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7 **QUASI JUDICIAL MATTER OF**
8 **THE CITY COUNCIL OF THE CITY OF BELLINGHAM**

9 In the Matter of the Appeal of:

10 **PROTECT MUD BAY CLIFFS,**

11 Appellant,

12 of SUB2022-0011, VAR2022-0002,
13 and
14 CAP2022-0005

15 for the project known as "The Woods
16 at Viewcrest at 352 Viewcrest Road,

17 **ANN C. JONES FAMILY LP**

18 and

19 **CITY OF BELLINGHAM,**

20 Respondents,
21

**RESPONDENT CITY OF
BELLINGHAM'S BRIEF**

22 **I. STATEMENT OF THE CASE**

23 Over the course of five days in January 2026, City of Bellingham Hearing
24 Examiner Sharon Rice conducted a hybrid open record hearing on Ann C. Jones
25 Family, LP's, ("Applicant") application for a preliminary plat, subdivision variances,
26 critical areas permit, shoreline substantial development permit, and shoreline
27

1 conditional use permit for the project commonly known as “The Woods at
2 Viewcrest,” together with a hearing on an appeal of the City’s State Environmental
3 Policy Act (SEPA) threshold determination.

4
5 Examiner Rice issued Consolidated Findings, Conclusions, and Decisions
6 regarding the SEPA Appeal and Permits (“Decision”) for the project on June 5,
7 2026. Examiner Rice conditionally approved the application for a preliminary plat,
8 subdivision variances, and critical areas permit. She denied the SEPA appeal.

9
10 The Appellant (PMBC) filed an appeal to the Bellingham City Council
11 (“Council”) challenging Examiner Rice’s Decision on June 18, 2026. Importantly,
12 PMBC acknowledges that Council *does not* have jurisdiction to review Examiner
13 Rice’s decision denying the SEPA appeal, or the shoreline substantial development
14 permit, or the shoreline conditional use permit. Notice of Appeal, June 18, 2026
15 (“This appeal does not seek review of the Hearing Examiner’s SEPA appeal ruling
16 or shoreline permit decisions.”)

17
18 Despite acknowledging the limited scope of Council’s review, PMBC’s Brief
19 restates various arguments regarding the City’s environmental review of the
20 proposal under SEPA, all of which were expressly rejected by Examiner Rice in
21 her comprehensive 208-page decision. The issues addressed by Examiner Rice in
22 the SEPA appeal¹ are beyond the scope of Council’s review.

23
24 The Bellingham Municipal Code states that Council must affirm Examiner
25 Rice’s Decision conditionally approving the preliminary plat, subdivision variances,
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27 ¹ Examiner Rice includes a list of the issues within the scope of appeal on page 4 of her Decision.

1 and critical areas permit unless it concludes that (1) the decision is contrary to law;
2 (2) the decision is not supported by substantial evidence; or (3) the proceedings
3 before the hearing examiner are inconsistent with the appearance of fairness.²
4 Because PMBC has failed to demonstrate that Examiner Rice's Decision is
5 erroneous, in whole or in part, Council must affirm.
6

7 **II. FACTS**

8 Ali Taysi of AVT Consulting LLC, on behalf of Ann C. Jones Family LP
9 (Applicant), requested approval of a preliminary plat, three subdivision variances,
10 and critical areas, shoreline substantial development (SSDP), and shoreline
11 conditional use (SCUP) permits to construct a project that would subdivide
12 approximately 37.7 acres into 38 lots for detached, single-family residential
13 development, three reserve/open space tracts, and public and private roads and
14 utilities. The proposal would retain approximately 80% of the site in its existing
15 unimproved and largely forested condition. Exhibits C.39, C.41, C.43, and P.1.
16 Decision, p. 6-7, Finding No. 1.
17

18 Examiner Rice determined, after reviewing the voluminous record and
19 hearing five days of testimony by multiple expert witnesses, including the City's
20 professional staff who work across multiple departments,³ that the Applicant
21 satisfied the Bellingham Municipal Code requirements for a preliminary plat
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26 ² PMBC does not argue that the proceedings before Examiner Rice were inconsistent with the
27 appearance of fairness.

³ Decision, pp. 4-5 (list of witnesses).

