



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

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

"THE LANDING AT LOPEZ VILLAGE"

**SJC DEPARTMENT OF
JAN 04 2019
COMMUNITY DEVELOPMENT**

FILE NO: PBSP00-18-0001

APPLICANT/OWNER: CRAIG PIERCE (LOPEZ LANDING PARTNERS, LLC)
19711 88TH AVE NE
BOTHELL, WA 98011

TAX PARCEL NUMBER: 251541003

LOCATION: ON LOPEZ ISLAND, BETWEEN LOPEZ ROAD AND WEEKS ROAD IN
LOPEZ VILLAGE

APPLICATION: PRELIMINARY BINDING SITE PLAN TO CREATE TWENTY-EIGHT (28)
LOTS ON A 7.4-ACRE PARCEL IN LOPEZ VILLAGE. THE SITE IS WITHIN
THE LOPEZ VILLAGE COMMERCIAL LAND USE DESIGNATION, AND
WILL BE SERVED BY THE FISHERMAN BAY WATER ASSOCIATION
AND FISHERMAN BAY SEWER DISTRICT.

SUMMARY OF DECISION: *APPROVED*, SUBJECT TO CONDITIONS

DATE OF DECISION: JANUARY 3, 2019

I. CONTENTS OF RECORD

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by San Juan County, in accord with applicable law.

Exhibits:

- A. San Juan County Department of Community Development "Staff Report" and recommendation (of APPROVAL) to the Hearing Examiner regarding "Lopez Landing" Preliminary Binding Site Plan, dated September 12, 2018;
1. First Request for Review dated June 27, 2018
 2. Application materials
 3. Determination of Nonsignificance, dated Aug. 28, 2018
 4. Environmental Checklist
 5. Preliminary BSP maps dated February 21, 2018 prepared by Star Surveying, Inc.
 - a. 2018 Existing Conditions
 - b. Site Development Plan
 6. Exterior Lighting Plan dated June 7, 2017 prepared by Ross Chapin Architects
 7. Second Request for Review dated August 28, 2018
 8. Stormwater Site Plan Report dated June 2017 prepared by Bennett Engineering, LLC
 9. Memo from Krista Davis, SJC PW dated September 7, 2018 re: SWMP
 10. Memo from Jeff Sharp, SJC PW dated August 13, 2018 re: roads
 11. Memo from RJ Myers, SJC Fire Marshal dated September 5, 2018
 12. Email from Kyle Dodd, SJC Health dated June 28, 2018 re: water and sewer
 13. Memo from Tracy Nishikawa, WA DOE dated July 18, 2018
 14. Letter from neighbor Merrill Weeks dated August 23, 2018 Re: stormwater issues
 15. Bare earth image of Merrill Weeks' property dated September 5, 2018
 16. Letter from neighbor Pamela McCabe and her architect Joseph Greene dated July 17, 2018 re: driveway use
 17. Memo from Bennett Engineering LLC dated May 24, 2018 re: clearing and grading standards
 18. Email from Christine Coray, SJC PW, dated September 11, 2018 re: concurrency
 19. Concurrency Analysis dated September 2, 2008 for earlier proposal
 20. Email from Ross Chapin, architect, dated May 23, 2018 re: parking
 21. Title Report date stamped June 21, 2018
 22. Permit Receipt dated March 19, 2018
 23. Email from Julie Thompson to Star Surveying undated requesting more information
 24. June 27, 2018 legal ad
 25. Mailing and posting verification date stamped June 28, 2018
 26. Email from Scott Rozenbaum dated September 7, 2018 re: stream buffers
 27. Traffic Impact Analysis from Gibson Traffic Consultants dated December 2016
 28. Applicant's Preliminary Drainage Basin Analysis, from Tom Bennett, P.E., dated Sept. 25, 2018
 29. Applicant's response to Fire Marshall comments on the project, stamped received by the County on Sept. 21, 2018
 30. Applicant's revised Site Development Plan, labeled 'Preliminary Plat' The Landing at Lopez Village, prepared by Star Surveying, Inc., dated 10/10/2018

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31. (A) Memorandum from Krista Davis, San Juan County Stormwater Engineering Technician, dated October 19, 2018, recommending additional conditions of approval for the proposed BSP, addressing stormwater control and maintenance issues; and
(B) Memorandum from Applicant's Stormwater Engineer, Tom Bennett, P.E., dated October 4, 2018, Re: Preliminary Stormwater Flow Control Design for Lopez Landing, addressing a proposed design that would attenuate flows following development of the Lopez Landing project and future build-out of the drainage basin.
32. Post-Hearing email from the applicant, Craig Pierce, to Ms. Thompson, sent after the hearing adjourned on October 31, 2018, clarifying his testimony at the public hearing, explaining that he "*noticed one addition to pass along to the Hearing Examiner. Lots 1, 12, 17, 26, and 28 are contemplated for further development. I [Mr. Pierce] neglected to add Lot 17 at the Hearing*". Ms. Thompson forwarded this note to the Examiner on November 6th.

