



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250
(360) 378-2354 | (360) 378-2116 | FAX (360) 378-3922
cdp@sanjuanco.com | www.sanjuanco.com

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

**FINDINGS, DECISION AND CONDITIONS OF APPROVAL
FOR THE
PRELIMINARY BINDING SITE PLAN KNOWN AS
HIDDEN MEADOW**

FILE NUMBER:	PBSP00-17-0001	S.J.C. DEPARTMENT OF FEB 08 2018 COMMUNITY DEVELOPMENT
OWNER:	CURT JOHNSON P.O. Box 775 EASTSOUND, WA 98245	
APPLICATION:	PRELIMINARY BINDING SITE PLAN TO CREATE SIX CLUSTERED LOTS FROM ONE ACRE, TO BE DEVELOPED AS AFFORDABLE HOUSING	
SITE ADDRESS:	NOT CURRENTLY ADDRESSED, LOCATED IN THE NORTHWEST PORTION OF THE EASTSOUND URBAN GROWTH AREA, NORTH OF MIGUEL LANE, SOUTH OF ENCHANTED FOREST ROAD, EAST OF VIEW HAVEN ROAD, AND WEST OF LOVER'S LANE, ALONG A PROPOSED EXTENSION OF CEDAR RIDGE LANE THROUGH THE NEIGHBORING PROPERTY TO THE EAST, ON ORCAS ISLAND	
TAX PARCEL NUMBER:	271424008	
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS	
SUMMARY OF DECISION:	<i>APPROVED – SUBJECT TO CONDITIONS</i>	
DATE OF DECISION:	FEBRUARY 8, 2018	

I. INTRODUCTION

Curtis Johnson owns an undeveloped one-acre property located in the Northwest portion of the “Eastsound Urban Growth Area”, north of Miguel Lane, along a proposed extension of a private road known as Cedar Ridge Lane, on Orcas Island. Mr. Johnson’s property is designated “Eastsound Residential”, allowing 1 unit per acre. (*Staff Report, Project Data*). The applicant submitted the pending application for a Binding Site Plan (BSP) to be known as “Hidden Meadow”, a single family residential project in the Eastsound Urban Growth Area, with up to six building sites, relying on affordable housing bonus density authorized under SJCC 18.30.510, Table 13. Because the application and the SEPA DNS issued for the project notes that the applicant is proposing five affordable housing units and one market rate unit, it should be noted up front that the San Juan County Code is very clear that: “Affordable housing units must be developed prior to or at the same time as other allowed residential units in any project granted a density bonus for affordable housing”. *SJCC 18.60.260(F)*. In communications following the public hearing, the Examiner was informed that the applicant has elected to no longer pursue the “market rate unit” element of his proposed project. This Decision is limited to consideration of all six proposed lots as affordable housing sites.

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

At the public hearing, all witnesses provided testimony under oath. Julie Thompson, the County’s planner assigned to review the pending application, summarized her review, proposed conditions, and recommendation of approval. Curt Johnson, the property owner and applicant, appeared on his own behalf and spoke in favor of the pending application. Mr. Johnson requested modifications to the conditions recommended in the Staff Report, and asked that similar changes be made to his wife’s PUD/BSP application, also heard by the Examiner on the same date for a neighboring parcel that she (Suzanne Moe) owns, under File No. PBSP00-17-0002. For purposes of this Decision and a separate Decision issued for Ms. Moe’s application regarding her neighboring parcel, the Examiner includes all testimony provided during the public hearings for both matters together, because Mr. Johnson indicated his comments overlapped and generally applied to both applications. For each, he argued that state subdivision statutes are not applicable to the pending application. On this point, he was in error.

No one spoke at the hearing in opposition to the application. Written comments are included in the record as separate exhibits, identified and numbered as follows.

