



## Planning and Community Development Department

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### **CONSOLIDATED PERMIT INFILL HOUSING, MULTIFAMILY DESIGN REVIEW, AND CRITICAL AREAS DECISION AND PERMIT**

**SUB2020-0005/VAR2021-0001/DR2020-0003/PDP2020-0001/  
CAP2020-0002/SEP2020-0002**

**Barkley Heights  
Type I and II**

#### **I. SUMMARY OF DECISION**

##### **Proposal (Exhibit A):**

Development of an approximately 11-acre site located generally west of Chandler Parkway, between Bristol Way and the northern terminus of Sussex Drive with 63 residential units. The associated preliminary plat, known as Barkley Heights, proposes to create each of these units on a fee simple lot consisting of 12 single-family cluster lots, 11 infill smaller house lots and 40 infill housing townhomes lots. A density bonus is requested through the associated preliminary plat to increase the number of residential units from 50 to 63.

This consolidated permit includes review of infill housing, multifamily design review and critical areas applications for development on the infill housing lots created through the land division process. The Barkley Heights preliminary plat is under review through the Type III review process with a final decision issued by the hearing examiner.

The proposed infill housing units require approval pursuant to Bellingham Municipal Code (BMC) Chapters 20.25 and 20.28. Modifications from some of the infill housing code provisions have been requested.

Impacts to critical areas are proposed with mitigation occurring onsite. The Proposal includes approximately 39,490 square feet (SF) of temporary wetland buffer impacts, 18,245 SF of permanent wetland buffer impacts and development within geohazards.

The Proposal is served by the extension of Sussex Drive from its current terminus through the site to Bristol Way. Direct vehicular access from Chandler Parkway is not allowed. The dedication of land for public trail easements is required. Stormwater management is proposed along the western boundary of the site in detention vaults.

**Applicant:** Tony Freeland, Freeland and Associates; 220 W Champion, Bellingham WA 98225; (360)650-1408.

**Owner:** R&H Farms, Inc, 8-3322 Bluejay Street, Abbotsford, V2T 6P9

**Decision:** Approval with conditions.

**Date:** April 7, 2021

## II. PROPERTY LOCATION AND DESCRIPTION

**Address:** 3615 Chandler Parkway

**Legal Description:** The subject site is legally described on Lot 4, Amended Form Over Substance Short Plat #1997 as recorded under Whatcom County Auditor's File Number 2030106542.

**Whatcom County Assessor ID#:** 380316 372176

## III. PERMIT PLANS AND EXHIBITS

This approval includes the following documents, subject to any modifications and conditions contained in **Section V** of this permit:

**Exhibit A** – Barkley Heights Proposal,

**A.1** – Application materials and site, building design, and landscape plans as amended by the January 4, 2021 submittal.

**A.2** – Requested Infill Housing Modifications

**A.3** – Floor Area Ratio (FAR) Calculations

**A.4** – Smaller House Plans

**A.5** – Townhouse Plans

**A.6** – Preliminary Landscape Plan

**Exhibit B** – Notice of Application, Barkley Heights

**Exhibit C** – Public comment

**Exhibit D** – Traffic Analysis (Gibson, March 2019)

**Exhibit E** – SEPA Threshold Determination of Nonsignificance

**Exhibit F** - Mitigation plan

**Exhibit G** - Geohazard map

**Exhibit H** - Wetland map

**Exhibit I** - Geohazard report

**Exhibit J** - Geohazard addendum letter

**Exhibit K** - Wildlife corridor map

**Exhibit L** - NGPA sign spec

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The subject site is vacant and consists of approximately 11.37 acres.
2. The property is located in Area 2 of the Barkley Neighborhood and zoned Residential Multi, Planned with a density of 10,000 square feet per unit, which yields 50 density units.

3. The Proposal requires approval of the associated preliminary plat application (SUB2020-0005) to allow the creation of the smaller house lots and approve the density bonus pursuant to BMC 23.08.040(C)(1). The hearing examiner issues the final decision regarding the preliminary plat and the requested density bonus. This permit decision is valid only if appropriately conditioned that the associated preliminary plat application is approved and this permit decision is subject to the hearing examiner order for the preliminary plat. This permit decision shall be deemed null and void if the preliminary plat is not approved or conditionally approved in a manner determined inconsistent with this permit.
4. Abutting properties to the north, south and east of the subject site are located in the same zoning subarea. Properties west of the subject site are located in Area 1 of the Barkley Neighborhood and zoned Residential Single with a 10,000 square foot minimum lot size requirement.
5. In 2018, the applicant submitted a proposal for city review that included 31 single-family lots. In response to the pre-application conference with city staff, the proposal was redesigned and presented at a neighborhood meeting as a 75-unit proposal that consisted of a mix of townhouse and duplex units.
6. In response to the comments received at the neighborhood meeting and further site exploration, the applicant revised the proposal to include 50 townhouse units and 24 single family lots. On July 25, 2019, the applicant presented the revised proposal at a pre-application neighborhood meeting. Issues raised included traffic (future increase), impacts to existing parking on Sussex, will the units be for rental or ownership, slope stability due to construction/tree removal, concerns regarding the impacts from increased traffic on McLeod Road during school drop-off and pick-up hours, Chandler landscape median maintenance and comments that the proposed development will impact the existing neighborhood with increased noise, traffic, air pollution, etc.
7. On January 13, 2020, the proposed unit count and make-up were again modified and applications were submitted for the 64-unit proposal, which included a preliminary plat, SEPA checklist, infill toolkit, multifamily design review, critical areas and technical studies. NOTE: The applicant subsequently submitted a subdivision variance from the front yard setback associated with the single-family cluster lots, Lots 1-12. The application materials submitted in support of the preliminary plat and variance are **Attachments A, A.1-A.6**.  
  