Testimony/Comments:

The public hearing for this matter began on September 26, 2018, and continued to October 31st, to allow the applicant and staff additional time to refine the proposed site plan and address stormwater issues and fire marshal comments associated with the project. All people who provided factual information were sworn and provided testimony under oath at the open-record public hearing. Hearing witnesses included:

1. Julie Thompson, the primary Staff representative for the County who oversaw the project review process and generated the Staff Report. Ms. Thompson appeared and spoke on both days of the hearing;
2. Robert "Bob" Anderson, with Star Surveying, for the applicant, appeared on Sept. 26th;
3. Craig Pierce, the applicant/owner, appeared and spoke on both days;
4. Merrill Weeks, local property owner, whose family name appears on Weeks Road, which forms part of the southeast border for the project site, and from which the project would obtain vehicular access, explained existing stormwater runoff problems in the project area, especially with volumes of water that now run from uphill areas generally east of Lopez Road (which forms the project's westerly border), and move south onto surrounding downhill parcels to the west of the site before pouring into the marine waters just north of the Fisherman's Bay Spit, spoke only on September 26th;
5. Suelynn Callahan, Mr. Weeks's niece, one of the owners of "Lot 1", to the west of the project site, explained that she does not oppose the development itself, but she has concerns with stormwater runoff problems that the new development might cause for downhill properties, requesting mitigation for potential impacts on "Lots 1 and 2", located to the west, across Lopez Road, from the project site. Ms. Callahan encouraged the County to be part of discussions to address existing stormwater problems, partly because runoff from a county road (Lopez Road) also utilizes the culverts and conveyance system on her land, as water moves down to the shoreline. Ms. Callahan appeared and spoke on both days of the hearing;
6. Kendra Smith, Stormwater Engineering Technician for the San Juan County Public Works Department, appeared at the hearing, taking note of concerns with stormwater impacts on downstream properties, explaining that some problems may be existing problems, or partly due to the need for 'repairs' to drainage system/pipes downstream of the project site, noting concerns with holding back

peak flows, spoke on Sept. 26th, provided follow-up memo (Ex. 31A) included in the record on October 31st; and

7. Jeff Knapp, local resident, owner of parcel located immediately south of the Weeks' parcel, where stormwater outfall (sometimes a waterfall) used by project site and other uphill properties to marine waters along the shoreline is located. Expressed his willingness to work with interested parties to address downstream deficiencies, acknowledging that some conveyances may be inadequate, hopes that this project development might spur a complete agreement to address existing and future stormwater issues.

III. APPLICABLE LAW.

Jurisdiction.

There is no dispute that relevant provisions of the San Juan County Unified Development Code expressly provide the hearing examiner with jurisdiction and authority to review and issue decisions on Preliminary Binding Site Plan (BSP) applications, which are processed and reviewed for compliance with various County development standards. Because this BSP application seeks to divide an existing portion of land into more than four new lots, SJCC 18.80.170(D)(1) and (2) explain that the provisions of SJCC 18.70.050(D) and (E) (long subdivision review procedures) shall apply such that the binding site plan application is equivalent to a long subdivision for procedural purposes, which expressly vests the hearing examiner with authority to hear and take action on such matters. 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.

Criteria for Approval of Preliminary Binding Site Plans.

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 as follows:

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; [...]

Burden of Proof.

SJCC 2.22.210(H), captioned “Burden of Proof”, expressly provides that: *For an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply. The applicant shall have the burden of proof in a pre-decision hearing. Additionally, SJCC 18.80.040(B) explains that “[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 in the record demonstrates that the applicant has satisfied his burden of proof to satisfy the criteria for Preliminary Binding Site Plan approval?

Short Answer: Yes, subject to conditions of approval.

V. FINDINGS OF FACT

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.

1. Any statements in previous or following sections of this document that are deemed findings of fact are hereby adopted as such and incorporated by this reference.

