

**THE CITY OF BELLINGHAM COUNCIL
WHATCOM COUNTY, WASHINGTON**

In the Matter of the Appeal of:

PROTECT MUD BAY CLIFFS, Appellant

of SUB2022-0011, VAR2022-0002, and
CAP2022-0005

for the project known as “The Woods at
Viewcrest” at 352 Viewcrest Road,

ANN C. JONES FAMILY LP, Applicant

CITY OF BELLINGHAM, Respondent

**FINDINGS, CONCLUSIONS,
AND DECISIONS**

BELLINGHAM CITY COUNCIL

SUMMARY OF DECISIONS

Ann C. Jones Family LP (“Applicant”) proposes a 37.7-acre development, commonly known as “The Woods at Viewcrest,” located at 352 Viewcrest Road. The proposal consists of a 38-lot single-family residential subdivision, open space tracts, and associated infrastructure.

The consolidated applications—comprising preliminary plat, subdivision variances, critical areas permit, shoreline substantial development permit, and shoreline conditional use permit—were heard by City of Bellingham (“City”) Hearing Examiner Sharon Rice together with an appeal of the City’s State Environmental Policy Act (“SEPA”) threshold determination.

FINDINGS, CONCLUSIONS, AND DECISIONS
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BELLINGHAM CITY COUNCIL
CITY OF BELLINGHAM
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1 On June 5, 2026, Hearing Examiner Rice issued Consolidated Findings, Conclusions, and
2 Decisions (“Decision”) conditionally approving the proposed subdivision as described herein,
3 while denying the SEPA appeal.

4 Protect Mud Bay Cliffs (“Appellant”) filed a timely Notice of Appeal, challenging the Hearing
5 Examiner’s decision before the Bellingham City Council (“Council”). The Council heard oral
6 arguments from the parties on August 10, 2026. Based upon its review of the record as a whole,
7 the Council hereby **AFFIRMS** the decision of the Hearing Examiner on all five errors asserted
8 by the Appellant.

9 **BURDEN OF PROOF AND STANDARD OF REVIEW**

10 The City Council’s review of a Hearing Examiner’s decision is a closed-record review, based
11 upon the record established in the Hearing Examiner’s proceedings, written argument submitted
12 by the parties of record, and oral argument presented at the August 10, 2026, hearing.

Bellingham Municipal Code (“BMC”) 1.26.020. No new evidence may be considered on appeal.

13 The Hearing Examiner’s decision is presumed sufficient, legal, and regular. The Appellant bears
14 the burden of demonstrating that the decision is contrary to law, is not supported by substantial
15 evidence in the record, violates the Appellant’s right to due process, or otherwise so deviates
16 from the appearance of fairness that the Appellant was denied the opportunity to be heard. *Id.*
17 Within this context, “substantial evidence” means there is sufficient credible evidence on the
18 record to support the Hearing Examiner’s decision.

19 To prevail, the Appellant cannot merely show that it presented sufficient evidence to support its
20 own position; it must affirmatively establish one of the specified grounds for reversal. The
21 Council must affirm the Hearing Examiner’s decision unless it finds that the Appellant satisfies
22 this burden.

23 **FINDINGS**

24 1. Any Finding that is more properly deemed a Conclusion shall be treated as a Conclusion,
25 and any Conclusion that is more properly deemed a Finding shall be treated as a Finding.

1 **Background & Procedural Summary**

2 2. The City Council is required to prepare findings and conclusions in this appeal and issue a
3 written decision pursuant to BMC 21.10.120. These findings are based on (1) the record
4 established in the proceedings before Hearing Examiner Rice, (2) the written arguments submitted
5 by the Appellant, Applicant, and City (“Respondent”) and (3) the oral arguments presented by the
6 parties on August 10, 2026.

7 3. The Applicant requested approval of a preliminary plat (SUB2022-0011), a subdivision
8 variance (VAR2022-0002), a critical areas permit (CAP2022-0005), a shoreline substantial
9 development permit (SHR2022-0008), and a shoreline conditional use permit (SHR2022-0007).
10 Collectively, these approvals would authorize subdivision of approximately 37.7 acres into 38
11 detached single-family residential lots, three reserve/open space tracts, two new public roads, four
12 shared private driveways, and associated public and private water, sewer, and stormwater
13 infrastructure. Decision p. 10. The City determined the application complete on April 5, 2022.
14 Exhibit C.129.

15 4. The subject property is located at 352 Viewcrest Road, Bellingham, Washington, within
16 Edgemoor Neighborhood Area 7. The site carries a zoning designation of Residential Single, with
17 an allowable density of 20,000 square feet minimum detached lot size or one lot per 20,000 square
18 feet average overall density. BMC 20.00.060; Decision pp. 129-130.

19 5. The City issued Requests for Information (“RFIs”) on four occasions—April 28, 2022,
20 December 21, 2022, August 7, 2023, and August 14, 2024—seeking additional data necessary to
21 determine project compliance with applicable development standards. Exhibits C.28, C.55, C.93,
22 and C.131. The Applicant submitted revised and supplementary materials in response to these
23 RFIs. Decision p. 95.

24 6. Following review of the plans, narrative, professional consultant reports, and updated
25 SEPA checklist, the City’s SEPA Responsible Official issued a Mitigated Determination of Non-

1 Significance (“MDNS”) on July 25, 2025. Exhibit C.4. The Responsible Official concluded that,
2 with appropriate mitigation conditions, the proposal would not result in probable significant
3 adverse environmental impacts and that an Environmental Impact Statement (“EIS”) was not
4 required. Decision p. 11.

5 7. The Appellant timely appealed the City’s SEPA threshold decision to the Hearing
6 Examiner on August 7, 2025. Exhibit MB. 1.

7 8. In accordance with BMC 16.20.210(E), Hearing Examiner Rice, over five days
8 commencing January 12, 2026, conducted a consolidated open record hearing on the underlying
9 land use permits and the SEPA appeal. Decision p. 2.

10 9. Having evaluated the voluminous record and heard extensive testimony from expert
11 witnesses and City staff across multiple departments, Hearing Examiner Rice issued Consolidated
12 Findings, Conclusions, and Decisions on June 5, 2026. The Hearing Examiner denied the SEPA
13 appeal and approved the requested 38-lot preliminary plat and associated land use permits, subject
14 to conditions. Decision p. 150.

15 10. On June 18, 2026, the Appellant filed a timely appeal of the Hearing Examiner’s decision
16 to the City Council. Notice of Appeal. The Appellant assigned five specific errors and sought
17 reversal of the Hearing Examiner’s approval of SUB2022-0011, VAR2022-0002, and CAP2022-
18 0005. Appellant’s Pre-Hearing Brief p. 17. The Appellant did not appeal Hearing Examiner’s
19 SEPA decision. Oral arguments were heard before the City Council on August 10, 2026.

