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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

IN RE:	HE-23-PL-013
QUEEN MOUNTAIN HOMES LLC, Applicant	FINDINGS, CONCLUSIONS, AND DECISIONS
4175 Iron Gate Road	
SUB2022-0021 & VAR2022-0007 / Queen Mountain Preliminary Plat	SHARON A. RICE HEARING EXAMINER

SUMMARY OF DECISIONS

The requested subdivision of a 36.11-acre parcel for a phased development of 11 single-family cluster lots, five future development tracts, four conservation easement/reserve tracts, one open space tract, and one stormwater tract at 4175 Iron Gate Road in Bellingham, Washington is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:
Nick Palewicz, Freeland & Associates, on behalf of Queen Mountain Homes LLC (Applicant), requested subdivision of a 36-acre parcel into 11 single-family cluster lots, five future development tracts, four conservation easement/reserve tracts, one open space tract, and one stormwater tract through the Type III review process. The subject property is addressed as 4175 Iron Gate Road, Bellingham, Washington.

Hearing Date:
The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on September 13, 2023. The record was held open two business days to allow

1 for public comment, with additional time for responses by the parties. No post-hearing
2 comment was submitted, and the record closed on September 15, 2023.

3 No in-person site visit was conducted, but the Examiner viewed the property on Google
4 Maps.

5 **Testimony:**

6 At the hearing the following individuals presented testimony under oath:

7 Nick Palewicz, Project Civil Engineer, Freeland & Associates, Applicant
8 Representative

9 Ali Taysi, AVT Consulting, Applicant Representative

10 Kathy Bell, Senior Planner, City of Bellingham

11 Steve Sundin, Environmental Planner, City of Bellingham

12 Peter Gill, Parks Coordinator, City of Bellingham

13 Paul Randall-Grutter, Public Works Project Engineer, City of Bellingham

14 Ryan Chace

15 Paul Kearsley

16 Jane Campbell

17 **Exhibits:**

18 At the open record hearing, the following exhibits were admitted in the record:

19 Exhibit 1 Planning and Community Development Department Staff Report including
20 the following attachments:

21 A. Preliminary Plat land use application materials (overall site plan at .pdf
22 page 32)

23 A1. Preliminary Plat map (close up of proposed improvements on site)

24 B. Temporary Certificate of Multimodal Transportation Concurrency

25 C. SEPA Threshold Determination (SEP2022-0024), issued June 20, 2023
26 with attachments:

27 1. Environmental Record Supplemental Report by the Responsible
28 Official (undated)

29 2. Comment email from Richard Campbell, April 18, 2023

30 3. Comment email from Teresa Eiden, April 25, 2023

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- 4. Comment email from Tara Adrian-Stavik, April 25, 2023
- 5. Comment email from Melissa Gille, April 26, 2023
- 6. Autogenerated reply email from Department of Ecology, June 22, 2023

- D. Zoning and Comprehensive Plan Designations-Subject Site
- E. Zoning Designations – Surrounding Properties
- F. Wetlands and Mitigation Mapping
 - F1. Alternative Plat Configurations
- G. Landslide Hazard Areas Mapping
- H. Road Connectivity
- I. Park and Trail Connectivity
- J. Map of Bellingham School District Attendance Areas
- K. School Rezone Map
- L. Transportation and Transit Stops in the Vicinity
- M. Land Division Variance Application
- N. Request to be notified of decision submitted by Gayle LeBlonde

Exhibit 2 Notices:

- 1. Notice of Complete Application, dated June 8, 2022
- 2. Request for Information, dated September 14, 2022
- 3. Notice of Application, dated April 12, 2023
- 4. Posting Verification for Notice of Application
- 5. Notice of Hybrid Public Hearing, dated August 29, 2023
- 6. Posting Verification for Notice of Hybrid Public Hearing

Exhibit 3 Transportation Impact Analysis, Gibson Traffic Consultants Inc., dated December 2021

Exhibit 4 Critical Area Report and Mitigation Plan, Miller Environmental Services LLC, dated January 29, 2021

Exhibit 5 Geotechnical Engineering Report, GeoTest, dated March 15, 2023

Exhibit 6 Tree Risk Assessment, TGI Arboriculture Services, dated February 10, 2022

1 Exhibit 7 Preliminary Stormwater Site Plan, Freeland & Associates, dated February
2 2023

3 Exhibit 8 Soil Sampling Report (of the fill pile) by GeoTest, dated September 3, 2020
4

5 Exhibit 9 Planning Staff email dated September 15, 2023, with attached public
6 comment inadvertently omitted from Exhibit 1.C:

- 7 a. Elizabeth Chace email, April 25, 2023
- 8 b. Judson Daffern and Rachel Medley email, April 25, 2023
- 9 c. Jane Campbell email, April 25, 2023
- 10 d. Dannon Traxler letter on behalf of Setter, Eiden, Campbell, Kearsley, and
11 Chace, April 6, 2022
- 12 e. Letter from (unidentified) “residents of 660 Montgomery Road”, undated
- 13 f. Photographs showing cougar and tracks

14 After considering the testimony and exhibits submitted, the Hearing Examiner enters the
15 following findings and conclusions:

16 FINDINGS

17 *Site and Surroundings*

- 18 1. Nick Palewicz of Freeland & Associates, on behalf of Queen Mountain Homes
19 LLC (Applicant), requested approval to subdivide a 36.11-acre parcel into 11
20 single-family cluster lots, five tracts for future development of multi-family and
21 infill housing, four reserve/conservation easement tracts, one stormwater tract,
22 and one open space tract. The subject property is addressed as 4175 Iron Gate
23 Road, Bellingham, at the northern terminus of Irongate Road north of E.
24 Bakerview Road.¹ *Exhibits 1 and 1.A.*
- 25 2. The subject parcel was created by the recording of the Garden Addition to
26 Whatcom on December 12, 1883. That preliminary plat map shows platted
27 rights-of-way called Mars, Richard, June, and Ross Roads abutting the site
28 boundaries. The Applicant’s surveyor of record submitted that, pursuant to
29 Revised Code of Washington (RCW) 36.87.090, these rights-of-way have been

30 ¹ The legal description of the subject property is a portion of Section 8, Township 38 North, Range 3
East, W.M.; also known as Tax Assessor Parcel 380308 336210. *Exhibits 1, 1.A, and 4.*

1 vacated by operation of law; the City agrees. Ownership status of the vacated
2 rights-of-way has never been legally established. The Applicant indicated that
3 the property owner plans to pursue ownership of the portions of the rights-of-
4 way within the subject property through quiet title proceedings. This must be
accomplished in order for the proposal to be effectuated. *Exhibit 1.*

5 3. Additionally, the subject property was annexed into the City in September 2009
6 as part of the Van Wyck/James Street annexation, one condition of which
7 requires property owners within the annexation areas to purchase or transfer a
8 development right for every five acres of annexed land by executing a Covenant
9 to Purchase or Transfer Development Rights (Covenant). The Covenant for the
10 subject property was recorded under Whatcom County Auditor File number
11 2090900285, including a provision that requires that the purchase or transfer of
12 development rights to occur prior to approval of development. Thus, the instant
13 preliminary plat must be conditioned to require fulfillment of this Covenant.
Planning Staff recommended that fulfillment of the development rights transfer
or purchase be required for the entire 36 acres prior to or concurrent with filing
of the first final plat application associated with the preliminary plat. *Exhibit 1.*

14 4. The subject property is in Area 12 of the King Mountain Neighborhood and is
15 zoned Residential-Single with Detached/Cluster/Mixed qualifiers and requires a
16 7,200 square foot per unit minimum density. Properties to the west and
17 southwest share the site's zoning. To the north, properties have a different
18 residential zoning designation, while parcels to the east, northeast, and south
19 have industrial zoning designations. There are existing industrial uses on
20 property adjacent to the east, and single-family residential uses on large lots
21 adjacent to the west. There is a single-family residential subdivision that adjoins
the southeast corner of the site; however, it does not share a boundary with the
site. Existing public streets and municipal water and sewer abut the southeast
corner of the site in Iron Gate Road. *Exhibits 1, 1.A1, 1.E, and 1.I.*

22 5. The subject property abuts both the King/Queen Mountain Open Space area and
23 the Bellingham City limits along its northern boundary. VanWyck Park is
24 located approximately 4,500 feet to the northwest, and the Bakerview
25 Neighborhood Park is located approximately one mile to the southwest. An
26 informal neighborhood trail system meanders through the subject property.
Exhibits 1, 1.A, 1.E, and 1.I.