The applications submitted for this proposal include Type I, II and III land use review processes. The Type I and II applications, which include the multifamily design review, infill toolkit, and critical areas applications, are the subject of this permit.  
  
The preliminary plat and subdivision variance are Type III applications and require a hearing examiner's decision.
8. The City informed the applicant that the above land use applications could not be accepted without issuance of a Temporary Certificate of Multimodal Transportation Concurrency and payment of the required application fees. The city subsequently issued this certificate (CON2020-0005) on January 28, 2020. Application fees were received by the city on March 3, 2020, which constitutes the application date for the proposal.
9. From March 16, 2020 through January 4, 2021, the applications remained in an incomplete status with the city and applicant exchanging notices of incomplete application and responses to those notices. The applicant's January 4, 2021 submittal reduced the unit count by one unit for a total of 63 units proposed.

10. On January 15, 2021, the city deemed the applications sufficient to begin review and deemed the applications complete.
11. On January 15, 2021, the city issued a Notice of Application (**Attachment B**) establishing a comment period through January 29, 2021 compliant with BMC 21.10.200. The applicant informed the city on January 19, 2021 that the public notice signs had been posted on the site in two locations, terminus of Sussex Drive and near Bristol Way. In response to this notice, the city received public comment (**Attachment C**) concerning the following:
  - a. Traffic:
    - i. Increased traffic.
    - ii. Cut-through traffic resulting from Sussex Drive as a through street.
    - iii. Impacts of increased traffic on the Sussex Drive/Barkley Blvd intersection.
    - iv. Current parking trends on Sussex Drive.
  - b. Density:
    - i. Too dense.
    - ii. Density bonus should not be approved.
    - iii. Townhouses are not consistent with single-family character.
  - c. Overall Design:
    - i. Concerns raised regarding lot and building design of infill housing units.
    - ii. Private alley is not sufficiently designed to serve the townhouse units.
  - d. Trails:
    - i. Location of trail between the two residences at 3511 and 3601 Chandler Pkwy would have too many impacts and result in an undesirable connection.
    - ii. The project is not provided sufficient recreational opportunities.
  - e. Private covenants for Woodside Association:
    - i. The current maintenance obligations of the Woodside Association to maintain portions of Chandler Pkwy should be transferred to the new homeowner's association.

The applicant voluntarily prepared a traffic study (**Attachment D**) to study the concerns raised at the neighborhood meeting, including but not limited to the impacts the Proposal would have on the Sussex Drive/Barkley intersection and overall impacts resulting from the construction of Sussex as a through road. Staff have reviewed the traffic study and concurs with the study's conclusions that the impacts resulting from this Proposal do not require mitigation.

Staff evaluated the public comments and determined that the impacts resulting from the increased traffic, street and intersection designs are consistent with adopted development standards and city policies. The impacts were determined to be non-significant and did not warrant mitigating measures beyond what city regulations already require.

Staff notes that the subject site is zoned Residential-Multi, Planned and through Chapter 20.38 BMC, the property can be developed with multifamily uses and request a similar 50% density bonus. The proposed uses are both compliant and consistent with the current zoning designation and a neighborhood characterized predominately by single-family uses.

Staff finds the overall design of the proposed housing types are contextually consistent with the character of the adjacent single-family development in terms of site orientation and building elements.

The public comments received concerning recreational amenities are appropriately discussed in staff's recommendation to the hearing examiner concerning the preliminary plat.

Public comment concerning the current maintenance responsibilities of the Woodside Association are private matters that are not subject to this land use review. These obligations were imposed as a condition of the Woodside Preliminary Plat approval. The city would not object to a transfer of maintenance responsibilities through a plat modification process (BMC 23.16.090) provided the city has authority through that process to ensure the maintenance responsibilities are guaranteed in perpetuity.

12. On March 26, 2021, the city issued a SEPA threshold determination of non-significance (SEP2020-0002). **Attachment E**

### **Infill Housing**

13. The proposal includes 51 infill housing units consisting of 40 townhouse and 11 smaller house units. Chapter 20.28 BMC establishes the development regulations and design standards for these infill housing units. Development on the cluster detached single-detached lots will be regulated by Chapter 20.30 BMC.
14. Pursuant to BMC 20.28.030(B)(1-3), applicants may request minor modifications to the general parameters and design standards set forth in Chapter 20.28 BMC if all required criteria are met. The infill housing application includes requests for the following modifications (**Attachment A.2**):
  - a. BMC 20.28.060(C)(3): Increase the allowed height for the smaller houses.
  - b. BMC 20.28.060(E)(8): Allow parking within the required 25-foot setback.
  - c. BMC 20.28.140(C)(3): Increase the allowed height of the townhouse buildings.