2. If approved, the requested Preliminary Binding Site Plan (BSP) would authorize the subdivision of a 7.4-acre site into 28 lots. The Department of Community Development’s Staff Report and Recommendation of Approval, transmitted to the Examiner before the hearing, (*the “Staff Report”*), includes a number of specific findings and conditions that credibly establish

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how the pending BSP application satisfies provisions of applicable law, is consistent with the county's Comprehensive Plan, and is designed or conditioned to comply with applicable development standards and guidelines.

Procedural background.

3. The Record for this matter reflects substantial time and attention focused upon achieving a project design that clusters development, creates shared amenities, and provides wetlands protection. Staff commented that the application packet and project design reflects a “superb analysis and plan”. (*Testimony of Ms. Thompson, on Sept. 26th*).

4. The Staff Report and application materials explain that the project site – the same 7+acre tax parcel located in the Lopez Village Urban Growth Area on the west side of Lopez Island – has been the subject of several prior development proposals, including a possible short plat concept in 1988, and a preliminary plat application submitted in 2008 that was eventually approved as the “Treasurewood” 23-lot preliminary subdivision, but the Treasurewood project was never finalized before it expired in 2015. (*Staff Report, page 3*).

5. In the last few years, the project applicant, Craig Pierce (via his Lopez Landing Partners LLC), acquired the property and worked with design professionals to generate the proposed Lopez Landing Preliminary Binding Site Plan, including Ross Chapin Architects, known for their clustered-home/cottage/infill/pocket-neighborhood development projects in various parts of Western Washington that reflect “new urbanism” concepts where homes are designed with porches or similar features that open onto public venues shared with neighbors, like attractive open spaces, walking paths, shared parking areas, and gathering places/community rooms, all intended to create a sense of community amongst residents in the development. (*Testimony of Mr. Pierce, application materials, online resources*).

6. The pending application was submitted on or about March 16, 2018. Staff deemed the application materials complete for purposes of vesting and project review, on or about May 24, 2018. Public notices were mailed, published, and posted on June 26, 27 and 28, 2018. Staff considered the application materials and SEPA Checklist (*Ex. 4*) submitted by the applicant, and issued a Determination of Non-Significance for the project, which was not appealed or challenged. (*Staff Report, page 3; Ex. 3, SEPA DNS, issued on August 28, 2018; Ex. 4, SEPA Checklist; Testimony of Ms. Thompson*).

7. Staff completed its review of the pending application in mid-September of 2018, issuing a Staff Report recommending approval, subject to specific conditions of approval. Shortly after the Staff Report was issued, the Fire Marshal issued a set of comments regarding the project, and County Works Staff expressed the need for additional time to review and address stormwater issues associated with the project.

8. As noted above, the public hearing for this matter began on September 26, 2018, and continued to October 31st, to allow the applicant and staff additional time to refine the proposed site plan and address stormwater issues and fire marshal comments associated with the project. Several additional items were submitted after the Staff Report was issued, copies of which are now included in the record as *Exhibits 30-32*. These materials reflect limited revisions and clarifications by the applicant, and the staff's concurrence or alternative language to consider on specific topics. The Examiner reviewed available maps, online mapping resources and aerial imagery, to better understand surrounding uses, where local residents appearing at the hearing live, and the visible critical areas in the immediate area.

9. Conditions of approval have been updated to incorporate language consistent with the comments and exhibits submitted during the public hearing process.

Description of Proposal and Location.

10. The project is identified as "The Landing at Lopez Village" on the most updated site plan submitted for consideration by the Examiner (*Ex. 30, dated Oct. 10, 2018*), though it is sometimes referenced in the Staff Report and several application materials as "Lopez Landing".

11. The pending application is for Preliminary Binding Site Plan Approval to divide a 7.4-acre site into 28 (twenty-eight) lots. (*Testimony confirming project lot count, by the applicant, Mr. Pierce, on Oct. 31st; Ex. 30, updated site plan, dated Oct. 10, 2018*). The project is a residential development including 25 lots where small cottage-style homes will be located, ranging in size from 544 to 1390 square feet, and three additional lots, on which several shared common amenities will be located and/or that are reserved for potential future development. Portions of lots 12, 17, and 26 will be used for shared parking, and portions of lots 12 and 26 will be where two "clubhouses" are constructed, each with 778 sq.ft., which will offer added amenities for residents, including a shared kitchen, dining area, sitting space, quiet room, ¼ bath, laundry and bicycle shed. The application materials explain that the two clubhouse-buildings will be for the exclusive use of the residents and their guests for community meetings, potlucks, movie nights, over-flow living space and the like, and that they will not be for rent and cannot be sold. Lot 28 is depicted as the site of a small home in the northwestern corner of the exceptionally-large lot, shown to be over 53,000 sq.ft. (*Compare details shown on Ex. 30[Star Surveying Site Plan] and Ex. 6[Exterior Lighting Plan, with proposed house-plan sizes, prepared by project architects], and Ex. 29, Applicant's response to Fire Marshal comments on the project, stamped received by the County on Sept. 21, 2018, specifically project description letter dated Sept. 18, 2018, captioned "Lopez Landing," from Ross Chapin Architects, signed by Ross Chapin, FAIA*).