27 6. Currently the subject property is vacant and forested with a mixed coniferous/
28 deciduous forest. Species dominating the canopy include red alder, big-leaf
29 maple, western hemlock, Douglas fir, western red-cedar, and black cottonwood.

1 A logging road from historic timber harvest activities in the area extends from
2 the center of the east property boundary to the north central portion of the site.
3 Near the center of the property, old fill piles comprised of concrete blocks,
4 rubble, fill, and various articles of manmade debris have been left behind from
5 previous activities. The Applicant commissioned site review by qualified critical
6 area professionals, who delineated nine wetlands and one seasonally flowing,
7 non-fish bearing stream on site.² There is also an artificial ditch located in the
8 eastern portion of the property, which drains wetlands from the north side of the
9 logging road into the seasonal stream. No portion of the site is within a flood
10 control zone. The nine wetlands are either depressional or slope features,
11 ranging in size from 285 square feet to nearly 200,000 square feet; the two
12 largest wetlands extend off site. All nine provide moderate habitat functions.
13 Situated near to the offsite open space areas, the northwest portion of the site
14 comprises a “terrestrial habitat” biodiversity area. The project vicinity is in an
15 area generally identified by the Washington State Fish and Wildlife (WDFW)
16 Priority Habitats and Species (PHS) mapper as containing big brown bat habitat,
17 described by the WDFW program as steep, unbuildable forested area close to
18 urban development with potentially important enclaves of wildlife habitat. There
19 are also known Bald eagle nesting territories in the vicinity. The site contains
20 mature forest with numerous priority snags and logs and is considered prime
21 habitat for the Pileated Woodpecker, a candidate/priority species in Washington.
22 The wetlands, stream, and habitat areas are pursuant to the City’s critical areas
23 ordinance established in Bellingham Municipal Code (BMC) Chapter 16.55.
24 The subject property is believed to be regularly used by the many terrestrial
25 species common in the region including black-tailed deer, coyote, raccoon,
26 eastern cottontail, Douglas squirrel, deer mouse, opossum, common songbirds,
27 owls, and falcons. *Exhibits 1.A, 4, and 5.*

7. In addition, the site was assessed by qualified geotechnical professionals who
concluded that it contains geologically hazardous areas in the form of steeply
sloping terrain, erodible soils, and potential seismic hazards. Portions of the site
meet the critical area ordinance definition of erosion hazard areas (any area
where the soil type is predominantly (greater than 50%) comprised of sand, clay,
silt, and/or organic matter and the slope is greater than 30%) and portions meet
the definition of landslide hazard areas (areas including slopes with an incline
that is equal to or greater than 40% grade (22 degrees) with a vertical elevation
change of at least 10 feet). The subject property including the proposed project

² The Staff Report at page 7 says the site contains eight wetlands, but the critical areas report identifies nine: Wetlands A, B, C, D, E, F, G, I, and J. Also, there is no Wetland H identified in the critical area report or on the site plan. *Exhibits 1, 1.A1, and 4.*

1 site is mapped as having a low to moderate liquefaction susceptibility.
2 Following site-specific evaluation, the geotechnical consultants determined that
3 the subject property does not contain areas that meet the City's definition of
4 seismic hazard areas; however, it is located approximately 4.25 miles southeast
5 of a trace of the Birch Bay fault zone and 9.25 miles southwest of the known
6 active Kendall fault complex, which produces earthquakes on a regular basis.
7 *Exhibit 5; BMC 16.55.420.* Having reviewed site soil samples and industry
8 standard available data, the geotechnical consultants concluded that the proposed
9 development is feasible with minimal effects on mapped geohazards provided
10 that recommendations identified in the report are incorporated into project plans
11 and design. *Exhibit 5.*

12 8. Between the date of complete application (June 8, 2022) and the open record
13 public hearing, the proposal underwent multiple redesigns, including at least
14 eight iterations, before arriving at the project under consideration in the instant
15 decision. The initial geotechnical report (September 2020) considered 107
16 single-family residential lots, while by the time of the initial critical area report
17 (January 2021) the number of proposed lots had been reduced to 75, and at the
18 time of City transportation concurrency review (June 2022), the number of lots
19 was down to 48. Having received public comment at the neighborhood meeting
20 and following notice of application, and having had the opportunity to more
21 closely review site conditions through the reports of the Applicant's professional
22 consultants, the City requested modifications and the Applicant repeatedly
23 amended the proposal with the aims of preserving more tree canopy, avoiding
24 and minimizing direct wetland and steep slope impacts, arriving at a workable
25 trail alignment from the southwest corner of the site, and determining acceptable
26 street connections and alignments. Over time, the concept migrated from one
27 dominated by detached and/or attached single-family residential lots to the
28 currently contemplated mix of clustered single-family detached lots, infill toolkit
29 alternative dwelling types, and some percentage of multifamily development in
30 order to achieve the required minimum density while preserving 21 acres of the
site as habitat conservation areas protected by conservation easements. The
preserved portions of the site, which include large areas of contiguous forest
canopy and the western steeply sloped areas, would be kept in an undisturbed
condition (19.5 acres) or would be restored/enhanced to a natural wetland
condition (approximately three acres). *Exhibits 1, 1.A, 1.A1, 1.B, 1.F, 1.F1, 1.G,
4, and 5; Steve Sundin Testimony.*

9. In the final proposal, impacts to the critical areas have been reduced to 1,100
square feet of direct wetland impact, 49,775 square feet of indirect wetland
impact, and 66,575 square feet of buffer impact. As proposed, mitigation for all

1 impacts would occur on-site as follows: approximately 40,800 square feet of
2 wetland creation, 114,800 square feet of wetland preservation, and 92,430 square
3 feet of buffer enhancement and restoration to temporary impact areas is proposed
4 to be onsite. The proposed mitigation area would include the approximately
5 3.62-acre debris/fill pile area between wetlands A and C-F; the debris pile would
6 be completely removed and the area would be restored to wetland or wetland
7 buffer. Because of the proposed 1,100 square feet of wetland fill for construction
8 of Richard Street, which is the route by which any construction equipment would
9 access the site, the project requires state and federal permit review in addition to
10 future City review. *Exhibits 1 and 1.F; Testimony of Steve Sundin and Ali
11 Taysi.*

9 *The Proposal*

10 10. The proposal under consideration in these proceedings is a request for
11 preliminary plat including subdivision variances, which is a Type III-B
12 application, and for critical areas permit, which is a Type II application. *BMC
13 21.10.040.C(12); BMC 21.10.040.E(1)*. Consistent with BMC 21.10.050, the
14 Applicant chose not to consolidate the review of the Type II and III
15 applications. Thus, the instant decision will address the Type III-B applications
16 and the Type II application for critical area permit will be administratively
17 decided by staff after issuance of the plat/variance decision. Planning Staff
18 provided the critical areas review information in the record, including the
19 critical area reports and proposed mitigation plan, and conveyed that the
20 materials submitted are adequately detailed to determine that the proposal can
21 be conditioned to comply with applicable provisions of BMC Chapter 16.55.
22 *Exhibits 1, 1.F, 1.G, 4, 5, 6, and 8.*