20 **Appeal Findings Related to Errors Identified**

21 11. The Appellant did not identify any provision of the Bellingham Municipal Code governing
22 preliminary plats that the proposed subdivision allegedly violates. Nor did the Appellant state any
23 particular basis on which the approval of the critical areas permit was allegedly in error. The
24 Appellant likewise makes no claim that the proceedings before the Hearing Examiner violated the

1 appearance of fairness doctrine or otherwise deprived it of due process. *See generally* Appellant's
2 Pre-Hearing Brief.

3 12. One of the Appellant's primary concerns on appeal is the deferral of certain engineering
4 analyses until after preliminary plat approval. Appellant's Pre-Hearing Brief pp.18-19. Although
5 this issue was raised and addressed during the SEPA appeal proceedings below, the testimony of
6 Kurt Nabbefeld, the City's Development Services Manager, comprehensively explains the design
7 and operation of the City's land use process. Under the City's regulatory framework, the
8 preliminary plat approval stage does not require complete technical certainty or fully engineered
9 designs. Rather, the primary scope of review at preliminary plat is to establish overall project
10 feasibility. Essential components such as pipe sizing, sidewalk standards, and street specifications
11 are formally identified later through the public facilities construction ("PFC") agreement process
12 prior to construction of roads and utilities. The City will also conduct further technical reviews
13 during the clearing and grading permit and building permit stages. As Mr. Nabbefeld testified,
14 final code compliance remains strictly mandatory. If a post-preliminary plat approval review of
15 detailed engineering plans reveals that any proposed improvement fails to meet applicable
16 standards, the City will not grant subsequent permits unless and until full compliance is
17 demonstrated. Decision p. 52.

18 13. As described by the Hearing Examiner, the project site "is comprised of a hilly, forested
19 upland area bounded by a sheltered bedrock bluff defining the northern margin of Chuckanut Bay
20 within the partially enclosed area known as the Chuckanut Creek Pocket Estuary or Mud Bay."
21 Decision p. 8.

22 14. The subject property is extensively encumbered by on-site critical areas, including
23 wetlands, fish and wildlife habitat conservation areas ("HCAs"), and geologically hazardous areas
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1 (“GHAs”)¹, which are subject to the City’s critical areas regulations set forth in Chapter 16.55
2 BMC.

3 15. As proposed, approximately 20% of the overall site would be cleared for construction of
4 the lots and necessary infrastructure, leaving the remaining 80% of the site’s existing forest canopy
5 intact. Exhibit C.39.

6 Density, Lot Averaging, and Phasing

7 16. The project proposes one single-family detached residence per lot. All lots significantly
8 smaller than 20,000 square feet are situated within the interior of the development site. Exhibit
9 C.39.

10 17. Public comments received during the below proceedings raised concerns regarding density,
11 lot averaging, and project phasing. Commenters argued that certain proposed lots are smaller than
12 the 20,000-square-foot standard for Edgemoor Area 7, that specific lots cannot accommodate
13 standard building envelopes, that proposed Phases 1 and 2 fail to comply with phasing standards,
14 and that the project fails to meet the lot averaging provisions of BMC 23.08.050(A)(6). Decision
15 p. 98.

16 18. The Hearing Examiner found that Area 7 of the Edgemoor Neighborhood contains no
17 independent minimum lot size requirement separate from the overall standard of one unit per
18 20,000 square feet. Based on the site’s total area of 37.7 acres, the maximum theoretical density is
19 82 dwelling units. Decision pp. 56-57. While the Applicant initially proposed 45 lots, subsequent
20 plan revisions during the RFI process reduced the proposal to 38 single-family lots. Decision p.
21 84. The Hearing Examiner concluded that the proposed 38 lots, with an average area of 21,000
22 square feet, is consistent with Area 7 density. Decision p. 130.

23
24
25 ¹ “[T]he geotechnical consultant determined that there are no erosion hazards that are not also landslide hazards
26 onsite, and the two are referred to collectively as GHAs.” Decision p. 138.

1 19. Phasing of a preliminary plat is authorized under BMC 23.16.010(E). The Applicant
2 proposes development in three distinct phases:

- 3 • Phase 1 consists of infrastructure and homesites on Lots 1–6, 22, 37, and 38. These
4 nine lots require minimal internal access infrastructure, with Lots 1–6 draining
5 toward Viewcrest Road for stormwater purposes. Site frontage improvements along
6 Viewcrest Road will be constructed in Phase 1.
- 7 • Phase 2 encompasses Lots 10–17, the West and North Roads, the site entrance from
8 Viewcrest Road, and the West Road stormwater facilities.
- 9 • Phase 3 includes the remaining lots, the East and South Roads, and associated utility
10 infrastructure.

11 Exhibits C. 39, C. 45; Decision p. 59.

12 20. Of the 19 mitigation measures imposed by the City, Mitigation Measure 2 requires that,
13 “Prior to or concurrently with submittal of the public facilities construction agreement application,
14 a construction management plan that includes phasing, staging and circulation plan shall be
15 submitted to the PCDD for review and approval.” Decision p. 12; Exhibit C.4.

16 21. As noted in Footnote 26 of the Decision, phasing details need not be finalized prior to land
17 use permit issuance; by code, final phasing layout must be formally established concurrently with
18 the PFC agreement for the initial phase. Decision p. 59.

19 22. The Hearing Examiner concluded that as conditioned, the proposed subdivision would
20 comply with applicable provisions of the Bellingham Municipal Code, including density, lot size,
21 and building envelopes. Decision pp. 126, 129-130.

22 Ecology Flow-Control Requirements

23 23. Pursuant to the Department of Ecology (“Ecology”) Stormwater Management Manual for
24 Western Washington (“Stormwater Manual”) as adopted under local code, development projects
25 must generally provide flow control to mitigate downstream impacts from created hard surfaces

1 and land cover conversions. BMC 15.42.060. Under Appendix I-A of the Stormwater Manual,
2 flow-control-exempt receiving waters explicitly include all saltwater bodies, with the Snohomish
3 River Estuary identified as a separate exemption.

4 24. Within the context of the below SEPA appeal, the Appellant asserted that the City was
5 obligated to exercise its SEPA authority to require the project to comply with Stormwater
6 Manual's Minimum Requirement 7 ("MR 7") for flow control. Decision p. 54. In support of this
7 claim, the Appellant presented expert testimony from Dr. Lyndon Lee and Barry Wenger, both of
8 whom disputed that Mud Bay is an exempt saltwater body under the Stormwater Manual and
9 contended that flow control should be required. Decision pp. 29, 31.

10 25. Dr. Lee holds a PhD from the University of Washington (1983) in ecosystem
11 ecology/wetland and river science. Since the 1980s, he has held various academic positions and
12 worked as a consultant to numerous public and private entities. Exhibit MB.1; Decision p. 27. Mr.
13 Wenger is a retired senior environmental planner whose career spans roles, among others, with
14 Ecology, San Juan County, and the University of Washington. Decision p. 30.

