessary as a direct result of proposed development to
meet the requirements of RCW 82.02.020. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wash.2d 740, 755-56
(2002). The County also has the burden of proof in establishing nexus and proportionality for actions that would qualify as
takings if not properly justified. *Burton v. Clark Cnty.*, 91 Wash. App. 505, 517, 958 P.2d 343, 352 (1998)

1 The Findings of Fact of the Final Decision are superseded to the extent inconsistent with the legal
2 analysis above. The conditions of approval and mitigation measures identified in the Final Decision
3 are modified below as depicted in track change:

4 Plat Conditions:

5 35. Critical area buffers or setbacks shall remain undisturbed natural vegetation areas except where
6 the buffer can be enhanced to improve its functional attributes and as Code allows for disturbances
in setbacks. Refuse shall not be placed in buffers.

7 78. The interior roads of the proposed plat shall be designed and constructed in accordance with
8 Kitsap County Code 11.22 and the Kitsap County Road Standards for a local access road or an
9 approved higher standard unless accepted as private roads. Roads shall be publicly maintained and
the right-of-way dedicated to Kitsap County as proposed unless accepted as private roads.

10 84. Interior plat roads shall be constructed to current County standards and deeded as public right-of-
11 way unless accepted as private roads.

12 104. Dispersion trenches for roof drainage shall be installed in the open space tracts to the extent
reasonably practicable and not inconsistent with recreational and critical area functions.

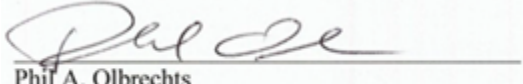
13 SEPA Mitigation Measures:
14

15 7. The Applicant shall improve shoulders ~~install walking paths~~ along one side of Island Road NW
16 from the project site to Lakeridge Circle NW in areas where sufficient undeveloped right of way is
17 available, excluding privately landscaped or developed areas, to provide safe walking areas as
reasonably available outside the travelled portion of the walkway. These walking paths areas shall
18 consist of ~~be cleared and graded~~ pathways sufficient to provide safe passage for pedestrians. In the
alternative the Applicant may agree to install pedestrian pathways as found consistent with County
road standards by County public works staff.

19 9. The owner of the dock and beach area of the project site shall be responsible for ensuring that
20 the beach and dock areas of the project site within the proposed no trespass areas are not used for
21 recreational purposes. CC&Rs of the HOA required for the proposal shall include a covenant
authorizing Kitsap County to remove the project site dock and revegetate its beach if the If this
22 beach and/or dock area is used for recreational purposes a total more than eight times per month for
three consecutive months, the current owner of those areas. The HOA shall be given shall have the
23 options of (1) to remove the dock and revegetate the beach within itself first within 120 days of
demand by the County, or (2) prior to the County exercising this option. The HOA shall also be
24 given the option of applying for an amendment to this approved shoreline conditional use permit
25 within 60 days of demand that would results in authorized use of the beach and dock.

26 10. The footbridge accessing the beach of the project site to the extent located on the projects site
shall be blocked from pedestrian access and posted as no trespass.

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2 DATED this 4th day of April, 2025.

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4 
Phil A. Olbrechts

5 City of Renton Hearing Examiner

6
7
8 **Appeal Right and Change in Valuation**

9 Pursuant to KCC 21.04.100 and KCC 21.04.110, this preliminary plat decision and consolidated
10 SEPA appeal decision is a final land use decision of Kitsap County and may be appealed to
11 superior court within 21 days as governed by the Washington State Land Use Petition Act,
Chapter 36.70C RCW.

12 The shoreline conditional use permit approval is subject to Washington State Department of
13 Ecology (DOE) approval as governed by Chapter 90.58 RCW. The final decision of DOE may be
14 appealed to the Washington State Shoreline Hearings Board as further governed by Chapter 90.58
RCW.

15 Affected property owners may request a change in valuation for property tax purposes
16 notwithstanding any program of revaluation.
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