23 11. The proposed plat would create an 11-lot cluster subdivision, five reserve tracts
24 for future development of multifamily and infill housing, a storm water tract,
25 four reserve/conservation easement tracts, and one open space tract. The 11-lot
26 cluster plat would be placed in the northwest quadrant of the property between
27 two areas of steep slopes abutting the north property boundary. Each of the 11
28 lots would be at least 50 feet wide and 100 feet deep. Lots 1 through 8 would
29 each contain 5,000 square feet in area; Lot 9 would be 6,679 square feet, Lot 10
30 would be 9,501 square feet, and Lot 11 would be 5,181 square feet in area. All
31 11 lots have frontage on Mars Road and provide the minimum 40- by 40-foot
32 building envelope required for cluster subdivision lots. *Exhibits 1 and 1.A
33 (Overall Site Plan, .pdf page 32).*

34 12. The subdivision would create five tracts expressly for future residential
35 development as follows: Tract 1: 37,844 square feet; Tract 2: 31,897 square

1 feet; Tract 3: 72,379 square feet; Tract 4: 50,685 square feet; and Tract 5:
2 83,656 square feet.³ All five tracts would front proposed Montgomery and Mars
3 Roads. Of note, the base density for the overall site is 218 dwelling units,
4 which means after the 11-lot cluster subdivision, the remaining base density is
5 207 units. Of the total density allowed, up to 25% (54) may be developed as
6 duplex and/or multifamily units. The Applicant indicated that due to the extent
7 of critical areas on site, it is unlikely the overall project would be able to
8 achieve more than approximately 100 units onsite. *Ali Taysi Testimony.*
9 Currently some combination of Infill Toolkit housing types and multifamily
10 residential development is contemplated. Development of each of the future
11 development tracts would require full land use review and approval consistent
12 with the City's development code, including review for compliance with the
13 critical areas ordinance and design review as appropriate. *Exhibits 1, 1.A, and*
14 *1.A1; Ali Taysi Testimony.*

- 11 13. The subdivision would create six additional tracts. One 59,345 square foot
12 stormwater tract, placed in the southeast quadrant of the property west of the
13 intersection of Richard Street and Montgomery Road, would receive stormwater
14 from all of the proposed pollution generating surfaces through the overall site.
15 One open space tract totaling 17,700 square feet would connect to Montgomery
16 Road between two of the future development tracts to offer pedestrians a
17 forested view of the surrounding area. Four "reserve tracts" are proposed to
18 contain the site's most sensitive natural features, preserved in perpetuity by
19 conservation easements. Reserve Tract 1, containing 129,378 square feet in the
20 northwest corner of the property, would be improved with a public trail
21 extension within a dedicated easement that would connect to existing trail
22 and/or pedestrian improvements to the south and would stub at the northern plat
23 boundary at the King/Queen Mountain Open Space. Reserve Tract 1 would
24 otherwise be undeveloped and would preserve steep slopes and exposed rock
25 outcroppings that are of value to the community. Reserve Tract 2, at 336,377
26 square feet, would occupy the northeast quadrant of the subject property and
27 would encompass Wetlands C, D, E, and F and a large area of slopes steeper
28 than 40% grade. Reserve Tract 3, at 596,690 square feet, would occupy the
29 southeast quadrant, the southwest corner, and the majority of the middle of the
30

³ Note: There is an unfortunate discrepancy in the way these tracts are called out between the overall site plan at Exhibit 1.A, page 32 and Exhibit 1.A1. On Exhibit 1.A page 32, which the Applicant identified as the actual site plan, the future development tracts are called "Reserve Tracts" and the large tracts to be retained in existing/enhanced condition as natural open space areas are called "Open Space Tracts." On the document provided at Exhibit 1.A1, the future development tracts are called "Tracts" – fortunately with the same numbering – and the large tracts to be retained in native/enhance condition are called "Reserve Tracts." The instant decision adopts the naming convention from Exhibit 1.A1.

1 subject property and would encompass Wetlands A, B, G, I, and J. Reserve
2 Tract 4, at 24,893 square feet, would occupy the narrow sliver of the subject
3 property between proposed Richard Street and the eastern site boundary, where
4 it would serve as a buffer between the industrial land uses to the east and the
5 subdivision. Approximately 60% of the site's forest cover would be retained in
6 its existing condition in the reserve tracts, except that a sizeable portion of
7 Reserve Tract 2 would receive wetland buffer enhancement plantings and
8 another large portion of Reserve Tract 3 would receive buffer enhancement
9 plantings and would host wetland creation, which activities are proposed as
10 mitigation for the project's critical areas impacts. Future analysis would be
11 undertaken through the critical area and land use permit processes to determine
12 appropriate tree retention and replacement requirements BMC 16.60.080 and
13 23.08.030. *Exhibits 1, 1.A, and 1.A1.*

- 14 14. The subdivision would access the public road network at the extreme southeast
15 corner of the subject property from the terminus of Iron Gate Road, which
16 would be extended north into the parcel as Richard Street and would be built
17 fully within the subject property because the adjoining neighbor to the east
18 declined to dedicate right-of-way from their property. Proposed Richard Street
19 improvements, including two travel lanes, two bike lanes, and sidewalk on both
20 sides at back-of-curb, would stop at about the middle of the site; however, the
21 right-of-way would be dedicated to the northern site boundary in case of future
22 connectivity opportunities. In the approximate middle of the eastern site
23 boundary, Richard Street would connect to an east/west segment of
24 Montgomery Road that would extend to the west site boundary in a curving
25 shape designed to avoid wetlands; its proposed improvements include two travel
26 lanes, one lane of parking, and a sidewalk behind a landscaping strip on the
27 north side only. Proposed Mars Road would extend north from Montgomery
28 Road and end in a cul-de-sac bulb at the northern plat boundary to allow for
29 possible future development of a City Parks Department access or parking area
30 for the King/Queen Mountain open space to the north. No alleys are proposed.
The rights-of-way within the plat would be dedicated to the City, and the
connection to off-site road extensions would be built in the future if and when
the abutting parcels to the west are developed. Parallel on-street parking is
proposed on one side of Montgomery and Mars Roads along all future
development tracts. Street trees would be planted along all rights-of-way and
utilities would be extended in the rights-of-way. *Exhibits 1, 1.A1, and 1.H;*
Nick Palewicz Testimony.

- 15 15. Road alignment throughout the proposed plat was carefully designed in
16 collaboration with City Staff to both avoid critical area impacts to the maximum

1 extent possible and provide for future connection with existing Montgomery
2 Road west of the plat. The City determined that the proposed road alignments
3 meet City standards, with the exception that the submitted materials do not
4 include a centerline study demonstrating that the proposed Montgomery Road
5 alignment can provide a connection in accordance with City street standards.
6 Staff recommended a condition of approval requiring a centerline study, which
7 would be reviewed at time of public facilities construction agreement for the
8 preliminary plat. *Exhibits 1 and 1.H.*

9 16. In addition to the publicly dedicated rights-of-way within the site, the proposal
10 includes extension of a five-foot wide sidewalk along the north side of off-site
11 Iron Gate Road for the full distance of the current gap in existing sidewalk.
12 This off-site sidewalk segment would create a pedestrian connection with
13 Bakerview Road that would connect residents of the proposed plat with nearby
14 shopping, dining, movie theater, public transportation stops, and school
15 amenities. Of note, the nearest transit stop is located approximately one-half
16 mile west of the subject property at the corner of E. Bakerview Street and
17 Kramer Lane (Route 48). *Exhibits 1 and 1.A, .pdf page 41.*

18 17. The City's Parks Recreation & Open Space (PRO) Plan calls for a trail
19 connection from Queen Mountain Forest down to the area west of the site and
20 also calls for parking facilities to serve the City-owned open space areas north
21 of the site. In pre-hearing public comment, the Applicant was made aware of
22 the importance of this trail connection to the local community – both in terms of
23 its characteristics for trail users as well as its potential for impact on the
24 residential uses west of the subject property. After multiple iterations, the
25 proposed trail alignment would be placed in a 30-foot wide easement along the
26 west boundary of the subject property. As contemplated at time of hearing, the
27 trail would have less than a 5% grade as it goes north to Montgomery Road,
28 where due to natural topography, it would narrow and steepen to not greater
29 than a 10% grade. Its proposed placement would preserve a green belt to
30 maintain privacy for the neighbors. The City indicated that an ideal location for
the contemplated parking facility would be at the end of Mars Road, and it
would make sense to construct the facility at the time of plat construction;
however, funding is not in place. Through review of the plat, the City requested
private construction of the parking facility as part of the public facilities
construction agreement for the plat in exchange for park impact fee credits.
Exhibits 1, 1.A, and 1.I.