EXHIBITS:

A. Staff Report to the Hearing Examiner, prepared by Project Planner, Julie Thompson, dated November 17, 2017;

1. Request for Review
2. Application cover sheet
3. Determination of Nonsignificance
4. Environmental Checklist
5. Preliminary BSP maps
6. Draft Restrictive Use Easement for Affordable Housing
7. Documents from EWSD: 2017 Community Sewage Treatment Facilities and Superintendent's July 2017 Report
8. Page 8 of 9, SJC Resolution 62-2016 Fee Schedule
9. Preliminary Stormwater Report date stamped September 5, 2017 prepared by Wagner Analytics LLC
10. September 14, 2017 Public Works memo regarding stormwater
11. September 11, 2017 Public Works memo regarding vehicular access
12. September 14, 2017 Fire Marshal memo regarding fire protection
13. August 9, 2017 Health and Community Services memo regarding water and septic
14. August 9, 2017 EPRC comments
15. July 26, 2017 memo from Stephanie Barney, WA DOE
16. July 24, 2017 memo from Paul Kamin, EWUA
17. July 26, 2017 letter from Ed Sutton, President, View Haven Estates
18. August 2, 3 & 4, 2017 emails between Brendan Flannery and Julie Thompson commenting of proposal
19. July 26, 2017 email from Jim and Betsy Nelson
20. August 5, 2017 letter from Chris Dahl
21. August 5, 2017 letter from Andrew Brian Carlstrom
22. Legal ad
23. Verification of posting and mailing
24. Comprehensive Plan B.5.2.A and 5.2.D
25. Eastsound Subarea Plan 3.3 Policies
26. September 27, 2017 memo from Roy Light, Eastsound Sewer and Water District
27. "Assignment of Partial Easement Rights, Points of Access Rights and Subjoining Additional Development Rights", Recorded with the San Juan County Auditor in 2009, listing Suzanne Moe (applicant's wife) as Grantee, and lists Mr. Johnson's project site as an affected parcel, submitted by Mr. Johnson at the public hearing
28. Photo of emergency access crash gate, similar to that proposed by Mr. Johnson, submitted by the applicant during the public hearing
29. Eastsound Planning Review Committee (EPRC) meeting minutes from Aug. 3, 2017, re: discussion of Moe and Johnson applications. *(Added by the Examiner, taking official notice of approved EPRC minutes, accessible on the San Juan County website).*

III. APPLICABLE LAW

A. Jurisdiction.

Under SJCC 18.80.170(D)(2), binding site plan applications for more than four lots are equivalent to long subdivisions for procedural purposes. Long subdivisions, aka preliminary plat applications, are subject to review, hearing and final decisions by the Hearing Examiner. SJCC 18.70.050(E). Additionally, SJCC 2.22.100 vests specific authority in the Hearing Examiner to receive and examine available information, conduct public hearings, prepare a record thereof, issue findings of fact, conclusions based upon those facts, and decisions which shall represent the county's final decision regarding various permits, expressly including subdivisions and binding site plans for more than four lots.

B. Criteria for Preliminary Binding Site Plan approval.

The process, requirements, and standards for Binding Site Plan proposals are generally found in SJCC 18.70.090 and 18.80.170, noting that the requirements to comply with numerous other state and county code provisions are referenced therein. For instance, SJCC 18.80.170(D)(3), provides in relevant part (emphasis added by the Examiner):

Criteria for Approval of Preliminary Binding Site Plans. The preliminary binding site plan shall be approved only if all of the following are met:

- a. The application meets the requirements in SJCC 18.70.090, the applicable standards in Chapters 18.40, 18.50 and 18.60 SJCC, and complies with the policies and requirements of Chapter 58.17 RCW, the Shoreline Master Program, the State Environmental Policy Act, and the Comprehensive Plan;
- b. The associated planned unit development application, if required, is approved, and action has been completed on any shoreline permit that is required for proposed improvements; [and]
- c. The application satisfactorily addresses the comments of the reviewing authorities and is in the public interest; [...]

Chapter 58.17 RCW, which is the state subdivision statute referenced above, expressly mandates 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 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 (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. []” RCW 58.17.110(2).

C. Affordable Housing.

SJCC 18.60.260 addresses Affordable Housing, and provides the purpose and conditions under which housing may qualify as affordable housing for the purpose of utilizing density bonuses, and reads as follows:

A. Purpose. The purpose of this section is to set forth the conditions under which housing may qualify as affordable housing for the purpose of density bonuses or other provisions of the comprehensive plan or unified development code.