15 26. In response, the Applicant relies on the testimony of Jeff Vander Yacht, a licensed civil
16 engineer in Washington with over 30 years of experience, including 23 years as a principal
17 managing projects and staff. Exhibit JFT.4. Mr. Vander Yacht testified that the Stormwater Manual
18 considers Mud Bay as an exempt saltwater body. He explained that flow control requirements are
19 designed to protect streams from high-velocity erosive forces. Twice-daily tidal cycles in saltwater
20 bodies would dwarf any potential erosive force generated by stormwater runoff. Given the rigorous
21 erosion controls and inspections that will be in place, he does not believe there is a significant risk
22 of erosion impact to Mud Bay. Decision pp.. 37-38.

23 27. The Applicant's critical areas consultant, Collin Van Slyke, noted that while the
24 Stormwater Manual does not explicitly define "saltwater body," the Washington State Hydraulic
25 Code at WAC 220-660-030(133) defines "saltwater area" to specifically include estuaries. Mr.

1 Van Slyke concurred that Mud Bay is exempt from flow control because its water budget is
2 controlled by tides rather than a hydroperiod. Decision p. 38.

3 28. The City's Surface and Stormwater Utility Manager, Jason Porter, concurred with the
4 Applicant's experts that Mud Bay is exempt from flow control requirements as a saltwater body.
5 In Mud Bay, tidal action would exert far greater influence on sediment transport than stormwater
6 discharges from the project site. Decision p. 41.

7 29. Based on the evidentiary record and expert testimony, the Hearing Examiner concluded
8 that Mud Bay is appropriately considered a saltwater body exempt from MR 7. While Appellant's
9 witnesses disagreed, she noted the State Hydraulic Code (WAC 220-660-030(133)) explicitly
10 incorporates estuaries within the definition of saltwater areas. Subject matter experts from both the
11 City and the Applicant—with extensive experience in stormwater standards—agreed that Mud
12 Bay is flow-control exempt, and the Appellant failed to provide controlling legal authority to the
13 contrary. Decision p. 120.

14 *Does Mud Bay Constitute as an "Estuarine Wetland"?*

15 30. Appellant's expert stormwater consultant, Dr. Richard Horner, argued that Mud Bay
16 should be identified and protected as a Category I estuarine wetland and contended that failing to
17 do so would lead to the risk of adverse impacts to fish and wildlife species. Decision p. 26.

18 31. Dr. Horner holds a Ph.D. in civil engineering from the University of Washington (1978).
19 In addition to serving as a Research Associate Professor at UW, he has operated an environmental
20 engineering and science consulting firm since 1986. Exhibit MB. 1.

21 32. Consistent with U.S. Fish and Wildlife Service ("USFWS") National Wetlands Inventory
22 ("NWI") mapping, Dr. Lee similarly asserted that the entirety of Mud Bay constitutes a Category
23 I estuarine wetland. Decision p. 27.

24 33. In the November 22, 2024 wetlands report addendum, Mr. Van Slyke notes that under the
25 1987 United States Army Corps of Engineers ("USACE") Wetland Delineation Manual ("1987

USACE Manual”), a positive wetland determination requires “a minimum of one positive wetland indicator from each parameter [hydrology, hydric soil, and hydrophytic vegetation].” Exhibit C.16.

34. As a senior ecologist with over a decade of local experience in critical area permitting and wetland reconnaissance and delineations, Mr. Van Slyke conducted a site visit on May 23, 2024, to evaluate whether Mud Bay functions as a Category I estuarine wetland. He reviewed all areas within 150 feet of the project area for wetlands. The site visit was scheduled during a particularly low tide to allow access into the Bay and direct observation to ascertain the presence or absence of wetland criteria. Mr. Van Slyke testified that he walked at least 1,000 feet into the Bay, that he could see all the way across the mudflat, and that the water was shallow enough he was able to see the substrate. No hydrophytic or other vegetation were observed within 1,000 feet of the subject shoreline. Data of the soils in the two representative sample plots (SP 200 near the proposed stormwater outfall and SP 201 in the main channel of Chuckanut Creek) revealed that they did not meet hydric indicators for wetlands. Given the absence of hydric soils and hydrophytic vegetation, Mr. Van Slyke thus concluded that the mudflats do not meet wetland criteria under federal, state, or local regulations. Exhibits JFT.3, C.16; Decision pp.31-32.

35. Analiese Burns, Habitat and Restoration Manager in the City’s Public Works Natural Resources Division, corroborated Mr. Van Slyke’s conclusions, testifying that Mud Bay as a whole is not a wetland. She agreed that while classification involving estuaries can be complicated, the 1987 USACE Manual is “the appropriate first, foundational source to consult.” Decision p. 34.

36. The Applicant further submitted evidence—uncontradicted by other parties—that the City has not historically regulated projects adjacent to Mud Bay on the basis of its status as a wetland. *Id.*

37. As part of her SEPA appeal conclusions, the Hearing Examiner noted that despite presenting expert testimony, the Appellant failed to address the City’s adoption of the 1987 USACE Manual by reference in its municipal code. Although a site-specific study showed

1 hydrology, the absence of hydric soils and hydrophytic vegetation confirms that Mud Bay along
2 the subject shoreline is not a wetland. The Hearing Examiner further noted that even if Mud Bay
3 in its entirety is considered a wetland, the maximum required buffer in Bellingham is 200 feet. The
4 proposed project well exceeds this requirement, providing a buffer of over 400 feet between the
5 Ordinary High Water Mark (“OHWM”) and proposed improvements. Decision pp. 119-120.

6 Hydrologic and Hydraulic Modeling and Soils

7 38. Before the Hearing Examiner, the Appellant challenged the City’s MDNS issuance,
8 asserting that environmental review was incomplete due to the deferral of hydrologic and hydraulic
9 modeling. Decision p. 25.

10 39. The Appellant presented expert testimony contending that such modeling is required at this
11 stage to demonstrate compliance with City and state stormwater regulations. Dr. Horner testified
12 that preliminary plat approval requires complete hydraulic modeling to verify the adequacy of
13 proposed stormwater management facilities. Exhibit MB.1; Decision p. 26. On cross-examination,
14 Dr. Horner acknowledged that he was unfamiliar with and had not reviewed Chapter 15.42 BMC,
15 had not visited the project site, had not conducted on-site soil testing, and was unfamiliar with the
16 City’s PFC agreement process. He further confirmed he had not reviewed the MDNS, the City
17 staff report, the Applicant’s RFI responses, or the City’s SEPA Report. Dr. Horner clarified his
18 opinion that, due to “the uniqueness of the site and the importance of the resources in Mud Bay,”
19 the City should have required a final stormwater site plan with complete hydrologic and hydraulic
20 modeling rather than accepting a preliminary stormwater report. Decision p. 27.

21 40. In response, Mr. Vander Yacht testified regarding the preparation of the preliminary
22 stormwater site plan. Mr. Vander Yacht stated that over his 30 years of practice, he has never
23 prepared final stormwater site plans at the land use permitting stage for any project in any
24 jurisdiction. A preliminary stormwater report establishes a conceptual framework demonstrating
25 that the site can accommodate code-compliant stormwater controls alongside roads and utilities.