(Decision, pp. 126-133), associated subdivision variances (Decision, pp. 133-137), and critical areas permit (Decision, pp. 137-142).

PMBC filed a notice of appeal to challenge Examiner Rice's Decision before Council on June 18, 2026. Notice of Appeal.

III. STANDARD OF REVIEW

Examiner Rice's decision is presumed to be sufficient, legal, and regular. BMC 1.26.020(D). Council must affirm the decision of the hearing examiner unless the council concludes that the decision is contrary to law, or that it is not supported by substantial evidence on the record, or that the proceedings before the hearing examiner are inconsistent with the appearance of fairness. *Id.* PMBC has the burden of demonstrating that Examiner Rice's Decision is erroneous. BMC 1.26.020(D).

Council must consider this appeal at a closed record hearing. BMC 1.26.020(C). Council's decision shall be based solely upon the record established in the hearing examiner's proceedings, written argument submitted by the parties of record, and such oral argument as may be allowed at its discretion. BMC 1.26.020(A). No new evidence shall be considered.

IV. SUMMARY OF ARGUMENT

PMBC's appeal repeats several arguments and issues that it raised before Examiner Rice in the SEPA appeal. Those issues are not before Council in this appeal. Instead, the scope of this appeal is limited to determining whether Examiner Rice's Decision conditionally approving the preliminary plat, subdivision

1 variances, and critical areas permit is contrary to law, unsupported by the facts, or
2 that the proceedings before the hearing examiner were inconsistent with the
3 appearance of fairness. PMBC has failed to carry its burden of demonstrating that
4 Examiner Rice's Decision is erroneous, in whole or in part.
5

6 Examiner Rice's Decision includes 172 findings of fact. Decision, pp. 6-107.
7 PMBC did not assign error to, or otherwise challenge, any of Examiner Rice's
8 findings of fact. Unchallenged findings of fact are verities on appeal. *Seven Hills,*
9 *LLC v. Chelan Cnty.*, 198 Wn.2d 371, 384, 495 P.3d 778, 784 (2021) (citing *Dumas*
10 *v. Gagner*, 137 Wn.2d 268, 280, 971 P.2d 17 (1999)). PMBC likewise failed to
11 assign error to, or otherwise challenge, any of Examiner Rice's conclusions of law.
12 PMBC does not cite the Bellingham Municipal Code requirements that apply to
13 preliminary plats, subdivision variances, or critical areas permit or argue that
14 Examiner Rice erred in applying those requirements to the application materials.
15 Decision, pp. 126-142.
16
17

18 Instead, PMBC makes a conclusory assertion that Examiner Rice erred
19 when she conditionally approved the preliminary plat before the Applicant
20 demonstrated compliance with various sections of the Bellingham Municipal Code
21 that do not apply at this stage of the land use development process.⁴ This argument
22 failed before Examiner Rice in the SEPA appeal, and it fails here, as well.
23
24
25

26
27 ⁴ PMBC also makes several misstatements of law regarding vesting without any citation to
authority.

1 State law provides that the requirements for a fully completed preliminary
2 plat application shall be defined by local ordinance. RCW 58.17.033(2), *Friends of*
3 *the Law v. King Cnty.*, 123 Wn.2d 518, 869 P.2d 1056 (1994). As noted in that
4 case, “a preliminary plat application is meant to give local governments and the
5 public an approximate picture of how the final subdivision will look” and “it is to be
6 expected that modifications will be made during the give and take of the approval
7 process.” *Id.* at 528. And while “it is up to local governments to decide what level
8 of specificity they will require from a developer in its initial application,” they may
9 “not make the application process so odious that completion is nearly impossible.”
10 *Id.* at 529.

13 The City has adopted a procedure to review applications for preliminary
14 plats under its land division chapter, Title 23 BMC. Under the municipal code, an
15 application for a preliminary plat is a Type III decision under BMC 21.10.240, with
16 a public hearing and decision by the hearing examiner. BMC 23.16.020(A). The
17 municipal code details the decision criteria for approving a preliminary plat. BMC
18 23.16.030(A).