The applicant has provided an analysis of each modification request for compliance with the decision criteria pursuant to BMC 20.28.030(B)(1-3). The proposal meets the minor modification criteria in BMC 20.28.030(B)(1-3) as follows:

- 1) Fifty percent of the site is constrained with critical areas, including wetlands, wetland buffer and steep slopes. Development is further restricted by the site's shallow bedrock. The development proposal has been designed around these physical limitations to the extent practical.

The residential structures and infrastructure have been placed on the developable portion of the site in locations to avoid excess cut and fill and limit removal of bedrock with blasting. The shallow bedrock results in a stair-stepped site design to allow the construction of accessible driveways and building placement with relatively shallow foundation designs.

Pursuant to BMC 20.08.020, height definition #1 is measured from existing grade unless otherwise approved through a preliminary plat. The application materials did not include sufficient information to establish final grades for the preliminary plat. Staff believes the site physical challenges sufficiently address the criteria to warrant the requested modifications. The excessive grades of the site determine an existing grade for height definition #1 that does not work for the desired locations of the residential structures. Allowing an increased height will not increase the overall square footage of the structures due to their size limitation using FAR. Measuring the height of the proposed structures with the excessive grade is increasing the overall measured height but is not affecting the overall allowed bulk and mass of the structures;

- 2) The modifications are consistent with the purpose of Chapter 20.28 BMC to implement comprehensive plan goals and policies encouraging infill development, providing recreational amenities, more efficient use of the remaining developable land, protection of environmentally sensitive areas, and creating opportunities for more affordable housing. The site will create compact housing with opportunities for individual sale with an efficient site plan that integrates pedestrian-oriented site and building design into an abutting regional trail network; and
  - 3) The modifications will not result in a development that is less compatible with neighborhood land uses given the surrounding development consists of single-family development of 2- to 3-stories constructed on similarly steep hillsides and/or on sites that contain critical areas.
15. Pursuant to BMC 20.28.050(A), the proposed density exceeds the zoned density with the request for a density bonus pursuant to the cluster land division provisions of BMC 23.08.040(C). As proposed, at least 50% of the proposed dwelling units are infill housing units. The overall density of the proposal can only be found to comply with this code provision if the cluster density bonus is approved through the land division review process. This permit must be appropriately conditioned to require approval of the cluster preliminary plat (SUB2020-0005).
  16. BMC 20.28.050(B) specifies that there are no minimum lot dimensions, lot sizes or minimum street frontage requirements for lots created for development of infill housing units, unless otherwise specified in Chapter BMC 20.28 BMC. As proposed, the townhouse and smaller house lots do require frontage on a street or lane and smaller house lots have lot size requirements.

The proposed townhouses meet the frontage requirement with abutment on the proposed extension of Sussex Drive.

The lots identified for smaller houses also provide frontage on Sussex Drive and all have site areas between 1,800 and 3,000 square feet. The townhouse and smaller lots can only be found to comply with this code provision if Sussex Drive is constructed to fully abut the townhouse and smaller house lots.
  17. Pursuant to BMC 20.28.050(C), sites with townhouse unit types may be subdivided into lots that do not comply with development standards in Title 23 BMC individually, as long as the parent site as a whole complies with this chapter. The parent site as a whole complies with Title 23 BMC provided the necessary infrastructure to support the development as required through the preliminary plat process is installed. This permit should be appropriately conditioned to require all conditions of the preliminary plat to be conditions of this permit.
  18. The infill application relies on the overall design of the proposed Barkley Heights preliminary plat and the exceptions specific to lot design standards pursuant to Title 23 BMC. This permit must be conditioned to require the lots proposed for development of infill housing units comply with the preliminary plat decision and be appropriately noted on the final plat.
  19. BMC 20.28.050(D) specifies: "Legal documents identifying the rights and responsibilities of property owners and/or the homeowners' association for use and maintenance of common facilities shall be submitted for approval by the Director and recorded. When part of a

subdivision they shall be noted on the plat." The legal documents that are or may be necessary for this proposal include but are not limited to: Common wall agreements for the townhouse units, use and access easements for access and parking, pedestrian access and landscaping, utility easements, and building easements necessary to comply with the building code. This provision will be met after the city's review of the required legal documents and proper notation on the final plat mylar.

20. BMC 20.28.050(F)(1) requires each townhouse and smaller house lot to abut a street or lane. All units front a street, provided Sussex Drive is constructed as discussed above in this permit. Therefore, conditionally this proposal satisfies this provision.
21. BMC 20.28.050(F)(2-4) require additional design standards for private alleys. Vehicular access to the townhouse lots is proposed from an alley off Sussex Drive. All townhouse units have underbuilding parking. As designed, the alley meets this code provision.

The application materials include a request to dedicate the alley to the public. Infill housing provisions do not require the dedication. The city will consider the applicant's request to dedicate the alley and will make a final determination of the alley's ownership during review of the proposal's engineering construction plans through the Public Facility Construction Agreement process. The city's final determination to accept the alley for public dedication will take into consideration the final design of the alley to determine the city's ongoing maintenance obligations resulting from its design. If the alley is dedicated to the public, this permit decision should be conditioned to require construction of the alley to city of Bellingham standards for a public alley.

22. BMC 20.28.050(F)(5-9) are not applicable to this proposal.
23. BMC 20.28.050(F)(10) has been taken into consideration and the area of the alleys has been excluded from the FAR and open space calculations as shown on the Parcel Size Exhibit (**Exhibit A.3**).