1 In contrast, final engineering plans contain construction-level specifications designed for actual
2 building execution. Mr. Vander Yacht testified that generating final computer modeling prior to
3 land use approval is impractical because there are often significant changes made to the project
4 through the course of review and permit issuance that require significant revision of the stormwater
5 plan (e.g., trail locations and standards). The proper role of a preliminary stormwater site plan is
6 to demonstrate to the permitting authority that the layout is capable of meeting code standards.
7 Decision p. 36.

8 41. Among the 19 City-imposed mitigation measures, Mitigation Measure 1 includes a
9 requirement to “[s]ubmit to the City Public Works for review and approval Stormwater Pollution
10 Prevention Plan (SWPPP) consistent with the [Stormwater Manual] and City Code including
11 hydrologic and hydraulic calculations after the preliminary plat approval and during the review of
12 permit applications.” Exhibit C.4; Decision pp. 14-15.

13 42. Geotechnical site assessment in the record indicates two primary soil units on-site: Everett-
14 Urban Land Complex, 5 - 20 percent slopes (NRCS Map Unit 52) extending into some northern
15 areas of the site, and Nati loam, 30 - 60 percent slopes (NRCS Map Unit 110) across the central
16 and southern majority of the site interior. The Everett soil is somewhat excessively drained, but
17 has a very low to low capacity to transmit water through its most limiting layer. The unit is assigned
18 Hydrologic Soil Group B and not noted as being prone to flooding or ponding. Exhibit C.62.

19 43. In addressing the Appellant’s stormwater-related challenges raised in the proceedings
20 below, the City contended before the Hearing Examiner that state law authorizes local
21 governments to establish requirements for what constitutes a complete plat application. The City
22 has done so, and its Municipal Code does not require a final stormwater site plan prior to
23 preliminary plat approval. In fact, Bellingham has never required the granular level of engineering
24 detail the Appellant demands prior to issuing a SEPA threshold determination. Decision, p. 54.

1 Landslide Hazard Area Buffers Reduction

2 44. Development alterations within designated GHAs require a critical areas permit under
3 Chapter 16.55 BMC. In response to the City's RFIs, the Applicant submitted multiple rounds of
4 geotechnical reports and corresponding revisions to the site design. Initial feasibility analysis
5 began long before the proposal itself, dating back to 2009. Exhibit C.184. This was followed by
6 formal, project-specific geotechnical investigation and geohazard reports and memo in November
7 2021 (Exhibit C.140), October 2022 (Exhibit C.62), June 2023 (Exhibit C.82), and an updated
8 addendum in November 2024 addressing the stormwater outfall plan (Exhibit C.10). An additional
9 memo was also prepared in response to public comments. Specifically, it was clarified in the memo
10 that the 2009 analysis was a preliminary review conducted ahead of a development concept,
11 intended to inform the owners of potential development challenges and to preliminarily discuss
12 areas to preferentially avoid. Given the preliminary nature of that review and that over ten years
13 have since elapsed, the Applicant's geotechnical professional who prepared the subsequent
14 reports—a different firm than the one that conducted the 2009 review—performed a full
15 geotechnical and geohazard study for the project independent of the earlier work. Exhibit C.11. In
16 her decision, the Hearing Examiner concluded that a qualified geotechnical professional had
17 evaluated the subject property and identified the GHAs, and that the submitted reports satisfied
18 the requirements of BMC 16.55.430 and 16.55.440. Decision p. 138.

19 45. The Applicant's geotechnical consultant confirmed that the plat as a whole is feasible in
20 light of the landslide hazards. Aside from specific lots encumbered by GHAs where specific
21 setbacks were identified, it was determined that setbacks can be reduced to 10 feet for the
22 remaining lots, subject to future site-specific assessments and design recommendations. This site
23 plan assessment resulted in eliminating one proposed lot and shifting of building envelopes for
24 five others. Exhibit C.62; Decision p. 139.

1 46. Mitigation sequencing for impact to GHAs needs to be satisfied first through avoidance
2 and then by minimizing alterations through careful design. City planning staff agreed that the
3 Applicant succeeded in demonstrating avoidance of GHA impacts to the extent possible. With the
4 geotechnical recommendations incorporated by staff and to be implemented by the Applicant, the
5 proposed plat is expected to satisfy BMC 16.55.450. Decision pp. 80-81.

6 47. The steepest surfaces and areas prone to future instability were excluded from the
7 development. Development design was focused on the interior portion of the site around the
8 localized grades. Proposed lots would provide a minimum 10-foot buffer from regulated slopes,
9 subject to lot-specific geotechnical review prior to building permit issuance. For lots more
10 constrained by GHAs, specific setbacks were recommended after close review. Exhibit C.62, C.82.
11 Retaining walls will be utilized for road cuts and fills. Slightly greater than 80% of the 37.7-acre
12 site will remain undisturbed in its natural vegetated state. Stormwater from all created impervious
13 surfaces will be captured and managed. As designed and conditioned, the Hearing Examiner
14 concluded that the project avoids and minimizes impacts to regulated critical areas. As
15 conditioned, unavoidable environmental impacts from GHA alterations would be appropriately
16 mitigated in accordance with BMC 16.55.240, 16.55.260, 16.55.450, and 16.55.460. Decision pp.
17 132, 138-140.

18 48. In approving the critical areas permit, the Hearing Examiner imposed several geohazard-
19 related conditions, including a requirement that “[a]t the time of submitting a building permit
20 application on an individual lot that proposes reduction of [GHA] buffer to less than 50 feet, a
21 certified geologist shall demonstrate consistency with the criterion specified in BMC
22 16.55.460.A(1)(b).” Decision p. 152.

23 49. The conditions of approval would ensure that the recommended GHA-specific and lot-
24 specific analysis is performed, that construction would only ensue after GHA performance
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standards are shown to be satisfied for each lot and road segment in each phase, and that the project generally conforms to the recommendations of the licensed engineering geologist. Decision p. 139.

50. With these conditions in place, the Hearing Examiner determines that the project is consistent with the general purposes of the Critical Areas Ordinance and would not pose an unreasonable risk to public health, safety, or welfare. Decision, pp.138-139.

51. Having reviewed the complete evidentiary record, conducted the open-record hearing, and evaluated all written and oral testimony, the Hearing Examiner concluded that the proposed preliminary plat, as conditioned, would comply with applicable provisions of the Bellingham Municipal Code. Decision p. 126.

52. The Applicant's representatives confirmed on the record that the recommended conditions of approval shall apply throughout all stages of development. With the sole exception of the requirement to provide the PROS Plan-identified trail connections through the western boundary of the plat—the Applicant waived objections to all recommended conditions. In addition, the Applicant agreed to abide by and implement all recommended conditions contained within its various consultant reports, modified as necessary to incorporate any conditions recommended by the City. Decision p. 107.

CONCLUSIONS

1. Any Finding that is more properly deemed a Conclusion shall be treated as a Conclusion, and any Conclusion that is more properly deemed a Finding shall be treated as a Finding.

Jurisdiction:

2. The decision of the Hearing Examiner shall be final except for those matters for which appeal of the decision of the Hearing Examiner to City Council is permitted. BMC 2.56.080. Pursuant to BMC 21.10.120 and BMC 2.56.050, the City Council has authority to hear and decide appeals of Hearing Examiner's Type III-B land use decisions. *See also* BMC 21.10.040.