20 The Applicant must satisfy six criteria to receive approval of a preliminary
21 plat including, for example, that the proposed preliminary plat is consistent with the
22 applicable provisions of Title 23, the Bellingham comprehensive plan, and the
23 Bellingham Municipal Code. BMC 23.16.030(A)(1). The Applicant must also show
24 that each lot in the proposal can reasonably be developed in conformance with
25 applicable provisions of the BMC, including but not limited to critical areas,
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27

1 setbacks, and parking, without requiring a variance that is not processed
2 concurrently with the subdivision application pursuant to Chapter 23.48 BMC. BMC
3 23.16.030(A)(4). The Applicant must also show that there are adequate provisions
4 for open spaces, drainage ways, rights-of-way, sidewalks, and other planning
5 features that assure safe walking conditions for pedestrians, including students
6 who walk to and from school, easements, water supplies, sanitary waste, fire
7 protection, power service, parks, playgrounds, and schools. BMC 23.16.030(A)(5).

8
9 The municipal code also states, in part:

10
11 The approval of a preliminary plat by the hearing examiner is approval of the
12 general acceptability of the plat layout and its relation to adjoining properties.
13 *Engineering detail and fulfillment of conditions of preliminary plat approval*
14 *remain subject to the approval of the city.*

15 BMC 23.16.060(A)(emphasis added). A preliminary plat is, as the name suggests,
16 a preliminary approval. City staff, the Applicant, and Examiner Rice recognize that
17 more information addressing the questions raised by PMBC will be provided later.⁵

18 For this reason, the Bellingham Municipal Code does not require Applicants
19 to submit a final civil plan set stamped by a professional engineer before
20 preliminary plat approval. Nor does the municipal code require an Applicant to
21 submit a final stormwater site plan that satisfies all requirements of chapter 15.42
22 BMC ("Stormwater Management") before receiving preliminary plat approval.

23 The City does not require, and has never required, the level of engineering
24 detail desired by PMBC at this stage of the land use development process,
25

26
27 ⁵ PMBC also appears to recognize this, as evidenced by Exhibit A to its brief.

1 according to the un rebutted testimony from the City's Planning Development
2 Services Manager (and SEPA Responsible Official) Kurt Nabbefeld, the City's
3 Surface and Stormwater Utility Manager Jason Porter, and Stormwater Engineer
4 Jeff Vander Yacht, P.E.⁶ And, as Engineering Geologist John Gillaspay, P.E., noted
5 during his testimony, requiring the level of engineering detail desired by PMBC at
6 this stage of the land use development process would be like "putting the cart
7 before the horse." See, also, Decision, p. 52, Finding No. 75:

9 ...Mr. Nabbefeld testified that the preliminary plat stage does not require a
10 final, complete SWPPP; at the time of preliminary plat, the City needs
11 enough information to determine whether the project is feasible, but it does
12 not need demonstration of compliance with all required technical elements
13 of the applicable codes. Plats involve PFC agreements, which must be
14 reached prior to construction of roads and utilities dedicated to the City. Mr.
15 Nabbefeld indicated that the PFC agreement process is the juncture at
16 which the size of pipes, sidewalk standards, street standards, and other
17 similar details are identified. There is additional review for compliance with
18 technical Code requirements at the clearing and grading permit and building
19 permit stages. Mr. Nabbefeld testified that if, at any point after land use
20 approvals are granted, the City's review of engineering details reveals that
21 a given improvement - a road, a utility, a residential foundation, etc. - cannot
22 comply with applicable standards, that specific permit - clear and grade,
23 PFC agreement, building permit, etc. - would not be granted unless and until
24 compliance with applicable standards can be shown. *Kurt Nabbefeld*
25 *Testimony*

26 PMBC argues that City staff or Examiner Rice should have required the Applicant
27 to provide additional engineering detail and other technical information before
28 preliminary plat approval including, e.g., a final stormwater site plan complete with
hydrologic modeling. That is not the law. BMC 23.16.060(A).

⁶ Copies of the auto-generated transcripts from the consolidated hearing (and video recordings of the hearing) are part of the available record.