#### Smaller House (**Exhibit A.4**)

24. BMC 20.28.060 provides the required development and design standards for smaller house lots and units except for the requested modifications discussed above. The smaller houses meet the development setbacks, provide the required number of parking spaces, will provide required street frontage with the improvements to Sussex Drive, meet the floor area requirements and provide a design architecturally consistent with the established character of the neighborhood with pitched roofs, similar window forms and siding treatments.
25. Pursuant to BMC 20.28.140(E)(1), the planning director has the authority to reduce parking requirements based on the applicant's demonstration of site-specific factors that justify a lower standard. The Proposal, through requests for minor modifications, includes the following reduced parking standards:
  - a. BMC 20.28.140(E)(1): Allow tandem parking for all smaller house units.
26. The city finds that through the applicant's justification provided in response to the minor modification criteria, the site does have site-specific factors given its topography and multiple street frontages that support the reduced parking standards. The reduced standards should be approved if demonstrated that the proposed 9' by 18' tandem parking stall for all

units can be located in the proposed driveways without hanging over or into the abutting sidewalk in Sussex Drive.

#### Townhouse (Exhibit A.5)

27. BMC 20.28.140 provides the required development and design standards for townhouse units except for the requested modification discussed above. The townhouse units are designed with no more than eight units being attached, enclosed parking in attached garages, frontage and front porches abutting Sussex Drive and all units have both front and rear entries. As proposed, the townhouse units comply with the standards of this code section except for height.
28. The application materials did not include correspondence with Sanitary Services Company, Inc. (SSC). Approval from SSC is required to determine if refuse for the townhouses will be provided by each individual household. If SSC approves this individual refuse for each household, a modification from BMC 20.28.140(F)(7) should be approved. If individual service is denied, the refuse areas shall be designed and located to meet applicable code and design provisions.
29. Pursuant to BMC 20.28.060(D) and .140(D)(4), landscaping is required for smaller house and townhouse infill development. The draft landscape plan shown on **Exhibit A.6** is not sufficient to demonstrate compliance with these code provisions. This permit should be appropriately conditioned to require submittal of a landscape plan for city review and approval prior to or concurrently with building permit application approval.

#### **Multifamily Design Review**

30. Pursuant to Chapter 20.25 BMC, the proposal is subject to multifamily design review and in accordance with BMC 20.28.030(A), design review shall take into consideration the additional design standards and guidelines as specified under each infill housing type. The proposal as described in **Exhibit A.1** meets the design standards in the *Multifamily Residential Design Handbook* (MRDH) except as outlined below.
31. MRDH, I. Site Design, (D): The application materials did not provide sufficient information to determine compliance with this design standard. Retaining and foundation walls, when exposed more than 2 feet above grade, should be designed with an architectural treatment and landscaping to add texture to what would otherwise be blank walls/facades. The project narrative does not provide sufficient information to address how the impact of the retaining wall at its greatest height will be mitigated. Relying on the landscaping required for the wetland buffer restoration is not sufficient to meet the design standards. The final retaining wall design shall include a textured finish sufficient to adequately mitigate the blank face of the wall. Similarly, foundation walls should be mitigated to reduce the appearance of large, expansive concrete sections of a building face. Fencing should be provided on top of the retaining wall in a manner that is adequate for safety and design purposes.
32. MRDH, I. Site Design (G) concerning lighting is not met. The application materials did not include sufficient lighting information to determine compliance with this standard. Compliance with these standards should be demonstrated during building permit review which prioritizes safe lighting levels consistent with Crime Prevention Through Environmental Design principals in the commons, building entries, private usable spaces, and waste enclosures, if required.



33. Based on the exceptions noted above and the applicant's responses to the applicable multifamily design standards, staff finds that the proposal meets the intent of these standards with specific details identified and conditioned above, and design review approval should be granted.

### **Critical Areas**

34. The Proposal includes approximately 39,490 square feet (SF) of temporary wetland buffer impacts and 18,245 SF of permanent wetland buffer impacts (**Exhibit F**, Appendix A, Figure W2). The site development also includes work within geohazards (**Exhibit G**).
35. The following reports were prepared by a qualified professional, Miller Environmental Services, LLC (MES) for wetland and habitat conservation areas onsite:
- Critical Areas Report: Wetlands and Fish and Wildlife Habitat Conservation Areas (HCA) for Barkley Meadows Condominiums (Miller Environmental Services, LLC (MES), July 30, 2018)
  - Mitigation Plan for the Plat of Barkley Heights (MES, July 8, 2020)
  - Revised Mitigation Plan for the Plat of Barkley Heights (MES, December 23, 2020)
36. MES identified three wetlands, Wetland A, C, and D (**Exhibit H**). Three HCAs were also identified: pileated woodpecker habitat, big brown bat habitat, and priority snags and logs.
37. The following reports were submitted for the geohazards onsite:
- Critical Areas Evaluation: Proposed Barkley Heights Development (GeoTest, 10/9/18).
  - Geotechnical Addendum Letter—Geohazard Areas Evaluations (GeoTest, 2/8/19).
  - Geotechnical Engineering Investigation and Report: Proposed Barkley Heights (GeoTest, 2/27/19) (Geo Report) (**Exhibit I**)
  - Geotechnical Addendum Letter #2 (GeoTest, 4/15/20) (**Exhibit J**)
38. A survey of significant trees within the entire development footprint (excluding the buffer restoration area described below) is required for the creation of a tree retention/replacement plan, in accordance with BMC 16.60.080.B.4. The retention/replacement plan will include the quantity and species of native tree replacements for significant trees removed. The optimum location for replacement trees is within the buffer restoration area because 1) requirements for the housing types will result in landscaping in the built environment, 2) space in the developed areas will be inadequate for native trees to grow to maturity, 3) the buffer restoration area is part of a wildlife corridor described in Exhibit F and native conifer species are essential to the corridor, 4) restoring the currently forested area that will be cleared and graded for a retaining wall requires dense plantings of native trees (plus shrubs and ground covers), 5) planting trees densely is an accepted strategy to re-establish forests after clearing, and 6) Goal no. 3 in the Barkley Neighborhood Plan calls for native vegetation in the vicinity of Barkley Village to be retained and enhanced with native species, especially conifers. The retention plan will also include the fencing method and location for protecting the critical root zone of retained trees adjacent to the construction footprint. This detail will be displayed on the tree retention map.
39. Permanent wetland buffer impacts total 39,490 SF and result from a 25 percent reduction of the 150-foot wetland buffer in the vicinity of the retaining wall. Temporary wetland buffer impacts total 18,245 SF and result from site grading needed to support the proposed 15-foot-tall concrete retaining wall. Note: the final height of the retaining wall will be determined at the final engineering stage.