12. During the hearing, the applicant expressed his belief that current county codes would allow for up to 8 residential units per acre in the site's Lopez Village land use designation, so the current project, with just 28 lots on 7+acres, is below the maximum allowable density, after considering wetlands, and other factors that are part of county density calculations. He asked

that a specific condition of approval should be added, to the effect that the largest lots (Lot Nos. 1, 12, 17, 26, and 28) may be subject to future division into additional lots, subject to compliance with County codes and regulations addressing density and land division requirements in effect at the time of any future application. (*Testimony of Mr. Pierce; Ex. 32, email from Mr. Pierce, clarifying his request to identify all five of the lots numbered above as “contemplated for future development”*). Ms. Thompson indicated that the County would not object to a condition along the lines requested by the applicant, so long as it mandates compliance with then-applicable density and land division requirements. Accordingly, the Examiner has included an additional Condition of Approval, No. I(F), acknowledging that the above-referenced large lots may be subject to future division, subject to compliance with then applicable laws.

13. The project site is located on a single, vacant, 7+acre site, identified as San Juan County Tax Parcel No. 251541003, which is located between Weeks Road and Lopez Road in the Lopez Village Urban Growth Area, on the west side of Lopez Island, located uphill and across Lopez Road from several residential lots abutting the shoreline along San Juan Channel, just north of the Fisherman’s Bay Spit. While close, this project is not within a shoreline area so none of the county’s shoreline permit requirements apply to this application.

14. The Staff Report explains that the proposed site has been used as pasture land, cultivated and hayed by prior owners. The site is relatively flat with a maximum elevation difference of fifteen feet, and includes a seasonal stream and substantial wetlands. Currently, the site is accessed via a historical road/lane, comprised of compacted gravel, which is about twelve feet wide and runs through the property from Weeks Road to Lopez Road, crossing the stream and designated wetlands. (*Ex. 2, application materials, specifically two page letter/site description and proposed development plan to County Staff from Star Surveying, Inc., dated February 9, 2017, but stamped received by the County on March 16, 2018*). As of the date of the Staff Report, the site was described as overgrown with many invasive plants and littered with a substantial amount of trash in the thickets located along the creek and in wetlands. (*Staff Report, pages 2 and 3*). Application materials explain that “[i]t appears someone has been living in the woods for a long enough duration that there is a large accumulation of trash” on the site. (*Ex. 2, specifically Star Surveying letter noted above*).

15. The project is surrounded by several commercial and service amenities, all within walking distance of the proposed development, including the Lopez Market across Weeks Road from the site; a retail store and a bank to the southwest along Weeks Road; and a post office just northeast along Weeks Road. Two high-density housing developments are located in the vicinity, one to the north and one to the south. (*Staff Report, page 2; online maps; Tax Assessor’s Parcel data for surrounding properties; Ex. 2, application materials, Star Surveying site description letter*).

Design features and conditions to address critical areas and comments.

16. Given that the site includes critical areas, the Record includes a Wetlands report generated by Rozewood Environmental Services, Inc., dated September 26, 2016, (*Ex. 8, Appendix III, also included in the application materials*), which is summarized in relevant part in the Staff Report, which notes that all wetlands on the project site rate as Category IV, and are seasonal, with most drying up at the start of the growing season in early to mid-April, and not re-saturated until December. (*Staff Report, page 12; Rozewood report, page one, "all wetlands rate as Category IV"*).

