



**NOTICE OF HEARING EXAMINER'S RECOMMENDATION &
NOTICE OF PUBLIC HEARING**

DATE: July 28, 2017 **LAND USE NUMBER:** PL16-150
APPLICATION NAME: East Village Short Plat and Street Frontage Deferral

PROJECT DESCRIPTION: Proposed is a short plat of an approximate 13.4± acre site that will create seven (7) single-family residential lots, a tract for a future stormwater facility and a lot that will contain the existing residential structures on the site. A private road will be extended to provide access. The project site contains wetlands and a fish bearing stream.

RECOMMENDATION: The City's Hearing Examiner held an open record public hearing on July 13, 2017. Following this hearing the Examiner has recommended **APPROVAL** of the subject application with the conditions found within the accompanying Hearing Examiner Recommendation.

RECONSIDERATION: An applicant or party of record feeling that the recommendation of the examiner is based on an erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence, which could not be reasonably available at the public hearing, may make a written application to have the Hearing Examiner's Recommendation reconsidered on/before **AUGUST 7, 2017**. Procedural details with regard to submitting a request for reconsideration of the Hearing Examiner's recommendation can be read within the Mount Vernon Municipal Code (MVMC) 14.05.110(H)(4). A link to the City's MVMC can be found on the City's website at: www.mountvernonwa.gov

CITY COUNCIL PUBLIC HEARING: a closed record public hearing will be held before the Mount Vernon City Council on **Wednesday, August 23, 2017 at 7PM** at the City's Police and Court Campus located at **1805 Continental Place in Mount Vernon**.

APPLICANT: Samish Bay Land Company, LLC - Dave Prutzman, 4215 Montgomery Place, Mount Vernon, WA 98274

PROJECT LOCATION: The approximate 13.4± acre site is addressed as 2437 East Blackburn Road. This site is bound by Blackburn Road to the south, the Big Fir PUD to the west, and the Mount Vernon School District's Little Mountain Elementary School to the north. The Skagit County Assessor describes the subject site as parcel: P28003. The entire site is located within a portion of the NW ¼ of Section 28, Township 34 North, Range 04 East, W.M.

To receive additional information regarding this project contact the DS Department and ask to become a party of record:

Rebecca Lowell, Senior Planner
Development Services Department
City of Mount Vernon
910 Cleveland Avenue, Mount Vernon WA 98273
Telephone - 360-336-6214; Facsimile - 360-336-6283

City staff has created a page on the City's website where the materials for this application (including the Hearing Examiner's recommendation) can be viewed. This webpage can be viewed as follows: navigate to: www.mountvernonwa.gov; once here click on 'Departments' then 'Community & Economic Development' then 'Community Development' then 'News Notices' then near the top of the page on the Application Name/No. listed within this notice.

ISSUED: July 28, 2017
PUBLISHED: August 1, 2017

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**BEFORE THE HEARING EXAMINER FOR THE CITY OF MOUNT
VERNON**

Phil Olbrechts, Pro Tem Hearing Examiner

RE: East Village Short Plat Preliminary Short Plat; Street Frontage Deferral PL16-150	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL RECOMMENDATION
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INTRODUCTION

The applicant has requested approval of a seven-lot preliminary short plat of a 13.4-acre parcel located at 2437 East Blackburn Road. Review of the short plat application is consolidated with a request to defer installation of required street frontage improvements along Blackburn Road. It is recommended that the City Council approve the consolidated short plat and deferral applications subject to conditions.

Short plat applications are usually reviewed administratively with no City Council or hearing examiner review. However, deferral of frontage improvements requires City Council approval. The applicant has agreed to have its request for deferral consolidated with its request for short plat approval into a single review process subject to final approval by the City Council. In addition to the unusual review process, the proposal involves an atypically large administrative record involving 990 pages of exhibits. This voluminous amount of information is in large part attributable to public opposition to the project. This opposition was significantly diminished by the time of the public hearing through accommodations made by the applicant to neighboring property owners.

Public opposition manifested itself in over 95 comment letters in the administrative record. 60 of those letters are well summarized at pages 5-7 of the City’s SEPA¹

¹ “SEPA” stands for the Washington State Environmental Policy Act, Chapter 43.21C RCW. SEPA is the source of the state requirement for environmental impact statements. In this case, the City issued a mitigated determination of non-significance (“MDNS”), which was an administrative decision that concluded that with the addition of conditions, an environmental impact statement was not necessary.