1 3. The Appellant expressly stated in its Notice of Appeal that it “does not seek [Council]
2 review of the Hearing Examiner's SEPA appeal ruling or shoreline permit decisions.”
3 Nevertheless, neither its written brief nor its oral argument identified which of the six decision
4 criteria for preliminary plat approval under BMC 23.16.030 were allegedly violated. Finding 11.
5 Both the Applicant and the Respondent noted in their briefs that the Appellant appeared to be
6 raising matters already argued in the SEPA appeal before the Hearing Examiner, and the Council
7 recognizes that several of the errors asserted here do overlap with issues raised in those SEPA
8 proceedings. *See e.g.*, Finding 24. However, the Appellant reaffirmed during oral argument that
9 this appeal pertains to the Hearing Examiner’s approval of the preliminary plat. The Council need
10 not address whether it possesses jurisdiction or authority to review the Hearing Examiner’s SEPA
11 appeal decisions. Instead, the Council limits its review to whether the Hearing Examiner erred
12 regarding the five asserted errors under the preliminary plat approval criteria in BMC 23.16.030.²

13 4. The Appellant similarly did not provide a specific basis on which the critical areas permit
14 approval was erroneous. Its critical areas arguments are raised in the context of the errors asserted
15 in its Notice of Appeal and Pre-Hearing Brief, and each is addressed individually below in the
16 analysis of the asserted errors.

17 **Preliminary Plat Approval Criteria and Applicable Regulatory Framework**

18 5. Chapter 23.16 BMC governs preliminary plats. The provisions identified below establish
19 the criteria for preliminary plat approval and distinguish such approval from the subsequent review
20 and approval of detailed engineering and subdivision improvements.
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23 ² The Applicant requested three variances in the proceedings below. As the challenging party, the Appellant bears
24 the affirmative burden of demonstrating error. The Council will not construct arguments or identify errors on a
25 party’s behalf. Because the Appellant has failed to identify or explain in its brief how the Hearing Examiner’s
26 decision on the variances constitutes an error of law or is unsupported by substantial evidence in the record, the
Appellant has failed to meet its burden. Accordingly, the Council will not further consider or discuss the Hearing
Examiner’s approval of the variances and will not disturb that decision.

- BMC 23.16.030(A): Preliminary plats shall be given approval, including preliminary plat approval subject to conditions, upon finding by the hearing examiner that all of the following have been satisfied:
 1. It is consistent with the applicable provisions of this title, the Bellingham comprehensive plan and the Bellingham Municipal Code;
 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
 3. The division of land provides for coordinated development with adjoining properties or future development of adjoining properties through, where appropriate, the extension of public infrastructure, shared vehicular and pedestrian access, and abutment of utilities;
 4. Each lot in the proposal can reasonably be developed in conformance with applicable provisions of the BMC, including but not limited to critical areas, setbacks, and parking, without requiring a variance that is not processed concurrently with the subdivision application pursuant to Chapter 23.48 BMC;
 5. There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools; and
 6. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The director shall be guided by the policy and standards and may exercise the powers and authority set forth in Chapter 58.17 RCW, as amended.
- BMC 23.16.060(A): The approval of a preliminary plat by the hearing examiner is approval of the general acceptability of the plat layout and its relation to adjoining

properties. Engineering detail and fulfillment of conditions of preliminary plat approval remain subject to the approval of the city.

- BMC 23.16.060(C): After final approval of the public facility construction agreement and the approval and issuance of any other required permits identified within the preliminary approval, work on the subdivision improvements may be commenced. All such agreements and permits shall be contingent upon compliance with the conditions specified in the preliminary plat approval, conformance with all applicable development standards, the payment of all fees, and the submittal of financial sureties, as may be required.

Conclusions Based on Findings

6. Because the Appellant does not claim that Hearing Examiner Rice's decision violated its due process rights or otherwise deviated from the appearance of fairness so as to deny it a meaningful opportunity to be heard, the Council will not review the appeal on those grounds. Rather, the Council's review is limited to whether the decision is contrary to law or is unsupported by substantial evidence in the record. Finding 11.

7. The Appellant's overarching argument is that strict compliance with all development standards must be demonstrated prior to preliminary plat approval, at which point vested development rights attach. Appellant's Pre-Hearing Brief p. 1. This argument reflects a fundamental misunderstanding of the City's land use regulatory framework. As demonstrated by the City code identified above, the preliminary plat process is intended to determine whether a proposed subdivision is generally feasible and capable of being developed in compliance with applicable code provisions, with more detailed requirements addressed through conditions of approval and subsequent review. Requiring final engineering designs and complete technical analyses at the preliminary plat stage would be impractical because many engineering details necessarily depend on subsequent design work, site-specific information, and the conditions

1 established through the City's PFC agreement³ and permitting processes. At the preliminary plat
2 stage, a project has not yet progressed to the point where all such information can reasonably be
3 finalized. The City's regulatory framework therefore provides for preliminary review of a
4 proposed subdivision, followed by additional engineering review and permitting before
5 construction may proceed. This staged process is consistent with state law and ensures that a
6 project's detailed improvements will ultimately comply with applicable standards, while avoiding
7 the need to complete engineering and construction level design before the overall subdivision
8 layout and feasibility have been established. *Friends of the Law v. King County*, 123 Wn.2d 518,
9 528, 869 P.2d 1056 (1994) ("A preliminary plat application is meant to give local governments
10 and the public an approximate picture of how the final subdivision will look"). Requiring complete
11 engineering and technical detail at this preliminary stage would run counter to Washington court's
12 recognition that a local government may not "make the application process so odious that
13 completion is nearly impossible." *Id.*, at 529.

14 8. At the outset, it bears noting that the decision criteria set forth in BMC 23.16.030(A) do
15 not require the Applicant to demonstrate "compliance" with every applicable City code provision
16 at the preliminary plat stage; rather, it requires the preliminary plat to be "consistent with" the
17 Bellingham Municipal Code. In this context, "consistent with" requires harmony and general
18 alignment—that the proposed subdivision conforms to the general framework and requirements of
19 the City code. BMC 23.16.060(A) and (C) expressly provide that engineering details and the
20 fulfillment of preliminary plat conditions will be addressed through subsequent City review and

21
22 ³ A PFC agreement is a formal contract between a developer and the City designed to legally bind the developer to
23 construct required public infrastructure—such as streets, water, sewer, and stormwater systems—to municipal
24 standards as a prerequisite for property development. The agreement is highly specific, binding the owner to the
25 approved project description and the engineering plan submittal standards required by the City. Pursuant to BMC
26 23.20.030, final subdivision approval is strictly contingent upon the City's formal acceptance of all procedural steps
associated with the PFC agreement, including approved record drawings, a cost statement, a maintenance bond for
dedicated infrastructure, a deed of conveyance, and a water availability form from the Whatcom County Health
Department. This rigorous review ensures that all infrastructure meets City specifications and standards and is
formally transferred to public ownership before final plat approval and recording.