18 18. Public water would be extended in the Richard Street and Montgomery Road
19 rights-of-way and extended to the western plat boundary to provide for future

1 extension that would serve abutting properties within City limits should they
2 redevelop. Municipal sewer would also be extended into the subdivision;
3 however, due to topography, gravity service could not be provided to the
4 abutting properties to the west. Therefore, a 12-inch sewer main, which would
5 not loop, would be extended into the site to serve only the future development
6 tracts. The proposal was reviewed by municipal utility staff, who indicated that
7 there is adequate pressure and flow to serve the proposal. City Staff noted that
8 the Applicant is not required to extend municipal utilities to connect with the
9 abutting property outside of the City limits or the City's urban growth area.
10 *Exhibit 1; Testimony of Nick Palewicz and Steve Sundin.*

11 19. The Applicant submitted a preliminary stormwater report (titled Preliminary
12 Stormwater Site Plan), which indicated that 100% of stormwater runoff from
13 the development would be managed on site with a mixture of full dispersion,
14 dispersion, and a combined detention and wetpond. Runoff from all pollution
15 generating surfaces (specifically roads and driveways) and non-pollution
16 generating surfaces would be conveyed to the stormwater pond if not mitigated
17 through full dispersion, except that runoff from certain lots would be dispersed
18 into onsite wetlands to maintain hydrology. The proposed stormwater plan was
19 designed to be consistent with the 2019 Stormwater Management Manual of
20 Western Washington and BMC Chapter 15.42, including peak runoff rates to
21 predevelopment levels. Exhibits 1 and 7; *Nick Palewicz Testimony.*

22 20. While only 11 lots are currently proposed, with the contemplated number of
23 units in the future development tracts, at full build out the instant plat is
24 expected to exceed the maximum allowed number of units that may be served
25 from a single emergency access (200 multifamily, 30 single-family). The
26 proposed subdivision therefore requires a second emergency access road.
27 However, given its location at the City limits, and the zoning and existing uses
28 on adjacent parcels, Planning Staff submitted that the City's Fire Marshal
29 acknowledged during project review that a second full access is not likely to be
30 available in the near future. Planning Staff suggested that adequacy of
emergency access be allowed to be reviewed and determined by the Fire
Marshal through the public facilities construction process. Fire hydrants would
be provided throughout the proposed plat. Staff noted that the preliminary
engineering drawings show streets with final grades in excess of 12%. Per
applicable City standards, any residential lot served by a street in excess of 12%
grade must be equipped with an approved automatic fire sprinkler system.
Further, in order to satisfy emergency access standards, no road may exceed
15% grade. Planning Staff indicated that the Fire Department participated in

1 application review processes and submitted no additional concerns about the
2 proposal. *Exhibits 1 and 1.A; Kathy Bell Testimony.*

3 21. The Applicant commissioned a professionally prepared traffic impact analysis
4 based on an earlier project design, which concluded that traffic from the then-
5 proposed 96 units would not cause any area intersections to fall below the
6 City's acceptable level of service and that, beyond payment of traffic impact
7 fees and a proportionate share towards construction of an off-site intersection at
8 Bakerview Road and James Street, no offsite mitigation would be warranted.
9 *Exhibit 3.* In the course of reviewing multiple iterations of the project, the City
10 issued a temporary certificate of multimodal transportation concurrency for the
11 preliminary plat on June 3, 2022 (CON2022-0011). At time of hearing, City
12 Staff submitted that, while the certificate is for a previous plat design, it
13 adequately covers the currently proposed 11 single-family lots. Subsequent
14 concurrency review would be required prior to construction of the future
15 development tracts. *Exhibit 1; Kathy Bell Testimony.*

16 22. School aged residents of the proposed plat would be served by Northern Heights
17 Elementary, Shuksan Middle School, and Squalicum High Schools. The City
18 and Bellingham School District (District) maintain ongoing collaboration
19 regarding capital development. The District is in the process of preparing a
20 comprehensive plan amendment and rezone to designate a parcel southwest of
21 the site to Public zoning designation to allow construction of a new elementary
22 school, which is anticipated to be a 'swing school' to facilitate uninterrupted
23 schooling of students while the schools in other elementary attendance areas are
24 replaced or remodeled. Once the other school projects are completed, the
25 school district is likely to redistrict the attendance areas and at that time identify
26 safe school routes for all elementary schools. The proposed off-site sidewalk
27 extension along Iron Gate Road would establish a safe walk route from the plat
28 to the proposed Cougar Road elementary school. The District was notified of
29 the instant application and did not submit comment. The Applicant would be
30 required to pay school impacts fees in the amount established by ordinance.
Exhibits 1, 1.J, and 1.K; Kathy Bell Testimony.

21 23. The Applicant submitted that the proposal would be consistent with the King
22 Mountain Neighborhood Plan in that it: proposes to preserve existing forest on
23 the east and west hillsides of Queen Mountain; would provide a connection
24 from the south of the plat along the western ridgeline to the top of the and
25 Queen Mountain Forest park via trail, sidewalk, and road. The proposed plat
26 design, including the open space tract would make spectacular views accessible
27 to the public. *Exhibit 1.A.*

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24. Addressing the subdivision performance standards established in BMC 23.08.030, the Applicant submitted, and Planning Staff agreed, that the proposal complies with the applicable standards in the following ways: providing an acceptable mix of single-family, infill housing, and multifamily units consistent with anticipated residential development in the neighborhood; preserving significant natural features by preserving nearly 60% of the existing vegetated cover; minimizing clearing/grading for the alignment and profile of Montgomery Road in a manner that conforms to best engineering practices and provides a functional frontage for the proposed residential development; and providing the right-of way dedications and construction needed to ensure the orderly extension of public streets, utilities and trails consistent with the King Mountain and Iron Gate Neighborhood Plans. *Exhibits 1 and 1.A.*

25. The subject property is designed as Residential Single, Medium Density by the City of Bellingham Comprehensive Plan. Planning Staff submitted that the proposal meets the intent of the Comprehensive Plan in furthering the following goals and policies:

Land Use

- GOAL LU-5 Support the Growth Management Act’s goal to encourage growth in urban areas.
- Policy LU-66 Encourage design flexibility (e.g. clustering and low impact development) to preserve existing site features, including trees, wetlands, streams, natural topography, and similar features.

Housing

- Policy H-2 Encourage mixed housing types for new development on greenfield sites, a benefit of which is the integration of people from various socio-economic back.
- Policy H-3 Encourage well-designed infill development on vacant or underutilized properties.
- GOAL H-3 Promote sense of place in neighborhoods (see Land Use Chapter).
- Policy H-28 Protect and connect residential neighborhoods to retain identity and character and provide amenities that enhance quality of life.