1 Environmental Review Report, Ex. 4h. The full text of another 35+ letters are
2 compiled in Ex. 13. A major concern raised in these comments was that access to the
3 proposal is through the Big Fir North Planned Unit Development, a subdivision that is
4 age-restricted to persons 55 years and older. The Big Fir Community Association
5 appealed the SEPA review of the proposal, primarily asserting that (1) the traffic
6 generated by the proposal was not compatible with the narrow roads or senior
7 population of the Big Fir subdivision; (2) the proposal would disturb the peace and
8 tranquility of Big Fir residents; and (3) the proposal would depress Big Fir property
9 values. The Big Fir Community Association withdrew its appeal upon execution of a
10 settlement agreement with the applicant in which the applicant agreed to restrict the
11 age of its proposal to 55 and older residents. At the subsequent hearing on the
12 application, concerns were still raised about tree preservation, noise and security, but
13 persons who testified were generally pleased about how neighbor concerns were
14 addressed by the applicant.

9 Limited to seven new lots, the proposal's impacts and demand for services are fairly
10 nominal and fully mitigated as proposed and conditioned. This recommendation
11 identifies and assesses project impacts in detail. The only unusual feature of the
12 proposal is its access through Big Fir North and associated request for deferral of
13 Blackburn Road frontage improvements. Although the parcel fronts on Blackburn
14 Road and would normally have its primary access from this minor arterial, that is not
15 practical or desirable for this application because of Maddox Creek. Maddox Creek
16 cuts across the middle of the project site in an east-west direction, splitting the project
17 site in two with the southern half fronting Blackburn Road. The southern half will be
18 retained as one lot (referenced as a "remainder lot" in this recommendation) with two
19 existing residences. The seven new lots created by the proposal are limited to the
20 northern two acres of the 13.4-acre project site, 1,300 feet from Blackburn Road.
21 Maddox Creek is a fish bearing creek that adjoins a Category III wetlands and a
22 Category IV wetland. Road access to Blackburn Road would necessitate a road
23 crossing over the stream and the Category III wetland. This is why the applicant has
24 proposed access through the adjoining Big Fir North PUD to the west.

19 The request for deferral of frontage improvements is well justified and should be
20 granted. The remainder lot is large enough to accommodate a 16-lot subdivision and
21 the applicant has already submitted a preliminary lot design to the City for comment.
22 Blackburn frontage improvements can be required by the City as a condition of the
23 subdivision of the remainder lot. The current proposal provides for no new access to
24 Blackburn Road and will not appreciably add to the traffic of Blackburn Road. In the
25 absence of any new direct connection or evidence of an increase in traffic, it would be
difficult to legally require frontage improvements along Blackburn. *See Benchmark
Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 49 P .3d 860 (2002)(record must
contain substantial evidence that subdivision will increase traffic along adjoining road
within no direct access in order to require frontage improvements).

Neighbors filed an appeal of that MDNS and that appeal was a major part of this case until the
neighbors withdrew their appeal shortly before the public hearing on July 13, 2017.

1
2 **ORAL TESTIMONY OF JULY 13, 2017 HEARING**
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4 Mike Karpelman, Secretary of Big Fir Homeowner’s Association, confirmed that the
5 Association wished to withdraw its appeal. The Examiner granted the request.

6 Dave Prutzman, applicant, confirmed that he still wished to have the short plat
7 application consolidated with the request for deferral despite withdrawal of the
8 appeal.

9 Rebecca Lowell, City of Mount Vernon senior planner, summarized the staff report.
10 In response to examiner questions, Ms. Lowell confirmed that the reason the
11 applicant is requesting a deferral as opposed to waiver of street frontage
12 improvements is because it is anticipated that the lots proposed along Blackburn Road
13 will be further subdivided at a future date and at that time frontage improvements can
14 be required. Ms. Lowell also confirmed that the proposed subdivision will not
15 generate any appreciable traffic along Blackburn frontage since access to the
16 subdivision is limited to the west side and there will be little need for residents to
17 travel along Blackburn to head east.

18 Dave Prutzman, applicant, noted that the owner is a 90-year old widow who has
19 owned the property for more than 60 years. The owner’s plan has been to short plat
20 the north portion of the property first as proposed and to do a long plat of the southern
21 portion later. Staff has already been presented with a preliminary lay out for division
22 of the south portion. Without touching any wetlands it’s clear that the southern
23 portion can be divided into at least 16 lots, more than enough lots to justify frontage
24 improvements along Blackburn. The northern three acres maintains the integrity of
25 the Maddox Creek critical areas. The applicant’s marketing division has determined
that large lots of the type proposed are attractive to the senior living market.
Proposed road width matches Balsam Lane, a Type 2 road standard that no longer
exists. The project roads are proposed to be private so that the proposed roads can
match the cross sections of Balsam Lane.