1 approval. The deferral of certain technical analyses thus reflects the staged process contemplated
2 by the code. Therefore, so long as the Applicant's proposed subdivision is sufficiently developed
3 to establish consistency with applicable requirements and the feasibility of future compliance, the
4 Council sees no basis to require either the City or the Applicant to depart from the process
5 expressly established by the Bellingham Municipal Code.

6 9. Preliminary plat approval also does not itself grant vested development rights, contrary to
7 the Appellant's assertion. *See* Appellant's Pre-Hearing Brief p. 1. Under RCW 58.17.033 and
8 BMC 21.10.260, the vested rights doctrine simply establishes that a land use application is
9 governed by the development regulations in effect on the date a complete application is filed to
10 the City. Preliminary plat approval confirms that the project, as proposed or conditioned, is
11 consistent with applicable provisions; it does not eliminate a property owner's obligation to
12 demonstrate consistency with those vested laws, nor does it transform preliminary approval into
13 an automatic pass on future technical design reviews. The Applicant remains bound by the vested
14 code requirements during subsequent stages of development.

15 *Asserted Error 1: Failure to Comply with Density, Lot Averaging, and Phasing Requirements*

16 10. Hearing Examiner Rice did not err by failing to comply with density, lot averaging, and
17 phasing requirements. The Appellant argues that following the adoption of Ordinance No. 2025-
18 12-032, up to 152 dwelling units are theoretically permissible on the proposed 38-lot site, and that
19 the Hearing Examiner erred by failing to evaluate this project based on this greater potential
20 development intensity. Appellant's Pre-Hearing Brief p. 4. This argument is without merit.
21 Pursuant to BMC 21.10.260, a land use permit application must be reviewed under the
22 development regulations in effect on the date a complete application is filed. The project vested
23 on April 5, 2022, upon issuance of the Notice of Complete Application. Finding 3. Ordinance No.
24 2025-12-032 was adopted in December 2025 and does not apply to this vested application.
25 Evaluating theoretical density allowed under subsequent zoning amendments is neither a factor

1 nor an approval criterion for a preliminary plat. Furthermore, the potential construction of 152
2 dwelling units is purely speculative. Site-specific constraints—including building envelopes,
3 critical area buffers, tree preservation mandates, and other regulatory requirements—would render
4 such additional density infeasible on most lots. The Hearing Examiner properly evaluated the
5 application based on the project actually proposed for approval: a 38-lot single-family detached
6 residential subdivision. Finding 9.

7 11. The Appellant next asserts that the proposed phasing plan violates code requirements
8 because Phase 1 is non-contiguous. Appellant's Pre-Hearing Brief p. 5. Under BMC 23.16.010(E),
9 a preliminary plat may be developed in phases "provided a phasing plan is reviewed and approved
10 by the city concurrently with the [PFC] agreement for the first phase." Although the Applicant's
11 preliminary layout draft depicts non-contiguous lots in Phase 1, the City code does not require a
12 finalized phasing plan at the preliminary plat approval stage. Rather, full compliance with
13 contiguity and independent development standards is required when the PFC Agreement is
14 executed. Findings 19-21.

15 12. The Appellant's contention that neither phase independently satisfies the applicable
16 20,000-square-foot standard for Edgemoor Neighborhood Area 7 also fails. Under BMC
17 23.08.050(A), all new lots must satisfy the minimum size requirement specified in the zoning
18 tables under Chapter 20.00 BMC. For Area 7 of the Edgemoor Neighborhood (BMC 20.00.060),
19 the density column specifies: "20,000 sq. ft. min. detached lot size, or one lot per 20,000 sq. ft.
20 average overall density." Because the code uses the disjunctive term "or," an applicant may satisfy
21 density either by maintaining a minimum lot size of 20,000 square feet or by maintaining an overall
22 density of one lot per 20,000 square feet. Where an applicant—as here—elects the overall density
23 standard, there is no minimum lot size requirement. Consequently, the lot averaging provision
24 under BMC 23.08.050(A)(6) is not applicable. As found by the Hearing Examiner, the maximum
25
26

1 theoretical density is 82 dwelling units; the proposed 38 lots are entirely consistent with Area 7
2 density. Finding 18.

3 13. The Appellant has not established that the Hearing Examiner erred in evaluating the
4 proposed project's density, phasing, or lot sizing under the applicable provisions of the Bellingham
5 Municipal Code. The Hearing Examiner's decision regarding these matters was consistent with
6 applicable laws and supported by substantial evidence. For these reasons, Asserted Error 1 is
7 denied.

8 Asserted Error 2: Failure to Adequately Resolve the Applicability of Ecology Flow-Control
9 Requirements

10 14. The Appellant asserts that Hearing Examiner Rice erred by accepting the Applicant's
11 claimed exemption from MR 7 (flow control). Appellant's Pre-Hearing Brief pp. 5-8. The City's
12 stormwater provisions in Chapter 15.42 BMC implement the Stormwater Manual to regulate the
13 discharge of stormwater to receiving water bodies. Specifically, BMC 15.42.060(F)(7) provides
14 that "projects that meet flow control exemption criteria of the Ecology Manual are eligible to apply
15 for modification to these requirements." Appendix I-A of the Stormwater Manual identifies all salt
16 waterbodies as flow-control-exempt receiving waters. Finding 23.

17 15. Substantial evidence supports the Hearing Examiner's determination that Mud Bay is a
18 saltwater body exempt from MR 7. Under the State Hydraulic Code, WAC 220-660-030(133),
19 "saltwater areas include estuaries and other surface-water-connected wetlands that provide or
20 maintain habitat that support fish life." Both of the Applicant's experts, Mr. Vander Yacht and Mr.
21 Van Slyke, testified that Mud Bay is a salt waterbody exempt from flow control requirements.
22 Addressing this issue on behalf of the City, Mr. Porter likewise agreed, testifying that tidal action
23 would have far greater influence in Mud Bay than stormwater discharge from the proposed project.
24 The Appellant makes no showing that the Hearing Examiner erred in relying on the consensus of
25 the Applicant's experts and City staff. While the Appellant notes that Ecology's guidance

1 document, *How to Meet Ecology's Construction Stormwater General Permit Requirements*, lists
2 estuaries and saltwater separately in its definition of "surface waters of the state," the Appellant
3 fails to establish why a general guidance document should take precedence over WAC 220-660-
4 030(133). The Appellant further points out that Appendix I-A separately lists the Snohomish River
5 Estuary as exempt, arguing by negative implication that similar waterbodies like Mud Bay are not
6 automatically exempt. Appellant's Pre-Hearing Brief p. 6. Mere speculation regarding the
7 administrative rationale for separately listing the Snohomish River Estuary, without further
8 elaboration, does not satisfy the Appellant's burden of proof or overcome the presumption of
9 validity afforded to the Hearing Examiner's decision under BMC 1.26.020(D). Given the credible
10 testimony from the Applicant's experts and the City, substantial evidence supports the Hearing
11 Examiner's determination that Mud Bay is exempt from flow control requirements. Findings 23-
12 24, 26-29.