1 The Bellingham Municipal Code does not require the Applicants to provide
2 the level of detail sought by PMBC at this stage of the land use development
3 process and PMBC has cited no authority supporting its argument that City staff or
4 Examiner Rice erred in following the City's land use development process, as
5 detailed in the Bellingham Municipal Code, for this development proposal.
6

7 **V. ARGUMENT**

8 **a. Alleged Error No. 1**

9 PMBC alleges that Examiner Rice erred by failing to comply with density,
10 lot averaging, and phasing requirements.
11

12 PMBC is misstating the facts and misrepresenting Examiner Rice's
13 Decision. First, the applicants *did not* apply for, and Examiner Rice *did not*
14 authorize, the development "of up to 152 dwelling units." Instead, the Applicant
15 applied for a preliminary plat to subdivide their property into 38 single-family lots.
16 Exhibits C.39, C.41, C.43, and P.1. Decision, p. 6-7, Finding No. 1. Examiner
17 Rice conditionally approved the application for a preliminary plat consisting of 38
18 lots. Decision, p. 150 ("Based on the preceding findings and conclusions, the
19 preliminary plat, critical areas permit, shoreline substantial development permit,
20 and shoreline conditional use permit subdividing approximately 37.7-acres
21 located at 352 Viewcrest Road into 38 detached single-family lots and two open
22 space tracts are **APPROVED**, and the requested subdivision variances are
23 **APPROVED in part**, subject to the conditions below.")
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1 While PMBC failed to timely identify this issue in the context of its SEPA
2 appeal, this issue was fully briefed by the parties and decided by Examiner Rice
3 in the SEPA appeal. Decision, pp. 187-188. The Applicant moved to dismiss
4 issue no. 12 related to density as a matter of law prior to the consolidated
5 hearing. Applicant's Motion to Dismiss Issue No. 12, dated October 10, 2025. The
6 City joined the Applicant in its motion. City of Bellingham's Response to
7 Applicant's Motion for Summary Judgment, dated October 27, 2025. Examiner
8 Rice granted the Applicant's motion to dismiss issue no. 12 related to density and
9 dismissed this issue as a matter of law prior to the consolidated hearing. Ruling
10 on Cross Summary Judgment Motions and Revised Scheduling Order, issued
11 November 17, 2025.
12

14 PMBC cites no legal authority, and the City is not aware of any, for the
15 proposition that issues that were dismissed (or otherwise denied) in a prior
16 administrative SEPA appeal can be brought back to life before Council on a
17 quasi-judicial appeal of the preliminary plat. This is especially true here where the
18 Council does not have jurisdiction to review Examiner Rice's SEPA decision:
19

20 Any party aggrieved by the SEPA action of the Hearing Examiner may file
21 an action in the Superior Court of Whatcom County to review the Hearing
22 Examiner's decision. Any such action shall be governed by and filed within
23 the time periods provided by RCW Chapter 36.70C.⁷

24 Notice of Decision, June 5, 2026.
25

26 ⁷ PMBC did not file an action in Whatcom County Superior Court challenging Examiner Rice's
27 Decision denying its SEPA appeal within 21 days of the decision, as required by RCW
36.70C.040.

1 PMBC also argues that Examiner Rice erred in approving a phasing plan
2 that does not comply with BMC 23.16.010(E). This misrepresents Examiner
3 Rice's Decision. Examiner Rice did not approve a phasing plan. Instead, she
4 noted, correctly: "6. Phasing of the preliminary plat is permitted pursuant to BMC
5 23.16.010." Decision, p. 164. Examiner Rice separately noted:

7 The Phasing plan may require alteration depending on the timeline for
8 resolution of the dispute over access to proposed Lot 22 via the existing
9 easement. *Of note, phasing need not be finalized prior to land use permit
10 issuance. By Code, it must be finally determined concurrently with the PFC
11 agreement for the first phase.* BMC 23.16.010.E.

12 Decision, p. 59, fn. 26 (emphasis added).

13 While it is true that Examiner Rice reviewed a proposed phasing plan that
14 was submitted by the Applicant, she did not approve the phasing plan. Instead,
15 the Applicant's phasing plan "will be reviewed and approved by the city
16 concurrently with the public facilities construction agreement for the first phase"
17 under BMC 23.16.010(E).