21 Mike Karpelman, neighbour and representative of the SEPA appellant, noted that the
22 adjoining Big Fir subdivisions are age restricted to 55 years or older and residents
23 were concerned that the proposal would severely disrupt the community. He is
24 pleased with the SEPA settlement agreement, which requires that the proposal also be
25 age restricted.

Dennis Rabe, President of Little Mountain Estates, an adjoining senior living
subdivision, was concerned whether all residents of his subdivision as well as the
owners were all notified of the hearing. He is still opposed to the proposal, but feels
better with the terms of the settlement agreement. Adjoining residents hope that

1 wooded areas will be preserved and that trees will not be thinned out to the point that
2 remaining trees are dangerous. Security, traffic and noise is also a concern.

3 John Van Dyke, neighbour, asked how the private roads would be maintained,
4 whether assessments would be levied to maintain the road and whether the roads had
5 to be paved. Mr Van Dyke also wanted to know if the settlement agreement applied
6 to the southern portion of the project site.

7 In staff rebuttal, Ms. Lowell noted that City regulations require property owners
8 within 300 feet of the project site to be notified of the public hearing. The 300 feet
9 did not encompass all the mobile home units of Little Mountain Estates. The owner
10 of the mobile home park hadn't received notice for the initial June 21 hearing, but the
11 property owner did receive notice and several project documents for the July 13
12 continued hearing. City regulations do require that the private road be paved. The
13 plat will have a note that the homeowner's association must maintain the road. The
14 applicants will be required to show its work on how much road maintenance will cost
15 and how that will be assessed. The City will not maintain any enforcement authority
16 over the maintenance agreement since it is private. The settlement agreement
17 probably doesn't apply to the southern portion of the project site. The City is not a
18 party to the settlement agreement.

19 In applicant rebuttal, Dave Prutzman noted that the CC&Rs will set up an escrow
20 account for road maintenance. A road engineer determines what the costs will be.
21 Should the homeowners' association fail to maintain the road, the City can probably
22 sue to have the funds used for maintenance.

23 **EXHIBITS**

24 Exhibits 1-17 identified at Page 5 of the June 15, 2017 staff report were admitted into
25 the record during the July 13, 2017 public hearing. The following exhibits were also
admitted during the hearing:

- 26 Ex. 18: Staff Addendum, including attachments
- 27 Ex. 19: Pre-Hearing Examiner email communications with SEPA appeal parties
- 28 Ex. 20: Post-Hearing Examiner email communications with SEPA appeal parties
- 29 Ex. 21: Staff Power Point Presentation
- 30 Ex. 22: Settlement Agreement
- 31 Ex. 23: June 21, 2017 Public Hearing Sign in Sheet
- 32 Ex. 24: June 15, 2017 Staff Report

1 **FINDINGS OF FACT**

2 **Procedural:**

3 1. Applicant and Property Owner. The applicant is Samish Bay Land
4 Company, LLC, Dave Prutzman, 4215 Montgomery Place, Mount Vernon, WA
5 98274. The property owner is Mary Margaret Kiesel, 2437 E. Blackburn Road,
6 Mount Vernon, WA 98274.

7 2. Hearing. A hearing for the consolidated application and SEPA appeal was
8 initially scheduled for June 21, 2017. At the June 21, 2017 hearing the parties to the
9 SEPA appeal requested a continuance to work out a settlement agreement. A
10 continuance to July 13, 2017 was granted. At the continued hearing date on July 13,
11 2017, the SEPA appellant withdrew its appeal. The applicant confirmed that it still
12 wished to have its short plat application consolidated with its hearing for deferral of
13 frontage improvements. A hearing was thus held on July 13, 2017 on the short plat
14 application and request for deferral of frontage improvements.

15 **Substantive:**

16 3. Site/Proposal Description. The applicant has requested approval of a
17 seven-lot preliminary short plat of a 13.4-acre parcel located at 2437 East Blackburn
18 Road consolidated with a request for deferral of required street frontage
19 improvements along Blackburn Road.

20 Although the staff report characterizes the proposal as a seven-lot subdivision, it can
21 also be characterized as an eight-lot subdivision composed of seven new lots and a
22 remainder lot that will accommodate two existing residences. The seven new lots
23 will comprise approximately two acres of the 13.4-acre site and will be clustered
24 along the northern border of the project site, extending all the way across from the
25 western boundary to the eastern boundary. The lots will range in size from 10,002 to
13,185 s.f with an average lot size of 11,318 s.f. The seven new lots are separated
from the eighth remainder lot by Maddox Creek and two wetlands -- one Category IV
wetland adjoining the creek to the north and one Category III wetland adjoining
Maddox Creek to the south. The two residences in the remainder lot currently have
driveway access to Blackburn Road, which borders the project site to the south.
Direct access to Blackburn Road will not change as a result of the proposal and is
limited to the driveway access of the existing two residences. The seven new lots will
be accessed by a private road that connects to Balsam Lane in the adjoining Big Fir
North PUD to the west.