Capital Facilities and Utilities

- GOAL CF-8 Promote the delivery of adequate utilities and encourage the design and siting of private utility facilities in a manner that minimizes impacts on adjacent land uses and the environment.

1 Policy CF-3 Encourage and support development in areas where adequate
2 public facilities and services exist or can be provided in an
efficient manner.

3 Policy CF-4 Protect public health, enhance environmental quality, and
4 promote conservation of natural resources through appropriate
5 design and installation of new public facilities.

6 Policy CF-17 New development should pay its proportional share of the cost
of new public facilities that serve the subject development.

7 Environment

8 Policy EV-23 Protect habitat and habitat corridors used by wildlife, fish, and
9 pollinators from the impacts of development, where feasible.

10 Policy EV-26 Limit public and pet access and their impacts to the most
11 sensitive and unique habitats and employ measures to minimize
impacts from public access.

12 Policy EV-27 Minimize light and noise impacts on fish and wildlife habitat.

13
14 Policy EV-28 Provide natural area and open space linkages within developed
15 areas.

16 *Exhibit 1.*

17 *Subdivision Variance*

18 26. The underlying zoning is subject to special conditions, with some City review
19 and discretion, that would require Iron Gate Road to be constructed to full
20 secondary arterial standards, Montgomery Road to full collector arterial street
21 standards, and Mars Road to full residential street standard. Having conducted
22 site specific review of these zoning requirements, City Staff agrees that Iron
23 Gate Road warrants construction to full arterial City-standard, which require two
24 travel lanes and bike lanes, curb, gutter, and sidewalks both sides. There will be
25 a controlled intersection at Iron Gate at some future time, which would improve
26 safety for residential traffic among the industrial uses in the vicinity. However,
27 Staff determined based on limited possible additional development that
28 Montgomery Road does not warrant arterial improvements and instead should
29 be classified as a residential street. The Applicant proposes to build
30 Montgomery Road to less than a full residential street standard, in that sidewalk
is proposed only on the north side. This requires approval of a subdivision
variance. *Exhibits 1, 1.A1, and 1.M; Steve Sundin Testimony.*

1 27. The approximately eastern two-thirds of the south side of the proposed
2 Montgomery Road alignment would abut a critical areas tract retained in a
3 conservation easement and the stormwater tract; the western one-third of the
4 south side of the road would abut future development tract 5. The Applicant
5 proposes not to design Montgomery Road to full standard, and instead to only
6 place the sidewalk on the north side of the street at back of curb without a
7 planter strip to reduce overall road width. At hearing, the parties conveyed that
8 the variance request is to allow determination of the final standards to be
9 decided through the public facilities construction contract, after more detailed
10 site-specific engineering has been conducted. *Exhibits 1, 1.A1, and 1.M;*
11 *Testimony of Nick Palewicz and Steve Sundin.*

9 28. In support of the variance, the Applicant submitted that construction of a
10 sidewalk along the southern portion of Montgomery Road abutting Reserve
11 Tract 3 would result in critical area impacts that could be avoided. The
12 alignment of the road was carefully studied and ultimately selected to maximally
13 avoid and reduce impacts to wetlands and buffers. A sidewalk would be
14 provided along the full length of the north side of the road, ensuring pedestrian
15 connectivity from the plat entrance to the western site boundary. As proposed,
16 without the sidewalk, the road is designed to provide the necessary 2:1 slope for
17 the street in the space between the back of north curb and the south edge of the
18 right-of-way and does not require construction of retaining walls. Any increase
19 in road profile width would necessitate larger cuts, which due to topography
20 would require retaining walls, which would require greater excavation in the
21 wetland buffer abutting the road, and thus cause greater critical areas impacts.
22 The Applicant submitted that any detriment resulting from having sidewalk on
23 only one side of Montgomery Road would be more than made up for by the
24 proposed provision of the off-site sidewalk along Iron Gate Road where there
25 currently is none; not only would approval of the variance not create a sidewalk
26 gap in the plat, it would correct an existing gap outside the plat. City Staff
27 supported the requested variance. *Exhibit 1; Testimony of Ali Taysi and Kathy
28 Bell.*

24 *Procedural Findings*

25 29. A pre-application conference was held with City staff on April 30, 2018.
26 Applicant held a pre-conference neighborhood meeting on October 6, 2021.
27 Concerns raised at this meeting included increased traffic and cut-through traffic
28 from the proposed connector, loss of vegetation, and density. *Exhibit 1.*

28 30. Applications for preliminary plat and subdivision variance, critical areas, design
29 review (the design review is no longer relevant to the proposal), and SEPA were

1 submitted May 11, 2022. The applications were deemed complete June 8, 2022.
2 *Exhibits 1 and 2.*

3 31. On April 12, 2023 notice of application was issued with a public comment period
4 through April 26, 2023. Comments included requests for retention of forested
5 areas of the site, preservation of large, mature trees, proposed housing forms, and
6 recreation opportunities. Concern for wildlife, stormwater runoff, and soil
contamination was also expressed. *Exhibits 1, 1.C, and 2.*

7 32. The City acted as lead agency for review of the environmental impacts of the
8 proposal under the State Environmental Policy Act (SEPA). Having reviewed
9 the preliminary plat plans, technical reports, environmental checklist, and public
10 comment, the City's SEPA responsible official issued a determination of non-
11 significance (DNS) on June 20, 2023. The DNS was not appealed and became
final. *Exhibit 1.C.*

12 33. Notice of hybrid public hearing was issued on August 29, 2023 and posted on-
13 site in accordance with BMC 21.10.200. *Exhibit 2.* No additional written public
14 comment was submitted after notice of application period (which is included in
the record at Exhibits 1.C and 9) prior to the hearing.⁴ *Exhibit 1.*

15 34. Public comment was submitted in response to notice of application and SEPA
16 review, as well as at the time of hearing. Nearly 100% of those who commented
17 submitted that the upland forest area should be maintained and that 60%
18 retention of existing forest cover is not sufficient. All asked that the ridge (in the
19 northwest corner of the site) and trees on that slope that are large and 70 years or
20 older should be maintained for the health of the forest, protection of habitat, and
21 the ecosystem. Many submitted that the 60% of the site proposed for retention
22 would primarily retain trees in wetlands or buffers, which are younger trees,
23 while it is the older trees on the ridge and slope that are most important for the
24 integrity of the forest; others requested that the project be required to retain a
25 greater percentage of existing of forest cover, suggestion 70% as a minimum.
Those who own/live on neighboring parcels to the west submitted concerns that
26 the proposed trail construction and development of the 11-cluster lots and future
development tracts in the northwest corner of the site would cause runoff issues
to the west. Several commenters requested that clearing/grading only be allowed

27 ⁴ At hearing, members of the public and the undersigned questioned whether all public comment that had
28 been submitted to the City was in the record. Staff testified that public comment was included in the
29 SEPA attachment, Exhibit 1.C. However, after the hearing, Staff discovered that not all public comment
had been provided in the record, and Staff submitted Exhibit 9, acknowledging this omission and
providing the missing public comment.