17. Environmental documentation also confirms that the onsite wetlands are somewhat infested with reed canary grass, and that none of the wetlands provide amphibian-breeding habitat. Staff has discretion to approve reductions in otherwise applicable buffers in an urban growth area when impacts to critical areas are appropriately mitigated. *See* SJCC 18.35.040. In this instance, the project has been designed to reduce buffers to 25 feet, subject to four mitigation measures summarized in the Rozewood report, including 1) removal of residual trash piles and miscellaneous garbage onsite; 2) fencing the outer edges of buffers to demarcate such areas, preferably using a rustic (split-rail) cedar fencing design; 3) remove or control non-native species such as Himalayan or evergreen black berry, Scot's broom, tansy ragwort, and missed thistles inside buffer zones; and 4) enhance buffer areas with augmentation and/or addition of suitable native plan species. (*Staff Report, discussion on pages 12 and 13; Ex. 8, Appendix III, Rozewood Report*). Compliance with these mitigation measures is required, as part of an additional Condition of Approval, No. I(C).

18. Similarly, the same environmental documentation for the project site explains that the seasonal stream that runs through a portion of the property is not a fish-bearing stream, so the project can be designed to reduce otherwise applicable stream buffers subject to mitigation measures, primarily split-rail fencing augmented with native woody shrub enhancements between affected residential lots and the stream. (*Staff Report, page 17; Ex. 26, Email from Scott Rozenbaum dated Sept. 7, 2018 re: stream buffers, author of Rozewood report referenced above*).

19. The Staff Report explains applicable county development regulations that will be applied to address clearing and grading work necessary to development property, including without limitation the type of fill materials to be used, placement, compaction, erosion control, and site restoration. (*Staff Report, discussion on pages 18-20*).

20. One of the written comments received regarding the pending project was from owners of the McCabe Building, located immediately southwest of the proposed primary access route that will be used for the new development as residents and visitors move to/from Weeks Road. The neighbors explain that the proposed road serving the new development would be less than 20 feet

from the McCabe Building. They asked that construction traffic should be required to use the existing site access road from Lopez Road, though they recognized that large vehicles or truck and trailer combinations would need to use the wider Weeks Road access point from time to time. The Staff Report suggests that the request to mainly use the Lopez Road entrance during construction makes sense. The Examiner finds that it makes more sense to delegate authority to County staff to craft appropriate construction access requirements applicable to site development activities, including provisions that require the developer to clean, repave or restore any segments of public or private access roads or property damaged or impacted by construction activities. (*See Condition of Approval No. I(H)*).

21. One written comment was reiterated and amplified by several local residents who appeared and spoke as part of the public hearing process, with remarks focused upon their concerns with existing and potential stormwater runoff problems experienced on parcels downhill, across Lopez Road, from the project site. (*Ex. 14, written comment letter from Merrill Weeks, dated August 23, 2018; Testimony of Mr. Weeks on Sept. 26th; Testimony of Ms. Callahan on Sept. 26th and Oct. 31st; and Testimony of Mr. Knapp on Oct. 31st*).

22. Mr. Weeks submitted a collection of pictures, showing existing conditions on his property, as water moves downhill from Lopez Road, via a route that includes a culvert/pipe from the road leading to a ravine/ditch segment, ending at a discharge point into the marine waters along the shoreline along San Juan Channel. Mr. Weeks offered his personal opinion that previous County road work on Lopez Road moved a culvert further north, changing the flow of stormwater so that it flows into the ravine at an angle causing excessive erosion to the bank where his home is located. Initially, Public Works staff did not confirm Mr. Week's allegations, but they expressed their willingness to work with the applicant and surrounding property owners to ensure that stormwater issues in the area will be adequately addressed.

23. The applicant and public works staff responded to the stormwater runoff comments, noting that existing problems could be due, in part, to a lack of maintenance, weeds or other obstructions/debris located in the path used by existing stormwater flows. The applicant's surveyor, Mr. Anderson, noted that the pending project would only develop about 5 acres of property, which is a very small part of the much-larger 300+acre drainage basin area that contributes water flowing into the system that is of special concern to Mr. Weeks, Ms. Callahan and Mr. Knapp. Mr. Pierce testified that he met with Mr. Weeks on the site, and that he understands his concerns, although he emphasized that downstream owners have repair and maintenance work that they need to do to help stabilize the current stormwater situation on their properties.

24. In follow-up correspondence included in the Record as *Exhibit No. 31*, received by the Examiner when the hearing continued on October 31st, Ms. Davis, the County's Stormwater Engineering Technician, recommended approval of this project, so long as the developer does not request further exemption for flow control because of downstream capacity and erosion concerns expressed by downstream property owners and Public Works' staff, and because the

manmade conveyance systems have not been determined to be adequately stabilized to prevent erosion on downstream properties. She also requested a condition requiring the developer to enter into a maintenance agreement with the Public Works Department addressing the 30” culvert that passes beneath Lopez Road. (*Ex. 31*). The Director has full discretion and authority to impose such conditions as part of the final stormwater system design and plan, which the applicant must submit for review and approval by the Public Works Director. (*See Condition of Approval No. I(G)*).