The applicant’s request for deferral of frontage improvements is for those required
along the project street frontage of Blackburn Road. The staff report and engineering
analysis don’t identify what specific regulation requires the frontage improvements.
However, the engineering analysis of the deferral request, Ex. 12, does identify that

1 the deferred installation of street improvements includes the following: widening of
2 street, installation of sidewalk curb and gutter, storm conveyance system, sanitary
3 sewer extension, water system and other utilities.

4 4. Characteristics of the Area. Abutting the site to the north is Mt. Baker
5 Middle School, Little Mountain Elementary School and a mobile home park named
6 Little Mountain Estates.

7 Abutting the site to the east is an extension of the Little Mountain Estates mobile
8 home park and an approximate 5.3-acre property developed with an approximate
9 2,789 square foot single-family residential home, a general purpose building, and a
10 lean to.

11 Abutting the site to the south is a portion of East Blackburn Road consisting of 2
12 through lanes with shoulders within a 60-foot City right-of-way. The City's
13 Transportation Element of the Comprehensive Plan identifies this portion of East
14 Blackburn Road as part of the City's Arterial Street Plan and classifies it as an
15 Existing Minor Arterial.

16 Abutting the site to the west are two Planned Unit Developments named Big Fir
17 North and Big Fir South. Big Fir North contains lots that range in size from 5,246 to
18 8,988 square feet with an average lot size of 6,152 s.f. Big Fir South contains lots
19 that range in size from 4,640 to 7,603 square feet with an average lot size of 5,611 s.f.
20 Also abutting the site to the west is an approximate 1.5-acre property developed with
21 an approximate 1,512 square foot single-family residential structure with a multi-
22 purpose shed.

23 5. Adverse Impacts. There are no significant adverse impacts created by the
24 proposal. Impacts are more specifically addressed as follows:

- 25 A. Critical Areas. The project site contains three wetlands and Maddox creek, a
Type F (fish habitat) water. Two of the wetlands are classified as Class III
and one is classified as a Class IV. The applicant has submitted a critical
areas site assessment prepared by a wetland ecologist and environmental
planner, Ex. 8, as required by the City's Critical Areas Ordinance ("CAO").
The assessment identifies and classifies the stream and wetlands and
formulates a mitigation plan in conformance with the CAO. City staff have
reviewed the assessment and found it to conform to the CAO. On this basis, it
is determined that the proposal will not adversely affect critical areas.

All proposed critical area buffers are in conformance with CAO requirements.
Maddox Creek will be protected with a 150-foot buffer. Wetland A, a Class
III wetland located on the southside of Maddox Creek, will be protected by a

1 75-foot buffer. Wetland B, located between the 7 new lots and Maddox
2 Creek, will have a buffer ranging in width from 37.5 feet to 62.5 feet as
3 authorized by CAO buffer averaging provisions. In the absence of buffer
4 averaging, the CAO would require 50-foot buffers for Wetland B, a Class IV
5 wetland. Wetland C, another Class III wetland, is proposed to be filled and
6 unavoidable impacts will be minimized through the purchase of mitigation
7 credits at an authorized wetland mitigation bank.

8 B. Compatibility. The proposal is fully compatible with surrounding uses. As
9 noted in Finding of Fact No. 4, the proposal is surrounded by residential
10 development and two schools. The proposed lot sizes are almost twice as
11 large as the lots in the Big Fir PUDs to the west and about 50% larger than the
12 minimum 7,500 square foot lot size required for the applicable R-1, 4.0
13 zoning district. The applicant's voluntary covenant to restrict the age of
14 subdivision residents to 55 years or older further enhances compatibility.

15 C. Noise and Security. Comment letters expressed concerns over noise and
16 security. There is nothing in the record to suggest that the addition of seven
17 lots would generate any significant noise or security impacts, particularly with
18 the addition of the applicant's age restriction covenant. The City's noise
19 ordinance, Chapter 9.28 MVMC, assures that noise impacts will be kept to
20 legislatively acceptable levels.

21 D. Trees. Public comments also addressed the retention of trees. The City has
22 set tree retention standards in its land clearing regulations, Chapter 15.18
23 MVMC. Further, a significant number of trees will be protected from removal
24 in the buffers to the projects critical areas. The city's land clearing and CAO
25 regulations provide for an adequate protection and retention of trees.