1 to occur at the time each phase is developed, rather than all clearing occurring at
2 the front and then cleared areas sitting bare for several years, as they allege has
3 resulted from the nearby King Mountain development. Some commenters
4 questioned whether the fill pile on site contains contaminants that would result in
5 public health issues if disturbed. Neighbors to the west expressed concern about
6 the potential for pesticides used in the western portion of the plat running offsite
7 onto their properties. Neighbors to the west requested that the trail be moved
8 farther east to reduce the likelihood of privacy and trespassing issues; some
9 requested a buffer of at least 100 meters between the trail and residences to the
10 west, while others requested a fence and signage at a minimum to apprise trail
11 users of the boundary with private property. All commenters agreed on the
12 importance of trail connectivity through the site, submitted that trails on the
13 subject property are of particular importance to the community due to their
14 natural beauty and current integrity. There was public comment requesting that
15 more consideration be made for what would happen in the event of urban
16 wildfires, in light of what recently occurred in Maui. More than one commenter
17 noted that the City's Urban Forestry Management Plan, currently under
18 development, would speak to proposals such as this one and requested that this
19 project be required to pause and then be subject to that plan once adopted.
20 Public comment included concern for future residents of the plat about impacts
21 from the industrial uses to the east, especially noise. While some commenters
22 expressed support for and approval of the contemplated infill toolkit
23 development for the future development tracts, others suggested that the project
24 would just create expensive view lots for wealthy buyers and won't benefit the
25 general buying public. *Exhibits 1.C2, 1.C3, 1.C4, 1.C5, 1.C6, 9.A, 9.B, 9.C, 9.D,*
26 *9.E, and 9.F; Testimony of Ryan Chace, Paul Kearsley, and Jane Campbell.*

- 27 35. In response to public comment, City Staff testified that the trail alignment has
28 been carefully crafted based on site conditions and the PRO Plan, and cannot
29 easily be relocated. The Applicant would dedicate the easement to the City and
30 would build the trail, and then the City would assume management and
maintenance of the trail in perpetuity. Fences and signage are sometimes placed
along trails, especially when – as here - there are switchbacks, wetlands, and
steep slopes. The fence line would be broken and would be of a style that would
accommodate wildlife movement. Residents of the 11-lot subdivision would be
able to access the park and trail from the end of Mars Road, and the Parks
Department would be in favor of another plat connection to the trail, such as
within future development Tract 3, if topography is favorable. In order to
establish trail access for those with disabilities, the trail grade at Montgomery
Road would need to be 5% or less. Staff submitted that the switchback portion
of the trail would be wheelchair accessible. The City does not have wildfire

1 rules at this time. Once the City's urban forestry management plan is complete,
2 it will identify areas where the forest is better managed to keep trees healthy.
3 Other steps in the development process that protect existing and proposed
4 development from wildfire include stormwater standards that require maintaining
5 existing hydrology as development occurs around parks, to ensure natural flow
6 paths are not interrupted. Regarding timing, Staff indicated that trails are
7 typically constructed through public facilities construction agreements. *Peter
8 Gill Testimony.*

9 36. City Staff indicated that the City code currently code doesn't support adding
10 conditions addressing urban wildfire concerns, but that code would support
11 additional conditions regarding warning potential purchasers about noise from
12 the adjacent industrial uses. Staff noted that applicable regulations limit
13 phosphorus in the Lake Whatcom watershed, which provides the City's drinking
14 water. Staff noted that clearing and replanting disturbed soils would be governed
15 through the clear and grade, critical areas, and building permit processes, and
16 that clearing typically does not occur until after public facilities construction
17 agreements are in place, one phase at a time. Regarding urban wildfire concerns,
18 Public Works Staff noted that the stormwater regulations would prevent the
19 project from interrupting hydrology to offsite areas. *Testimony of Kathy Bell,
20 Steve Sundin, and Paul Randall-Grutter.*

21 37. In response to public comment, Applicant representatives submitted the
22 assessment of the fill pile, which revealed that the only contaminants identified
23 in the fill pile were petroleum based materials which were at a low enough
24 concentration that the fill soils could be reused on-site; however, the Applicant
25 intends to have them entirely removed and disposed of at an appropriate off-site
26 facility. Proposed future development Tract 3 is slated to manage stormwater via
27 full dispersion, meaning hydrology to the west would not be reduced or
28 interrupted. All runoff would be fully treated for water quality and flow control.
29 Representatives testified that the eight project iterations included in the record
30 reflect the Applicant's responses to and attempts to accommodate the comments
of the neighbors. They indicated that fence and signage requirements for the trail
connection would be worked out with City Staff at time of trail construction.
They indicated that they are willing to provide a trail spur connection to Mars
Road and would work with the Parks Department to arrive at the best alignment
for the trail profile. Because the future development tracts are likely to be
developed with townhomes or smaller infill toolkit lot types, it is not anticipated
that there would be many yards or much private landscaping upon which
pesticides could be applied by future residents, but that full dispersion in
accordance with the Stormwater Management Maul for Western Washington

1 would address water quality. Addressing the public's request to preserve the
2 larger/older trees on the ridge in the west of the site, all trees located outside the
3 future development tracts would be preserved if determined to be windfirm
4 through arborist review; no tree clearing generally on the steep slopes in the
5 western portion of the site is anticipated, no trees determined to remain
6 windfirm, and no trees outside of striking distance of existing or proposed
7 structures or the trail would be removed. Addressing the timing of clearing,
8 Applicant representatives noted that the City's code contains regulations
governing timing, that the public facilities construction agreement would identify
clearing limits, and timing would be governed by the contract. *Testimony of Nick
Palewicz and Ali Taysi.*

- 9 38. Having reviewed the complete materials and heard all testimony at hearing,
10 Planning Staff maintained their recommendation for approval subject to the
11 conditions in the staff report. *Exhibit 1; Kathy Bell Testimony.* The Applicant
12 representatives waived objection to the recommended conditions. *Testimony of
Nick Palewicz and Ali Taysi.*

14 CONCLUSIONS

15 Jurisdiction

16 The Hearing Examiner is granted authority to hold hearings and make decisions on
17 applications for preliminary plat and subdivision variance pursuant BMC 2.56.050.A(1)
and (3).

18 Criteria for Review

19 Pursuant to Bellingham Municipal Code 23.16.030.A, Preliminary plats shall be given
20 approval, including preliminary plat approval subject to conditions, upon finding by the
hearing examiner that all of the following have been satisfied:

- 21 1. It is consistent with the applicable provisions of this title, the Bellingham
22 comprehensive plan and the Bellingham Municipal Code;
- 23 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
- 24 3. The division of land provides for coordinated development with adjoining
25 properties or future development of adjoining properties through, where
26 appropriate, the extension of public infrastructure, shared vehicular and
pedestrian access, and abutment of utilities;
- 27 4. Each lot in the Proposal can reasonably be developed in conformance with
28 applicable provisions of the BMC, including but not limited to critical areas,

1 setbacks, and parking, without requiring a variance that is not processed
2 concurrently with the subdivision application pursuant to Chapter 23.48 BMC;

- 3 5. There are adequate provisions for open spaces, drainage ways, rights-of-way,
4 sidewalks, and other planning features that assure safe walking conditions for
5 pedestrians, including students who walk to and from school, easements, water
6 supplies, sanitary waste, fire protection, power service, parks, playgrounds, and
7 schools; and
8 6. It will serve the public use and interest and is consistent with the public health,
9 safety, and welfare. The director shall be guided by the policy and standards and
10 may exercise the powers and authority set forth in Chapter 58.17 RCW, as
11 amended.

12 Pursuant to BMC23.48.040.A, the hearing examiner may grant a variance from any
13 term of this title, except minimum lot size, if it is shown that the proposal is consistent
14 with the following criteria:

- 15 1. a. Because of unusual shape, the location of preexisting improvements, other
16 extraordinary situation or condition, or physical limitation including, but not
17 limited to, exceptional topographic conditions, geological problems, or
18 environmental constraints, in connection with a specific piece of property,
19 the literal enforcement of this title would involve difficulties, result in an
20 undesirable land division or preclude a proposal from achieving zoned
21 density; or
22 b. The granting of the variance will establish a better lot design resulting in a
23 development pattern found to be consistent with the neighborhood character
24 including, but not limited to, development orientation to the street, setbacks,
25 lot orientation, or other contextual element associated with the proposed
26 development; and
27 2. The granting of any variance will not be unduly detrimental to the public
28 welfare nor injurious to the property or improvements in the vicinity and subarea
29 in which the subject property is located.