25. The parties should be fully advised that Washington law generally prohibits the imposition of development requirements or conditions that go beyond something that would be roughly proportional to the scale or nature of any impact caused by a specific project proposal. In this matter, the SEPA DNS was issued without negative comment or any appeal. The project will be conditioned to comply with applicable State and County Stormwater regulations, however, the Examiner or other County officials cannot require the applicant to bear the full cost of fixing what witnesses acknowledge is already broken. Fortunately, in this instance, surrounding property owners who appeared at the hearing, the applicant team, and public works staff, all appear ready and willing to work together to share information and suggestions to formulate a plan that will ensure that the pending project does not generate any additional, adverse stormwater impacts. The final stormwater system plan for this project will be subject to review and approval by County staff, prior to final BSP approval. (*See Condition of Approval No. I(G)*).

26. The Staff Report thoroughly explains how the project has been designed or can be conditioned to comply with applicable provisions of the County codes in effect at the time the project vested. (*Staff Report*). No one offered evidence or testimony sufficient to rebut any of the findings provided in the Staff Report.

27. No one submitted any comments questioning or challenging the DNS issued for this project.

The Preliminary Binding Site Plan satisfies applicable approval criteria.

28. A preponderance of evidence in the record, including without limitation the summary of relevant reports and analyses provided in the unchallenged Staff Report, environmental documentation in the record, and testimony by applicant witnesses, Mr. Pierce and Mr. Anderson, fully supports a finding that the proposed binding site plan has been designed or can be conditioned to satisfy applicable approval criteria.

29. The Staff Report recommended approval, subject to conditions.

30. As noted in the Staff Report, existing and surrounding utilities, with proper extensions and connections can adequately serve the utility demands associated with the new plat.

31. Throughout the process, no one presented any substantive or credible basis in fact or law that would serve as a basis to deny the pending preliminary BSP application. No one presented credible or convincing evidence or testimony sufficient to rebut the City's determination that the proposed BSP meets applicable development standards and policies.

32. The Staff Report and recommendation of approval includes a number of specific findings and conditions that establish how the proposed Preliminary Plat application satisfies provisions of applicable law, and is designed or conditioned to comply with applicable development standards and guidelines. Except as modified in this Decision, all Findings, and statements of fact contained in the Staff Report, are incorporated herein by reference as Findings of the undersigned hearing examiner.¹

33. Based on all evidence, exhibits and testimony in the record, the undersigned Examiner specifically finds that the proposed BSP, as conditioned below, makes appropriate provision for the considerations detailed in applicable law, and that the public use and interest will be served by the proposed BSP and associated improvements.

34. The Conditions of Approval included as part of this Decision are reasonable, supported by the evidence, and capable of accomplishment.

VI. CONCLUSIONS OF LAW

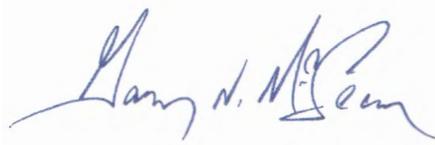
1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Preliminary Binding Site Plan for The Landing at Lopez Village, as conditioned below, conforms to all applicable land division and county land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, the application meets the standards necessary to obtain approval by the County.
2. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions of Law are hereby adopted as such and incorporated herein by reference.

¹ For purposes of brevity, only certain Findings from the Staff Report and recommendation of approval are highlighted for discussion in this Decision, and others are summarized, but any mention or omission of particular findings should not be viewed to diminish their full meaning and effect, except as modified herein.

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 contents of the record, the undersigned Examiner APPROVES The Landing at Lopez Village Preliminary Binding Site Plan, subject to the attached Conditions of Approval.

Decision issued: January 3, 2019.

A handwritten signature in blue ink, appearing to read "Gary N. McLean". The signature is fluid and cursive, with a large initial "G" and "M".

Gary N. McLean
Hearing Examiner for San Juan County

CONDITIONS OF APPROVAL

*For the
The Landing at Lopez Village
Preliminary Binding Site Plan
File No. PBSP00-18-0001*

[NOTE: For convenience of the parties, these conditions are generally organized as they were presented with the Staff Report. The use of captions, numbering, or sections has no substantive effect regarding the full scope or applicability of any condition to various aspects of the project].

