

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision	)	LSS2008-0004
Application by	)	
	)	
Duane & Krista Vermeer, Ryan & Wendy Haak	)	FINDINGS OF FACT,
Chad & Diane Likkell, Roger & Kim Anderson	)	CONCLUSIONS OF LAW
<i>“VAHL Meadows APO Cluster Long Plat”</i>	)	AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicants are requesting Preliminary Long Subdivision approval for the proposed creation of a cluster subdivision consisting of 3 single-family clustered lots, with a 19.39 acre reserve tract, on an approximately 23-acre parcel, located in the Rural (R5A) zoning designation.

Decision: The requested preliminary approval is hereby granted subject to the conditions set forth in the Staff Report, Exhibit #2 of the Hearing Examiner file, attached hereto and incorporated herein.

**SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

**I.**

Applicants: Duane and Krista Vermeer  
Ryan and Wendy Haak  
Chad and Diane Likkell  
Roger and Kim Anderson

Agent/Representative: Jaime White

Site Location/Address: The subject property is located at ‘0’ Lindsay Road, SW of the intersection of Lindsay and Garrison Roads and east of Sumas River

Legal Description: within a portion of the NE ¼ of the NE ¼ of Sec21, T40 N, R4E,W.M.

Assessor's Parcel Number: 400421 467440

Zoning: Rural-5A

Comprehensive Plan: Rural

Subarea: Lynden – Nooksack Valley

Number of Lots: Three single family lots and one reserve tract

Reserve Area: 19.39 acres

Total Acreage: Approximately 23 acres

Roads: Private

Water Supply: Nooksack Valley Water Association

Sewage Disposal: On site septic systems

Fire Protection: Whatcom County Fire District No. 1

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Nooksack School District

Topography: The site is described as mostly flat with slopes to the Sumas River on the west portion of the property.

Vegetation: Vegetation consists mostly of pasture grass areas with some forested areas.

Adjacent Land Uses: North: Residential  
East: Agricultural uses  
South: Vacant land  
West: Residential and vacant land

Utilities Easements: Necessary utility easements will be established prior to recording the final plat.

Variations: No variations requested

SEPA Review: Determination of Non-significance issued February 10, 2009

Authorizing Ordinances:

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

Legal Notices:           Posted – May 13, 2009  
                                  Mailed – January 12 and May 8, 2009  
                                  Published – January 12 and May 14, 2009

Hearing Date: May 27, 2009

Parties of Record:

Duane & Krista Vermeer, Ryan & Wendy Haak, Chad & Diane Likkel, Roger & Kim Anderson  
c/o Ryan and Wendy Haak  
810 Chestnut Street  
Everson, WA 98247

Jaime White  
Whatcom Land Use Consultants  
PO Box 30696  
Bellingham, WA 98228

Townline Grower  
PO Box 242  
Lynden, WA 98264

Amy Keenan  
Planning and Development Services

Mary White  
Division of Engineering

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Letter of Completeness, dated January 9, 2009
  - 1-3 Project Description
  - 1-4 Contact Information Sheet
  - 1-5 Certificate of Mailing, dated January 12, 2009
  - 1-6 Mailing Labels
  - 1-7 Application Tracking
  - 1-8 Form Letter to Property Owners
  - 1-9 Deed
  - 1-10 Fire/School District Concurrency Letter
  - 1-11 Public Water Availability
  - 1-12 On-Site Sewage System Application
  - 1-13 Declaration of Covenants
  - 1-14 Preliminary Traffic Analysis
- 2 Staff Report, dated May 18, 2009, with attached Agency Comments
- 3 Comment Letters
- 4 Site Plan
- 5 Millennium Engineering Report, dated December 28, 2008
- 6 Plat Map, Zoning Map, Aerial Maps
- 7 Legal, dated January 12, 2009
- 8 DNS, dated Feb 10, 2009
- 9 Certificate of Mailing, dated May 8, 2009
- 10 Legal Notice, dated May 14, 2009
- 11 Posting Notice, dated May 13, 2009
- 12 Verification of Wetland C, by Northwest Ecological Services, LLC, dated December 12, 2008, with Wetland Delineation, dated February 2008 attached

II.

The proposed 4-lot subdivision was reviewed by the Technical Review Committee. The

recommendation of this Committee was set forth in a Staff Report, entered into the Hearing Examiner file as Exhibit #2, dated May 18, 2009, prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Committee recommended Preliminary Long Subdivision Approval, subject to conditions.

### III.

There was no public comment on this proposal at the public hearing. No County agency objected to the granting of Preliminary Long Subdivision approval. The Applicant has indicated no objection to any of the conditions proposed in the Staff Report, Exhibit #2, dated May 18, 2009.

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Committee, as set forth in the Staff Report, or its Conclusions of Law were incorrect or inaccurate or failed to properly support preliminary approval.

The Hearing Examiner hereby adopts by this reference the Findings of Fact and Conclusions of Law reached by the Technical Review Committee in the Staff Report, Exhibit #2, a copy of which is attached hereto and incorporated herein by this reference.

### IV.

Based on these Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following decision:

#### **DECISION**

Preliminary Long Subdivision Approval is hereby granted to Duane and Krista Vermeer, Ryan and Wendy Haak, Chad and Diane Likkel, Roger and Kim Anderson, granting preliminary approval for a cluster long subdivision, "VAHL Meadows," consisting of a three single-family lot cluster subdivision and one 19.39-acre agriculture reserve tract, to be located on Assessor's Parcel No. 400421 467440, '0' Lindsay Road, Lynden, Washington, subject to the Conditions of Approval recommended in the Staff Report, Exhibit No. 2, dated May 18, 2009, and attached hereto and incorporated herein.

#### **NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 3<sup>rd</sup> day of June 2009.

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Michael Bobbink, Whatcom County Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

May 18, 2009

The application of **Duane and Krista Vermeer, Ryan and Wendy Haak, Cad and Diane Likkel and Roger and Kim Anderson** for a Long Subdivision (VAHL Meadows) | LSS2008-00004  
| FINDINGS, CONCLUSIONS, AND  
| RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The project consists of three clustered single-family residential lots and one reserve tract located on an approximately 23-acre site within the Rural-5A zoning designation.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, subject to the attached conditions.

**II. PRELIMINARY INFORMATION**

A. BACKGROUND INFORMATION

Applicant: Duane and Krista Vermeer  
Ryan and Wendy Haak  
Chad and Diane Likkel  
Roger and Kim Anderson

Agent/  
Representative: Jaime White  
Whatcom Land Use Consultants  
PO Box 30696  
Bellingham, WA 98228

Site  
Location/Address: The subject property is located at 'O' Lindsay Road, southwest of the intersection of Lindsay and Garrison Roads and east of the Sumas River.

Legal Description: Located within a portion of the NE ¼ of the NE ¼ of Section 21, Township 40 N, Range 4 EWM.

Assessor's Parcel  
Number: 400421 467440

<u>Zoning:</u>	Rural-5A
<u>Comprehensive Plan:</u>	Rural
<u>Subarea:</u>	Lynden – Nooksack Valley
<u>Number of Lots:</u>	Three single family lots and one reserve tract
<u>Reserve Area:</u>	19.39 acres
<u>Total Acreage:</u>	Approximately 23 acres
<u>Roads:</u>	Private
<u>Water Supply:</u>	Nooksack Valley Water Association
<u>Sewage Disposal:</u>	On site septic systems
<u>Fire Protection:</u>	Whatcom County Fire District No. 1
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Nooksack School District
<u>Topography:</u>	The site is described as mostly flat with slopes to the Sumas River on the west portion of the property.
<u>Vegetation:</u>	Vegetation consists mostly of pasture grass areas with some forested areas.
<u>Adjacent Land Uses:</u>	North: Residential East: Agricultural uses South: Vacant land West: Residential and vacant land
<u>Utilities Easements:</u>	Necessary utility easements will be established prior to recording the final plat.
<u>Variances:</u>	No variances requested
<u>SEPA Review:</u>	Determination of Non-significance issued February 10, 2009.

**B. AUTHORIZING ORDINANCES:**

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

**III. SITE DESCRIPTION**

The subject property is an approximately 23-acre site, and is located at '0' Lindsay Road, southwest of the intersection of Lindsay and Garrison Roads east of the Sumas River.

There is one wetland on site located on the west border of the property and is associated with the Sumas River. A wetland buffer also extends onto the site along the east border of the site. The property is sloped approximately 6-12% from the north to the south. The majority of the site is vegetated with grasses and some forested areas. Property surrounding the site is zoned Rural (R(5)) and Agriculture (AG) with mostly single-family residential home sites and agricultural fields.

**IV. PROJECT PROPOSAL**

The VAHL Meadows proposal is to subdivide the reserve tract of the Robbin's Cluster Short Plat into four single-family residential parcels including one 19 acre reserve tract in the Rural (R(5)) zone. The residential lots range from 1.19 acres to 1.39 acres. Access to the site will be provided off an easement through Lot 1 of the Robbin's Cluster Short Plat. Water service will be provided by the Nooksack Valley Water Association. All lots will have individual on-site septic systems.

Assessor's parcel number 400421 467440 was created in 2002 under Auditor's File Number 20204700294 as the reserve tract for the Robbin's Cluster Short Plat and as such is considered a legal lot of record pursuant to WCC 20.97.220.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on January 12, 2009. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received one written comment. A summary of the comment and a response follows:

- Concerns regarding the conversion of farmland to residential purposes.

The subject property is zoned R-5A which allows a residential density of one unit per five acres. The lot is over 23 acres and has the ability to develop four residential lots. The property is subject to the Agriculture Protection Overlay (APO) and as such is required to cluster the residential development and retain at least 75% of the parcel in a reserve tract.

Notice of SEPA Threshold Determination: The Notice of Decision for the Determination of Non-Significance (DNS) for this project was issued on February 10, 2009. The notice was also sent to state and local agencies, and Parties of Record for the project. During the public comment period for the DNS, the County received one written comment.

- The Lummi Nation Tribal Historic Preservation Office (LNTHPO) has coordinated an internal review in response to the Notice of Application. The LNTHPO utilized records on file with the Lummi Nation's Cultural Resource Management Program. Based on the review, an archaeological assessment is not recommended at this time. While the presence of cultural resources is not anticipated, the LNTHPO requested that the standard inadvertent discovery language be included within the approval conditions.

The standard inadvertent discovery language has been added to the conditions of approval.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of

Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on February 10, 2009 and no appeals were filed.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Building Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Chief Plans Examiner submitted a memo dated January 15, 2009 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The Whatcom County Plans Examiner required conditions for the above permit, with the following provisions:

1. Until structures are proposed, the plans examiners have no comments for the Preliminary Long Subdivision, at which point the attached conditions may apply.
2. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The comments [as conditions of approval] are general comments are not intended to be the final comments or requirements for any one project.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

### **B. Critical Areas (Title 16)**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The following wetland reports were submitted and reviewed:

- Letter regarding wetlands from Analiese Burns with Northwest Ecological Services, LLC. dated December 12, 2008.
- Wetland Delineation from Northwest Ecological Services, LLC. dated February 2008.

A critical areas technical administrator reviewed and approved the wetland report on January 12, 2009. Three wetlands exist on site. Please see the following table for the type and buffer widths for each wetland.