18 This argument fails.

19 **b. Alleged Error No. 2**

20 PMBC argues that Examiner Rice erred by failing to adequately resolve
21 the applicability of Ecology flow-control requirements for stormwater. This
22 argument fails as a matter of law because this issue was also raised in the
23 context of the SEPA appeal (Decision, p. 4 "Issues within the Scope of Appeal at
24 Hearing"), Examiner Rice expressly rejected PMBC's arguments regarding this
25 issue (Decision, pp.117-126), and Examiner Rice's decision denying the SEPA
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27

1 appeal is beyond the limited scope of Council's review, as acknowledged by
2 PMBC. Notice of Appeal, June 18, 2026 ("This appeal does not seek review of
3 the Hearing Examiner's SEPA appeal ruling or shoreline permit decisions.")
4

5 **c. Alleged Error No. 3**

6 PMBC argues that Examiner Rice erred by failing to require demonstrated
7 compliance with stormwater regulations, soil, and slope stability requirements
8 before preliminary plat approval. This argument fails as a matter of law because
9 these issues were also raised in the context of the SEPA appeal (Decision, p. 4
10 "Issues within the Scope of Appeal at Hearing"), Examiner Rice expressly
11 rejected PMBC's arguments regarding these issues (Decision, pp. 117-26), and
12 Examiner Rice's decision denying the SEPA appeal is beyond the limited scope
13 of Council's review, as acknowledged by PMBC. Notice of Appeal, June 18, 2026
14 ("This appeal does not seek review of the Hearing Examiner's SEPA appeal
15 ruling or shoreline permit decisions.")
16
17

18 **d. Alleged Error No. 4**

19 PMBC argues that Examiner Rice erred by failing to require the Applicant
20 to demonstrate that reduced landslide hazard area buffers provide equivalent
21 protection before preliminary plat approval. This argument fails as a matter of law
22 because these issues were also raised in the context of the SEPA appeal
23 (Decision, p. 4 "Issues within the Scope of Appeal at Hearing"), Examiner Rice
24 expressly rejected PMBC's arguments regarding these issues (Decision, pp. 117-
25 26), and Examiner Rice's decision denying the SEPA appeal is beyond the
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27

1 limited scope of Council's review, as acknowledged by PMBC. Notice of Appeal,
2 June 18, 2026 ("This appeal does not seek review of the Hearing Examiner's
3 SEPA appeal ruling or shoreline permit decisions.")

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5 **e. Alleged Error No. 5**

6 PMBC alleges that Examiner Rice erred by failing to adequately protect
7 public health, safety, welfare, and shoreline ecological functions. This argument
8 also fails as a matter of law because all these issues were raised in the context of
9 the SEPA appeal (Decision, p. 4 "Issues within the Scope of Appeal at Hearing"),
10 Examiner Rice expressly rejected PMBC's arguments regarding these issues
11 (Decision, pp. 116-127), and Examiner Rice's decision denying the SEPA appeal
12 is beyond the limited scope of Councils review, as acknowledged by PMBC.
13 Notice of Appeal, June 18, 2026 ("This appeal does not seek review of the
14 Hearing Examiner's SEPA appeal ruling or shoreline permit decisions.")

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17 **VI. CONCLUSION**

18 PMBC's brief largely ignores the record, repeatedly mischaracterizes
19 evidence and testimony from the consolidated hearing, and misstates the law. If
20 this were a court of law, the City would file a motion to dismiss this appeal as
21 frivolous and request that the court impose sanctions on opposing counsel because
22 the appeal is not well grounded in fact; it is not warranted by existing law or a good
23 faith argument for the extension, modification, or reversal of existing law or the
24 establishment of new law; and it appears to be have been filed for an improper
25 purpose, such as to harass or to cause unnecessary delay or needlessly increase
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1 the cost of litigation. However, this is not a court of law and PMBC is not
2 represented by an attorney subject to sanctions under Civil Rule 11. Instead, this
3 is a quasi-judicial appeal to the Council of the Examiner Rice's Decision
4 conditionally approving a preliminary plat, subdivision variances, and critical areas
5 permit.
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7 Under the applicable standard in these proceedings, PMBC has failed to
8 meet its burden of demonstrating that Examiner Rice's Decision is erroneous, in
9 whole or in part. Examiner Rice correctly applied the law to the facts, her decision
10 is supported by substantial evidence, and the proceedings before her complied
11 with the appearance of fairness.
12

13 For these reasons, Council must affirm Examiner Rice's Decision.
14

15 Respectfully submitted this 5th day of August 2026.
16

17 **CITY OF BELLINGHAM**

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19 _____
20 **James Erb**, WSBA #40128
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