

**POULSBO DISTRIBUTION SCHEDULE**

**RESOLUTION NO. 2015-14**

**SUBJECT: Whitford Strand Preliminary Plat & Shoreline Development Permit Appeal**

**CONFORM AS TO DATES & SIGNATURES**

- Filed with the City Clerk: 09/26/2015
- Passed by the City Council: 10/07/2015
- Signature of Mayor
- Signature of City Clerk
- Publication: \_\_\_\_\_
- Effective: 10/07/2015

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Kati Diehl  
City Clerk

11/30/2015  
Date

**RESOLUTION NO. 2015-14**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, REGARDING THE APPEAL BY CENTRAL HIGHLANDS, INC., OF THE HEARING EXAMINER DECISION REGARDING WHITFORD STRAND PRELIMINARY PLAT AND SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT APPROVAL

WHEREAS, on July 20, 2015, the Poulsbo Hearing Examiner issued the report and decision on the Whitford Strand Preliminary Plat and Shoreline Substantial Development Permit application, approving the application subject to conditions (the "Hearing Examiner decision"); and

WHEREAS, the Hearing Examiner decision is a Type III decision; and  
WHEREAS, pursuant to section 19.01.060(E) of the Poulsbo Municipal Code a Type III decision is appealed to the Poulsbo City Council; and

WHEREAS, the applicant, Central Highlands, Inc. ("Appellant"), timely submitted its appeal of the Hearing Examiner decision along with the required appeal fee; and

WHEREAS, on August 31, 2015, the City received appeal briefs from both the Appellant and the City staff; and

WHEREAS, on September 1, 2015, the City provided written notice of the Notice of Closed Record Appeal Proceeding to parties of record; and

WHEREAS, on September 10, 2015, the City received Appellant's Objection to Legal Brief in Support of Hearing Examiner Decision and on September 11, 2015 the City received City Staff's Response to Objection, and after consideration of the briefing on the objection, the City Council denied the objection to the City's legal brief because the City staff was authorized to provide both briefing and an oral argument in this appeal; and

WHEREAS, on September 16, 2015, the City Council held the Closed Record Appeal Proceeding and issued its preliminary decision, to be made final by this Resolution; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. Jurisdiction. Section 19.01.060(E) of the Poulsbo Municipal Code provides that the Poulsbo City Council shall hear appeals of Type III decisions by the hearing examiner in a closed record proceeding.

Section 2. Decision. After consideration of the record before the Hearing Examiner, the legal submittals of the parties, and the oral argument provided by Hayes Gori, counsel for Appellant, and James Haney, counsel for the City, the Poulsbo City Council hereby concludes the Hearing Examiner did not make a material error of fact or law in the decision of the Hearing Examiner approving the Whitford Strand Preliminary Plat and Shoreline Substantial Development Permit, and therefore the City Council hereby upholds the Hearing Examiner's decision in its entirety.

Section 3. Findings and Conclusions. In support of the City Council's decision, the City Council adopts the Findings of Fact and Conclusions of the Hearing Examiner, set forth in the Hearing Examiner decision dated July 20, 2015, attached hereto as Exhibit "A" and incorporated herein by reference.

Section 4. Appeal to Superior Court. The City's final decision on this application may be appealed by a party of record by filing a petition for review in Kitsap County Superior Court under the Land Use Petition Act, Chapter 36.70C RCW. Any such petition for review

must be filed within twenty-one days of the date of this Resolution, as provided in Chapter 36.70C RCW, and the petition must meet all requirements set forth in that statute.

RESOLVED this 8<sup>th</sup> day of October, 2015.

APPROVED:

  
\_\_\_\_\_  
MAYOR REBECCA ERICKSON

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CITY CLERK NICOLE M. STEPHENS

FILED WITH THE CITY CLERK: 09/26/2015  
PASSED BY THE CITY COUNCIL: 10/07/2015  
RESOLUTION NO. 2015-14

July 20, 2015

**CITY OF POULSBO, WASHINGTON  
HEARING EXAMINER**

**REPORT AND DECISION**

**Project:** Whitford Strand Preliminary Plat and Shoreline Substantial Development Permit

**File number:** 09-04-13-1

**Proposal:** To subdivide a 1.91 acre parcel into 7 residential lots. Portions of the site are located in the SR-1 and SR-2 shoreline residential environments and also require issuance of a substantial development permit.

**Location:** 17492 Fjord Drive NE Poulsbo, WA 98370.  
Tax Parcel Number 262601-1-024-2005

**Zoning:** Residential Low

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**GENERAL INFORMATION:**

**Applicant Name and Address:**

David Smith  
Central Highlands  
P.O. Box 2789  
Poulsbo, WA 98370

**Property Owner:**

Trent Whitford  
1819 D Street NE  
Salem, OR 97301

**Land Use Review:** Preliminary Plat and Shoreline Substantial Development Permit

**Description of Proposal:** The applicant proposes subdividing a 1.91 acre triangular parcel bisected by Fjord Drive into 7 residential lots. The zoning for the property is Residential Low, which allows for 4-5 dwelling units per acre. Portions of the site lying within 200 feet of Liberty Bay are also within the SR-1 and SR-2 shoreline residential environments. The proposed preliminary plat will utilize public water and sewer. Access to the site is currently proposed through three separate private driveways off of Fjord Drive. Stormwater will be

collected and treated on-site, then discharged directly at an existing stormwater outfall to Liberty Bay. The portion of the parcel south of Fjord Drive adjacent to the shoreline will remain undeveloped as a private open space tract.

**Location:** 17492 Fjord Drive NE Poulsbo, WA 98370.  
Tax Parcel Number 262601-1-024-2005

**Comprehensive Plan and Zoning Designations:**

Site: Residential Low  
North: Residential Low  
South: Residential Low  
East: Residential Low  
West: Residential Low

**Existing Land Uses:**

Site: Existing single-wide mobile home (along shoreline) and vacant upland  
North: Single-family residences  
South: Single-family residence  
East: Vacant/Wooded  
West: Liberty Bay

**Site Features:** The 1.91 acre parcel is located on the west side of Liberty Bay at the southeastern end of the City and is bisected by Fjord Drive NE. The .45 acres along the shoreline southwest of Fjord Drive has been used residentially and is presently sited with a mobile home, while the remaining 1.46 acres of upland, now overgrown, was historically utilized as agricultural pasture for a sheep farm and later for raising hay.

The site slopes from the northeast to the southwest at an average grade of 10%. A few evergreen trees exist on the site. According to the USDA Soil Survey, on-site soils are classified as Poulsbo Gravelly Sandy Loam.

Small Category III and IV wetlands are located onsite near the northern property line at its eastern and western ends respectively. They have been delineated as Wetland A, located in the northwestern upland area at 452 square feet in size, and Wetland B in the eastern portion of the site at 714 square feet in size. The principal controversies generated by the review of this proposal have resulted from the applicant's desire to fill the Category III wetland for the creation of residential lots.

**FINDINGS OF FACT**

**Procedural background**

1. The combined review for Preliminary Plat and Shoreline Substantial Development Permit proposals constitutes a Type III application, which requires a public hearing before the Hearing Examiner. The application was received on September 4, 2013 and determined to be technically complete on November 25, 2013. A Notice of Application was issued December 6, 2013. The Planning Commission met May 12, 2015, and recommended approval of the proposal.

2. A Mitigated Determination of Non-Significance was issued under SEPA authority on November 7, 2014, with a comment period ending November 21, 2014. When the SEPA threshold determination was issued, staff's position was that the proposed development did not yet meet certain City-adopted development regulations. Staff has since concluded that the site access and emergency turnaround designs depicted on the applicant's April 7, 2015 drawings meet City standards.

3. Three SEPA comment letters were received. The Washington State Department of Fish and Wildlife confirmed that the beach adjacent to the site is a documented surf smelt spawning area, with a Pacific sand lance spawning beach located nearby to the west. The Department opposed use of the marine shoreline as a freshwater wetland mitigation site. The Suquamish Tribe also commented on the proposed filling of Wetland B, the possibility of compensatory mitigation on the shoreline portion of the site, and the documented surf smelt spawning beach. Finally, Brent Stinnet, an adjacent property owner to the north, questioned the substantial reduction in the delineated size for Wetland B, described its use as wildlife habitat and expressed opposition to the proposal to fill it.

4. The public hearing on the preliminary plat and shoreline permit applications for Whitford Strand was opened on May 21, 2015, and continued for legal briefing on wetland regulatory issues. At the public hearing the Examiner had questioned whether the proposed filling of Wetland B is in fact authorized by City codes, eliciting a wide range of responses and arguments. Because of the fundamental importance of the regulatory questions being raised, it seemed prudent to allow the parties an opportunity to fully research and brief the various issues before undertaking to render a decision. Accordingly, a notice issued May 22, 2015, provided until June 5, 2015, for such briefing to occur. Timely submissions were received from City Attorney James Haney and from attorney Hayes Gori on behalf of the applicant, Central Highlands, Inc.