B. Affordable housing is housing where the occupants pay no more than 30 percent of gross monthly income for total housing costs, including the cost of property taxes and insurance for homeowners and monthly utilities, excluding telephone, for owners and renters. Except where further specified in the Comprehensive Plan and this code, “affordable housing” refers to such housing serving as the primary residence for very low-, low-, moderate- and middle-income households. The definition of income groups by household size shall be as most recently defined by the U.S. Department of Housing and Urban Development for San Juan County.

C. To qualify as affordable to a particular income group and family size, housing shall provide long-term affordability as defined below, and shall have an appropriate size and amenities and have a sufficient number of bedrooms to meet the needs for that family size as determined by the administrator, using appropriate information from the building code, the U.S. Department of Housing and Urban Development and the Washington State Office of Community Development.

D. Long-Term Affordability. In order to qualify as affordable housing, housing must provide assurance of affordability to applicable income groups for at least 50 years for ownership housing and 20 years for rental housing by one or more of the following methods:

1. Ownership of land or land and structures by a public agency or nonprofit housing provider;
2. Granting of a restrictive use easement in a form specified by the County for the portions of the site encompassing the affordable units to San Juan County for the purpose of affordable housing development;
3. In the case of rental housing only, the units are subject to a contract with a housing provider which assures their affordability for a minimum of 20 years; or
4. Housing which because of its size, location, amenities, restrictions on development or use, or other characteristics, has been specifically determined by resolution of the board of County commissioners to be affordable.

E. Permanently Affordable Housing. In order to qualify as permanently affordable housing, housing must provide assurance of affordability to applicable income groups for at least 99 years by one or more of the following methods:

1. Ownership of land or land and structures by a public agency or nonprofit housing provider with assurance of affordability for at least 99 years;

2. Granting of a restrictive use easement in a form specified by the County for the portions of the site encompassing the affordable units to San Juan County for the purpose of affordable housing development;
3. Housing which because of its size, location, amenities, restrictions on development or use, or other characteristics, has been specifically determined by resolution of the board of County commissioners to be permanently affordable.

F. Concurrent Development. **Affordable housing units must be developed prior to or at the same time as other allowed residential units in any project granted a density bonus for affordable housing.** (*Emphasis added due to the significance of this provision to the pending application*).

G. Limitation on Credit for Affordable Middle-Income Housing. No more than 25 percent of the dwelling units counted as affordable housing or permanently affordable housing for the purpose of obtaining a density bonus, use permit, or other special privilege reserved for affordable housing in any project may be for middle-income households.

D. Burden and Nature of Proof.

Under SJCC 18.80.040(B), “[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets [her] burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied his burden of proof to meet the criteria for Preliminary Binding Site Plan approval?

Short Answer: As conditioned, yes.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the requested Preliminary Binding Site Plan subject to specific conditions of approval as set forth below.

2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.

Application reviewed and noticed as an Affordable Housing project.

3. The applicant submitted the pending Binding Site Plan application to the San Juan County Community Development Department on or about April 6, 2017. (*Ex. 2, Application*). His project description provided in the SEPA Checklist submitted as part of his application reads: “*A Binding Site Plan is proposed to create six clustered lots on one acre five of which are planned for moderate income affordable housing.*” (*Ex. SEPA Checklist, at page 1, item 11*). Staff reviewed the materials, and deemed the application complete on or about May 21, 2017. (*Staff Report at page 2*). The County’s published Notice of Application for this project expressly describes this project as follows: “*Binding Site Plan for 6 Lots on 1 Acre, Affordable Housing*” (emphasis added). (*Ex. 22, Notice of Application for project, published in The Journal & Sounder on July 19, 2017*).

4. The Staff Report indicates that this application was allowed to move forward under a fee waiver, relying on San Juan County Resolution No. 62-2016, which is included in the Record as Exhibit 8 and authorizes a fee waiver when the proposed dwellings are “*intended for occupancy by very low income, low income, or moderate income families, as defined in Section 1 of the Housing Needs Assessment for San Juan County, Appendix 5 of the Comprehensive Plan*”. (*See Ex. 8; and Staff Report, at page 19, item K; and Ex. 2, Application, bottom of page, hand written notes – “Fee Waived”, on June 26, 2017*).