40. The north/south trail located in the wetland buffer immediately adjacent to the wetland has lacked maintenance and does not meet the Parks and Recreation Dept. trail standard. The applicant will provide maintenance as part of the project scope by adding a crushed limestone cover to a depth and width sufficient to meet the trail standard. It is not anticipated that this work will result in new wetland or wetland buffer impacts.
41. Mitigation for the permanent buffer impacts includes 11,801 SF of wetland buffer enhancement and 6,649 SF of added buffer (**Exhibit F**, Appendix A, Figure W3) (referred to hereafter as wetland buffer enhancement).
42. Mitigation for the temporary wetland buffer impacts includes 39,490 SF of wetland buffer restoration (**Exhibit F**, Appendix A, Figure W3) (referred to hereafter as wetland buffer restoration).
43. Cumulative impacts were assessed by MES. They noted that the wetlands on the property extend south and west. Though residential properties in the vicinity could be developed, and therefore have additional impacts, these wetlands are likely to have a 150-foot buffer for protection. The wetlands are part of the headwaters of Fever Creek and together form a wildlife corridor, albeit bisected by Barkley Blvd. City-owned properties in the vicinity include the Roosevelt Nature Area and Northridge Park. The pedestrian corridor, established by the north/south trail, is planned to extend north; southern connections already exist (**Exhibit K**).
44. Cumulative impacts can be minimized through successful implementation, monitoring, and maintenance of the buffer enhancement and buffer restoration areas.
45. Mitigation sequencing applied to this proposal includes avoidance, minimization, and mitigation as follows:
  - The proposal avoids direct wetland impacts and minimizes permanent wetland buffer impacts by locating the project in the eastern portion of the property away from the wetlands.
  - Permanent wetland buffer impacts are minimized to the extent possible by containing the development to the eastern portion of the site, which necessitates the retaining wall.
  - The original site plan was based on a 30-foot tall 1,000-foot long retaining wall to avoid extensive clearing and grading needed to support a 15-foot wall. Considerations for building a concrete retaining wall that is 30-feet by 1,000-feet to avoid the additional clearing and grading include the number of truck trips to deliver the estimated 1,111 cubic yards of concrete, the potential for re-clearing vegetation next to the wall in the next five to ten decades to repair the wall, and the potential to significantly increase the cost of housing due to the cost of construction.
  - The permanent wetland buffer impacts are approximately the same for a 15-foot and 30-foot-tall wall. The temporary buffer impacts have increased due to grading needed to support the shorter wall.
  - Mitigation for unavoidable wetland buffer impacts, temporary and permanent, will be implemented.
46. The Mitigation Plan (**Exhibit F**) outlines mitigation for permanent and temporary wetland buffer impacts. The stated mitigation goals are: 1) enhance and protect wetland buffers to provide a wildlife corridor on the west half of the property and 2) restore temporary impact buffer areas (including added buffer areas) to pre-disturbance conditions.