I. General conditions included by the Examiner based on evidence and testimony in the record.

- A. Preliminary Binding Site Plan (BSP) approval shall be null and void if any condition enumerated herein is not satisfied. The Landing at Lopez Village preliminary binding site plan 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 the 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. The binding site plan shall be developed in substantial conformance with the updated plan submitted by the applicant at the hearing on October 31, 2018, included in the record as Exhibit No. 30.
- B. No construction or site development activities related to the BSP may be undertaken until required land-use and engineering approvals become effective, and the County and other regulatory authorities with jurisdiction issue applicable permits or approvals needed for any element of the project.
- C. The applicant shall comply with all professional report conclusions and recommendations submitted in connection with the preliminary BSP and engineering reviews, as approved, modified, or required by the Director, including without limitation any wetland and stream buffer reduction mitigation measures detailed in the Rozewood Environmental report and follow-up memo, included in the Record as part of Ex. 8, Appendix III, and Ex. 26, deemed necessary by the Director in order to approve/authorize aspects of the final BSP design that reduce otherwise applicable wetland or other critical area buffers.
- D. Applicant shall be responsible for consulting with state and federal agencies, and tribal entities with jurisdiction (if any) for applicable permit or other regulatory requirements. Approval of a preliminary BSP does not limit the applicant's responsibility to obtain any required permit, license or approval from a state, federal, or other regulatory body. Any conditions of regulatory agency permits/licenses/approvals shall be considered conditions for this project.
- E. The final engineering plans and submittals necessary to obtain final BSP approval shall conform to all applicable provisions of the San Juan County Code and the Conditions of Approval herein.

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- F. The five largest lots (Lot Nos. 1, 12, 17, 26, and 28) created by this BSP may be subject to future division into additional lots, subject to compliance with applicable provisions of Chapter 58.17 RCW and San Juan County codes and regulations in effect at the time of any future application, including without limitation those addressing land division, density, critical areas, wetland restoration or wetland/critical area mitigation bank credits (if any), parking, and open-space.
- G. Given the poor condition and questionable functionality of the existing stormwater system in the drainage basin for this project, the developer shall be responsible for preparing a final stormwater system design and plan for this project (not the entire basin) that shall be subject to review and approval by the Public Works Director, prior to final BSP approval. Consistent with Public Works' comments in Exhibit 31, until or unless the developer enters into agreements with downstream property owners to upgrade capacity and eliminate erosion problems, the developer shall not seek further exemptions from otherwise applicable stormwater flow-control requirements. Such plan shall include language confirming that the BSP developer has/or has obtained any and all maintenance agreements, easements or similar property rights necessary to serve the BSP, including any required for utility extensions or connections, stormwater discharges, and the like.

FURTHER, prior to any clearing, grading, or other on-site project development 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 this BSP.

- H. The Director has full discretion and authority to require a pre-construction meeting before any on-site development activities commence and again at any stage of the development process for this project, for the purpose of establishing appropriate construction requirements that may be included as additional conditions of approval for this BSP and/or in connection with any County permit(s) associated with clearing, filling, grading, building, or other site development activities, including without limitation those that might address:
- a) Designated truck hauling routes.
 - b) Truck loading and unloading activities.
 - c) Hours of construction and hauling.
 - d) Continuity of pedestrian facilities.
 - e) Temporary traffic control and pedestrian detour routing for construction activities.
 - f) Street sweeping and maintenance during excavation and construction.
 - g) Location of construction fences.
 - h) Parking for construction workers.
 - i) Construction vehicles, equipment, and materials in the right of way.
 - j) All other construction activities as they affect the public street system.
 - k) Provisions that might require the developer to clean, repave or restore any segments of public or private access roads or property damaged or impacted by construction activities.

In addition, the applicant shall submit for review and approval by the Director a plan for providing pedestrian access on existing public streets serving surrounding businesses and residents that are impacted during construction of this project (if any). Access on such existing public roads shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage

improvements prevents access. General materials storage and contractor convenience are not reasons for preventing access along streets, sidewalks, parking strips, or other portions of the county road system surrounding the project.