26 E. Property Values². There is no evidence to reasonably suggest that property
27 values would be adversely affected by the proposal. Many of the concerns
28 raised by neighbors on property values were premised upon the presumption
29 that the value of the age restricted character of Big Fir would be diminished if
30 a neighboring development with road access was not also age restricted.
31 Those concerns largely became moot once the applicant agreed to place an
32 age restriction on his development. Even without this accommodation, the
33 record does not support a finding of diminished property values. The
34 applicant submitted a report from a real estate appraiser, Ex. 4h, concluding
35 that property values would not be adversely affected and there was no expert
36 testimony or evidence to the contrary. It is also noteworthy that Balsam Lane
37 ends abruptly at the east property line of Big Fir North as a stub road without

² Property value is of dubious relevance to the short subdivision criteria, very arguably subsumed under the criteria requiring that the short plat serve the public use and interest and the public health, safety and welfare. Property value impacts was a significant concern of neighboring property owners, so it is addressed in this recommendation.

1 a turn-around or cul-de-sac, prominently providing notice that a future
2 connection to the adjoining project site was contemplated by the City.
3 Nothing in the City's zoning standards requires or required the project site be
4 developed in an age restricted manner and the density of the proposed short
5 plat is less than allowed by applicable zoning. It is a little unusual that
6 Balsam Lane turned out to be the only connection to the project site, but
7 ultimately the project site will only be developed with seven new homes.
8 Ultimately, (assuming no misrepresentations by the seller) purchasers of lots
9 in Big Fir should not have been surprised that Balsam Lane would provide
10 some access to a development that was not age restricted and this would likely
11 have been factored into fair market value.

12 6. Adequacy of Infrastructure and Public Services. As conditioned by this decision,
13 adequate and appropriate infrastructure and public services will serve development as
14 follows:

15 A. Drainage: The city's drainage standards impose detailed requirements that
16 mandate that the development maintain pre-development off-site stormwater flow
17 volumes and velocities. *See Stormwater Management Manual for Western*
18 *Washington*, prepared and published by the Washington State Department of
19 Ecology that is adopted as part of Chapter 13.33 MVMC. Consequently, no
20 adverse drainage impacts to adjoining properties are anticipated. A preliminary
21 drainage assessment, Ex. 7, has been completed for the project and reviewed by
22 engineering staff. This preliminary assessment helps assure that the general
23 preliminary plat design can accommodate the stormwater facilities necessary to
24 control drainage and more detailed engineering and construction of required
25 improvements will be installed prior to approval of the final plat. In the
preliminary drainage assessment, the applicant proposes to install a wetpool
combined with a detention pond in Tract A, located on the southside of the
proposal's private road just east of its connection with Balsam Lane. The
wetpool/detention pond will discharge to Maddox Creek, matching
predevelopment flow patterns. The project site currently drains into Maddox
Creek.

20 B. Transportation: Proposed streets and transportation facilities have been reviewed
21 by the City's Public Works staff and found to be in conformance with the City's
22 street standards, specifically Chapters 14.10 (Concurrency Management), Chapter
23 12.04 (Public Works Specifications), and 16.16, (Design Standards for
24 Nonarterial streets). On this basis, it is determined that the proposal makes
adequate and appropriate provision for transportation facilities. It is
recommended that the City Council defer frontage improvements required for
Blackburn Road for the reasons outlined in the Conclusions of Law below.

25 As previously noted, the applicant proposes that the proposed new lots be served
by a private road connecting to Balsam Lane. The private road consists of a 20-
foot wide paved surface with a 36-foot wide access and utility easement and has

1 an approved turnaround. As outlined at page 25-26 of the staff report, the project
2 complies with all the criteria for authorization of private roads set by MVMC
16.16.040.

3 Transportation related concerns raised in the public comment letters³, addressed
4 increased traffic volumes, vehicle speeds (especially by young drivers), safety
5 issues with young drivers, pedestrian safety and construction traffic. No expert
6 analysis was provided to support these concerns. The applicant submitted an
7 analysis by its traffic engineer, Victor Saleman, P.E., in response. See Ex. 4h.
8 Mr. Saleman determined that the roads in Big Fir North were adequate to
9 accommodate the trip generation of the proposal and that Big Fir North residents
10 would not experience any significant change in driveway access or road
11 congestion. Mr. Saleman also noted that the narrow, windy streets of Big Fir
12 North provide traffic calming features that would discourage speeding and that a
13 2014 insurance study found that drivers over 80 years old have similar fatal crash
14 rates to drivers 16-19 years old. The conclusions of Mr. Saleman are supported
15 by the fact that the applicant is only proposing seven new single-family homes,
which is typically not associated with any significant increase in trip generation.
Further, the Big Fir concerns over young drivers was rendered moot at the July
13, 2017 hearing when the applicant volunteered to restrict the age of proposal
residents to 55 and older. Finally, Mr. Saleman correctly noted that construction
traffic will be temporary in nature and is managed by City ordinance for
construction hours and site management requirements. The conditions of
approval, via adoption of Engineering Department recommendations, requires the
applicant to acquire approval of a construction traffic control plan and hauling
hours and approval of a truck route for hauling.

16 Some public comment letters asserted that the new lots of the proposal should be
17 connected to Blackburn Road as opposed to Balsam Lane. As noted at page 8 of
18 the City's SEPA Environmental Review Report, Ex. 4h, such a connection would
19 require a crossing over Maddox Creek, which would impact 1.13 acres of buffer
20 and significantly increase the costs of development. The applicant's proposed
21 road connection to Balsam Lane would not result in any loss of buffer area but
22 would necessitate the filling of 0.23 acres of Category III wetlands as opposed to
0.11 acres of Category III wetlands for the bridge crossing. As noted in the SEPA
report, there is no basis in the City's regulations to require the crossing in lieu of
the Balsam Lane connection.

23 ³ The staff analysis of the public comment letters was limited to SEPA review. However, impacts
24 addressed by SEPA review can be independently addressed in the application of permit review criteria
25 if those impacts are relevant to addressing those permitting criteria. See *Quality Products, Inc. v. Thurston County*, 139 Wn. App. 125 (2007). As outlined in the Conclusions of Law of this decision, subdivision criteria include the general requirement that the proposal make adequate provision for the public health safety and welfare as well as for a long list of public facilities and infrastructure. These criteria are broad enough to encompass most, if not all, of the concerns raised in the public comment letters so those concerns are addressed in this recommendation.

1 One person at the July 13, 2017 hearing raised concerns over continued
2 maintenance of the private roads. A recommended condition of approval requires
3 the applicant to record covenants that requires a homeowners' association to
4 maintain the private road. As an enforcement measure, the conditions also
5 provide that the covenants authorize the City to do maintenance at the expense of
6 the homeowner's association if the homeowner's association fails to do the
7 maintenance. Cities appear to differ as to whether they want to be involved in
8 enforcement to this degree and it is a policy choice for the City Council on
9 whether it elects to impose such a condition.

6 C. Parks and Open Space: The MVMC does not require any specific open space for
7 subdivisions and there is no substantial evidence in the record establishing general
8 open space needs, so none can be required from the applicant. See *Isla Verde*
9 *Int'l Holdings v. City of Camas*, 146 Wn.2d 740 (2002)(If a municipality wishes
10 to make a developer set aside land for park purposes, the municipality has the
11 burden of proof in establishing the need for that park space.). Although there is
12 no basis to require the applicant to dedicate land for recreational open space in the
13 project site, the proposal nonetheless contains a significant amount of open space
14 via the CAO buffers that apply to the wetlands and stream of the project site.

12 The City's development regulations also require that developers pay impact fees
13 for Parks, Open Space and Recreation Facilities per MVMC Chapter 3.40. This
14 impact fee will be required to be paid prior to building permits being issued by the
15 City for new residential structures once final short plat approval is granted.
16 Payment of this impact fee is intended to pay for a proportionate share of the cost
17 of new parks, open space and recreation facilities needed to serve new growth and
18 development.

17 D. Water and Sewer: Water service in the City is provided through Public Utility
18 District #1 (PUD) of Skagit County.

18 Sanitary wastes are regulated by MVMC Chapters 13.08, 13.12, 13.16, and 13.32.
19 The applicant will be required to design and install sanitary sewers to serve each
20 of the proposed residential lots. The applicant's site plans submitted as part of the
21 short plat show where the sanitary sewers are proposed to be located (see the
22 accompanying Exhibit 11). The applicant will pay connection chargers per
23 MVMC 13.32 once the short plat is finalized and building permits are issued for
24 the new residential structures to be built on what are currently proposed lots.

23 E. Schools: The City's development regulations require that developers pay impact
24 fees for School Facilities per MVMC 3.36. The impact fees will be required to be
25 paid prior to building permits being issued by the City for new residential
structures built after the short plat is finalize. Payment of the school impact fees
is intended per the referenced portions of the MMVC to pay for a proportionate
share of the cost of new school facilities.

1 **CONCLUSIONS OF LAW**

2 **Procedural:**

3 **1.** Authority of Hearing Examiner. The hearing examiner has authority to
4 hear and make recommendations on the applicant’s short plat and deferral requests
5 because deferral review requires an examiner recommendation. The applicant’s short
6 plat application, normally an administrative decision, has been consolidated with the
7 deferral request for review and recommendation by the hearing examiner.

8 MVMC 14.05.060 designates short plat review as a Type II process and deferrals
9 requested pursuant to MVMC 14.10.110 as Type IV applications. As required by
10 MVMC 14.05.070, Type II subdivision decisions are made administratively without a
11 public hearing and Type IV decisions are made by the City Council after a
12 recommendation from the hearing examiner. MVMC 14.05.080(G)(1), entitled
13 “*Optional Process Resulting in a Single Open Record Public Hearing,*” (emphasis
14 added), provides that an applicant “may” have development review involving
15 multiple permits consolidated into one public hearing. This implements RCW
16 36.70B.060(3), which requires cities to adopt permit review procedures that include
17 an “optional” consolidated review process. By requiring consolidation to be optional,
18 RCW 36.70B.060(3) enables applicants to have project permit applications to be
19 reviewed separately when it is more efficient to do so, such as in cases where an
20 applicant wishes to see if a variance request will be approved before expending a
21 significant amount of money on design plans that are dependent upon approval of the
22 variance. In this case, if the deferral and short plat applications had not been
23 consolidated, the examiner and City Council would have been limited to reviewing
24 the deferral request and the public would have not been given a public hearing to
25 voice their concerns over the short plat application in toto.

18 For this project, the City of Mount Vernon issued an administrative determination,
19 Ex. 4e, that determined that consolidation of the applicant’s concurrently filed short
20 plat application and deferral request were mandatory as opposed to optional. This
21 determination was not appealed and is therefore binding upon the applicant even if
22 erroneous. *See See Nykreim Chelan County v. Nykreim*, 146 Wn.2d 904 (2002);
23 *Habitat Watch v. Skagit County*, 155 Wn.2d 397 (2005). Subsequent to issuance of
24 the administrative determination, the issue of consolidation became moot upon the
25 filing of the SEPA appeal. Unlike project permit applications, consolidation of the
hearing on a SEPA appeal with the underlying permit applications (the short plat
application and deferral) is mandatory. See WAC 197-11-680(3)(v). However, once
the request for the SEPA appeal was withdrawn, consolidation was arguably optional
once again pursuant to RCW 36.70B.060(3) and MVMC 14.05.080(G). At this point
the applicant of this case was likely still bound to the administrative determination of
the City holding that consolidation was mandatory. To remove any doubt, at the July
13, 2017 hearing the examiner asked the applicant if he elected to continue with
consolidated review and the applicant responded that he wished to do so.

1
2 **Substantive:**

3 2. Zoning Designation. The subject property is zoned R-1, 4.0.

4 3. Review Criteria and Application. MVMC 16.32.050 governs the review
5 criteria for short subdivisions. MVMC 14.10.110 governs the criteria for granting
6 deferrals for compliance with short plat street standards. Relevant criteria are quoted
below and applied through corresponding conclusions of law.

7 **MVMC 16.32.050:** *The community and economic development and public works*
8 *directors shall determine if appropriate provisions have been included in the*
9 *preliminary short plat for, but not limited to, the public health, safety and general*
10 *welfare, open spaces, drainage ways, critical areas, streets, alleys, other public ways,*
11 *water supplies, sanitary wastes, parks, playgrounds and sites for schools.*

12 *A. If the community and economic development and public works directors find that*
13 *the public use and interest will be served by the platting of such subdivision, then the*
14 *directors shall recommend approval. If the directors find that the proposed short plat*
15 *does not make such appropriate provisions or that the public use and interest will not*
16 *be served, then the directors may recommend disapprove the preliminary short plat.*

17 *B. Dedication of land to any public body; and/or dedication of easements to abutting*
18 *property owners may be required as a condition of subdivision approval and shall be*
19 *clearly shown on the final plat. The directors shall not require, as a condition of the*
20 *approval of any plat, that a release of liability be procured from other property*
21 *owners.*

22 4. Criterion is satisfied. The proposal serves the public use and interest and makes
23 appropriate provisions for the public health, safety and welfare because it enables the
24 reasonable exercise of property rights without adversely affecting other properties or
25 creating any significant adverse impacts as determined in Finding of Fact No. 5. The
proposal makes adequate provision for public infrastructure and facilities identified in
MVMC 16.2.050 as determined in Finding of Fact No. 6. As to dedication
requirements, the applicants will be required to record a native growth protection
easement for the stream and wetlands of the project site that aren't filled. Tract A of
the proposed plat is designated for the applicant's proposed wet pool and detention
pond. It is unclear from the record if staff will require that Tract A be dedicated to the
public.

MVMC 14.10.110: *Short plats will be subject to the applicable subdivision codes.*
Currently they are required to construct street improvements unless the city engineer
recommends and the city council approves a waiver or deferral of the requirement.