47. To meet the goal of restoring the buffer to pre-disturbance conditions, and to meet the buffer standard in BMC 16.55.340.B, the following site conditions are crucial: soil must be suitable for planting, the depth of hog-fuel mulch must be at least 6 inches (especially on slopes), planting density must be high for survival, and deer-proof fencing may be necessary.
48. A conservation easement for the permanently protected wetlands and wetland buffers will be recorded, as required in BMC 16.55.190.
49. The review criteria in BMC 16.55.200 are met, including an assessment of cumulative impacts.
50. The requirement in BMC 16.55.230 for signage will be met; fencing is not required due to the wall separating the project from the wetland buffer.
51. Mitigation sequencing required in BMC 16.55.190, 16.55.200, 16.55.240, and 16.55.250 has been met.
52. Review criteria in BMC 16.55.200 are met.
53. With the addition of details in the Decision section of this permit, the Mitigation Plan satisfies mitigation plan requirements in BMC 16.55.240 and 16.55.260.
54. A line-item surety estimate was provided, in accordance with BMC 16.55.260.B.8, however an update will be required to incorporate the conditions in this permit.
55. The building setback from the retaining wall to the buffer will be less than 15 feet, as allowed in BMC 16.55.340.G.
56. Wetland buffer reduction criteria are met, in accordance with BMC 16.55.340.G.
57. Wetland buffer mitigation ratios are consistent with BMC 16.55.350.F.
58. As conditioned in this permit, mitigation requirements in BMC 16.55.350 will be met.
59. GeoTest identified two geohazards onsite: erosion and landslide hazards (**Exhibit G**).
60. Concrete retaining walls are proposed to support the alley, extension of Sussex Drive, and residential construction. GeoTest concludes that the retaining walls will contribute toward stabilizing the site and therefore mitigate the erosion and landslide hazard.
61. In GeoTest's opinion the slopes present a low-risk hazard in their current condition, but the risk may increase during construction.
62. GeoTest listed recommendations in the Geo Report, one of which is to phase the project to prevent erosion and transport of sediment. If buildout of the project is done in phases, phasing may also be needed for mitigation for the temporary buffer impacts in the wetland buffer restoration area.
63. GeoTest "strongly advises" completing the major civil work between May to October when the weather is drier. In order to minimize erosion and sedimentation on a slope, and to properly prepare for replanting, the depth of hog fuel mulch should be at least 6 inches uniformly across the temporary buffer impact area.
64. GeoTest reviewed the development proposal and concluded that if their recommendations are incorporated into the site plans and followed during construction, the proposal is feasible from a geotechnical engineering perspective. The recommendations include having GeoTest

present during construction activities to ensure the plans and specifications are followed and to verify actual site conditions during excavation. GeoTest concludes that the project meets the performance standards in BMC 16.55.450 and 16.55.460 (**Exhibit J**).

65. As conditioned, the proposal is consistent with the purpose and intent of BMC 16.55, it protects the critical area functions and values consistent with best available science, and it results in no net loss of critical area functions and values.
66. Any Finding of Fact that should be denominated a Conclusion of Law shall be deemed to be a Conclusion of Law.

## **V. DECISION AND CONDITIONS**

Based upon the Findings of Fact and Conclusions of Law, the Director, of the Planning and Community Development Department (PCDD), or designee approves the Consolidated Infill Housing, Design Review, and Critical Area Permit subject to the following conditions:

### **A. GENERAL**

1. All development and use of the property legally described in Sections I and II of this permit shall be generally consistent with the permit plans listed in Section III, except as modified by this permit, and all other conditions contained in the permit.
2. Development of the property shall be consistent with all applicable provisions of the Bellingham Municipal Code and does not excuse the applicant from compliance with any other federal, state, or local statutes, ordinances or regulations that may be applicable to this project.
3. Prior to approval of any building or construction permits, the City shall determine compliance with the terms and conditions of this permit.
4. A public facility construction agreement shall be obtained from the City prior to installation of any public infrastructure required by this permit.
5. All applicable impact fees approved by City ordinance shall be paid prior to building permit issuance.
6. Development of the property shall be consistent with all applicable conditions of the proposed Barkley Heights preliminary plat (SUB2020-0005) and associated variance, if granted, as determined by the hearing examiner, and all conditions of the preliminary plat approval shall be deemed conditions of this consolidated permit. This permit decision shall be deemed null and void if the preliminary plat is not approved or conditionally approved in a manner determined consistent with this permit.
7. The City may impose additional conditions if found that sufficient information was not present with the applications to comply with the Bellingham Municipal Code.
8. The requested modifications are approved:
  - a. BMC 20.28.060(C)(3): Increase the allowed height for the smaller houses where the final height does not exceed 25 feet measured under Height Definition #1 from the existing grade as established during initial grading from the preliminary plat.
  - b. BMC 20.28.060(E)(1): Reduce the overall parking requirement to allow tandem parking for the smaller houses if demonstrated that the proposed 9' by 18' tandem parking stall for all units can be located in the proposed driveways without hanging over or into the abutting sidewalk in Sussex Drive.

- c. BMC 20.28.060(E)(8): Allow parking within the required 25-foot setback for the smaller houses provided the required driveways have a sufficient length to park the tandem parking space entirely on the subject site.
- d. BMC 20.28.140(C)(3): Increase the allowed height of the townhouse buildings in a manner where the final height does not exceed 35 feet measured under Height Definition #1 from the existing grade as established during initial grading from the preliminary plat.

## B. DESIGN REVIEW AND INFILL HOUSING

1. Legal documents identifying the rights and responsibilities of property owners and/or the homeowners' association for use and maintenance of common facilities shall be submitted for approval by the planning director and recorded concurrently with the recording of the final plat
2. The alleys shall be surfaced with a hard material such as concrete or asphalt. Alley pedestrian paths shall be included and delineated with a change in material, color or pattern.
3. Each townhouse building shall be built concurrently, generally in clusters as shown on the proposed site plan. Infrastructure such as vehicular and pedestrian access and utilities shall be constructed and installed prior to or concurrently with the development of the townhouse buildings.
4. All buildings shall be constructed and finished with the level of detail shown on **Exhibit A**, including, but not limited to siding material and direction, roof pitch, window wrap, trim, window size and placement, and front porch details.
5. The site plan elements shown on **Exhibit A**, including but not limited to the walkways, alleys, sidewalks and connections to city sidewalks and trails, shall be provided concurrently with the development of the associated structures.
6. All the covered main entry porches for the infill housing units shall be at least 50 square feet.
7. The landscape plan shown on **Exhibit A.6** for the townhouse portion of the Proposal is approved as a preliminary design. A final landscaping plan pursuant to BMC 20.28.140(D) shall be submitted with first building permit application for a townhouse building for review and approval. Landscaping required to meet the Green Factor requirement may be placed within city rights of way and city owned tracts adjacent to the site upon approval by the city. Landscaping proposed within city owned tracts must be designed in a manner that limits the need for excessive maintenance obligations. Financial sureties may be required by the city for installation and maintenance of all landscaping.
8. Landscaping for the smaller house portion of the Proposal shall be determined to comply with BMC 20.28.060(D)(1) with each separate building for the smaller house lots.
9. Retaining and foundation walls shall have an architectural treatment and landscaping to add texture to what would otherwise be blank walls/facades. The final retaining and foundation wall designs shall include a textured finish and a planting plan that adequately mitigates the blank face of a wall from the pedestrian level. The planting plan shall be provided with the building permit for the retaining wall.
10. Garbage collection. Any outside trash and recycling facilities shall be screened from view. The final location of these facilities shall be approved by Sanitary Services Company and may not conflict with any performance standards in the Bellingham Municipal Code.
11. All fencing in the front and side street setbacks or between the common areas and the units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback.

12. The Developer shall submit a site lighting plan for review and approval by the city concurrent with the first building permit application for the proposal. The lighting plan shall address the applicable design standards and be sized, shielded, and directed to avoid adverse impacts and spillover onto adjacent properties. The lighting plan shall include the following information:
  - a. A photometric site plan, drawn to scale, showing all buildings and parking areas, fixture and pole height, and include all proposed exterior lighting fixtures and foot-candle spread. Outdoor lighting shall not exceed 1.5-foot candles at the property line.
  - b. Design specifications for all proposed exterior lighting fixtures shall include photometric data, cutoff devices, bulb wattage/type, and other descriptive information.
  - c. The lighting must also be, as much as physically possible, contained to the developed area and not spill over into the regulated wetland areas.

### C. CRITICAL AREAS

1. The construction project shall be phased to the extent practicable in order to prevent soil erosion and the transport of sediment from the site during construction, in accordance with recommendations by the qualified professional, GeoTest. The phase numbering shall be used consistently on reports submitted for these critical area requirements.
2. Prior to any site disturbance and prior to issuance of any building permits, a tree retention plan shall be submitted that identifies the species and size of all “significant trees” (6 inches diameter at breast height) on the site, in accordance with BMC 16.60.080.B.4. The plan shall identify all “significant trees” that will be removed and preserved (excluding the area west of the north/south trail) and include the method by which the critical root zone of retained trees adjacent to construction will be protected during construction. Significant trees that must be removed shall be replaced at a 2:1 ratio (replaced tree:removed tree). Replacement trees shall be native conifer species or as required by the Planning and Community Development Department, and suitable for the conditions of the buffer restoration area. The planting schedule (**Exhibit F**, Table 4) shall be revised to include these additional trees.
3. Prior to any site disturbance and prior to issuance of any building permits, a conservation easement for the wetland and wetland buffer remaining outside the development footprint shall be recorded with the Whatcom County Auditor’s Office. The following shall be prepared by a licensed surveyor for the easement: legal description of the parent parcels (titled ‘Exhibit A’), legal description of the conservation easement areas (titled ‘Exhibit B’), and legal drawing of the conservation easement areas (titled ‘Exhibit C’). A lot closure report and subdivision guarantee shall also be provided for each conservation easement. The city will prepare the text. The existing storm drain easement shall be taken into account when developing the documents for the easement.
4. Prior to any site disturbance and prior to issuance of any building permits, a revised line-item estimate for all mitigation and significant tree replacement costs shall be submitted to the city environmental planner. The bid shall be provided by a qualified mitigation contractor. Note that the volume of wood chip mulch (hog fuel) shall be increased to 900 cubic yards. This volume will cover 39,490 SF six inches deep and leave a small amount of available mulch for buffer enhancement. The estimate is only valid for one year after issuance of this permit. After each year, an updated surety estimate shall be provided if the surety has not yet been accepted by the city.