30 **Conclusions Based on Findings**

1. The proposal as conditioned, including the subdivision variance (addressed in
conclusion 7 below), would be consistent with the applicable provisions of the
subdivision ordinance and the Bellingham Comprehensive Plan in the following
ways. It would provide for new residential uses consistent with zoning in a
location to which urban utilities can be extended while preserving extensive
sensitive areas in a natural/undisturbed or enhanced condition. As conditioned,
each future development tract would undergo site-specific review for required

1 critical area, design review, and land use approval. The project would provide a
2 significant linkage between existing City recreation opportunities in the form of a
3 trail. It would provide a mix of housing types to address demand across markets.
4 *Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28,*
29, 31, 34, 35, 36, 37, and 38.

5 2. The proposal would provide a mix of both single-family, infill housing and
6 multifamily development consistent with zoning while preserving approximately
7 60% of the existing site in natural conditions, consistent with the King Mountain
8 Neighborhood Plan. While a small area of direct wetland impact is unavoidable,
9 the project avoids and minimizes impacts to the extensive wetlands, stream/ditch,
10 and steep slopes on site to the maximum extent possible. Clearing and grading,
11 which would be formally addressed through appropriate permitting processes, is
12 minimized including through the requested subdivision variance for Montgomery
13 Road. The plat would dedicate all rights-of-way and the trail to the City, and all
14 would be built to the appropriate standard as ensured through the public facilities
15 construction agreement. As more fully addressed in conclusion 7 below, the
16 proposed pedestrian amenities not only adequate serve the anticipated residents
17 within the plat, but would create an off-site sidewalk connecting the plat to
18 existing sidewalk, addressing an existing gap. As conditioned to require, –
19 among other items, a centerline study for the west extension of Montgomery
20 Road, the proposal provides for orderly extensions of public roads and future
21 connectivity opportunities. Street trees would be provided through street
22 construction. The currently proposed 11 cluster lots satisfy dimensional
23 requirements including adequate building envelopes; each can be developed
24 without the need for variances. The number of units to be built in the future
25 development tracts would be addressed through review for each tract, but the
26 currently proposed 11 lots fall within the base density allowed on site without
27 resorting to cluster bonus provisions. No alleys are proposed or presently
required for the cluster subdivision. All 11 lots – and all five future development
tracts – would fully abut public right-of-way and utilities. The site does not abut
existing residential development such that a cluster subdivision transition is
required. The proposal far exceeds the 15% open space requirement in retaining
approximately 60% of the site in its existing vegetated condition. The proposed
trail adequately satisfies the PRO Plan's contemplated trail connection through
the site to connect to the King/Queen Mountain Open Space to the north.
Findings 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 34, 35,
36, 37, and 38.

28 3. As proposed and conditioned, the subdivision adequately provides for
29 coordinated development of adjoining properties located within the City limits

1 by extending roads and water to the plat boundaries. Sewer cannot be extended
2 through the site to the west due to topography. As discussed above, the proposed
3 trail provides valuable public access through the site to the King/Queen
4 Mountain Open Space adjacent to the north of the site. *Findings 3, 4, 5, 6, 7, 8,*
9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24.

5 4. Each of the 11 cluster lots can reasonably be developed in conformance critical
6 areas, zoning setback, and parking standards without requiring any variances
7 beyond that considered in conclusion 7 below. The 11 lots are rectangular or
8 wider and each provides at least the minimum 40- by 40-foot building envelope;
9 each would abut Mars Road. Of note, the instant approval does not prohibit the
10 design of the future development tracts from including requests for
11 administrative modification as allowed pursuant to the BMC Title 20. *Findings*
11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 34, 35, 36, 37, and 38.

12 5. As proposed and conditioned, the subdivision provides generously for open
13 spaces, retaining and creating wetlands onsite including remediation of a large
14 existing debris/fill pile. The roads and development areas have been carefully
15 planned in conjunction with public input to avoid impacts to the most valued
16 features on-site, including a rock outcropping and much of the mature forest
17 along the west boundary of the plat. The project would direct stormwater runoff
18 from pollution generating surfaces to appropriate treatment facilities and would
19 release in the natural flow path at controlled volumes in order to maintain
20 hydrology to the wetlands and surrounding forest. The street layout was
21 thoughtfully designed to meet connectivity needs while minimizing critical area
22 impacts, and subject to the ultimate approval of the subdivision variance, the
23 project makes reasonable provision connectivity including remediation of an
24 existing off-site sidewalk gap. Traffic, park, and school impacts would be
25 addressed through the payment of code-based fees at time of building permit for
26 each proposal. While the walk routes to the public schools are not called out
27 specifically, the off-site sidewalk extension would provide a safe walk route to
28 the future elementary school to the southwest and would connect school aged
29 residents of the plat to school and transit bus stops. Conditions of approval
30 would ensure that emergency services standards are implemented through the
public facilities construction and building permit processes. *Findings 5, 6, 7, 8,*
9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, 35, 36, 37, and 38.

6. As proposed and conditioned, the plat would serve the public use and interest
and is consistent with the public health, safety, and welfare. Based on the record
submitted, the Applicant has gone to considerable effort to preserve critical areas
undisturbed and to address the comments submitted by the public through plat

1 design. While the subdivision ordinance requires only 15% of the site to be
2 preserved as open space, the proposed plat design acknowledges the limitations
3 of the site due to extensive encumbrance by regulated wetland, steep slopes, and
4 habitat conservation areas. The design includes a request for subdivision
5 variance for the purpose of minimizing impacts to wetlands. *Findings 5, 6, 7, 8,*
6 *9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, 35, 36, 37, and 38.*

7. Circumstances inherent in the subject property that warrant consideration of a
8 variance include its extensive encumbrances by wetlands, steep slopes, and
9 regulated habitat conservation areas. Additional unique circumstances applicable
10 to the proposal include both the fact that the only feasible point of access is from
11 Iron Gate Road in the extreme southeast corner of the site and also the fact that
12 the adjoining property owner to the east is not amenable to dedicating its half of
13 Richard Street along the shared lot line, requiring the subject property to contain
14 the full width of that right-of-way. Finally, the location of a possible connection
15 to existing off-site Montgomery Road to the west is a feature inherent in the
16 property/vicinity over which the Applicant has limited control. These and other
17 unique features of the subject property satisfy the variance criterion requiring
18 unique circumstances inherent in the land to be the basis of any variance request.
19 The need to reduce the width of Montgomery Road in order to minimize critical
20 areas impacts arises primarily from the location of existing wetlands in
21 conjunction with the necessary road layout. The proposed variance results in a
22 better overall project design that protects the public interest. Further, as
23 proposed and conditioned to require the off-site sidewalk connection, there
24 would be no detriment to residents of the project and would be benefit to the
25 residents and the public generally – from construction as proposed as compared
26 to the design that would result from strict adherence to the road standards in the
27 design and construction of Montgomery Road within the plat. As proposed, the
28 project does not create a gap in pedestrian facilities and would address an
29 existing off-site gap. *Findings 6, 7, 8, 9, 26, 27, 28, 34, 35, 36, 37, and 38.*

DECISIONS

30 Based on the preceding findings and conclusions, the requested subdivision of the 36.11-
acre subject parcel for phased development of 11 single-family cluster lots, five future
development tracts, four conservation easement/reserve tracts, one open space tract, and
one stormwater tract at 4175 Iron Gate Road in Bellingham Washington is **APPROVED**
subject to the following conditions:

A. General Requirements

1. The plat shall be developed generally consistent with the lot layout on Exhibit
1.A, .pdf page 32.

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2. Preliminary plat approval is contingent upon approval of a critical areas permit as discussed in the staff report and the conditions of that permit shall be deemed conditions of this preliminary plat approval.
3. Modifications to this decision shall be processed in accordance with BMC 23.16.090.
4. A clearing and grading plan for the property, including rights-of-way, shall be submitted for review and approval of the Planning and Community Development Department concurrent with review of civil drawings for the infrastructure.
5. Issuance of a critical areas permit is required prior to issuance of any permit on the subject site that would result in land disturbance with the exception of additional wetland and / or soil analysis or geotechnical type explorations. All conditions of the critical areas permit shall be deemed conditions of this decision, and all conditions of this decision shall be deemed conditions of the critical areas permit.
6. Development of the property shall be consistent with the provisions of BMC Title 23, and with the description of the Proposal contained in the phased determination of non-significance, except as otherwise provided herein.
7. Heavy equipment and construction work shall be compliant with Chapter 10.24 BMC, except that no exterior work shall occur after 7 P.M.
8. Impact fees for transportation, schools and parks shall be paid in accordance with applicable BMC requirements.
9. Preliminary plat approval shall expire as provided in BMC 23.16.080.
10. The Applicant shall submit evidence to the City of ownership of all portions of vacated rights-of-way containing property subject to the proposal achieved through quiet title proceedings or otherwise, subject to review and acceptance by the City legal department, prior to issuance of any permit for earth disturbing work.
11. The Applicant shall submit evidence to the City of fulfillment of the development rights transfer or purchase requirement for the entire 36 acre subject property, subject to review and acceptance by the City legal department prior to or concurrent with filing of the first final plat application associated with the

1 preliminary plat.

2 B. Variance

3 The following variance has been approved with the stated conditions:

4 Montgomery Road

5 The variance from the requirement to construct Montgomery Road to full City-
6 standard of a residential street and to allow determination of the final standard
7 through the Public Facilities Construction agreement process is approved with the
8 following conditions.

- 9 1. The street standard for Montgomery Road abutting the open space tract shall be
10 designed to minimize critical area impacts and be submitted to the City for
11 review and approval during the PFC application review process. The standard
12 shall at a minimum include two 11-foot travel lanes, curb, and gutter both sides
13 and sidewalk one side.
- 14 2. Construction of a sidewalk offsite along Iron Gate Road from the Proposal's
15 south entry southwest to the existing sidewalk abutting the east edge of the
16 Stonecrop Subdivision is required to mitigate the impact of providing a sidewalk
17 on only one side of Montgomery Road and provide a walking route to the
18 proposed Cougar Road elementary school.

17 C. Conditions For Final Plat Approval

18 Each lot(s) proposed for single-family, infill, and multifamily development shall be
19 established through the final plat process consistent with the terms and conditions of this
20 decision.

21 The Applicant shall obtain all necessary permits and/or approvals from the City
22 necessary to satisfy the following conditions prior to final plat approval pursuant to
23 Chapter 23.20 BMC.

- 24 1. Iron Gate Road. Sixty feet of land shall be dedicated to the City for right-of-way
25 purposes for the extension of Iron Gate Road through the site in a location
26 generally as shown on the approved preliminary plat map, Exhibit 1.A. Iron
27 Gate Road shall be constructed with the first phase of development and to City-
28 arterial standards from the existing constructed portion of Iron Gate Road to the
29 intersection of Montgomery Road.
- 30 2. Montgomery Road. Sixty feet of land shall be dedicated to the City for right-of-
way purposes for the extension of Montgomery Road through the site from Iron

1 Gate Road (extended) to the western plat boundary in a location generally as
2 shown on the approved preliminary plat map with the first phase of development,
3 Exhibit 1.A.

4 The first Public Facilities Construction agreement for the preliminary plat shall
5 include a centerline study demonstrating the proposed alignment of Montgomery
6 Road can be constructed from the western plat boundary west to the existing
7 constructed portion of Montgomery Road. This analysis may use existing City
8 data (critical areas/topography/building locations).

9 Montgomery Road within the portion of the newly dedicated right-of-way from
10 Iron Gate Road to the western plat boundary shall be constructed to full standard
11 of a residential street except as otherwise allowed by the approved variance.

12 3. Mars Road. Sixty feet of land shall be dedicated for City rights-of-way purposes
13 for Mars Road in a location generally as shown on Exhibit 1.A. Mars Road shall
14 be constructed to full residential standard for a cul-de-sac.

15 4. The extension of public water and sewer mains to serve each lot and to provide
16 the orderly extension of utilities shall be installed as determined necessary by the
17 City engineer through a public facilities construction agreement.

18 5. Stormwater management shall be provided in accordance with BMC Chapter
19 15.42. Any open treatment and detention system, including swales, rain gardens,
20 and rock vaults, shall be designed to fit within the natural surroundings to the
21 maximum extent practicable and be accessible for maintenance. Landscaping for
22 these systems shall be designed by a licensed landscape architect and/or wetland
23 biologist. The landscape plan shall be reviewed and approved by the City and
24 include an irrigation system if drought tolerant plants are not used.

25 If a detention facility, above or below grade, is located within an area required to
26 meet minimum landscaping requirements, a landscape architect shall determine
27 an appropriate soil depth atop the facility to ensure required landscaping has
28 sufficient soil depth to survive.

29 6. Phased development is permitted pursuant to BMC 23.16.010(E). The City shall
30 have full authority to determine specific dedications and/or improvements that
are required with each proposed phase.

7. Street trees shall be installed pursuant to BMC 23.08.080(G)(5) and
23.08.080(C).

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- 8. All parks and recreational open space shall be provided as identified in the City's comprehensive plan. Specifically, the following is required:
 - a. Construction of a public trail from along the western plat boundary within a 20-foot easement, generally in the location shown on Exhibit 1.I.
 - b. For park impact fee credit, the Applicant may elect to construct a parking lot at the northern terminus of Mars Road in a manner approved by the Parks and Recreation Department. Determination of the credit shall be in accordance with BMC 19.04.

- 9. All required public and private easement documents as required by this approval and the consolidated permit shall be submitted to the City concurrently with checkprints for review and approval by the City departments and the Office of the City Attorney and recorded concurrently with the final mylars. Required easements include, but are not limited to, private and public utilities, trail, and stormwater facility.

- 10. Mailboxes shall be installed as approved by the United States Postal Service.

- 11. Monumentation shall be as required in BMC 18.28.180.

- 12. The following shall be shown on the face of the plat, as applicable:
 - a. All existing, required, and proposed easements.
 - b. A 10-foot wide easement adjacent to public rights-of-way reserved for utility purposes, as determined necessary by the utility providers.
 - c. A note stating that all lots are subject to those conditions set forth in this Order, and as may be amended in accordance with the municipal code.
 - d. A note referencing any existing private covenants and any covenants specific to the proposed lots.
 - e. Stormwater limitations.

- 13. Private covenants shall be recorded with the plat to specifically define the common, limited common, and private elements of the Proposal. The covenants

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shall also include maintenance obligation of these elements and a cost sharing mechanism for each.

Single Family Lots

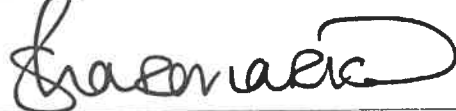
Development of single-family lots shall be subject to compliance with BMC Chapter 20.30, BMC Chapter 16.60, and BMC Chapter 16.55 pertaining to landslide hazard areas.

Future Development Tracts

1. The Future Development Tracts may be developed with a mix of single-family, infill housing and multifamily housing units. No more than 54 multifamily units are permitted on or within the preliminary plat boundaries. Multifamily development is subject to BMC Chapter 20.32.
2. Land use approvals for multifamily design review and critical areas, as determined necessary, shall be issued for each subsequent phase prior to obtaining final plat approval of the phase.
3. Nothing in this decision shall preclude a Future Development Tract from requesting and/or receiving approval of an administrative modification as may be allowed by BMC Title 20.

DECIDED October 2, 2023.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice