

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Nakatomi LLC Scott Boden 53 Avian Ridge Friday Harbor, WA 98250	S.J.C. DEPARTMENT OF AUG 08 2016 COMMUNITY DEVELOPMENT
Agent Representative:	Francine Shaw Law Office of Stephanie Johnson O'Day PO Box 2112 Friday Harbor, WA 98250	
File No.:	PLP000-15-0001	
Request:	Preliminary Plat	
Parcel Nos:	352031001 and 352032002	
Location:	Wold Road, south of Pelindaba Lavender Farm San Juan Island	
Summary of Proposal:	An application for a preliminary plat to allow for the subdivision of 85.11 acres into 17 lots	
Land Use Designation:	Rural Farm Forest/5	
Public Hearing:	July 21, 2016	
Application Policies and Regulations:	SJCC 18.70.050(F) Preliminary Plat Criteria RCW 58.17.110(2) Subdivision Conditions for Approval	
Decision:	Approved subject to conditions	

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Application of)
)
Nakatomi LLC) NO. PLP000-15-0001
)
) **Plat of Prospect Mountain**
)
)
For Preliminary Plat)

**S.J.C. DEPARTMENT OF
AUG 08 2016
COMMUNITY DEVELOPMENT**

SUMMARY OF DECISION

The requested preliminary plat to subdivide 85.11 acres into 17 lots is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Scott Boden on behalf of Nakatomi LLC (Applicant) requested approval of a preliminary plat subdividing 85.11 acres into 17 lots ranging in size from 3.73 to 6.38 acres. The subject property is on Wold Road just south of Pelindaba Lavender Farm on San Juan Island, Washington.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on July 21, 2016. On the record at hearing, the Applicant agreed to extend the decision issuance deadline by five business days.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Francine Shaw, Applicant Agent/Representative
Scott Boden, Applicant
Jenny Burgess, Neighbor

Exhibits:

The following exhibits were admitted in the record:

1. Staff report, dated July 6, 2016
2. Request for Review checklist
3. Application cover sheet
4. Determination of Non-Significance
5. Environmental checklist

6. Geologic Hazard Assessment
7. Preliminary Plat Map, dated June 30, 2016
8. San Juan County Public Works Department memorandum addressing stormwater, dated May 6, 2016
9. San Juan County Public Works Department memorandum addressing concurrency, dated May 26, 2016
10. Marler/Hart memorandum regarding fire protection
11. Site and Building Access checklist
12. Health and Community Services memorandum approving water and septic
13. Request for Review checklist, showing Cartographer sign off
14. Comment Letter from Jenny Burgess, dated March 6, 2016
15. First notice of application, mailing, and posting
16. Second notice of application and mailing
17. Francine Shaw memorandum, dated July 20, 2016
18. Washington State Department of Ecology Approval of Water Right Permit application, issued May 4, 2015, with attached Report of Examination for Water Right Application No. G1-29784
19. Washington State Department of Health Water Distribution Construction Plans and Specifications Approval, issued September 21, 2015
20. Stormwater Site Plan and Stormwater Pollution Prevention Plan, revised dated March 30, 2016

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested approval of a preliminary plat subdividing 85.11 acres into 17 lots ranging in size from 3.73 to 6.38 acres. The property subject to the application is on Wold Road just south of the Pelindaba Lavender Farm, 2.1 miles west of False Bay and 1.9 miles east of Haro Strait on San Juan Island, Washington.¹ *Exhibits 1, 3, 6, and 7.*
2. The vacant subject property is comprised of two contiguous forested properties containing a rock hill with surface water runoff flowing downhill in many directions. Site slopes range from 5% to 90%. There is a small wetland in the northeast corner of the site. While historic logging road corridors indicate previous logging activity, the property is entirely vegetated with woody shrubs and trees. Bedrock is visible on the

¹ The subject property is also known as tax parcels 352031001 and 352032002. *Exhibit 1*

surface in many locations. There are no known endangered or threatened species that inhabit the site. The site is not designated forest lands of long term commercial significance. No FEMA floodplains extend into the site. *Exhibits 1, 4, 5, and 7.*

3. Surrounding land uses include single-family residences, cultivated fields, pasture, and forestland. Property to the east is owned by the San Juan County Land Bank and Preservation Trust and will remain undeveloped. *Exhibit 1.*
4. The property has a Rural Farm Forest/5 land use designation, which requires a five-acre minimum density. *Exhibit 1; Thompson Testimony.*
5. The proposal would create 17 lots ranging from 3.73 acres to 6.38 acres in area. Initially, all lots were proposed to be five acres in area; however, with that configuration, Lot 17 would have been bisected by proposed "C" Lane and the County requested revision. Under the current proposal, only Lots 17 (3.73 acres) and 15 (6.38 acres) would not measure five acres in area. The proposed plat would create the lots and install roads and infrastructure; residences would be built by future purchasers of the parcels. All future structures would be set back a minimum of 10 feet from lot lines and 25 feet from rights-of-way. Future residences would be reviewed for compliance with the development standards of San Juan County Code (SJCC) 18.60, Table 6.2 at the time of building permit review. No landscaping is proposed or required. Approximately 100,000 board feet of timber has been or would be removed from the overall acreage for roadways, infrastructure, and building envelope placement. Downed trees would be removed and view enhancement thinning is proposed. Otherwise, existing vegetation would be retained to the extent possible. There would be no commonly held areas in the plat; the internal road and utility extensions would be placed in recorded easements prior to final plat. *Exhibits 1, 4, and 7; Shaw Testimony; Boden Testimony.*
6. The site contains areas that meet the County Code definitions of category II geohazards, due to the extremely steep slopes and the presence of high erosion hazard soils. The Applicant submitted a geologic hazard assessment to evaluate potentially unstable slopes and to certify that construction of roads and utilities would not pose unreasonable hazards to persons or property on- or off-site. The consultant noted that no road or utilities are proposed within 200 feet of any category II geohazard areas and that no seeps, springs, or recent erosion events were observed on-site. The consultant concluded that road construction and utilities installation would not result in unreasonable risk of hazards on- or off-site, decreased slope stability, or increased likelihood of landslides. However, the consultant also noted that five proposed lots, Lots 5, 6, 7, 8, and 9, would be within 200 feet of geohazard erosional soils and/or slopes greater than 15%. The report recommended that each of those five lots be the subject of a geotechnical report at the time of development. *Exhibit 6.*
7. No development is proposed in, or within 200 feet of, the wetland encroaching into the northeast corner of the site. The size and configuration of each lot appears adequate to contain a single-family residence, required infrastructure, and typical appurtenances in

conformance with all required setbacks and greater than 200 feet from all wetland and geohazard areas on-site. *Exhibits 4 and 7.*

8. Access to the lots would be from Wold Road, a County right-of-way, via three new private internal roadways built within 30-foot wide rights-of-way, identified on the preliminary plat map as A, B, and C Lanes. Each proposed lane ends in a cul-de-sac capable of providing emergency vehicle turnaround access. At the time of hearing, the 0.93 acres of gravel roads had already been built; road grades range from 5 to 15%. Open ditches are (or would be) provided on either side of the roads for stormwater. Native, 25-foot wide vegetated buffers would be retained along the internal roads for stormwater management purposes. Public Works reviewed sight distance at the intersection of the proposed plat entrance with Wold Road, as well as the access proposed to each lot, and determined that County standards were satisfied. *Exhibits 4, 5, and 7; Shaw Testimony; Thompson Testimony.* Prior to final plat approval, County Public Works Staff would inspect the built roads to confirm compliance with County road standards. *Exhibit 1.*
9. According to information submitted by the Applicant citing the Institute of Transportation Engineers (ITE) Manual, the 17 proposed lots would generate one PM peak hour trip per lot per day. *Exhibit 4.* Public Works indicated that the proposed plat satisfied the concurrency analysis requirements of SJCC 18.60.200 and submitted no concerns about impacts to roadway capacity. *Exhibit 9.*
10. The proposed lots would be served by a new Group A community water system and individual on-site septic systems on each lot. Two wells located in Lot 17 would supply the plat's water. The wells would be required to be provided with a 100-foot sanitary setback. The Applicant demonstrated to the satisfaction of the County Health & Community Services review staff that each lot contained adequate soils and area for individual septic systems. The Applicant's water right application was approved by the Department of Ecology, and the State Department of Health approved the water distribution construction plans and specifications. County Health & Community Services Staff concluded that the materials submitted demonstrate compliance with all Health Department requirements for provision of water and sanitary waste management. *Exhibits 12, 18, and 19; Thompson Testimony.*
11. Water from the wells in Lot 17, electric, and gas utility lines would be installed underground in the private internal road system, extended to each lot. *Exhibits 4 and 7.*
12. Pursuant to SJCC 18.70.060.B.9, no more than 30% of lot area (excluding roads and driveways) may be developed with impervious surfaces. Management of stormwater runoff from all impervious surfaces, including roads and driveways, is required to comply with the 2005 Department of Ecology Stormwater Management Manual for Western Washington. The Applicant submitted a professionally prepared stormwater management plan, which included designs for permanent stormwater systems for the management of runoff from the gravel roads, including culverts, open ditches, and two dispersion control

- devices with associated trenches to allow dispersion and infiltration of all road runoff. The plan included a stormwater pollution prevention plan and a temporary erosion and sediment control plan. *Exhibits 1, 4, and 20*. The County Public Works Department reviewed the stormwater plan and requested revisions; the plan was approved after resubmission following requested changes. *Exhibit 8*.
13. The proposed plat was reviewed by the San Juan County Fire Chief for compliance with Fire Code requirements for hydrant placement and fire flow in SJCC 13.08.020. The Applicant proposed one drafting hydrant and four blowoff hydrants along the internal roads to provide fire protection to all of the lots. The Fire Chief accepted the proposed fire infrastructure. *Exhibit 10*. The previous road construction and all future development of the lots are required to comply with the County's Site and Building Access Checklist. *Exhibit 11*.
 14. The Applicant estimated that each residence would be inhabited by approximately 2.5 people, or 43 people at full build out. The Applicant asserted, and Planning Staff agreed, that this increase in population would not generate excess demand for public services. *Exhibits 1 and 4*.
 15. The proposed home sites are substantially screened from view from Wold Road and surrounding residences by significant trees, although some future residences may be visible from off-site. Homes would be limited to 35 feet in height, based on the RFF-5 development standards. Any exterior lighting would be required to be downshielded to prevent off-site glare. *Exhibit 4*.
 16. The subject property is not located in or adjacent to any known archeological sites or associated buffers. *Exhibit 4*.
 17. There is no transit service in San Juan County. *Exhibit 4*.
 18. The San Juan County subdivision and zoning ordinances do not establish any open space, landscaping, park/recreation amenity, sidewalk, or school-specific requirements for preliminary plat approval. There are no County regulations requiring payment of traffic, school, or park impact fees. *Thompson Testimony; SJCC 18.60 and 18.70*.
 19. Pursuant to the State Environmental Policy Act (SEPA), San Juan County was designated lead agency for review of the proposal's probable, significant adverse environmental impacts. Upon review of a completed environmental checklist, the County's SEPA responsible official determined that compliance with applicable County development regulations would adequately mitigate adverse impacts and issued a determination of non-significance (DNS) on February 11, 2015. No comments or appeals were submitted prior to the March 18, 2015 appeal deadline, and the DNS became final. *Exhibits 1, 4, and 5*.

20. The application was submitted January 30, 2015 and determined to be complete on May 6, 2016. Notice of the application was posted on-site on February 10, 2015 and mailed to owners of surrounding property on both February 10, 2015 and June 7, 2016. Notice was published on February 11, 2015 and again on June 8, 2016. *Exhibits 1, 15, and 16; Thompson Testimony.*
21. On February 11, 2015 the following agencies received notice of the proposal and were asked to submit comments: San Juan County Public Works, San Juan County Fire Marshall, San Juan County Health and Community Services, and the San Juan County Cartographer. *Exhibit 1.* The County cartographer signed off on the proposal. *Exhibit 13.*
22. Neighboring property owner Jenny Burgess submitted written comments in March, 2016, expressing concern with the location of the proposed internal private road. Because her residence is near the intersection of Wold Road with the new private access road, she worries that headlight glare and road noise from the proposed increased traffic would affect her. *Exhibit 14.* Ms. Burgess also testified at hearing regarding concern whether the plat's community water system would impact her well, as well as potential conflicts between the plat's new traffic and the nearby Cottonwood Lane intersection with Wold. She noted that there is a bus stop on Wold near the proposed plat entrance. Ms. Burgess also stated that, while the access road design was changed to include a curve and to place its entrance farther from her home, because the Applicant has already installed the road before the instant public hearing process, she felt her concerns were not taken into consideration. *Burgess Testimony.*
23. In response to public comment, Planning Staff noted that the public hearing on the instant application was delayed after the initial advertisement because the water right and water system had not been approved. Staff clarified that clearing grading permits and road construction do not generally require traffic studies or public process. The Applicant acted at his own risk in building the roads prior to receiving preliminary plat approval. The Public Works Department reviewed the complete application materials and all additional information submitted by the Applicant and indicated no concerns that the traffic from the proposed lots would result in adverse impacts to road capacity or to unsafe conditions with regard to other traffic entering Wold Road at nearby Cottonwood Lane. Public Works reviewed sight distance at the plat entrance and found it complies with applicable standards. There are no regulations that address the glare of headlights from new vehicle traffic. *Thompson Testimony.*
24. Upon learning of Ms. Burgess's concerns, the Applicant shifted the site entrance location to the northwest to reduce the directness of the angle of headlights onto her property. *Shaw Testimony; Boden Testimony.*
25. In response to questions about impacts to school capacity resulting from the 17 new lots, the Applicant testified that Friday Harbor School District is currently under-enrolled and would benefit by increasing tax dollars if the new residences brought more kids to

District facilities. *Boden Testimony*. Regarding recreation amenities, the Applicant indicated that the subject property is beautiful and the new internal roads would act as walking trails for the recreational enjoyment of all residents. The Applicant requested two modifications to the proposed findings in the staff report. *Exhibit 17; Shaw Testimony; Boden Testimony*. While the recommended findings were considered, they were not adopted.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for preliminary plat applications pursuant to Chapter 36.70.970 of the Revised Code of Washington and San Juan County Code Chapter 2.22 and, specifically, SJCC 18.70.050.E.1.b.

Preliminary Plat Criteria for Review

Pursuant to SJCC 18.70.050.F, a preliminary plat shall be granted by the County only if the following criteria are met:

1. The application meets the requirements in SJCC 18.70.020 and this section, the standards in SJCC 18.70.060 and the applicable standards in SJCC 18.40, 18.50 and 18.60 SJCC; and complies to the policies and requirements of Chapter 58.17 RCW, the Shoreline Management Act (Chapter 90.58 RCW) and the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program), the State Environmental Policy Act, and the Comprehensive Plan.
2. The application satisfactorily addresses the comments of the reviewing authorities and is in the public interest (RCW 58.17.100 and 58.17.110).
3. Action has been completed on any shoreline permit that is required for subdivision improvements.
4. The associated planned unit development application, if required, is approved.

In Washington State, preliminary plats must be consistent with RCW 58.17.110(2), which stipulates that a proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds 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

- (b) The public use and interest will be served by the platting of such subdivision and dedication.

If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitute an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

Conclusions Based on Findings

1. As conditioned, the proposed subdivision is consistent with the applicable provisions of the Unified Development Code and subarea plans. The proposed lot density complies, or as conditioned, would comply with applicable density standards. The proposed lots sizes and configuration are based on the size and shape of the overall property. With an average lot size of five acres, and the need to avoid bisection of any lot by a road, the one lot smaller than five acres can be allowed as it would be allowed under clustering provisions. Each lot is capable of providing an adequate building envelope for the construction of a dwelling unit and an approved sewage system. The water supply and distribution system have been approved by the appropriate state agencies with jurisdiction. The project avoids development within 200 feet of on-site wetlands and steep slopes that meet the County definition of geologic hazard areas. A condition of approval would ensure compliance with the life safety-based recommendations of the Applicant's geologic hazard assessment report to ensure that future home construction does not result in threats to health or safety on- or off-site. No portion of the subject property is subject to the jurisdiction of the County's Shoreline Master Program. The proposal was reviewed for compliance with SEPA and the issued DNS was not challenged. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 20, 21, 22, 23, 24, and 25.*
2. As required by RCW 58.17.110, all appropriate locally required provisions have been made for public health, safety, and welfare. There are no open space requirements for subdivisions in the RRF/5 zone; however, no more than 30% of each lot (exclusive of roads and driveways) would be covered with impervious surfaces, and the remaining area is intended to be retained in its native vegetated (forested) state to the extent possible. There is no public transit service in San Juan County. The potable water supply and distribution system have both been approved by the respective state agencies; water lines would be extended to each lot and protective sanitary radii would be provided to each well, as conditioned. The proposed lots contain adequate soils and area for individual on-site septic systems. The new roads, which have been built, would be reviewed for compliance with all applicable standards prior to final plat approval. No sidewalks,

parks, or playgrounds are required in the rural portion of the County. Adequate infrastructure for fire protection has been proposed, including emergency vehicle turn around access at each terminus of the internal roads. The record contains no evidence of unmitigated adverse impacts to area schools. In creating 17 new lots conforming to zoning and public health standards, as conditioned, the proposed plat would be consistent with the public interest. *Findings 5, 6, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 22, 23, 24, and 25.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat to subdivide 85.11 acres into 17 lots is **APPROVED** subject to the following conditions:

1. This preliminary long subdivision approval allows the division of 85.11 acres into 17 lots according to the approved attached preliminary subdivision map. Should a final survey reveal there is less area included in the subject property, such that 17 lots would exceed the density standard for the underlying zoning district, the number of lots approved shall be reduced to achieve compliance. This preliminary long subdivision approval shall expire if the subdivision is not recorded within 60 months of the approval date. The final long subdivision application shall be submitted to the Community Development and Planning Department at least 90 days in advance of the expiration date.
2. Prior to final plat submission, all subdivision roads shall be built and/or final inspected to ensure compliance with SJCC 18.60.100, unless variances are obtained.
3. Prior to final plat approval, the Applicant shall submit a clear plan indicating who is responsible for maintenance of the roads. If all of the internal roads would be owned by individual lot owners, legal easements for use by affected properties shall be presented and legally recorded prior to or concurrent with final plat approval. If, at final plat, there will be any commonly held areas created, the Applicant shall provide a maintenance agreement to be submitted to and approved by the Community Development and Planning Department, then recorded with the final subdivision approval. All affected property owners shall participate in the agreement.
4. All roads serving three or more lots shall comply with the road design and construction standards specified in SJCC 18.60.100 of this Code.
5. Drainage from roads shall be controlled using best management practices provided in SJCC 18.60.080 and .100 and in the Stormwater Management Manual for the Puget Sound Basin.
6. Approved soil registration sheets for each parcel shall be filed with the Sanitarian prior to application for final subdivision approval.

7. The subdivision shall be served by a community water system. Prior to final subdivision approval, the water lines must be installed to the lot corners.
8. A sanitary setback shall be shown on the plat for all wells, unless a variance is obtained.
9. All survey standards and requirements shall be complied with, pursuant to SJCC 18.70.070(F)(2).
10. Building envelopes shall be shown on the final plat demonstrating no more than 30% impervious surface area for each lot, excluding road and driveway areas.

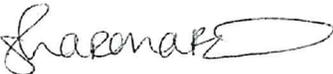
The following conditions shall be shown as restrictions on the face of the plat, in addition to those restrictions and dedications required by SJCC 18.70.070:

11. Parcels are subject to the Storm Water Management Report for the Plat of Prospect Mountain, dated March 30, 2016, as revised and on file with the San Juan County Department of Community Development.
12. The well site(s) shall be subject to a sanitary setback.
13. All utilities shall be placed underground.
14. All disturbed areas shall be restored to pre-project configurations, replanted with local vegetation, and the vegetation maintained until it is firmly established.
15. In Rural Farm Forest land-use districts, no more than 30% of the area of a parcel shall be covered by impervious surfaces, exclusive of roads and driveways.
16. This subdivision has been approved by the responsible County officials on the premise that each lot will be occupied by no more than one single family dwelling and lawfully related outbuildings. No lot shall be otherwise occupied unless the owner can first demonstrate to the County's satisfaction that the provisions for water supply, sewage disposal, circulation, lot size, and related planning considerations are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the Subdivision Administrator who shall be responsible for coordinating the review of such requests and for making the required determination.
17. Maintenance of the roads serving the lots in this subdivision is shared equally by the lot owners.
18. There are additional private declarations, conditions, covenants, or restrictions beyond those shown on the face of this plat. If any private declarations, conditions, covenants, and/or restrictions which appear on the face of this plat are different than those not shown, the more restrictive provisions shall govern. Any private deed restrictions are

supplemental to the requirements of this code. The County shall not be party to any private restrictions.

19. Any excavation or construction activity will cease immediately if any material of potential archaeological significance is discovered during such excavation or construction until the administrator is notified and inspections and disposition of the archaeological material is provided for.
20. Geotechnical study shall be required prior to development of residences or appurtenances on Lots 5, 6, 7, 8, and 9.

Decided August 8, 2016.

By: 

Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.