5. Unlike the BSP proposal for the neighboring property, owned by the applicant’s wife, Ms. Moe, the record for this application already includes an appropriate Draft Restrictive Use Easement for Affordable Housing (*Ex. 6*), which would serve as a binding legal instrument to ensure that the occupants of the new affordable housing units will be “*very low income, low income, or moderate income families, as defined in Section 1 of the Housing Needs Assessment for San Juan County, Appendix 5 of the Comprehensive Plan*”. This Decision approves the BSP with up to six affordable housing units, as defined in applicable county codes. This Decision should not be read or construed to alter or waive requirements found in the county’s affordable housing code provisions, including without limitation those found in SJCC 18.60.260(G), which reads as follows: “*G. Limitation on Credit for Affordable Middle-Income Housing. No more than 25 percent of the dwelling units counted as affordable housing or permanently affordable housing for the purpose of obtaining a density bonus, use permit, or other special privilege reserved for affordable housing in any project may be for middle-income households.*”

Utility services for the project.

6. The application expressly states that the “Proposed Method of Sewage Disposal” will be the Eastsound Water and Sewer District; and that the “Proposed Potable Water Source” will be the Eastsound Water Users Association. (*Ex. 2, Application*).

7. The applicant completed and submitted a SEPA Checklist for the project. (*Ex. 4, SEPA Checklist*).

8. The SEPA checklist properly lists the names of utility entities that will provide various services, including water and sewer, listing both the Eastsound Water and Sewer District and the Eastsound Water Users Association (*Ex. 4, SEPA Checklist, at page 10, item 16 re: Utilities*).

9. The SEPA checklist at page 4 forecloses any consideration of onsite septic for sewage disposal, where it answers that “*none*” will be discharged into a septic system, and that “*Eastsound Water and Sewer District main will be installed and available for house hook ups*”. Similarly, the checklist forecloses any consideration of a well-system for potable water, because it answers “*no*” in response to the question asking if groundwater will be withdrawn from a well for drinking water. (*Ex. 4, SEPA Checklist, at page 3, response to item 3(b)(1) re: Ground Water*).

10. After reviewing the SEPA checklist, application materials, and other information in the file, the County’s SEPA Responsible Official issued a Determination of Nonsignificance for Mr. Johnson’s proposal on or about July 19, 2017. (*Ex. 3, SEPA DNS issued for this application*).

11. In the Staff Report, Ms. Thompson represented that notices and publication required for the application were provided in accord with applicable county requirements. *Staff Report, at pages 2 and 3; Exhibits 22 and 23, Legal ad and posting/notice/mailling verification materials*.

12. Exhibit A credibly summarizes the written comments received from reviewing agencies and members of the public, as well as some detailed staff responses or proposed conditions intended to address such comments. (*Ex. A, Staff Report, pages 3 – 5*). It also credibly summarizes substantial evidence in the record that establishes how the proposal has been designed, or can be conditioned, to comply with applicable development standards for the zone (Eastsound Residential, 1 unit per acre), including density, setbacks, open space, lot coverage, clustering, Storm Drainage, private roads, and concurrency. (*Ex. A, pages 6-13*).

13. The Staff Report summarizes aspects of the proposal that are, or as conditioned will be, in substantial compliance with applicable Affordable Housing and Binding Site Plan standards and requirements for site. (*Ex. A, pages 13-29*).

14. At the public hearing, and in his written “Narrative” describing the neighboring project (*See Decision on File No. PBSP00-17-0002, Ex. 4, at page 3*), Mr. Johnson complained about the connection fees and charges imposed by water and sewer providers in the Eastsound area, where the project is located. The project narrative prepared by Mr. Johnson, for his wife, Ms. Moe’s project, expressly claims that her BSP application “*should circumvent the water membership to vacant lots policy/requirement of the water purveyor until the building permit stage of development.*” (*Moe Decision, Ex. 4, at page 3*). During part of his testimony at the public hearing, Mr. Johnson asked that Binding Site Plan approval should not require payment of connection fees, and argued that some sort of confirmation that sufficient utility system capacity exists to serve the project should be sufficient for approval. At the hearing, he also questioned whether provisions of the state subdivision statute (Ch. 58.17 RCW) should apply to a BSP proposal. As discussed below, the Examiner finds and concludes that Mr. Johnson’s request is not well founded in fact or law.