13 16. The Appellant next argues that because the proposed stormwater discharge point is located
14 above—rather than at—the applicable high-water mark, the requirement for flow control
15 exemption has not been met. Appellant's Pre-Hearing Brief p. 7. However, the Appellant cites no
16 code provision or legal authority supporting this distinction, nor does it explain how discharging
17 above the high-water mark constitutes a violation. It is not the role of the Council to construct or
18 speculate upon legal arguments on the Appellant's behalf in this appeal.

19 17. The Appellant's reliance on the Stormwater Manual definition of "estuarine wetland" is
20 likewise misplaced. Appellant's Pre-Hearing Brief p. 7. The City and the Applicant relied on the
21 1987 USACE Manual because that is the manual the applicable code requires. BMC 16.55.290(A)
22 provides that identification of wetlands and delineation of their boundaries shall be conducted in
23 accordance with the federal wetland delineation manual and applicable regional supplements, as
24 required by RCW 36.70A.175. RCW 36.70A.175, in turn, requires that wetlands regulated under
25 development regulations be delineated in accordance with the manual adopted by Ecology

1 pursuant to RCW 90.58.380. RCW 90.58.380 directs Ecology to adopt a manual for the delineation
2 of wetlands that implements and is consistent with the 1987 manual used by USACE and the
3 United States Environmental Protection Agency. Read together, these provisions establish a clear
4 statutory and regulatory chain for the use of the 1987 USACE Manual. The Appellant offers no
5 legal basis for looking instead to the Stormwater Manual for wetland delineation purposes, and its
6 argument on this point therefore fails. Findings 30, 32-37.

7 18. The Appellant's reliance on WAC 173-26-221 is misplaced. Appellant's Pre-Hearing Brief
8 p. 7. WAC 173-26-221 pertains to standards of requirements to be included in a local shoreline
9 master program—it does not apply to a project specific application. This appeal proceeding is not
10 a challenge to the City's shoreline master program. Moreover, even if WAC 173-26-221 was
11 applicable to the subject project permit review, which it is not, the present appeal excludes review
12 of any shoreline program requirements. While the Appellant calls for heightened ecological
13 protections for mudflats, it identifies no applicable code standard nor explains how any such
14 standard was violated here.

15 19. An appellant cannot satisfy its burden on appeal by merely raising generalized uncertainty
16 or identifying technical questions that it believes remain unresolved. Rather, the Appellant must
17 affirmatively demonstrate that the decision is unsupported by substantial evidence or contrary to
18 law. The mere presence of competing technical arguments does not render a Hearing Examiner's
19 decision legally reversible. As established in the record, substantial testimony from qualified
20 professionals and City staff supports Hearing Examiner Rice's determination that Mud Bay is
21 exempt from flow-control requirements. The Appellant has identified no specific evidentiary gap
22 or legal error sufficient to overcome the presumption that the Hearing Examiner's decision is valid
23 and correct. For these reasons, Asserted Error 2 is denied.

Asserted Error 3: Failure to Demonstrate Compliance with Stormwater, Soils, and Slope Stability Requirements Before Preliminary Plat Approval

20. Stormwater management represents one of the main concerns of the Appellant. Specifically, the Appellant points out that the Applicant's preliminary stormwater management report lacks hydrologic and hydraulic modeling. The Appellant repeatedly highlights that the SEPA report referenced such modeling as present when it was not, asserting that this discrepancy undermines the validity of the City's MDNS. Appellant's Pre-Hearing Brief pp. 8-9. However, the Hearing Examiner's decision on Appellant's SEPA appeal was not appealed to the Council and therefore the Council will not address this issue. Finding 10.

21. The threshold question properly before the City Council is whether formal hydrologic and hydraulic stormwater modeling is legally required prior to preliminary plat approval. Relying on the testimony of Dr. Horner, the Appellant contends that complete hydrologic and hydraulic modeling is necessary at this early stage. Conversely, the Applicant's stormwater engineer, Mr. Vander Yacht, testified to standard engineering practice based on his 30 years of experience. He noted that he has never prepared a final stormwater site plan at this early phase in any jurisdiction. As Mr. Vander Yacht explained, requiring final engineering information—including complete hydrologic and hydraulic modeling—prior to preliminary plat approval is unreasonable; while a final project generally conforms to the conceptual layout of an approved preliminary plan, project modifications commonly arise during detailed engineering design, necessitating corresponding adjustments to the stormwater plan throughout the course of review and permit issuance. The Hearing Examiner found Mr. Vander Yacht's analysis to be persuasive. So too does the Council. Findings 39-40.

22. Consistent with this phased approach as articulated by the Applicant's expert, the additional mitigation measures proposed by the Applicant and imposed by the City in the first MDNS mitigation measure include submitting to the City Public Works for review and approval

1 “SWPPP consistent with [Stormwater Manual] and City Code, including hydrologic and hydraulic
2 calculations after the preliminary plat approval and during the review of permit applications.”

3 Finding 41.

4 23. While Dr. Horner may be a respected expert in his field, the Hearing Examiner found that
5 he was not familiar with the City’s stormwater management code under BMC 15.42, had not
6 visited the site, had not reviewed the MDNS, and was not familiar with the City’s PFC agreement
7 process. Finding 39. Given these gaps, it is not unreasonable that the Hearing Examiner was not
8 persuaded by Dr. Horner’s opinion regarding the necessity of hydrologic and hydraulic modeling
9 at this stage of review.

10 24. The Appellant fails to cite any provision of the City code requiring hydrologic or hydraulic
11 modeling to be completed prior to preliminary plat approval. To the contrary, the applicable code
12 provisions confirm that engineering detail is properly addressed following preliminary plat
13 approval. The Hearing Examiner’s decision on a preliminary plat focuses exclusively on the
14 general acceptability of the plat layout. Full technical compliance is explicitly deferred to post-
15 preliminary plat approval processes, during which City departments must review and approve final
16 construction drawings prior to permit issuance or site disturbance. *See* BMC 23.16.060(A), (C).
17 Accordingly, the approval of a preliminary plat without final hydrologic and hydraulic modeling
18 is not inconsistent with the Bellingham Municipal Code.

19 25. The Appellant next asserts that the Applicant incorrectly classified the predominant project
20 soils as Everett-Urban loam with Hydrologic Soil Group B characteristics, contending instead that
21 the site’s predominant soil more accurately reflects Hydrologic Soil Group C conditions—which
22 have substantially lower infiltration capacity and correspondingly greater runoff potential.
23 Appellant’s Pre-Hearing Brief pp. 10-11. This assertion is conclusory. The Appellant fails to cite
24 specific record evidence supporting this claim and offers no rationale for crediting Dr. Horner’s
25 testimony over the contrary findings of the Applicant’s geotechnical expert—particularly given

1 the Hearing Examiner's finding that Dr. Horner did not conduct on-site soil testing. Finding 39. A
2 conclusion regarding the site's predominant hydrologic soil group is inherently a site-specific,
3 technical determination. Finding 42. The Hearing Examiner reasonably credited the Applicant's
4 expert, whose conclusions were grounded in site-specific data. The Appellant identifies no basis
5 in the record to disturb that credibility determination.