II. Conditions based upon those recommended in the Staff Report.

1. This preliminary binding site plan (BSP) approval allows for the development of twenty-eight single-family residential lots on this 7.4-acre parcel.
2. Binding site plan roads shall be built as specified in SJCC 18.60.100, unless variances are obtained.
3. Maintenance of internal roadway(s) and any commonly held areas shall be through provision of a maintenance agreement, which shall be subject to review and approval by the Director, and recorded with the final BSP approval. Such agreement shall attach to all lots within the BSP and run with the land, meaning that all lot owners shall be subject to terms of such agreement, including without limitation those addressing maintenance and financial responsibilities.
4. All roads serving three or more lots shall comply with the road design and construction standards specified in SJCC 18.60.100.
5. Prior to final approval, the stormwater plan elements shall be fully constructed, improved and in place; water and sewer shall be connected to each lot.
6. Any stormwater BMPs that require design calculations must be submitted with a stamped engineering report.
7. The following additional information requested by the Fire Marshal in Exhibit 11 shall be submitted to DCD and approved by the Fire Marshal prior to final approval; PROVIDED that the applicant's written responses already included as part of the Record addressing the following items may already be sufficient to address such issues. The DCD Director shall have discretion and authority to determine sufficient compliance with this Condition:

Additional information is required:

- Road profiles showing the average grade of the proposed road.
 - Location of proposed utility lines, including size of water lines, location of the closest existing hydrant and the location of proposed hydrants.
 - Water availability letter from purveyor with flow estimates for hydrants.
 - Profile of development to be conducted in order to determine the number of hydrants and hydrant flow needed.
 - Proposed emergency vehicle turnarounds and exit path from development for emergency vehicles.
 - Drawings that support the aforementioned requirements and outline plans for development with regards to fire suppression, hydrants, turn around radius, and grades.
8. The following Recommended Conditions of Approval as requested by the Fire Marshal in Exhibit 11 shall be included; PROVIDED that the applicant's written responses already included as part of the Record addressing the following items may already be sufficient to address such issues. The DCD Director shall have discretion and authority to determine sufficient compliance with this Condition.
 - A. A designated fire truck turn-around /fire lane must be provided on site that conforms to San Juan County turn around standards outlined in SJCC 18.60.100, this access is to be approved by San Juan County Fire Marshal and reviewed by Lopez Fire Chief.

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B. Prior to Final Plat, hydrants shall be installed meeting all the requirements of SJCC 13.08 including:

- a. Hydrant spacing to fulfill the hydrant distance minimum between hydrants for single family residential areas outlined in SJCC 13.08.090. Note that this review applies to the stated use of the site for single-family residential areas. Future use of the site for multi-family use (defined as a residence meant to be occupied by two or more families) would trigger different hydrant spacing requirements.
 - b. The hydrant must be tested and demonstrate that it can meet the residential hydrant flow. Flow must be met for this site per SJCC 13.08.010 which is 500 gallons per minute for 20 minutes and the service main must be no smaller than 6' per SJCC 13.08.070. This test must be observed by San Juan County Fire Marshal or their designee for each required hydrant.
 - c. Specifications for outlet, ports and drain per SJCC 13.08.110, and fitted with fitting that is compatible with Lopez Fire Department equipment.
 - d. Obstructions/visibility requirements of SJCC 13.08 must be adhered to.
 - e. International Fire Code (IFC) standards regarding hydrants must be adhered to including, but not limited to, IFC section 507 and 901.
9. All survey standards and requirements shall be complied with pursuant to SJCC 18.70.070(F)(2).
 10. Building locations shall be shown on the final plat.
 11. 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.
 12. 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.
 13. 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 plat, in addition to those restrictions and dedications required by SJCC 18.70.070:

14. 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.
15. Parcels are subject to the final Stormwater Site Plan Report for Lopez Landing as approved by the Stormwater Technician with the SJC Public Works Department and on file with the San Juan County Department of Community Development.
16. All utilities shall be placed underground.

17. 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.
18. ~~This BSP has been approved by the responsible county officials on the premise that this lot will be occupied by no more than six moderate income affordable housing single family dwelling units and lawfully related outbuildings.~~ [NOTE: This item appears to be misplaced, derived from a previous BSP Staff Report, regarding a proposed 'affordable housing' project, which was not part of this application, so it has been stricken as a condition for this project].
19. Maintenance of the roads serving the lots in this BSP is to be shared equally by lot owners.
20. 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.
21. 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.

NOTE – In the event of a need for clarification or correction regarding the application or interpretation of any term or condition of approval set forth above, either the applicant or the city can invoke the jurisdiction of the Hearing Examiner to issue a written clarification of a particular term or condition, through a written request detailing the matter, and the basis for such request. Such request shall be made as a Request for Reconsideration, submitted within the time and manner provided in SJCC 2.22.210(O)

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.

NOTE: The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable reconsideration or appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the code provisions referenced above and the Land Use Petition Act (Chapter 36.70C RCW) for additional information and details that may apply.