5. A remand order was issued by the Hearing Examiner on June 12, 2015, addressing the following issues: whether the wetland mitigation provisions stated at PMC 16.20.240 should be read as also containing development regulations; whether the Hearing Examiner possesses the legal authority within this proceeding to interpret and apply the City's critical areas wetland standards; and whether the City's authority to regulate and preserve Wetland B has been federally pre-empted by the issuance of an Army Corps of Engineers letter approving its filling. Answering the first and third questions in the negative and the second question affirmatively, the remand order required the applicant to reconfigure the preliminary plat map to protect Wetland B.

6. On June 23, 2015, the applicant's attorney Hayes Gori filed a motion for final decision requesting that the Examiner's decision be issued immediately and challenging the legal basis for the remand order. The motion stated that the applicant "is not willing to revise its application" and would prefer an adverse decision to undergoing further delay. A notice issued by the Hearing Examiner on June 29, 2015, concluded that if an applicant is unwilling to revise a proposal on remand, then the remand likely serves no useful purpose and should be withdrawn. In such instance the better process is to simply move forward to a decision as requested by the applicant and allow it to pursue overturning via appeal any elements of the decision deemed objectionable.

7. The City has no adopted procedures governing a remand. Implicit authority to issue a remand order is derived from the public policy supporting an orderly and efficient decision-making process. The essential rationale for issuing a remand is that some key element of the application is incapable of

being approved as submitted, and that an applicant will normally prefer an opportunity to revise an application over the prospect of receiving an adverse decision.

8. Since such opportunity has been refused in the instant case, the conditions attached to the decision will require the preliminary plat modifications generally specified in the remand order for the protection of Wetland B, with a procedure provided for requesting later Hearing Examiner determination of unresolved issues. A significant revision of the proposed site access concept is probably the circumstance most likely to generate a need for further public hearing review. The various post-hearing documents produced by the parties and the Examiner in response to wetland regulatory issues are assembled in exhibit no. 25.

### **Plat design requirements**

9. The Residential Low Zoning District Development Standards establish the lot size, density, setbacks, lot coverage and maximum structure height applicable to development within the district. These standards are specified in PMC 18.70.030, 18.70.040 and 18.70.050, as follows:

Land Uses: Single-family detached residences are allowed in the RL zone.

Lot Area: Minimum of 7,500 square feet and maximum 10,890 square feet.

Density: Maximum gross density of 5 dwelling units per acre. There shall be a minimum net density of 4 dwelling units per acre.

The minimum density is calculated by multiplying the subject site's net acreage by the minimum number of dwelling units required. Net acreage is the subject site's gross acreage minus acreage for public rights-of-ways, private easements, designated critical areas and buffer protection, and storm management facilities. Based on the removal from the total site acreage of areas intended for Open Space Tract A, Fjord Drive right-of-way dedication (frontage improvements and a section of the Liberty Bay Waterfront Trail), and a private access easement, the resultant density calculation would be 5.8/net acre, meeting the minimum net density requirement of 4 du/net acre. The maximum density for the subject site is the gross acreage multiplied by the maximum number of dwelling units allowed, resulting here in a maximum density of 9 du/gross acre.

Lot Width: 60 feet at the midpoint of the lot. Each lot shall have a minimum of 20 feet of frontage on a dedicated street or approved access way.

Lot Depth: 90 feet.

Maximum Building Coverage: 50%.

Setbacks:

Front yard - 20 feet. (25 feet for front-loaded garage).

Rear yard - 10 feet.

Side yard - 5 feet, combined total of 15 feet (street corner side yard – 10 feet).

Building height: Maximum of 35 feet.

Street Trees: Street trees are required for all new residential developments.

Street trees are to be provided along the frontage of Fjord Drive at 40' on center and may be located within right-of-way or on lots. No street trees have yet been identified on the submitted drawings in response to this requirement.

10. In addition to the foregoing requirements, two parking spaces per lot are to be provided for single-family residential development pursuant to PMC 18.70.080.A(2) and the tree retention standards of PMC Chapter 18.180 will apply. One small stand of 16 evergreen trees meeting the size requirement of PMC 18.180.030.B(1) lies in the site's northern sector and is subject to the 25% significant trees retention requirement. Due to small total number, determination of which four trees are to be retained will be deferred to the time of construction drawing review.

11. In addition, PMC Chapter 16.08 within the City's shoreline program contains standards applicable to subdivisions lying within shorelines jurisdiction. PMC 16.08.210 requires that new lots must demonstrate sufficient buildable area within the SR-2 environment outside of required buffers and critical areas. All construction will thus be limited to the portion of the site in the SR-2 environment upland of Fjord Drive. Applicable shoreline building lot coverage and height limitations are identical to those for the RL zone. Plus, although not a specific review requirement for this project, a 1,130 square foot "notch" in Open Space Tract A (at its southeast corner) has been offered by the applicant as a "public park dedication area". It is to be dedicated as Fjord Drive right-of-way as an additional amenity for the existing Liberty Bay Waterfront Trail located along the shoulder of Fjord Drive. As such, it supports the public access policy of WAC 173-26-221(4)(d)(iii).

12. Whitford Strand is also required to maintain a shoreline buffer from Liberty Bay at 100 feet, which the proposed plat design does not do on its western side. Fjord Drive, however, is considered to be a buffer interruption. The SMP allows new development to occur on the upland side of Ford Drive within the SR-2 environment and the interrupted buffer. Removal of the existing mobile home structure and septic system in the SR-1 environment is required. New residential development within shoreline jurisdiction will connect to the City sewer system, as also mandated.

13. The preliminary plat map proposal, as it currently exists, envisions snippets of lots 2 and 3 extending waterward of Fjord Drive into the SR-1 environment in order to meet minimum lot size requirements. Although splitting a single lot into two disconnected sections is arguably a regulatory device not contemplated by the state platting statute (and which drew adverse comment from a Planning Commissioner), it seems to constitute a harmless ploy here so long as all construction remains on the upland side of Fjord Drive within the SR-2 environment and an adequate upland building site is identified for each segmented lot.

14. The conditions governing redesign of the plat to avoid filling Wetland B will allow further such expansion of non-buildable lot areas waterward of Fjord Drive in order to meet lot area requirements and minimize the loss of plat lots due to the additional wetland buffering imposed. These waterward lot areas can be incorporated into a common use easement, which will reduce the size of Open Space Tract A (not a required amenity) but provide the same actual level of community beach use. In addition, reconfigured lot lines will necessitate further staff technical review to assure compliance with

the standards set forth in PMC Chapter 18.70.

**Support services and minor project impacts**

15. A revised Preliminary Drainage Report for Whitford Preliminary Plat was submitted in conjunction with the preliminary plat application and was later supplemented. These documents set forth the stormwater management plan for the proposed development. Water quality treatment for runoff from the developed site's pollution-generating impervious driveways will be supplied through four bio-retention cells designed to provide water quality mitigation in conformance with the 2005 DOE Stormwater Manual. Roof and yard drains will bypass the bio-retention cells. The site will discharge directly to Liberty Bay at an existing outfall, with no stormwater flow control required if the piping conveyance is sized to accommodate flows generated by the contributing basins for a 100 year, 24 hour storm event. Upstream offsite stormwater runoff will be conveyed through the project and discharged to the roadway ditch along Fjord Drive.

16. The project proposes utilizing an existing outfall that discharges on a shoreline segment identified as surf smelt spawning area. Although only a small flow increase is anticipated, a Hydraulic Permit Approval (HPA) from the Washington State Department of Fish and Wildlife will be required to address potential impacts to the documented surf smelt spawning beds generated by increased stormwater volumes and velocities at the existing shoreline outfall.

17. The applicant will be required to provide street improvements consistent with the City's road standards, including curb, gutter and sidewalk along the frontage of Fjord Drive. The lots are currently proposed to be accessed from Fjord Drive via three shared private driveways. Each driveway is located within an access and utility easement and will meet a minimum 20' width requirement. Existing neighborhood residents have expressed opposition to any access concept involving development of a road or driveway along the plat's northern boundary.

18. While PMC 17.20.120.F normally requires at least two separate standard routes for ingress and egress, the City Engineer has found this requirement to be unnecessary or impractical due to the small size of the plat. An approved fire apparatus road and emergency vehicle turnaround will be provided. The City's Traffic Impact Fee Ordinance will require the project developer to mitigate the project's traffic impacts through payment of an impact fee. This impact fee is presently calculated at \$283.50 per trip. Traffic impact fees are to be paid before building permit issuance. The applicant is also required to pay a parks impact fee of \$1,195 per unit.

19. The City of Poulsbo will provide water and sewer services to the subdivision. The water service will connect to an existing water line at the northern adjacent property, and loop through the project and connect at the existing water line in Fjord Drive. The water supply facilities linking to the subdivision will be constructed by the developer to City standards. Lots located near the site's northeast corner may be required to connect from an existing sewer line located on a northern adjacent property, with the remaining lots hooking up to the existing sewer line in Fjord Drive.

20. The Whitford Strand site will be served by Poulsbo Elementary and Middle Schools and North Kitsap High School, all of which are more than two miles from the site. It is therefore likely that the North Kitsap School District will bus students to school. In addition, the North Kitsap School District will receive prior to final plat approval a school mitigation fee from the project developer.

21. The proposal, as conditioned, will comply with the City's Comprehensive Plan. The site is designated "Residential Low" in the Comprehensive Plan and "Residential Low" on the Zoning Map, and is being platted consistent with these designations. The project meets the Comprehensive Plan's goals of providing single-family housing according to established zoning densities in order to meet the City's population allocation under the Countywide Planning Policies and the Growth Management Act.

### **Proposed filling of Wetland B**

22. Obtaining City approval to fill Wetland B for lot development has been a primary objective of the applicant from the inception of the project. The initial plat wetland delineation report by C3 Habitat, dated November 15, 2013, noted that the "property owner is convinced that Wetland B is considered a man-made wetland" that should be deemed exempt from regulation under PMC 16.20.215.B. C3 Habitat identified two wetlands on the property – Wetland A, located at the northwestern portion of the site at 452 square feet in size, and Wetland B in the property's eastern center at 3,603 square feet in size. Later, when Wetland B was reduced in size to under 1000 square feet by the City's third party peer reviewer, the applicant added a second prong of attack based on a contention that Wetland B is hydrologically isolated from the uphill wetland complex offsite to the northeast and therefore not protected from alteration by PMC 16.20.230.

23. The C3 Habitat report identified both wetlands as meriting a Category IV rating, but these findings were modified by Grette Associates, the peer reviewer, in a report dated August 11, 2014. While the third party review confirmed Wetland A's size, category and isolated status, Grette Associates concluded that Wetland B is a naturally occurring, non-isolated, regulated Category III wetland measuring 714 square feet in size. The applicant's new wetland consultant, Ecological Land Services, agreed with the reduced size determination but continued to question Grette's findings that Wetland B is both naturally occurring and non-isolated. This resulted in a followup series of dueling technical memoranda, but in the end Grette stuck to its conclusions and City staff accepted them. The applicant made no further attempt to challenge either Wetland B's natural origin or its hydrologic connection to the offsite system, either at the public hearing held on May 21, 2015, or later in response to the Examiner's expression of skepticism that it could be legally filled.

24. Grette's reduction of the size of Wetland B to about 20% of the size determined originally was based mainly on its rejection of the speculative hydric soils analysis employed by C3 Habitat in its report. With respect to the wetland's history, while acknowledging the increase to Wetland B hydrology contributed by new upstream flows generated by construction in the 1990s of the Baywatch subdivision and road improvements along SR 305, Grette concluded that the Wetland B hydric soils pre-dated 1990 and therefore the wetland existed in some form before such development took place. It also rejected drawing a contrary conclusion based on a single 2004 aerial photo submitted by Ecological Land Services, noting that the hydrophytic vegetation arguably absent in the 2004 picture is clearly present in an earlier 1977 aerial. The existence of a groundwater hydrological connection between Wetland B and offsite wetlands upslope about 175 feet is implied by the gradient, the underlying till soils and the absence of nearby alternative water sources.

25. As related in the staff report, City staff concluded that "[b]oth Wetland A and B are regulated wetlands" under PMC 16.20.215, with their "regulatory status...confirmed by the Washington State Department of Ecology and Grette and Associates." As a small, isolated, naturally occurring Category

IV feature less than 1,000 square feet in size, Wetland A under PMC Table 16.20.230.A only requires such buffer “as needed to protect wetland functions.” Grette Associates recommended a 10 foot buffer vegetated buffer be maintained for Wetland A to protect its limited wetland functions, which recommendation has been incorporated in SEPA condition no. 1.

26. City staff also accepted Grette's determination that Wetland B is a naturally occurring, non-isolated, regulated wetland with a Category III rating and thus subject to an 80 foot wetland buffer setback pursuant to PMC Table 16.20.230.A. But here the staff's reasoning process began to become murky. While staff had conscientiously required extensive third party peer review to resolve delineation and classification uncertainties, in the end it essentially walked away from Grette's regulatory conclusion that the City's critical areas ordinance required Wetland B to be protected from residential development. While the applicant had no doubt been strenuously arguing for recognition of an option to fill Wetland B, it seems more probable the deciding factor here was the fact that the Army Corp of Engineers (ACE) had issued a letter approving the proposed filling under its standard nationwide permit. From statements made in the staff report, the SEPA analysis and at the public hearing, it appears likely that staff was misled into believing that issuance of a federal approval letter for filling Wetland B precluded making a contrary decision to preserve it under the City's critical areas ordinance authority.

27. Federal pre-emption of local wetland regulatory authority was one of the issues identified for legal analysis in the Hearing Examiner's May 22, 2015, briefing notice. It is, in fact, not a controversial question and was dealt with summarily by both the City Attorney's and the applicant's legal briefs. As summarized by the City Attorney, “the City has a separate responsibility under GMA (RCW 36.70A.060(2)) to regulate wetlands and it is not limited or pre-empted by the Army Corps of Engineers issued nationwide permit.” Mr. Gori concurred, stating, “Notwithstanding issuance of the fill permit, the City is not obligated to permit alteration and mitigation of the wetland in question.” In short, federal and state jurisdictional authorities operate concurrently with respect to wetlands, and either entity may independently require preservation of a regulated entity.

28. Under PMC Table 16.20.230.A, a Category III wetland is to be protected with a 150 foot undisturbed natural vegetation buffer if its habitat score exceeds 20 points and with an 80 foot buffer if it receives a lower habitat score. Grette Associates assigned to Wetland B a habitat score of 11 points, resulting in an 80-foot buffer requirement. PMC Table 16.20.230.A allows a regulated wetland of less than 1000 square feet to be impacted (e.g., filled) if “*the wetland is not associated with a riparian corridor or is not part of a wetland mosaic, or does not contain habitat identified as essential for local populations of priority species...*” As determined by Grette, Wetland B is hydrologically connected to wetlands offsite to the northeast – in other words, forms part of a wetland mosaic. It is thus not subject to filling despite its relatively small size.

29. The argument for a contrary conclusion is based on a misreading of PMC 16.20.240 that effectively transforms a section clearly intended and labeled as “Wetland Mitigation Requirements” into a hidden set of expansive secondary development standards. The basic contention is that the detailed and extensive mitigation protocols contained in PMC 16.20.240 are rendered meaningless unless a broad and essentially unlimited power to destroy regulated wetlands is also implied. The fallacy of this argument, as offered in the briefing exercise documented in exhibit no. 25, lies in the unwarranted assertion that the sole development authorization reference for PMC 16.20.240 is PMC 16.20.230. But the rules of statutory construction require that the meaning of PMC 16.20.240 be

determined in the context of PMC Chapter 16.20 as a whole, not just a single section. When a proper analysis is performed that takes into account the entire PMC Chapter 16.20 regulatory framework, the wetland alterations authorized by the Chapter in the aggregate are found to correspond to the range of mitigations provided in PMC 16.20.240.

30. Two other wetland matters deserve mention. First, looking simply at the City's critical areas provisions, the small, isolated Category IV Wetland A would appear to qualify for filling under PMC Table 16.20.230A. The reason that it has not been proposed for alteration is that it also lies within shorelines jurisdiction and PMC 16.08.450.C provides unequivocally that “[f]ill shall not be permitted in regulated wetlands or streams.” It should be further noted that the southern extension of the 80-foot buffer for Wetland B also lies within the 200-foot jurisdiction for the Shorelines Management Act. It is additionally significant that the wetland identified by the applicant as the mitigation location for the proposed filling of Wetland B lies entirely outside shorelines jurisdiction.