6 26. Even assuming, arguendo, that some evidence in the record could be construed to support
7 the Appellant's soil classification assertion—which the Appellant fails to identify with any
8 specificity—this would not entitle the Appellant to relief. The applicable standard of review is not
9 whether the Appellant presented substantial expert testimony or otherwise identified some
10 evidence supporting its own position. Rather, the Appellant bears the affirmative burden of
11 demonstrating that the Hearing Examiner's decision is contrary to law or is not supported by
12 substantial evidence in the record. The mere existence of competing expert opinion does not satisfy
13 this standard. Where the record contains credible evidence supporting the Hearing Examiner's
14 determination—as it does here—that determination must be affirmed, even if the record could also
15 have supported a contrary conclusion. The Council will not reweigh the evidence or substitute its
16 judgment for that of the Hearing Examiner. Asserted Error 3 is denied.

17 Asserted Error 4: Failure to Demonstrate that Reduced Landslide Hazard Area Buffers Provide
18 Equivalent Protection Before Preliminary Plat Approval

19 27. The Appellant takes issue with the proposed reduction of landslide hazard area ("LHA")
20 buffers from the standard 50-foot width to as little as 10 feet across most proposed lots. The
21 Appellant asserts that reduced buffers cannot be permitted unless "equivalent protection" is
22 formally demonstrated prior to preliminary plat approval, and that deferring site-specific
23 geotechnical analyses to the building permit stage is unlawful. Appellant's Pre-Hearing Brief pp.
24 12-14.

25 28. Pursuant to BMC 23.16.030(A), preliminary plat approval requires a finding that each lot
26 within the proposed subdivision can reasonably be developed in conformance with applicable

critical area provisions (Chapter 16.55 BMC). While other municipal code provisions may have required a showing of equivalent protection for specific variances or modifications, the reduction of GHA buffers is governed specifically by BMC 16.55.460. Although BMC 16.55.460(A)(1)(a) establishes a standard minimum buffer equal to the height of the slope or 50 feet, whichever is greater, BMC 16.55.460(A)(1)(b) allows a buffer reduction to a minimum of 10 feet when a qualified professional demonstrates to the City's satisfaction that the reduction will *adequately* [emphasis added] protect the proposed development, adjacent properties, and the subject critical area.

29. In asserting that development-induced changes will destabilize slopes and heighten landslide risk, the Appellant relies heavily on the Applicant's 2009 geologic feasibility study. Appellant's Pre-Hearing Brief p. 13. However, the record shows that during the preliminary plat design process, updated geotechnical investigation and geohazard reports were subsequently completed in 2021 and 2022. The Appellant provides no legal or technical basis to disregard these updated evaluations in favor of an outdated preliminary report. Indeed, the Hearing Examiner expressly concluded that the subject property was reviewed by a qualified professional and that the submitted reports satisfy BMC 16.55.430 and BMC 16.55.440, and further determined, as conditioned, that direct impacts to GHAs were appropriately avoided or minimized. The Appellant does not challenge any of these Hearing Examiner findings or conclusions. Findings 44-47.

30. Contrary to the Appellant's assertion, deferring specific engineering analyses is expressly permitted under Bellingham Municipal Code. Under BMC 23.16.060, preliminary plat approval establishes the general acceptability of the plat layout and its relationship to adjoining properties, while detailed engineering designs and fulfillment of preliminary plat conditions remain subject to subsequent City review and approval. Importantly, the Hearing Examiner's approval of the proposed subdivision is expressly conditioned upon lot-specific geotechnical compliance. When submitting a building permit application for any lot proposing a GHA buffer of less than 50 feet, a certified geologist must demonstrate to the City's satisfaction that the proposed reduction is consistent with the criterion specified in BMC 16.55.460(A)(1)(b). Satisfaction of this condition is mandatory prior to building permit issuance. Findings 48-50.

31. As conditioned, the proposed project can reasonably be developed in conformance with Chapter 16.55 BMC as required by BMC 23.16.030(A). The Hearing Examiner did not err in conditionally approving the critical areas permit and preliminary plat. For these reasons, Asserted Error 4 is denied.

Asserted Error 5: Failure to Adequately Protect Public Health, Safety, Welfare, and Shoreline Ecological Functions

32. The Appellant failed to carry its burden of demonstrating that the Hearing Examiner erred by approving the preliminary plat despite alleged cumulative impacts on public health, safety, welfare, and shoreline ecological functions. Chapter 58.17 RCW governs the subdivision of land and expressly provides that its purpose is to promote the public health, safety, and general welfare in accordance with applicable state and local standards. *See also* BMC 23.16.030(A)(6).

33. The Appellant's contention that the proposed project cannot be safely or lawfully developed rests entirely on the aggregation of its preceding assignments of error. However, the Appellant has failed to meet its burden of establishing that any portion of the Hearing Examiner's decision was unsupported by substantial evidence in the record or inconsistent with applicable regulations. Because the Appellant failed to establish any individual error warranting reversal or modification, its "cumulative effect" argument is legally unfounded. Appellant's Pre-Hearing Brief p. 15. Such claim cannot succeed where none of the underlying individual claims has independently been established.

34. While the City maintains a duty under state and local law to protect public health, safety, and general welfare, generalized assertions of potential harm cannot serve as an independent legal basis to overturn a land use decision. Absent a specific showing that the Hearing Examiner's decision is not supported by substantial evidence or violates applicable law, broad public welfare concerns are insufficient to overcome the Decision's presumption of validity. Accordingly, the Hearing Examiner did not err, and Asserted Error 5 is denied.

1 **DECISION**

2 It is important to emphasize the narrow and purely quasi-judicial role the City Council plays in
3 this appeal. This proceeding is not a vote on whether the Council favors the development, nor is it
4 an opportunity for the Council to redesign the project or to signal whether it agrees with the
5 concerns the Appellant has raised. Under the Bellingham Municipal Code, the Council cannot
6 consider new evidence on this appeal and is required to affirm the Hearing Examiner's decision,
7 so long as it is supported by substantial evidence and is not contrary to law.

8 The Council recognizes that the Appellant brought this challenge in good faith, driven by a genuine
9 care for the local environment and the future of our community. The Council does not take these
10 concerns lightly, and today's decision is in no way a reflection of indifference to them. However,
11 the Council's authority is strictly limited to a single legal question: Has the Appellant met its
12 burden of proof to demonstrate that Hearing Examiner Rice's decision was contrary to law or
13 unsupported by substantial evidence?

14 Based upon the Findings and Conclusions set forth above, the City Council concludes that the
15 Appellant has not met its burden to show that Hearing Examiner Rice's decision is erroneous.

16
17 Accordingly, the decision of Hearing Examiner is hereby **AFFIRMED**.

18
19 **ENTERED** this 21st day of August, 2026.
20

21 **BELLINGHAM CITY COUNCIL**

22 
23

24 Hannah Stone, Council President
25