Wetlands Categories and Buffers

Wetland	Category	Buffer Width
Wetland 'A'	II	75
Wetland 'B'	I	110
Wetland 'C'	IV	N/A

Wetland 'B' and buffer is fully contained with the reserve tract. Only a small portion of Wetland 'A' extends on the site and the buffer is fully contained with the reserve tract. A wetland (Wetland C) was initially identified; however after additional monitoring during the wet season it was determined the wetland did not meet the standards for classification. The wetland was removed from the latest map. The project will be conditioned to provide protective measures that meet the requirements of WCC 16.16.

It should be noted that the private road easement will need to be widened per the Whatcom County Development Standards. Road widening will occur within the established buffer, but will be widened away from the critical area.

The VAHL Meadows subdivision has also been reviewed for conformance with the Whatcom County Shoreline Management Program (SMP). Based upon review of the proposed layout, SMP jurisdiction is limited to the western portion of proposed Lot 4 along the Sumas River. No subdivision of lands within the jurisdiction of the SMP is proposed according to information provided within the file. A note shall be placed on the plat as a guide to future use and development in SMP jurisdiction.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.*

### **C. Rural Zone Site Requirements (WCC Chapter 20.36)**

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.36.253, establishes the basic density and lot size requirements for residential development in the Rural zone. Flexibility from these requirements may only be obtained through the planned unit development process. The requirements for the R(5) zoning district are listed in the table below.

**Rural Site Requirements**

District	Gross Density	Minimum Lot Size	Minimum Reserve Area
R-5A subject to Agricultural Protection Overlay	1 dwelling unit/ 5 acres	15,000 sq. ft	75%

The site is approximately 23 acres in size with a density of one unit per five acres for a total of four units. The applicant is proposing three residential lots with one reserve tract. The reserve tract will be allowed one single-family residential unit. The average cluster lot size for the proposal is 1.25 acres with the smallest lot size at 1.19 acres.

It should be noted that this is a re-division of the reserve tract for the Amended Robbin’s Cluster Short Plat (SSS2001-00033) and as such requires a long subdivision. The original Robbin’s Cluster Short Plat (SSS1992-00046) was 25.84 acres and a condition of approval for the original short plat was that the reserve tract could not be reduced below seventy-five percent (75%) of the original parent parcel. The current configuration has a 19.39 acre reserve tract which is 75% of the original parent parcel.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.32.*

**D. Agricultural Protection Overlay (WCC Chapter 20.38)**

The site is located within the Agricultural Protection Overlay (APO) District as stated in WCC Chapter 20.38. The site is located within the R-5A zone, is greater than 20 acres, has soils designated as agricultural protection overlay soils and has been taxed as agricultural open space. In the APO district, a subdivision for nonagricultural uses must be clustered and several design standards apply including the following:

1. The clustered residential lot(s) shall not exceed 25 percent of the gross acreage of the original parent parcel, regardless of the number of separate subdivision events; and

*The project site has a gross acreage of 23 acres. The applicant is proposing to set aside 19.39 acres (84 percent of the gross acreage) in the reserve tract with the remaining acres (16 percent of gross) as the clustered residential area.*

2. Shall not interfere with the resource productivity and agricultural use of the agricultural reserve tract; and

*Over 19 acres of the site will be available for agricultural purposes. The residential subdivision is clustered in the southern portion of the lot and, as conditioned, will not impact resource productivity on the reserve tract.*

3. If the parent parcel contains an area that is nonagricultural or lower class soils, and if this area is large enough to contain or partially contain the clustered residential lots then the clustered residential lots shall be located in the lower class soil unless restricted by physical constraints or unless the placement of said lots would be contrary to subsection (2) of this section; and

*Nearly the entire site has high quality soils as determined by the standards in WCC Chapter 20.38, however, the development is clustered to the southern portion of the site leaving over 19 acres as the reserve tract.*

4. Minimum lot size shall comply with WCC 20.36.253, unless a larger lot is required as determined by the requirements of the Bellingham-Whatcom County Sanitary Code for on-site septic disposal; provided, however, separate drainfield tracts and common drainfields shall be allowed consistent with the sanitary code. Drainfields serving the cluster development may be located with the required building setback, but not within the reserve tract; and

*The minimum lot size complies with WCC Section 20.36.253. All drainfields will be located within the cluster subdivision area. No drainfields are located within the reserve area except for the reserve tract residential development.*

5. In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters; and

*This project is a three-lot subdivision and one reserve tract.*

6. All wells and protective buffer for potable water within the cluster subdivision shall be kept a minimum of 100 feet from the property line of an existing farm or any parcel or portion thereof which is designated as the agricultural reserve tract; and

*Potable water will be served to the subdivision by the Nooksack Valley Water Association.*

7. Any structure within the cluster subdivision, which will be used for human habitation, shall be setback a minimum of 100 feet from the property line of any parcel or portion thereof, which is designated or used for agricultural purposes. No structures shall be constructed within 30 feet of exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use; and

*As conditioned no new structure used for human habitation will be located within 100 feet of properties in agricultural production. This will be reviewed prior to final plat approval and/or at time of building permit.*

8. The 25 percent of a parcel available for development may be contiguous or in separate clusters so long as the requirements of this section are met; and

*The 25 percent of the parcel designated for residential development is located within one cluster.*

9. At the time of the initial development of a parcel under this section the entire parcel shall be included within the plat or tract map recorded, including the clustered residential parcel or parcels, and the reserve tract. Modifications to the plat or tract map shall be made in accordance with state and county codes and ordinances, and shall be permitted, so long as the provisions of this section are met as applied to the original parcel; and

*As conditioned, the entire parcel will be included within the plat.*

10. A statement that the property is subject to the Agriculture Protection Overlay (Chapter 20.38) shall be recorded on the face of the tract map, or short plat; and

*This has been added as a condition of approval and will be reviewed prior to final plat approval.*

11. For the purpose of determining additional development density should a rezone take place, the original (pre-subdivided) parent parcel acreage must be included in the total acreage calculation and the original development density shall be subtracted from the increased total development density assigned to the original parent parcel, to obtain remaining density.

*This shall be noted if and when the parcel is rezoned.*

*The Technical Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.38.*

## **E. Transportation Concurrency (WCC Chapter 20.78)**

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

The proposed development will not result in an "impacted transportation facility" per WCC 20.78.030(5) and therefore, will not require a transportation concurrency evaluation.

*The Technical Review Committee has determined the project is exempt from the requirements of WCC Chapter 20.78.*

## **F. Concurrency (WCC Section 20.80.212)**

WCC Section 20.80.212 states that no subdivision shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

### **Water**

A letter of water availability was received from the Nooksack Valley Water Association. For more analysis regarding water see Section VII.I. Health Department of this report.

### **Sewage Disposal**

There is no public sewage disposal available for this site. The applicant is proposing on-site septic systems. For more analysis regarding sewage disposal see Section VII.I. Health Department of this report.

### **Schools**

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

The applicant submitted a will-serve letter for this proposal dated December 10, 2008 from the Nooksack Valley School District #506. The school district received notice of the proposal and made no further comments.

### **Fire Protection**

The subject site is located within Fire Protection District No. 1. The Fire District has submitted a letter of concurrency for this proposal date stamped December 31, 2008 stating that the fire district will provide fire protection services for this subdivision.

The Whatcom County Deputy Fire Marshal submitted a memo dated January 14, 2009 with conditions of approval for this proposal.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

## **G. Subdivision Regulations (Title 21)**

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such subdivision and dedication; and

1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

*The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.*

2. With regard to open space, parks and playgrounds the Technical

Review Committee finds the following:

*Eighty-four percent of the parent parcel will be set aside as reserve area and the cluster lots are all over one acre in size.*

*The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.*

3. With regard to streets or roads, alleys, other public ways and transit stops, the Technical Review Committee finds the following:

*Lots 1 through 4 of this plat shall be served by the private interior road which accesses off an easement through Lot 1 of the Robbin's Cluster Short Plat which has access on Lindsay Road.*

*In summary, the Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.*

4. With regard to drainage Technical Review Committee finds the following:

*The Technical Review Committee has determined that the proposal, as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.*

5. With regard to schools the Technical Review Committee finds the following:

*The Nooksack Valley School District was notified of the project and provided a letter of availability; therefore, the Technical Review Committee has determined that the proposal is providing adequately for schools.*

6. With regard to compliance with the relevant polices of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

*The Whatcom County Comprehensive Plan adopted in May of 1997 applied the Rural designation to the subject site. Applicable goals of the Rural designation are as follows:*

Goal 2DD: Retain the Rural character and lifestyle of Whatcom County

Policy 2DD- 4: Support cluster housing in rural subdivisions.

- Goal 2EE: Ensure that Rural areas are provided with services consistent with the Rural character and that development patterns do not encourage an increased service level or degrade water quality.
- Policy 2EE- 2 Allow development in rural areas only when urban services are not required.

*The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.*

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

*As analyzed previously in this report, the Technical Review Committee finds that the project is in compliance with Title 20 and Title 21 and all other land use controls.*

*The Technical Committee has determined that, as conditioned, the project meets the requirements of WCC Title 21.*

## **H. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department submitted a memo dated April 24, 2009 with the following comments.

### Sewage:

- An On-site Sewage System (OSS) subdivision application has been submitted and approved for four lots.

### Drinking Water:

- A signed water availability form from the Nooksack Valley Water Association has been submitted and approved for four lots.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.*

## **VIII. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and

Washington State regulations.

As stated above the Technical Review Committee recommends approval of the Long Subdivision application, subject to the following conditions:

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division**

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless a final plat is submitted in proper form for final plat approval within five years of the date of preliminary subdivision approval. This expiration date may be extended pursuant to WCC 21.05.030(5).
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The applicant shall obtain all necessary permits prior to construction.
7. The following cluster subdivision provisions shall apply and be shown on the face of the plat:

#### **AGRICULTURE PROTECTION OVERLAY (APO) CLUSTER NOTES:**

1. THIS FOUR (4) LOT LAND DIVISION HAS BEEN APPROVED AS AN AGRICULTURE PROTECTION OVERLAY (APO) CLUSTER LONG PLAT PURSUANT TO WHATCOM COUNTY CODE TITLE 20.38. THE FOLLOWING NOTES SHALL BE CONSIDERED A DEED RESTRICTION AND SHALL CONSTITUTE A BINDING AGREEMENT BETWEEN WHATCOM COUNTY AND ALL PRESENT AND FUTURE OWNERS OF RECORD. SAID NOTES SHALL BE INCLUDED WITHIN ALL DEEDS AND CONTRACTS OF CONVEYANCE AND MAY ONLY BE AMENDED BY MUTUAL AGREEMENT BETWEEN SAID PARTIES PURSUANT TO THE ZONING IN EFFECT AT THE TIME. ANY ALTERATION OF THE RESERVE TRACT, BOUNDARIES OR CLUSTER

- NOTES PURSUANT TO WCC TITLE 21.04.120 REQUIRES THE REVIEW AND FILING FOR RECORD OF A NEW ORIGINAL DRAWING.
2. LOT(S) 1, 2, AND 3 HAVE BEEN DESIGNATED AS THE CLUSTERED LOT(S) AND ARE SUBJECT TO THE FOLLOWING RESTRICTIONS:
    - A. EACH CLUSTERED LOT HAS BEEN ASSIGNED ONE DENSITY.
    - B. EACH CLUSTERED LOT MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE SINGLE FAMILY DWELLING UNIT.
  3. LOT FOUR (4) HAS BEEN DESIGNATED AS THE AGRICULTURAL RESERVE TRACT AND IS SUBJECT TO THE FOLLOWING RESTRICTIONS:
    - A. IT HAS BEEN ASSIGNED ONE (1) DENSITY AND MAY BE UTILIZED FOR THE CONSTRUCTION OF ONE SINGLE FAMILY DWELLING UNIT.
    - B. BASED ON DENSITY CALCULATIONS MADE FOR THE ORIGINAL 23 ACRE PARENT PARCEL LOCATED WITHIN THE R5A ZONE, THE RESERVE TRACT HAS NO RESIDENTIAL DENSITIES REMAINING.
    - C. IT SHALL NOT BE FURTHER DIVIDED IN ANY MANNER EXCEPT AS MAY BE PROVIDED BY W.C.C. 20.36.320.
    - D. IT MAY BE RETAINED BY THE SUBDIVIDER, CONVEYED TO THE RESIDENTS OF THIS SHORT PLAT, OR CONVEYED TO A THIRD PARTY.
    - E. IT CONTAINS 75% OF THE GROSS AREA OF THE PARENT PARCEL OF THE AMENDED ROBBINS CLUSTER SHORT PLAT (AT LEAST 22.5 NOMINAL ACRES). AS THIS PROPERTY IS SUBJECT TO THE APO ZONE, ANY FUTURE ALTERATIONS, AMENDMENTS, OR ADJUSTMENTS TO ANY PART OF THIS PLAT SHALL NOT RESULT IN THE MINIMUM RESERVE AREA (TRACT) BEING REDUCED BELOW THE MANDATORY 75% REQUIREMENT.
  8. The following note shall be placed on the face of the plat:

RIGHT-TO-FARM COVENANT (THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM OR AN AGRICULTURE DISTRICT.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS SHORT PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON. THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE WHATCOM COUNTY AUDITOR'S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.
  9. The following note shall be placed on the face of the plat:

DISCLOSURE (WCC 21.04.170): THE SUBJECT PROPERTY IS LOCATED WITHIN 660' OF A SIGNIFICANT OIL/NATURAL GAS PIPELINE. THIS DISCLOSURE IS FOR NOTIFICATION PURPOSES ONLY AND BY APPROVAL OF THIS LAND DIVISION WHATCOM COUNTY ASSUMES NO RESPONSIBILITY FOR ANY SAFETY OR MAINTENANCE CONCERNS, OR NUISANCE POTENTIAL THAT MAY ARISE DUE TO THE PROXIMITY OF THE PIPELINE TO THIS SHORT PLAT."

10. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

## **B. Health Department**

1. The applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated April 24, 2009, unless modified by that Department or appealed to the appropriate agency.
2. Water service connections to each lot must be installed to the satisfaction of the Nooksack Water Association, and approval documentation provided to the WCHD prior to final plat approval.

## **C. Lummi Nation**

1. If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), Lummi Nation Tribal Historic Preservation Office (LNTHPO) (384-2298) and Washington State Office of Archaeology and Historic Preservation (OAHP) (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911), LNTHPO and OAHP shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

## **D. Natural Resources Division**

1. Critical Areas Administrator
  - a. The applicant shall comply with all of the conditions of the Critical Areas Administrator in the memo dated April 14, 2009, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
  - b. Critical areas staff have reviewed and approved the revised road location. Per WCC16.16.265(C), the critical areas and buffers on the site must be placed in a Conservation Easement or placed in a separate tract owned in common by all lots in the subdivision.
  - c. The Conservation Easement must be recorded prior to or at the time of mylar recording.
2. Whatcom County Shorelines
  - a. Per the memo dated January 26, 2009 from Chad Yunge, Whatcom County Shoreline Management, the following condition shall be placed on

the face of the plat:

SHORELINE MANAGEMENT PROGRAM NOTE:

THE WESTERN PORTION OF LOT 4 IS LOCATED WITHIN THE JURISDICTION OF THE WHATCOM COUNTY SHORELINE MANAGEMENT PROGRAM. FUTURE USE AND/OR DEVELOPMENT WITHIN THIS AREA REQUIRE REVIEW AND APPROVAL PURSUANT TO THE SMP IN EFFECT AT THE TIME OF THE PROPOSED USE AND/OR DEVELOPMENT. EXACT SMP JURISDICTION SHALL ALSO BE DETERMINED AT THE TIME OF THE ABOVE REQUIRED REVIEW.

**E. Building Division**

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated January 15, 2009 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
2. A building permit is required at the initial site development stage of the project for any proposed nonexempt structures or buildings. See the applicable code sections of current codes (current code as of submittal is, 2006 International Building Code (IBC), Section 105.2) regarding nonexempt structures.
3. A Washington State Professional Engineer may be required to engineer applicable portions of any proposed nonexempt structures or buildings.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
5. Nonexempt structures may include fences, retaining walls, concrete vaults and other poured-in-place concrete structures, some retention/detention structures, bridges, permanent signs and the like.
6. All information, details, conditions and specifications which determine the building envelope for each individual lot, including but not limited to easements, setbacks, critical areas buffers, etc., shall be clearly indicated on the face of the checkprints.
7. Plans that may be required for proposed structures for given project may include but not be limited to. (Suggested scales)
  - a. Site plan (1/10<sup>th</sup> scale)
  - b. Foundation plan (1/4" = 1' scale)
  - c. Floor plan (plan views) (1/4" = 1' scale)
  - d. Elevation plans (1/4" = 1' scale)
  - e. Structural plans (1/4" = 1' scale)
  - f. Section views (1/2" = 1' scale)
  - g. Details (special construction and or connections) (1/2" = 1' scale)

## **F. Fire Marshal**

1. The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated January 14, 2009 unless modified by the Deputy Fire Marshall or appealed to the appropriate agency.
2. Fire flow required. Fire flow shall be a minimum 500 gpm at 20 psi. Hydrants shall be located within 600 feet of the building areas.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

## **G. Public Works – Engineering Division**

The Engineering Division has reviewed the Plat submittal and has the following conditions of approval:

1. All development shall comply with Whatcom County Development Standards.
2. Sight distance at entrance to the access road meets Whatcom County Development Standards.
- 3.
4. A preliminary traffic analysis has been submitted. No Traffic Study will be required by Whatcom County.
5. The roadway shall either be paved 18 feet wide on all of the roadway at or over 12% grade or the road can be cut/filled to a grade less than 12% and be constructed as a gravel road. Otherwise the road shall be built to a minimum 18-foot wide gravel road, private rural road standard. The applicant has met the criteria outlined in Section 505.E of Chapter 5 Road Standards, Private Roads and Streets. The proposed turnarounds shall be provided.
6. A paved apron at Lindsay Road will be required. A Revocable Encroachment Permit will be obtained for the apron work or any other work within the county right of way.
7. All signing and striping shall be installed per MUTCD standards at the developer's expense.
8. A Preliminary Storm Drainage Report has been submitted.

9. An Engineered Stormwater Design Report that addresses conveyance, detention, and water quality measures by a Washington State licensed civil engineer shall be submitted for approval by Whatcom County Engineering.
10. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
11. Erosion control plans shall be submitted and approved before any clearing or grading on the site.
- 12.
13. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar. [WAC 332-130-050(1)(b)]
14. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for address assignment. Address fee shall be paid before recording.
15. All drainage facilities and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction. As-built drainage plans and a letter of certification from a licensed engineer must be submitted to the County Engineer before plat recordation.
16. Developer shall provide a plat layout to the post office to get approved mailbox location(s).

Report prepared for the Technical Review Committee by:

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Senior Planner