31. Finally, the theory that unfettered destruction of natural wetlands can be authorized consistent with GMA-based goals and requirements rests explicitly on the myth that artificial wetlands provide a fully adequate replacement for any natural features destroyed. Indeed, since the artificial replacement will often be required to exceed in area the natural wetland eliminated (as would be the case for Wetland B), in its most extreme form this argument suggests that the artificial outcome will represent an absolute upgrade over the natural conditions being altered. The developer gets to destroy as many wetlands as he likes while the municipality's wetland area total simultaneously grows. In other words, the more natural wetlands that are destroyed, the happier everyone will be. As argued by the applicant's attorney in his July 10, 2015, memorandum, “From an environmental standpoint, the application as submitted provides not only no net loss of function but rather a net gain in that the prescribed compensatory mitigation ratio is being exceeded...”

32. This “have-your-cake-and-eat-it-too” fantasy is obviously too good to be true. This Examiner is aware of no competent scientific studies holding that the creation of artificial replacement wetland features adequately replicates the natural values being lost. In reality, the usual concern expressed is that, despite good intentions, compensatory mitigation goals are generally unmet. The Examiner takes notice that the Washington Department of Ecology's web page on wetland mitigation opens with the following overview summary:

In Washington State, we spend millions of dollars every year to mitigate the unavoidable adverse effects to important habitats – such as wetlands and shorelines – stemming from development. Yet, studies show that our wetland mitigation efforts are successful only about 50 percent of the time. This is a far cry from the national and state goal of “no net loss” of wetlands. It is likely that other environmental mitigation is equally unsuccessful. This is an unacceptable situation. (<http://www.ecy.wa.gov/mitigation/>).

## **CONCLUSIONS**

1. The Hearing Examiner has jurisdiction over this proceeding. Both a preliminary plat and a shoreline substantial development permit are Type III applications requiring a public hearing for which the Examiner makes the City's final decision. Public hearing notice requirements have been met.

## **Shoreline substantial development permit**

2. PMC 16.09.110 provides the following general review criteria applicable to all substantial development permits: 

*WAC [173-27-150](#) establishes that a minor shoreline substantial development permit or a shoreline substantial development permit may only be granted when the proposed development is consistent with all of the following:*

- A. The policies and procedures of the Shoreline Management Act;*
- B. The provisions of Chapter [173-27](#) WAC;*
- C. Chapter [16.08](#);*
- D. Any conditions attached by the city to the permit approval as necessary to ensure compliance with the Act and Chapter [16.08](#).*

3. In addition to the specific development standards stated in PMC Chapter 16.08, PMC 16.08.120 provides the following general standards applicable to all shoreline development:

- A. All development, activities and uses within the shoreline jurisdiction shall require a shoreline substantial development permit, shoreline conditional use permit, and/or a shoreline variance, unless exempted according to the requirements of Sections [16.09.040](#), [16.09.050](#) and [16.09.060](#).*
- B. All shoreline uses and development shall be located and designed in a manner that ensures no net loss of shoreline ecological functions and minimizes adverse impacts to natural shoreline resources and wildlife habitat, including fish and aquatic habitat.*
- C. All shoreline development and uses impacting ecological functions shall be mitigated according to the mitigation sequence established in WAC [173-26-201](#)(2)(e), except as otherwise specified in this chapter. This mitigation sequence requires that potential impacts shall first be avoided if possible; if avoidance is not possible, the anticipated impact shall be minimized; and any impacts that remain after reviewing for avoidance and minimization shall be mitigated.*
- D. Shoreline development and uses shall be approved according to the following priority: water-dependent, water-related, water-enjoyment, non-water-oriented.*
- E. In addition to the requirements of this chapter, critical areas within the shoreline jurisdiction shall be protected according to the requirements of the critical areas ordinance, Chapter [16.20](#). If there are any conflicts between the critical areas ordinance and this chapter, the more stringent requirement shall apply.*
- F. Where specific regulations for a proposed development, activity or use are not provided, the development, activity or use shall utilize best management practices to minimize any adverse impacts to water quality and natural shoreline resources.*
- G. Disruption of natural shoreline resources, including clearing and grading, tree removal, and erosion protection, shall be the minimum necessary to accommodate the approved use or activity.*
- H. In evaluating permit applications for proposed development, activities or uses along the shoreline, the city shall consider the long-term and regional effects of the proposal on natural*

*shoreline resources and the ability of future generations to enjoy and use the shoreline. Any negative long-term and regional effects shall be mitigated in accord with the mitigation sequencing requirements of Section [16.08.140](#). Failure to comply with the mitigation sequencing requirements may result in permit denial.*

*I. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.*

*J. New development must have adequate access, utilities and public services.*

*K. When development, activities or uses are proposed on a property or properties that are partially located in the city's shoreline jurisdiction, the relevant shoreline permit or exemption application and any other required applications shall address the entire property or properties and the complete development proposal, both inside and outside of the shoreline jurisdiction. The applicant shall address protection of shoreline resources from nonshoreline activities and development, impacts of proposed nonshoreline land uses on protected critical areas and buffers, including the area within the shoreline buffer and setback area, and indicate any potential incompatibilities between proposed nonshoreline and shoreline uses.*

*L. Proposals for new and expanded shoreline development and uses shall be evaluated for cumulative impacts to shoreline values and functions, per WAC [173-26-201\(3\)\(d\)\(iii\)](#). (Ord. 2012-10 § 2 (Exh. A) (part), 2012)*

4. The interaction between PMC 16.08.120 subsections B, C and K, plus PMC 16.08.450.C, operates to extend shoreline program protection to Wetland B. Under PMC 16.08.120.K the entire Whitford Strand project is subject to being addressed within the shoreline permit review if any portion is within shorelines jurisdiction. The Wetland B system itself is to be included within shorelines regulatory jurisdiction because the southern portion of its required buffer lies within 200 feet of Liberty Bay. It is therefore deemed a “*natural shoreline resource*” within the meaning of PMC 16.08.120.B.

5. Because PMC 16.08.120.B requires “*no net loss of shoreline ecological functions*” and minimization of “*adverse impacts to natural shoreline resources and wildlife habitat,*” compensatory mitigation for impacts to natural shorelines resources must also occur within shorelines jurisdiction to receive regulatory recognition. Achieving no net loss of shoreline ecological functions necessarily means that any proposed mitigation for shoreline resources damage to the Wetland B system also must take place within shorelines jurisdiction. This requirement is not met for Wetland B by the applicant's proposal for offsite wetland mitigation. Thus, Wetland B is both subject to direct regulatory protection as a shoreline resource, and its proposed offsite mitigation location fails to qualify because it will not avoid causing a net loss of shoreline ecological functions.

6. Except for its failure to properly analyze potential impacts to Wetland B as discussed above, the staff report's treatment of the potential shoreline impacts of Whitford Strand development is thorough, adequate, and can be adopted herein by reference. If Wetland B is preserved as required by the conditions stated below, the policies and procedures of the Shoreline Management Act, the provisions of Chapter [173-27](#) WAC and the requirements of PMC Chapter [16.08](#) will be met by the Whitford Strand proposal.

## **Subdivision application**

7. The City's criteria for approving a preliminary plat application are stated at PMC 17.08.070. Subsection A tracks the public use and interest provisions of RCW 58.17.110. As supported by the findings above, the Whitford Strand preliminary plat application, if conditioned in the manner provided below, will make appropriate provisions for the public health, safety and general welfare, including the specific items listed at PMC 17.08.070.A and RCW 58.17.110.

8. In conformity with the criteria stated at PMC 17.08.070.B through E, the Whitford Strand preliminary plat application, as conditioned, complies with the City's Comprehensive Plan, will create no unmitigated critical areas or environmental hazard impacts, and meets the development standards of PMC Chapter 12.02 and other applicable review requirements. The conditions, dedications and impact fees imposed by this preliminary approval mitigate the impacts of the plat proposal and are proportional thereto.

9. Wetland B is a small regulated wetland of relatively minor consequence. But it is clearly protected from residential development by the critical areas provisions of PMC Chapter 16.20. The preliminary plat drawing therefore will need to be revised to protect Wetland B and its buffer. If the City now believes that small non-isolated wetlands no longer merit regulatory protection, PMC 16.20.230.A can be amended to achieve such an outcome. But engaging in a belabored code "interpretation" exercise to remove Wetland B from regulatory protection is a flawed approach because it sets a precedent for allowing every natural wetland in the City to be filled based on an offer of artificial replacement. The goal of the GMA is to protect natural wetlands, not create some sort of "wetland barter fair" for their piecemeal destruction.

## **DECISION**

The Whitford Strand preliminary subdivision and shoreline substantial development permit applications (File no. 09-04-13-1) are APPROVED, subject to the following conditions:

## **SEPA MITIGATION CONDITIONS**

### **SURFACE WATER**

#### **Wetlands**

1. A minimum 10' buffer shall be maintained around Wetland A to protect its limited wetland functions. The wetland and 10' buffer shall be clearly marked or fenced prior to any clearing/grading activity. Confirmation by a City representative of this marking shall be required before clearing/grading may commence.
2. Wetland B shall be protected as a Category III wetland and require an 80' buffer setback as required by PMC 16.20.230 and Table 16.20.230.A.
3. If Wetland B is to be impacted, mitigation is required as set forth in PMC 16.20.240. If Wetland B is to be filled, compensatory mitigation is required as required in PMC 16.20.240.D and Table

16.20.240. A wetland mitigation plan shall be submitted consistent with the requirements of PMC 16.20.725. *Comment: Impacts to Wetland B are not authorized by this decision, rendering this condition superfluous.*

### **Water Runoff**

4. Offsite drainage upgrades to roadside ditch and culverts adjacent to Lemolo Shore Drive will be required as identified by Kitsap County Public Works. The improvements required by Kitsap County shall be identified on the project's construction stormwater drawings submitted to the City.

### **ANIMALS**

5. A Hydraulic Permit Approval (HPA) from the Washington State Department of Fish and Wildlife is required to address the potential impact to the documented Surf Smelt Spawning Beds from increased stormwater volume and velocity resulting from the proposed project's stormwater drainage to the existing stormwater outfall.
6. It shall be the responsibility of the applicant to take all necessary steps to prevent the incidental taking of protected species under the Endangered Species Act through habitat modification or degradation during the life of the project or development authorized by this permit or approval. The applicant shall notify the City through its Public Works Superintendent and the Federal agencies with responsibility for enforcement of the Endangered Species Act immediately, in the event of any damage or degradation to salmon habitat by or from the project or the development subject to this permit or approval. In any such case, the applicant shall, at its sole cost and expense, take all actions necessary to prevent the furtherance of the damage or degradation and to restore the salmon habitat as required by the Federal, State, and local agencies with jurisdiction.

### **ENVIRONMENTAL HEALTH**

7. The existing septic tank located on the shoreline portion of the subject site is required to be pumped and decommissioned in accordance with Kitsap County Board of Health Ordinance 2008A-01.

### **LAND AND SHORELINE USE**

8. The existing trailer located on the SR-1 shoreline designation portion of the site shall be required to be removed.

### **HISTORIC AND CULTURAL PRESERVATION**

9. While there are no known archaeological resources on this site, in the event archaeological artifacts are uncovered during ground disturbance and/or construction, activity shall be halted immediately and the State Historic Preservation Office and the Suquamish Tribe will be contacted. Inadvertent Discovery Protocol included as Attachment B of the "Cultural Resources Assessment for the Whitford Strand Cottages Project, Poulsbo, Kitsap County, WA" shall be followed.

## **TRANSPORTATION**

10. When serving more than five or more residences, a street meeting the standards of a Local Residential Access shall be provided consistent with the City's adopted street standards and specifications.
11. Shared driveways shall serve four or less residences. The driveway shall be 20' wide and paved onto the property for a minimum of 20' from the right-of-way. All weather surface material is acceptable for the remainder of the driveway.
12. Vehicle turnaround facilities required by PMC 12.02 shall be provided.

## **PUBLIC SERVICES**

13. When serving more than two residential buildings, Fire Apparatus Access Roads shall be provided. Fire Apparatus Access Roads shall meet the requirements set forth in the 2012 International Fire Code and the City of Poulsbo Construction Standards. The following minimum standards must be met:
  - a. Fire Access Roads shall be a minimum width of 20'.
  - b. Fire Access Roads shall be unobstructed at all times.
  - c. Appropriate signage and/or markings shall be provided by pre-approved means.
  - d. Fire access roads must extend to within 150' to any portion of buildings, measured on an approved route.
  - e. Fire access road surface shall be designed to withstand the imposed load of fire apparatus and all weather driving capabilities.
  - f. Fire Access Roads that extend 150' shall provide an approved turn-around.
14. School mitigation fees are required for this project and shall be paid prior to final plat recording. The applicant and the North Kitsap School District will reach agreement on the mitigation fees, and the developer will present a receipt of payment of fees to the City.

## **CONDITIONS OF APPROVAL**

### **PLANNING DEPARTMENT**

15. The preliminary plat map shall be revised to provide regulatory protection, as required by PMC 16.20.230.A, for onsite Wetland B and its buffer as a naturally occurring non-isolated wetland with a Category III rating. Further provisions specifically regulating the plat map revision process mandated herein appear within conditions 27, 28 and 29 below. The final subdivision and development of the site shall be in conformance with the revised preliminary plat drawings approved by City staff (and Hearing Examiner, if applicable), the SEPA mitigation conditions, and the conditions of approval.
16. Development of the lots shall comply with PMC 18.70, or as subsequently amended, for setbacks, building lot coverage, and building height. The building envelopes depicted on the preliminary plat drawing are for illustrative purposes and final building placement shall be determined at the

time of building permit submittal consistent with this condition.

17. All residences and accessory structures are to be located fully on lots in the SR-2 Shoreline Residential environment. Once the trailer and accessory structures are removed, and septic and well decommissioned, Open Space Tract A and all portions of platted lots lying waterward of Fjord Drive shall remain in a natural state as undeveloped shoreline open space.
18. Two parking spaces shall be provided for each residence and will be reviewed and confirmed at the time of building permit submittal.
19. Within seven years following approval of the preliminary plat, or as otherwise stipulated in RCW 58.17.140, a final plat shall be submitted to the City for review and approval.
20. Street trees are required to be provided along the frontage of Fjord drive at 40' on center. The preferred location for street trees is a minimum 5-foot planting strip in the right-of-way between the roadway and the sidewalk. Where street trees are proposed within narrower planting strips (no less than 3 feet in width) or within the utility easement on each individual lot, the applicant shall utilize trees from the Master Public Tree Plan Street Tree List that are labeled for use in the "Narrow Planting Strip" category. A final landscape plan shall identify any specific standards for soil amendments, root confining techniques, or planting to ensure the trees remain healthy within the narrow planting area. Any utilities placed in areas with street trees should be placed a minimum of 2 feet from the surface to allow for normal root growth without impacting utilities.
21. Tree retention of existing significant trees on the subject site shall be provided consistent with PMC 18.180. Prior to approval of construction drawings, trees to be retained shall be identified and reviewed by the City. Proper staking in the field and construction fencing will be required prior to grading of the site.
22. Building setbacks from easements shall be as follows:  
From access easements: Minimum 5' building setback  
From utility easements: Minimum 3' building setback
23. The final CC&Rs shall be submitted with the final plat application, and shall be recorded prior to final plat recording. The CC&Rs are subject to the review and approval of the Planning Department and City Attorney to ascertain if the documents are sufficient to assure compliance with the Conditions of Approval and SEPA Mitigations. At a minimum, the CC&Rs shall include provisions for repair, maintenance and performance guarantee of any tracts, landscaping, facilities, utilities or amenities which are private and commonly owned by the homeowners of the plat. Language shall also be included in the CC&Rs which requires notification to the City of Poulsbo Planning Director of any amendments to the CC&Rs, and that the City shall have the authority to object to any modification that is inconsistent with any condition lawfully placed upon the subdivision by the City of Poulsbo.
24. Any onsite wells or septic waste disposal systems shall be removed/decommissioned in accordance with the requirements of the Kitsap County Health District, prior to recording of the final plat.

25. Temporary fencing of Wetlands A and B is required during construction activities, in accordance with PMC Section 16.20.230.J. Fences shall be made of a durable protective barrier and be highly visible. Fencing shall be inspected prior to commencement of construction activities. Temporary fencing shall be removed once site work is complete and the site has been fully stabilized per City approval.
26. The sidewalk proposed to be located in small portion of Wetland A's buffer is allowed and must be an ADA approved pervious unpaved surface. (PMC 16.20.120.I allows for permeable pedestrian trails within critical area buffers when unpaved and no wider than 5'.)
27. The preliminary plat map revision required by condition no. 15 above may result in the loss of lots and a reduction of Open Space Tract A. Buffer averaging may be employed consistent with code requirements to reduce the southwestern extension of the Wetland B buffer.
28. Pursuant to the preliminary plat map revision, segments of lots may be platted waterward of Fjord Drive so long as the lot portions located upland of Fjord Drive each possess a satisfactory buildable area, as confirmed by staff review. Portions of lots located waterward of Fjord Drive shall be designated as legally unbuildable, as specified by a note to be placed on the face of the final plat map. Portions of lots located waterward of Fjord Drive shall be aggregated along with Open Space Tract A into an undeveloped common recreation easement area for use of plat lot owners collectively.
29. Hearing Examiner jurisdiction will be retained for the limited purpose of resolving issues arising out of the preliminary plat map revision process, as follows:
  - A. Either the City or the applicant may petition the Examiner in writing for a code interpretation relating to an issue encountered in the plat map revision process or for the interpretation of a condition governing this preliminary approval.
  - B. Revision of the plat map will require, at a minimum, reconfiguration of lot lines and modification of lot dimensions, all of which will necessitate further staff review. Based on new issues unaddressed in the initial review of the plat proposal, either the City or the applicant may petition the Examiner in writing for a change in the conditions appended to this decision. Existing conditions may be revised or deleted and new conditions added.
  - C. If the preliminary plat revision approved by City staff includes changed access locations along Fjord Drive or a substantially reconfigured internal circulation plan, before site development commences staff shall notify the Examiner of such circumstance and provide to the Examiner a copy of the staff-approved preliminary map revision and an analysis of the consequences to offsite properties or facilities potentially resulting from such access and circulation changes. Based on this information, the Examiner will determine whether the hearing record should be reopened to receive further public comment on the proposed new access concepts.
  - D. Hearing Examiner retained jurisdiction shall terminate upon the filing for record of the approved final plat.
30. An .03 acre portion of Open Space Tract A may be dedicated to the City as Fjord Drive right-of-way. This area is intended to expand the existing Liberty Bay Waterfront Trail as this location

through widening of the shoulder of Fjord Drive, in order to provide additional water enjoyment opportunities. Seating for a public resting area may be provided by the applicant at this location. Future coordination among the Washington State Department of Fish and Wildlife, the City and the applicant regarding the type and location of the seating area will be necessary.

31. Park impact fees shall be calculated pursuant to the Park Impact Fee Ordinance in effect at the time of building permit submittal. Estimated fee for this development is currently \$1,195 per dwelling unit with a credit for the existing one single-family residence.

### **POULSBO FIRE & SAFETY**

32. Fire apparatus access shall be made available at all times by providing and maintaining an unobstructed width of 20'. Appropriate means shall be provided to designate areas to remain clear through approved signage or road markings.
33. Fire flow shall be provided, in accordance with 2009 IFC Appendix B.
34. Fire hydrants shall be spaced and installed in accordance with the City of Poulsbo Construction Standards.
35. The emergency vehicle turnaround shall meet the requirements set for the by the City of Poulsbo construction standards or other approved standards to accommodate adequate maneuverability for emergency apparatus.

### **PUBLIC WORKS – ENGINEERING**

#### **GENERAL**

36. All water, wastewater, and stormwater facilities and streets shall be designed by a professional civil engineer licensed in the State of Washington. The applicant is responsible for the design and installation of the facilities. In the event that there is a conflict between standards, the more restrictive standard shall apply as determined by the City Engineer.
37. Land use permit approval shall not waive any requirements for the applicant to (a) obtain all appropriate permits; (b) pay all required fees and deposits; and (c) provide the City with adequate construction plans for approval which conform to City codes and standards. *Any utility plans, details, and drawing notes associated with the approved preliminary plat drawing are approved in concept only and are not considered approved for construction. Approval of the preliminary plat does not constitute approval of any construction drawings submitted with the preliminary plat approval documents.* Civil construction drawings must be submitted directly to the Engineering Department. For site plans, it is not acceptable to submit the civil drawings with the building plans to the Building Department.
38. Construction plans for the following shall be reviewed and approved by the Engineering Department and Public Works Department: storm drainage and street improvements (including signage and pavement markings), sanitary sewer, water, and interim and permanent on-site erosion control systems. Prior to final plat the applicant shall: construct the required improvements per City standards, and submit “as-built” drawings on mylar, paper, and electronically (compatible

with the AutoCAD version utilized by the City at the time of submittal), dedicate easements, convey utility ownership as determined by the City, and post a maintenance bond.

39. All plan review and project inspection and administration expenses shall be paid for at the developer's expense consistent with the fee and deposit schedule adopted by City ordinance in effect at the time of construction. Plan review fees shall apply to the original drawing submittal and one re-submittal. Subsequent submittals will require payment of hourly charges. Fees are non-refundable. Deposits are required for payment of actual expenses incurred by Engineering Department staff for project administration and inspection. If the City Engineer determines that the magnitude or complexity of the project requires full or part-time on-site inspection in addition to the inspection by City staff, he may contract with a duly qualified inspector or hire additional personnel to provide inspection, testing, or other professional services for the City in connection with the construction. Deposits for Engineering Department services or outside professional services shall be paid in advance. The deposits are estimates and may require replenishment. Deposits may be required at the time of, or after, payment of any fees. Unused deposits are refundable.
40. At any point in the process of application approval, construction plan review, or construction, the City Engineer may hire an independent consultant to review and comment on any, or all, utilities or sitework (for example, storm sewer, sanitary sewer, water, roads/streets, retaining walls, slopes) proposed by the applicant. The applicant shall make a cash deposit which will be used to pay for any independent review required by the City Engineer. If additional funds are required, the applicant shall immediately deposit the requested amount. Any unused funds will be refunded. Acceptance of the proposal and consultant comments shall be at the discretion of the City Engineer.
41. The applicant shall adhere to all recommendations of the applicant's geo-technical engineer and the City's consultants as determined by the City Engineer.
42. "City of Poulsbo Construction Standards and Specifications, July 2008" are published on the City website within the Public Works/Engineering Department page. Unless specified otherwise within Conditions of Approval these standards shall be followed.
43. The civil construction drawings shall include plans for: grading, water, sewer, storm, streets, dry utilities, street lighting, signage/striping, and composite wet utilities. Other plans may be required depending on site-specific conditions. Profiles and details for the wet utilities shall also be provided.
44. Construction drawings will be rejected, without review, if the following drafting requirements are not met:
  - a. Construction plan size shall not exceed 24"x36". The minimum drawing scale shall be 1:40 horizontal and 1:5 vertical. A larger scale may be required for legibility.
  - b. Utilities shall be shown on plan/profile sheets. Each sheet shall have the corresponding plan/profiles on the same sheet with aligned stationing.
  - c. Labels from the various overlapping AutoCAD layer shall be legible.
  - d. All elements on the drawings shall be legible as determined by the City Engineer.

45. All infrastructure must be installed before Final Plat approval. If the applicant wishes to construct the project in phases, those phases must be defined as divisions in the preliminary plat approval. At the time of Final Plat approval for each division, that division shall be “stand alone”. A division shall be considered “stand alone” if it contains complete utilities and access for the future residents of that division and is not dependent on other as yet un-built divisions for this purpose. Any infrastructure outside of the plat that is necessary in order to serve the division or allow it to function must be completed as well.

#### CLEARING, GRADING, AND EROSION CONTROL REFER TO CONST STDS

46. A Clearing and/or Grading Permit is required prior to any land-disturbing activity on the site (PMC 15.35). The permit may include restrictions as to the limits of any particular area or phase that can be cleared and graded at any one time or during any construction season. Additional restrictions may be placed on the permit in regard to seasonal weather conditions. At any time, the City Engineer may restrict activities or access to portions of the site which would be detrimental to maintaining erosion and sediment control.
47. The Department of Ecology requires project owners to obtain a Construction Stormwater General Permit for certain projects. Initial guidance on this requirement can be found on the Department of Ecology Focus Sheet titled "Focus on Construction Stormwater General Permit" which is available at the City Permit Counter or online at [www.ecy.wa.gov/biblio/0710044.html](http://www.ecy.wa.gov/biblio/0710044.html). Notice of Intent Application form available at the Permit Counter. Construction site operators must apply for the permit 60 days prior to discharging stormwater.
48. The developer's engineer shall submit a completed NPDES Permit Appendix 7 Worksheet along with other required stormwater application documents. You may obtain the worksheet from Engineering staff or the Ecology website:  
<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/phaseIIww/MODIFIEDpermitDOCS/Appendix7ww.pdf>

#### STORMWATER

49. All temporary and permanent storm system and erosion control measures shall be designed, constructed, maintained, and governed per the following, as adopted by the City of Poulsbo:
- a. All temporary and permanent storm system and erosion control measures shall be designed, constructed, maintained, and governed in accordance with PMC Chapter 13.17. Chapters 12.02.030 and 12.02.040 provide further guidance on design manual and threshold criteria within compliance of NPDES Phase II Permit.
  - b. City of Poulsbo standards and ordinances
  - c. All conditions of approval associated with any clearing and/or grading permits
  - d. Recommendations of the geo-technical engineer
50. A preliminary drainage report and plan has been submitted with the preliminary plat application and include both an upstream analysis and a Level 1 downstream analysis. The stamping/cover page of this report shall include the following text; “I hereby state that this Drainage Report has been prepared by me or under my supervision and meets the standard of care and expertise which is usual and customary in this community of professional engineers. The analysis has been

prepared utilizing procedures and practices specified by the City of Poulsbo and within the standard accepted practices of the industry. I understand that the City of Poulsbo does not and will not assume liability for the sufficiency, suitability or performance of drainage facilities prepared by me.” The preliminary & final site plan shall address management of upstream flows. Further levels of analysis may be required. The final drainage report shall include an analysis of the proposed drainage design which satisfies the City Engineer that the design complies with all City requirements and protects downstream properties and the surrounding area from damage and any adverse impacts. The applicant may be required to construct off-site downstream improvements to mitigate the impacts of the project. In the case of conflicts among the standards and manuals, the more restrictive shall apply unless determined otherwise at the discretion of the City Engineer. Requirements of the permit are a minimum. Other actions may be necessary to comply with State statutes for clean water. The applicant is ultimately responsible for compliance.

51. Provision shall be made for the conveyance of any upstream off-site water that naturally drains across the applicant’s site.
52. Ownership and maintenance of stormwater systems will remain the responsibility of the Lots being served. Tracts or easements shall be clearly described on the face of the plat. Specific responsibilities and cost reimbursements for routine maintenance, record keeping and repairs shall be on the face of the plat and the CC&Rs.
53. Per Minimum Requirement #7 of Volume I of the 2005 SWMMWW-Flow Control – the conveyance system between the project site and the exempt receiving water shall have the sufficient hydraulic capacity to convey discharges from future buildout conditions (under current zoning) of the site, and the existing condition from non-project areas from which runoff is or will be collected; and any erodible elements of the manmade conveyance system must be adequately stabilized to prevent erosion under the conditions noted above. Since some of these existing discharge conveyance facilities are within Kitsap County jurisdiction, Kitsap County shall review the Drainage Report and Plans for compliance with their NPDES discharge permit.
54. Bioretention Pond Setbacks: Per the 2009 KCLID Guidance Manual, bioretention facilities using infiltration should be set back 25’ from building structures to prevent infiltration from impacting the building or foundation. Deviations from this 25’ setback would require demonstration that groundwater will not impact building foundations and require approval by the City Engineer. If the bioretention facilities do not require infiltration into the native soils, the setback could be reduced to 10’ (as measured from the maximum water surface to the building) if the bioretention facilities have a liner. Compacted earthen liners, if used, need to meet the specifications of Section 4.4.3 of Volume V of the 2005 SWMMWW.
55. The project shall follow Minimum Requirement #8 – Wetlands Protection for any existing wetlands that will be retained in the project that may be impacted by the proposed stormwater revisions.
56. Per Minimum Requirement #4 of Volume 1 of the 2005 SWMMWW, the manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters. The offsite wetland mitigation must account for loss of water quality benefits from onsite Wetland B, which currently treats and infiltrates stormwater from the upstream basin.

57. A final storm drainage report shall be submitted to the City at the time of construction drawing submittal. At this time both the City and the County shall review the storm drainage report to determine compliance. If the City or County determines that the existing downstream conveyance does not have sufficient capacity, it is the responsibility of the applicant to upgrade the system to provide additional capacity if necessary.
58. A spill control type oil/water separator shall be installed in the stormwater system at the most downstream point of the site.

#### SANITARY SEWER

59. The applicant shall be responsible for obtaining any off-site easements for access and maintenance of the sewer. Prior to Preliminary Plat Approval, satisfactory evidence shall be provided to the City Engineer which indicates that the easement(s) will be granted. The easement(s) shall be legally described and dedicated to the City prior to Final Plat Approval. The easement(s) shall be shown on the Preliminary Plat, construction drawings, and "as-built" drawings.
60. All sanitary sewer infrastructure installed to serve the Whitford subdivision shall remain privately owned and maintained. Ownership and maintenance responsibilities shall be addressed on the face of the plat and in the CC&Rs.

#### WATER

61. When water mains are not within public right-of-way, easements for access and maintenance of the water main within the plat shall be legally described and dedicated to the City on the Final Plat drawings. For mains located in private roads, the easement width shall be the roadway width. Ownership of the pipe and appurtenances shall be conveyed to the City on the Final Plat drawings. The easements shall be shown on the construction drawings, "as-built" drawings, and Final Plat drawings.
62. The applicant shall be responsible for obtaining easements for access and maintenance of any off-site water mains and appurtenances. Prior to Preliminary Plat Approval, satisfactory evidence shall be provided to the City Engineer which indicates that the easement(s) will be granted. The easement(s) shall be legally described and dedicated to the City prior to Final Plat approval. The easement(s) shall be shown on all drawings.

#### ALL UTILITIES

63. All water mains shall be within public right-of-way or within easements dedicated to the City which meet the City's criteria for dimensions and access. All water, sewer, and storm service laterals and all secondary sanitary sewer and storm drainage lines located within easements or private property shall remain privately owned and maintained by the Homeowner's Association or applicable lot owners.
64. When private storm or sewer pipe is located in an easement that is adjacent and parallel with the property line between two lots/parcels, the easement shall be located entirely on one property and

not split between the adjacent properties OR the utilities shall be off-set from the property line a minimum of 2 feet due to the high potential for fence posts to be placed on the property line.

## STREETS

65. Unless otherwise approved by the City Council, street sections shall conform to adopted City standards. (Refer to Developer's Guide – Section 2 \_ Street Standards, 2014 available online: <http://www.cityofpoulsbo.com/publicworks/ConstructionStandards.htm>)
66. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of the project and Fjord Drive NE. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The certification shall also note necessary measures to correct and maintain the minimum sight triangle. Any corrective measures shall be complete prior to final plat approval.
67. GMA Transportation Impact Fee Ordinance (PMC 3.86) has been approved by City Council. This establishes a transportation impact fee assessment of \$283.50 per ADT payable at time of Building permit issuance. The application shall provide accurate occupancy information for each building to assign accurate ADTs. Average week day trips shall be determined using the latest version of the Trip Generation Manual published by the Institute of Transportation Engineers (ITE) for the land use(s) that are the subject of the permit. The current edition of the ITE manual (9<sup>th</sup>) calculates that traffic impact fee for single family residences at \$2,698.92 per single family home. The plat currently proposes 7 lots; however a credit for the existing single family residence will be given, for a total traffic impact fee applied to 6 lots of \$16,193.52
68. Streetlights shall be installed per City of Poulsbo and Puget Sound Energy specifications.
69. The applicant's engineer shall obtain approval of the postmaster and the City Engineer for all mailbox installation locations.
70. As a condition of site plan development, the construction of frontage improvements is required. This requirement is addressed in City Construction Standards. The applicant is responsible for improvements to Fjord Drive NE. Frontage improvements shall consist of sidewalk construction adjacent to Fjord Drive NE. Additional dedication of ROW may be required to complete the required frontage improvements. All sidewalks improvements shall comply with current ADA standards.
71. If a public sidewalk is to be located on private property, the face of the plat shall include the appropriate language that designates the sidewalk area as a public pedestrian access easement.
72. Rockeries/retaining walls constructed behind sidewalks shall be placed a minimum of two feet behind the back of any sidewalk. The ground shall be level behind the sidewalk.
73. Shared driveways shall serve a maximum of four residences.
74. Private driveways shall be designed so that backing into the ROW does not occur.

75. No driveways shall access off of the easement to the north of the plat unless the private driveway is converted to a City street in the future.

#### OTHER

76. All bonds, conveyances, and easements dedicated to the City shall be on the City's forms.

77. A Public Property Construction Permit is required when connecting to City-owned utilities or performing other work within the City right-of-way or other public/City-owned property (PMC 12.08). The permittee shall be responsible for repair and/or restoration of any damage to City property (such as sidewalks, curbs, gutters, pavement, and utilities) that occurs as a result of his operations under this permit.

78. Shared driveways shall be dedicated easements or tracts benefitting the property owners served by the driveway. The face of the plat and the covenants shall state that the responsibility for maintenance of any shared driveway shall be the responsibility of the property owners served by the driveway.

79. No rockeries/retaining walls may be constructed within the ten-foot (10') wide utility easement fronting all lots or within any other utility easement. No permanent structures of any kind are allowed within any utility easement. If construction, maintenance, repair, or reconstruction of any utility is required, the property owner shall be responsible for the removal and relocation of any permanent structure and plantings that were removed. Such relocation shall not be in conflict with City codes. The face of the plat shall state this requirement.

80. Any agreements made between the applicant and another property owner related to utilities, easements, right-of-ways, or ingress and egress shall not be in conflict with City codes or ordinances. No agreements between the applicant and the property owner shall exempt either party from obtaining proper City approval for land use activities regulated under the Poulsbo Municipal Code.

81. The covenants shall state that no fence shall be placed within two feet of the back of any sidewalk.

82. All public utilities shall be provided within the plat and shall include power, telephone, natural gas, and cable television. All utilities shall be placed underground (PMC 17.08.140, PMC 13.20). A ten-foot easement fronting all lots shall be dedicated for public utilities. A plan sheet titled Dry Utilities shall be included with Construction Plan submittal and include all above mentioned utilities.

83. The applicant shall be responsible for obtaining all required easements and rights-of-way. Copies of all recorded easements shall be provided to the City Engineer.

#### PUBLIC WORKS - UTILITIES

##### Service Availability:

84. The City of Poulsbo has determined that, as of the date of this development approval, the City has sufficient water supply to serve the development. This determination is not, however, a guarantee that sufficient supply will exist at the time of connection to the City's water system is applied for and the City expressly disclaims any such guarantee. The City allows connections to its water system on a first-come, first-served basis and the City may or may not have an adequate supply of water available to serve the development at the time connection is applied for. Pursuant to RCW 19.27.097, verification that an adequate water supply exists to serve the development will be required at the time a building permit is applied for and issuance of a certificate of water availability by the City at the time will be necessary before the ability to connect to the City's water system is assured.

Water:

85. The project shall loop 8 inch ductile iron main from the easement at the north of the property to Fjord Drive NE, if determined feasible by the City.

86. The existing  $\frac{3}{4}$  inch water service shall be decommissioned at the main. Credit for the existing water service shall be calculated and given at the time of building permit.

87. All on site wells and appurtenances shall be decommissioned per the Department of Health requirements.

88. All wells on adjacent properties shall be protected per Department of Health requirements.

89. Service connection and alteration to the city water system shall be the responsibility of the property owner.

90. Water mains shall be publically owned up to, and through, the water meters and fire hydrants. All water mains and meters, and fire hydrants shall be located in public right-of-way or easements granted to the City of Poulsbo.

91. Separate irrigation meter is recommended. No deduct meters are permitted in Poulsbo. A double check valve assembly shall be tested by a state certified tester upon installation. A copy of the test report must be sent to the Public Works and Building Departments.

Sewer:

92. This project shall connect to existing 8 inch sewer lines located in Fjord Drive or in the easement located to the north of the property, as approved by the City.

93. The existing  $\frac{3}{4}$  inch sewer service shall be decommissioned at the main. Credit for the existing sewer service shall be calculated and given at the time of building permit.

94. All on-site septic systems and appurtenances shall be decommissioned per the Department of Health requirements.

95. Service connection and alteration to the city sewer system shall be the responsibility of the property owner.

96. The new sewer manhole located in Fjord Drive right-of-way near the road side drainage ditch shall be appropriately constructed to prevent storm water infiltration into the City sewer system.
97. All manholes will be required to have an insert installed. The insert shall be 'The Rainstoper' by Southwestern Packing & Seals, Inc.

Solid Waste:

98. Solid waste service will be provided by the City of Poulsbo.
99. Solid waste shall be placed curbside adjacent to Fjord Drive NE.

General:

100. Design: All water, wastewater, stormwater system facilities and streets shall be designed by a professional engineer registered in the State of Washington. Design and installation of the improvements shall be the property owner's responsibility.
101. Design and Development Standards: Design shall be subject to the following Standards:
  - City of Poulsbo Utility Comprehensive Plan
  - City of Poulsbo Design, Development and Construction Standards
  - City of Poulsbo Municipal Code
  - Kitsap County Stormwater Management Manual
  - Washington State Department of Health Design Standards
  - Washington State Department of Ecology's Criteria for Sewage Works Design
  - Washington State Department of Ecology Stormwater Management Manual for the Puget Sound Basin
  - American Public Works Association/Department of Transportation Standard Specifications
102. In the event that there is a conflict between construction standards, the more restrictive shall apply as determined by the City Engineer.
103. Utilities shall be installed to each lot prior to recording of the plat.
104. No walls or structures shall be placed in utility easements.
105. Placement of landscape plantings and/or street trees shall not interfere with utilities. Required landscape vegetation may need to be relocated in the final landscape plan. Landscape vegetation not required by city code may need to be relocated or removed from the final landscape plan.

Submittal and Approvals:

106. The applicant shall be required to submit to the City for approval, the plans and specifications associated with the design and construction of utility system improvements.
107. Utility systems include, but are not limited to, distribution and collection mains, pumping facilities, storage reservoirs, detention/retention facilities or any improvements to be dedicated to the city under a deed of conveyance.

108. Upon completion of the project, the developer shall supply the Public Works Department with a copy of drawings of record; these drawings shall be in hard copy form and in electronic form compatible with the most current version of AutoCAD.

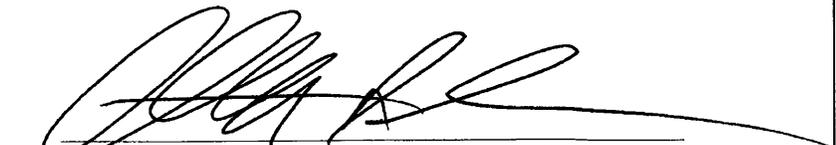
Connection Fees and Assessments:

109. Utility service for the noted property is subject to application and payment of the applicable fees and assessments.
110. Utility connection fees are required paid at the time of building permit issuance and are based on the current fee schedule in effect at that time. Early payment and reservation of utility connection are not provided for in Poulsbo Municipal Code.

**FINANCE DEPARTMENT**

111. Water and sewer facility charges, inspections and meter cost will be assessed at the time building permits are submitted. Facility fees will be due prior to the building permit issuance.
112. Irrigation system facility charges are based on meter size. A separate building permit is required.
113. Park and traffic impact fees are due before building permit issuance.

DATED July 20, 2015.



STAFFORD L. SMITH, Hearing Examiner  
City of Poulsbo

**EXHIBITS**

1. Whitford Strand Preliminary Plat and JARPA (Shoreline) Application Form
2. Whitford Strand Preliminary Plat Drawing date stamped 4/7/15
3. Whitford Strand Stormwater/Utilities Drawing date stamped 4/7/15
4. Cultural Resources Assessment was prepared by Cultural Resource Consultants dated February 20, 2014
5. Preliminary Drainage Report dated 11/24/14 and additional memorandums dated 12/16/14 and 4/7/15 prepared by Map Ltd.
6. Wetland Delineation and Analyses Report and Habitat Assessment, Whitford Strand Cottages Development, prepared by C3 Habitat Corp. dated November 15, 2013; and Addendum letter for Wetland B to the C3 Wetland Report

7. Whitford Strand Third Party Review Technical Memorandum dated August 11, 2014 and November 14, 2014 prepared by Grette Associates (also includes Sept. 17, 2014 letter from Ecological Land Services on regulatory status of Wetland B)
8. Whitford Strand Third Party Review Technical Memorandum dated March 6, 2015 prepared by Grette Associates
9. Wetland B delineation documents prepared by Ecological Land Services
10. Wetland B land survey, prepared by Adam and Goldsworthy
11. Correspondence from the Washington State Department of Ecology (email dated 12/31/13 and letter dated 11/04/14) regarding regulatory status of wetlands
12. Nationwide Fill Permit issued for Whitford Strand by Army Corp of Engineers
13. Wetland Mitigation Plan for Whitford Strand Preliminary Plat prepared by Ecological Land Services dated January 2015
14. Whitford Strand Third Party Review Technical Memorandum dated February 17, 2015 prepared by Grette Associates
15. SEPA threshold determination, mitigations and checklist
16. SEPA comment letters received
17. Public comment letters received
18. Affidavits of noticing
19. Public hearing notice and affidavits
20. Perisho public comment letter, received 5/12/15
21. Planning Commission meeting draft minutes
22. Staff response to comment letter
23. Perisho public comment letter, received 5/20/15
24. Staff report
25. Notices, orders, briefs and memoranda entered pursuant to continuance
  - A. Examiner's 5/22/15 briefing notice
  - B. Applicant's 6/2/15 brief
  - C. City Attorney's 6/5/15 brief
  - D. Examiner's 6/12/15 remand order
  - E. Applicant's 6/23/15 motion for final decision
  - F. City Attorney's 6/25/15 memorandum
  - G. Applicant's 6/26/15 memorandum
  - H. Examiner's 6/29/15 notice on closure
  - I. Applicant's 7/10/15 memorandum
  - J. City Attorney's 7/10/15 memorandum

The Hearing Examiner's decision on the application for Whitford Strand may be appealed to the Poulsbo City Council pursuant to PMC 19.01.060.