1 *Subsequent building permits and sequential building permit approvals within the short*
2 *plat would be subject to concurrency requirements.*

3 5. Criterion Satisfied. The only requirement for a deferral of short plat street
4 standards according to MVMC 14.10.110 is a recommendation of approval from the
5 city engineer. The City's designated city engineer, Esco Bell, recommends approval
6 in a memo dated February 10, 2017, Ex. 12. In his memo, Mr. Bell notes that the
7 requested deferral should be granted because the deferral does not detract from the
8 intent and requirements of the street standards because of the geography of the site;
9 that no burdens for developing Blackburn Road will be displaced upon others due to
the deferral; and that the public retains all needed authority and control to assure that
future development of site will trigger developer construction of the deferred
Blackburn frontage improvements.

10 Mr. Bell has ample justification for his conclusions. As noted in Finding of Fact No. 5
11 and the introduction of this recommendation, the 7 new lots created by the proposal
12 are all clustered at the northern end of the subdivision, 1300 feet from Blackburn
13 Road. The proposal doesn't involve any new access to Blackburn Road and there is
14 no evidence in the record to remotely suggest that the proposal will appreciably
15 increase vehicular or pedestrian traffic along Blackburn Road or create any need for
16 frontage improvements. As outlined in the Introduction to this recommendation, given
17 these circumstances it would be legally difficult to mandate the frontage
18 improvements. Further, the applicant testified that plans are already in the making for
a division of the remainder lot fronting Blackburn Road into approximately 16 lots.
During the subdivision review of the remainder lot, the City will likely have the legal
and practical justification necessary to require frontage improvements to Blackburn
Road.

19 **Recommendation**

20 All short plat and deferral criteria are met for the reasons identified in the
21 Conclusions of Law above and it is recommended that the City Council approve the
22 East Village Short Plat and request for deferral of Blackburn Road frontage
improvements subject to the following conditions of approval:

- 23 1. This application is subject to all applicable requirements contained in the
24 MVMC. It is the responsibility of the applicant to ensure compliance with all
25 applicable requirements.
2. The applicant is responsible for obtaining all local, state, and/or federal
permits or approvals applicable to the proposal.

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- 3. Prior to the recording of a final plat, the applicant shall comply with the following conditions:
 - a. Complete the Engineering Division conditions and requirements listed in the February 8th, 2017 memo from Ana Chesterfield to Rebecca Lowell, Ex. 14.
 - b. Acquire fire marshal approval of a water line with a fire hydrant and turnaround as identified in the March 3, 2017 memo from Steve Riggs to Rebecca Lowell, Ex.14.
 - c. The final short shall designate a Native Growth Protection Easement (“NGPA”) for Wetlands A and B, Maddox Creek and their associated buffers as required by the City’s Critical Areas Ordinance. Permanent fencing and signage shall be placed along the edges of the NGPA prior to final short plat approval.
 - d. The final short plat shall include the maintenance statement required by MVMC 16.16.040(C).
 - e. The applicant shall submit a certificate of water availability from Public Utility District #1 (PUD) of Skagit County for the seven new lots.
 - f. Statements shall be placed on the face of the short plat regarding future concurrency requirements as required by MVMC 14.10.110.
 - g. The applicant shall form a homeowner’s association (HOA) and record staff approved covenants that obligate the HOA to maintain the NGPA, stormwater facilities and private roads of the subdivision. The covenants shall further include a provision that all covenants required by the City may not be amended or repealed without approval of the City and that the City may undertake maintenance and repair obligations at the expense of the HOA if the HOA fails to do so.

- 4. A copy of the Settlement Agreement between Samish Bay Land Company, LLC (Mr. David Prutzman) and the Big Fir Community Association shall accompany both the preliminary and final short plat Resolutions and shall be

1 labelled as Exhibit 1. Additionally, the following note shall be added to both
2 the preliminary and final short plat Resolutions:

3 *The Settlement Agreement attached to this Resolution labeled as Exhibit 1 is a*
4 *private agreement between the Big Fir Community Association and the Samish*
5 *Land Company, LLC. The City of Mount Vernon is not a party to this*
6 *Agreement, nor is it a third-party or other beneficiary of this Agreement. This*
7 *Agreement is solely enforceable by the parties to the Agreement, and not the*
8 *City of Mount Vernon. The City of Mount Vernon will not take any action to*
9 *implement, monitor or enforce this private-party Settlement Agreement or the*
10 *CC&Rs that implement it.*

11 Dated this 27th day of July 2017.

12 
13 Phil A. Olbrechts
14 _____
15 City of Mount Vernon Pro Tem Examiner
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