15. The County Code does not include “delaying payment of utility connection fees” or similar language as a basis to pursue a Binding Site Plan instead of a Preliminary Subdivision. And, attempting to “circumvent” utility purveyor charges and fees is not a proper basis to submit and support a BSP application.

16. In a detailed decision involving a dispute as to whether appropriate provisions for potable water supplies must be made at the time of plat approval, or later when a building permit might be issued, the Washington Supreme Court analyzed state subdivision statutes, and concluded that proposed subdivisions shall not be approved unless appropriate provisions are first made for potable water, among other things. See *JZ Knight v. The City of Yelm et al.*, 173 Wn.2d 325; 267 P.3d 973 (2011).

17. The division of land “is a matter of state concern” to be “administered in a uniform manner by cities, towns, and counties throughout the state.” *Knight, at par. 12, citing RCW 58.17.010*. Among other reasons, the legislature enacted chapter 58.17 RCW “to facilitate adequate provision for water [and] sewerage [...]”. *Id.*

18. Every subdivision, and binding site plan, with limited exceptions not relevant to this application, must comply with chapter 58.17 RCW. *Id., citing RCW 58.17.020, .030*. And, as noted above, SJCC 18.80.170(D)(3)(a), the County’s “Criteria for Approval of Preliminary Binding Site Plans,” requires in relevant part that a preliminary binding site plan shall be approved only if the application “complies with the policies and requirements of Chapter 58.17 RCW”.

19. Subdivision and binding site plan (BSP) approval proceeds in two steps—preliminary plat or preliminary BSP approval and final plat or final BSP approval. At the preliminary approval stage, the local decision maker with authority to approve a plat or BSP must “inquire into the public use and interest proposed to be served by the establishment of the subdivision” or BSP and determine “[i]f appropriate provisions are made for ... the public health, safety, and general welfare [and] potable water supplies” RCW 58.17.110(1). “A proposed subdivision ... *shall not be approved*” unless the legislative body “makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for ... potable water supplies ... ; and (b) the public use and interest will be served by the platting of such subdivision” RCW 58.17.110(2) (emphasis added). “When the legislative body [or designated local decision maker] ... finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter ... , it shall suitably inscribe and execute its written approval on the face of the plat.” RCW 58.17.170. Once the local legislative body [or designated local decision maker] approves a final plat, only then can the landowner apply for a building permit. *Knight, at par. 13*.

20. Here, the same utility service policies and requirements found in the state subdivision statute apply to the requested binding site plan. See *SJCC 18.80.170(D)(3)(a)*.

Comments.

21. According to the San Juan County website: the Eastsound Planning Review Committee (EPRC) advises the Planning Department, Planning Commission and County Council on land use and development matters affecting Eastsound; the EPRC is composed of seven members who are residents of Orcas island, serving two-year staggered terms; and the Committee's guiding document is Resolution 128-1992.

22. The EPRC met on August 3, 2017 to discuss the pending application (File No. PBSP00-17-0001) and Mr. Moe's separate binding site plan application to create 7 clustered lots, under File No. PBSP00-17-0002. (*Ex. 14, email dated August 9, 2017, from Jeffrey Otis, EPRC Chair, to Julie Thompson; Ex. 29, EPRC Minutes for Aug. 3, 2017, accessible on the County's website*). For both projects, EPRC minutes show that Committee members had concerns regarding water assurance and enforcement of moderate/affordable housing for qualified purchasers and clarifications on how that is to be determined.

23. The EPRC comments in Exhibit 14 correctly observe that *"the application doesn't appear to comply with the application requirements in 18.70.50C1d regarding Health Dept. approval of adequate potable water for all of the proposed lots. Since the applicant is not proposing to build the residential units, the lots may remain empty for an undeterminable (?) amount of time. If adequate potable water is not guaranteed for each lot prior to approval of the binding site plan, there's no assurance that water will be available at the time of building"*. The EPRC comments properly direct attention to SJCC provisions that mandate Health Department approval of an available and adequate potable water source for a project, and Certificates of future connections from sewer and water purveyors serving lots in an urban growth area or activity center, such as the Eastsound Urban Growth Area, where this project is located. Exhibit 14 also conveys the EPRC's concerns that the project proposal fails to include any mechanism to ensure that the application's purported affordable housing objectives will be enforced or verified. The Examiner finds that the Draft Restrictive Use Easement for Affordable Housing, should provide County officials with an appropriate tool to enforce the County's affordable housing policies and requirements. *See Ex. 6.*

24. At the public hearing, Mr. Johnson again expressed his desire to delay payment of water connection fees until the time of building permit approval for the lots, well after the time any final binding site plan might be approved.

25. Several written comments voiced general support for both of the pending applications (Johnson and Moe, File Nos. PBSP00-17-0001 and PBSP00-17-0002), as *"two affordable housing projects in the Urban Growth Area of Eastsound, Orcas Island"*. (*Exhibits 19, 20 and 21, which appear to be form comments containing virtually identical language*).

26. During the public hearing, Mr. Johnson took exception with the View Haven Estates' comment letter, Exhibit 17, when he credibly explained that instead of concerns about future residents from the Johnson/Moe developments driving on area roads, he was more interested in preventing existing neighbors from the View Haven area using the new Johnson/Moe private roadway as a cut through

or short cut. Mr. Johnson fully supported and, in fact, requested an emergency-access-only / Fire, EMS, Utility only access restriction for the project, where it abuts Miguel Lane, somewhat similar to that requested by Mr. Sutton's written comments on behalf of View Haven Estates, but based on different motivations – i.e. no cut-through traffic using new private roads in the new development. (*Testimony of Mr Johnson; Ex. 17, Comment letter from Ed Sutton, President, View Haven Estates*).

27. Mr. Johnson also submitted copies of a 2009 Easement that appears to fully address access questions raised in some of the written comments, and he provided credible testimony regarding his professional work experience and familiarity with surveys and easements (as a licensed surveyor himself). The Examiner finds that Mr. Johnson credibly and substantially rebutted the unsupported written comments challenging access rights that might apply to his property and future owners.

28. The Record includes a letter from the Eastsound Sewer and Water District (ESWD), which reads: *At this time there is capacity in the Eastsound Sewer and Water District to serve six additional Equivalent Residential Units. This statement is not a guarantee of sewer service for any specific property, nor it is a guarantee of future availability for sewer service in Eastsound.*" (Ex. 26). At this time, there is no basis to conclude that sufficient sewer system capacity will be available for new residential units whenever they may be constructed at some uncertain date well into the future. As with any capacity-limited service system, until such time as a sewer service guarantee is secured, other applications may move forward before this project, and utilize available sewer system capacity. Accordingly, the Conditions of Approval for this project will require proof of sewer service from ESWD for the site prior to Final Binding Site Plan Approval.

29. The Water service purveyor for the project site, the Eastsound Water Users Association (EWUA), submitted a written comment regarding the Johnson/Moe applications, explaining that *"While the EWUA has available capacity for this project, the developer has not yet purchased the membership capacity required for this project, and Eastsound Water does not have a contract to serve these developments at this time."* (Exhibit 16, comment letter dated July 24, 2017, from Paul Kamin, General Manager for Eastsound Water). The file does not include a current Certificate of Water Availability for the project, so there is no basis to conclude that sufficient water supply will be available for new residential units whenever they may be constructed at some uncertain date well into the future. As with any limited resource, other applications may move forward before this project, and utilize available water system capacity. Accordingly, the Conditions of Approval for this project will require proof of water service from Eastsound Water for the site prior to Final Binding Site Plan Approval.

30. As with all permits and project approvals issued by the County, this Decision does not waive or excuse an applicant's obligation to comply with any utility service provider's lawful regulations or requirements, including without limitation electrical, telephone, cable, internet, sanitation, and water service providers. This includes, without limitation, payment of any lawfully required connection fees, system facility charges, or application fees.

31. Except as modified in this Decision, all Findings and statements of fact contained in the Staff Report (included in the Record as *Exhibit "A"*) are incorporated herein by reference as Findings of the undersigned hearing examiner.

32. The County satisfied its SEPA review process through compliance with applicable review and notice procedures. The city received no appeals of its SEPA determination issued in connection with the application. As noted above, this Decision includes conditions of approval needed to ensure that the application conforms with applicable county codes and policies.

33. Based on all evidence, exhibits and testimony in the record, the undersigned examiner specifically finds that the proposed project, as conditioned below, makes appropriate provisions for the considerations detailed in applicable codes, including without limitation SJCC 18.70.090 and 18.80.170 (re: Binding Site Plans), SJCC 18.60.260 (re: Affordable Housing), and relevant provisions of Chapter 58.17 RCW (the state subdivision statute), and that the public interest will be served by the proposed preliminary binding site plan and associated dedications, easements, and improvements, all as conditioned below.

VI. CONCLUSIONS of LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Preliminary Binding Site Plan can be conditioned to conform to all applicable land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, the pending application meets the standards necessary to obtain preliminary binding site plan approval by the County.

2. The Department's recommended conditions of approval as set forth in the Staff Report, as modified herein, and the additional conditions set forth below, are reasonable, supported by the evidence, and capable of accomplishment.

3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

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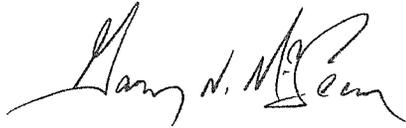
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VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's online site visit, the undersigned Examiner APPROVES the requested Preliminary Binding Site Plan for Curt Johnson's one acre property, subject to the attached Conditions of Approval, which are incorporated by this reference as part of this Decision. The Draft Restrictive Use Easement for Affordable Housing, included in the record as Exhibit 6, shall be subject to review and approval by the San Juan County Prosecuting Attorney, to verify legal compliance with applicable county affordable housing codes and policies, including without limitation those found in SJCC 18.60.260.

ISSUED this 8th Day of February, 2018

A handwritten signature in black ink, appearing to read "Gary N. McLean". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL
for the
PRELIMINARY BINDING SITE PLAN
KNOWN AS THE HIDDEN MEADOW PROJECT
File No. PBS00-17-0001
(Curt Johnson, Applicant)

General conditions

- A. The preliminary binding site plan of Hidden Meadow shall comply with all applicable provisions of the San Juan County Code whether or not those provisions are enumerated or referred to in the approved preliminary BSP plans, application file materials, in this staff report or in the Hearing Examiner's decision. The burden is on the applicant to show compliance with all applicable provisions of the SJCC at every stage of development. FURTHER, the applicant shall comply with all professional report conclusions and recommendations submitted in connection with the preliminary plat and engineering reviews, as approved and or modified by the County.
- B. The binding site plan shall be developed in substantial conformance with the plans submitted in the application file, including without limitation Exhibit 5.
- C. The applicant shall obtain any permit or license required by a state, federal, tribal, or other regulatory body with jurisdiction over the subject matter; any conditions of regulatory agency permits and licenses shall be considered conditions of final approval of this BSP.
- D. All conditions of preliminary BSP approval shall be provided on the engineering plan set, which shall be submitted for review and approval by the designated county official prior to final BSP approval.

Specific conditions.

- 1. This preliminary binding site plan (BSP) approval allows for the development of six moderate-income affordable housing single-family residences on a one-acre area, substantially as depicted on the Preliminary Project Map (Site Plan) for the Hidden Meadow project, included in the Record as part of Exhibit 5.
- 2. All roads serving the Binding site plan shall comply with the road design and construction standards specified in SJCC 18.60.100, unless variances are obtained from the Public Works Director or designee.
- 3. Maintenance of the road and any commonly held areas shall be through provision of a maintenance agreement submitted to and approved by the Community Development Department Director, then recorded with the final BSP approval. All BSP property owners shall participate in the agreement.
- 4. *(reserved; proposed condition was merged with item 2, above).*
- 5. Prior to any road construction activities, the applicant must first submit appropriate BMPs for Stormwater control to the Public Works Department, for the Director's review and approval, to ensure compliance with all County and state stormwater regulations and policies applicable to the site. Any additional conditions or modifications to the applicant's proposed stormwater BMPs that may be imposed by the Public Works Director or designee shall be included as conditions of approval for the entire PUD/BSP project addressed in this Decision.

6. Prior to Final BSP approval, the applicant shall submit a written narrative to the Public Works Director or designee, subject to his/her review and approval, describing access to/from and within the property, which must include an analysis of the full build-out potential of the subject property and adjacent properties served by the access roads. If deemed to be in the public interest, the Director shall have discretion to limit access to/from this project and the neighboring Cedar Ridge development via its southern boundary with Miguel Road to Fire/EMS/Law Enforcement/Utility vehicles and personnel only.
7. Consistent with RCW 58.17.110(2) and SJCC 18.80.170(D)(3), and to ensure that the project makes appropriate provisions for the public health, safety, and general welfare and for storm drainage, potable water supplies, and sanitary wastes, prior to Final Binding Site Plan approval:
 - A. All stormwater control features and elements must be complete, installed, constructed and functional, and water and sewer service infrastructure shall be properly stubbed to each lot, all subject to inspection, modification, acceptance and/or approval by the appropriate water and sewer system purveyor, and the Public Works Director or designee;
 - B. All lots in this PUD/BSP shall be served by the Eastsound Water Users Association system for potable water supply, and a written guarantee of connection with Eastsound Water shall be provided by the applicant prior to final Binding Site Plan approval; and
 - C. All lots in this PUD/BSP shall be served by the Eastsound Sewer and Water District for sewage disposal, and a written guarantee of connection with ESWD shall be provided by the applicant prior to Final Binding Site Plan approval.
8. Any stormwater BMPs that require design calculations must be submitted with a stamped engineering report supporting same.
9. The applicant shall submit measurements and other necessary details to properly illustrate the distance from proposed fire hydrants to buildings on the project site, for review and approval by the Fire Marshall, prior to any road construction activities.
10. Prior to final BSP approval, the applicant shall submit proposed emergency vehicle access and egress to the Fire Marshal for his/her review and approval.
11. All survey and drawing standards and requirements found in SJCC 18.70.070(F)(2) shall be followed, except where a deviation from any standard is approved in writing by the County engineer.
12. Maximum building envelopes/footprints permitted by County development regulations shall be shown on the final BSP.
13. Any sale, transfer, or lease of any lot, tract or parcel, created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of Chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in Chapter 58.17 RCW.
14. All public and private site improvements required by the approved binding site plan must be completed and accepted by the County prior to issuing the first building permit for the site.

15. This preliminary BSP approval shall expire if the map is not recorded within 60 months of the approval date. The final BSP application shall be submitted to the Department of Community Development at least 90 days in advance of the expiration date.

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

16. All development and use of the lands described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
17. All lots created by this binding site plan are subject to a Restrictive Use Easement for Affordable Housing, AFN _____.
18. Parcels are subject compliance with all control measures and recommendations included in the Stormwater Report for the Hidden Meadow Project as approved by the Stormwater Engineer with the SJC Public Works Department, a copy of which is on file with the San Juan County Department of Community Development.
19. All utilities shall be placed underground.
20. All disturbed areas shall be restored to pre-project configurations, replanted with local vegetation, and the vegetation maintained until it is firmly established. Compliance with the approved Stormwater Pollution Prevention Plan is required.
21. This Binding Site Plan has been approved by the responsible county officials relying on applicant's representations and assurances that the subject property will be occupied by no more than six moderate-income affordable-housing single-family dwelling units and lawfully related outbuildings, all to be constructed and maintained in compliance with applicable county codes.
22. Maintenance of the roads serving the lots in this BSP is shared equally by the lot owners.
23. There are additional private declarations, conditions, covenants or restrictions in addition to 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, 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.
24. 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.

EFFECTIVE DATE, POSSIBLE RECONSIDERATION, APPEALS, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

SJCC 2.22.210(O) sets forth the time, process and content of any request for reconsideration of the hearing examiner's decision.

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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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

Linda Ann Kuller

Subject: PREAPP 18-005 Ingman, Paul and Sue 340 Blind bay
Location: DCD conference room 935 Rhone Street

Start: Thu 2/15/2018 9:30 AM
End: Thu 2/15/2018 10:30 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Linda Ann Kuller
Required Attendees: Fred Schaller; Shannon Fitzgerald; Kyle Dodd; Jeff Sharp; John Cook; Paul Ingman