5. Prior to any site disturbance and prior to issuance of any building permits, a financial surety, using a form provided by the city for an assignment of funds or surety bond, shall be submitted to the PCDD for all mitigation costs based on a revised and city approved line-item estimate. The party initially providing the surety shall remain responsible for maintaining the surety through the duration of the mitigation maintenance and monitoring periods required by the city unless the city approves, in writing, the transfer of responsibility for maintaining the surety to another party.
6. All site preparation for replanting the wetland buffer restoration area and the wetland buffer enhancement area shall be done by a qualified mitigation contractor with at least five years of demonstrated experience with large-scale restoration or wetland mitigation in Whatcom County.
7. Prior to any site disturbance and prior to issuance of any building permits, a mitigation contractor's checklist shall be prepared by the MES in conjunction with the mitigation contractor and submitted to the environmental planner. The checklist shall be prepared prior to the site visit described in condition no. 7 below.
8. Prior to any site disturbance and prior to issuance of any building permits, a site visit shall be scheduled by the applicant and include the applicant, city environmental planner, MES, and the mitigation contractor. A copy of the Mitigation Plan (updated to incorporate the additional details in Critical Areas condition no. 9 below) and contractor's checklist shall be at this site visit. Any modifications to the Mitigation Plan or specifications in this permit resulting from this site visit shall be provided in writing by MES and approved in writing by the environmental planner. The following will be reviewed:
  - a. Surveyed clearing limits.
  - b. Overall condition of the restoration and mitigation areas.
  - c. Equipment access locations for the temporary buffer impacts and restoration work and for the wetland buffer enhancement work.
  - d. Equipment and materials staging and stockpiling locations for the duration of the construction and mitigation project.
9. The forest topsoil within the areas to be cleared and graded for the retaining wall shall be stockpiled in accordance with recommendations by the mitigation contractor. The mitigation contractor shall be onsite when stockpiling topsoil occurs. Soil compaction within the temporary buffer impact area shall be avoided to the greatest extent possible.
10. The Mitigation Plan (**Exhibit F**) shall be implemented as written and with the following additional details:
  - a. Table 4 shall be updated to include the replacement trees described in Critical Areas condition no. 2.
  - b. The entire area of wetland buffer restoration shall be mulched with hog fuel (trees chipped onsite is acceptable) no less than six inches deep. After the mulch is spread, the environmental planner shall inspect the site to verify the depth.
  - c. In the wetland buffer enhancement areas, removing the Himalayan blackberry, cut-leaf blackberry, and other invasive plant species such as holly and English ivy shall be done by a qualified mitigation contractor according to practices recommended by the Whatcom County Noxious Weed Board.

- d. The mitigation contractor shall contact MES to inspect the plant material prior to installation.
  - e. Four “native growth protection area” (NGPA) signs shall be installed in visible locations along the west side of the north-south trail and four NGPA signs along the east side of the trail in the vicinity of restoration for the temporary wetland buffer impacts. The signs shall be installed on metal posts and evenly spaced. The NGPA signs shall be produced according to the specs in **Exhibit L**.
  - f. Wetland buffer enhancement and wetland buffer restoration shall commence within one year of issuance of this permit, between October 15th and March 31st, unless the city agrees in writing to a different schedule.
  - g. Deer fencing shall be installed if deer browsing prevents the performance standards for tree survival rates from being met.
11. No later than four weeks after completing the enhancement and restoration work, the mitigation as-built report be submitted by MES to the city environmental planner. The report shall also include color photos of the completed enhancement and restoration areas and include the NGPA signs. If the restoration work is done in phases, as-built reports shall follow each phase.
12. Prior to the first surety release after receiving the as-built report, a site visit shall be scheduled by the applicant to include the city environmental planner and the project wetland biologist to inspect the mitigation areas.
13. Annual monitoring reports from MES shall be submitted for each of the mitigation sites for five consecutive years, or more if performance standards are not met. The reports shall be submitted to the city environmental planner no later than November 30<sup>th</sup> each year beginning the year following the first full growing season after plant installation. In addition to providing an assessment of the performance standards, a record of the maintenance tasks and the dates performed shall be included in each monitoring report.
14. Maintenance of the mitigation areas shall be conducted in accordance with the Mitigation Plan and the maintenance activities, and needed corrections, reported in the annual monitoring report.
15. The qualified professional, GeoTest shall be present during construction activities to ensure the plans and specifications are followed and to verify actual site conditions during excavation.

## **VI. AMENDMENTS**

Amendments to this Permit may be requested by the owner and approved by the Director in writing, provided such amendments do not substantially change or alter major elements of the project.

## **VII. EXPIRATION**

This combined approval for design review and infill housing is valid for two (2) years pursuant to BMC 21.10.260 (C)(1). The approval for critical areas is valid for five (5) years pursuant to BMC 21.10.260 (C)(2).



Pursuant to BMC 21.10.260 (C)(3), if a complete building permit application is filed prior to the expiration of the land use permit, the vested status of the permit shall be automatically extended for the time period during which the building permit application is pending prior to issuance; provided, that if the building permit application expires or is cancelled, the vested status of the permit or approval shall also expire or be cancelled. If a building permit is issued and subsequently renewed, the vested status of the subject permit or approval under the permit shall be automatically extended for the period of the renewal.

**VIII. EFFECTIVE DATE**

The Critical Area Permit shall be effective after the close of the appeal period, or if an appeal is filed, after the withdrawal of, or final decision on an administrative appeal (BMC 21.10.240 (C)(3)). Therefore, the effective date of this permit is April 21, 2021, unless an appeal is filed.

**VIII. APPEAL**

Pursuant to BMC 21.10.110(K), this combined permit may be appealed within 14-days from the date of the Notice of Decision to the City's Hearing Examiner. Procedures for appeal to the Hearing Examiner are contained within BMC 21.10.250. Any appeal must be filed with the Planning and Community Development Department on the appropriate forms and be accompanied by a filing fee as established by the City Council prior this established appeal period.

Prepared by:



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Kathy Bell, Sr. Planner



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Kim Weil, Environmental Planner

**DEPARTMENTAL APPROVAL:**



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Kurt Nabbefeld, Development Services Manager  
Planning and Community Development Department