

SUB2019-0014: List of Attachments

EXHIBIT 1 Planning and Community Development Department Staff Report including the following Attachments:

- Attachment A Preliminary Plat Land Use Application Materials
 - A.1 Preliminary Plat Map
- Attachment B Temporary Certificate of Multimodal Transportation Concurrency
- Attachment C SEPA Threshold Determination with SEPA Report (SEP2022-0024)
- Attachment D Zoning and Comprehensive Plan Designations-Subject Site
- Attachment E Zoning Designations – Surrounding Properties
- Attachment F Wetlands and Mitigation Mapping
 - F.1 Alternative Plat Configurations
- Attachment G Landslide Hazard Areas Mapping
- Attachment H Road Connectivity
- Attachment I Park and Trail Connectivity
- Attachment J Map of Bellingham School District Attendance Areas.
- Attachment K School Rezone Map
- Attachment L Transportation and Transit Stops in the Vicinity
- Attachment M Land Division Variance Application
- EXHIBIT 2 Notices, including Notice of Complete Application, Request for Information, Notice of Application with Affidavit of Posting, and Notice of Hybrid Public Hearing with Affidavit of Posting.
- EXHIBIT 3 Transportation Impact Analysis
- EXHIBIT 4 Critical Area Report and Mitigation Plan
- EXHIBIT 5 Geotechnical Engineering Report
- EXHIBIT 6 Tree Risk Assessment
- EXHIBIT 7 Preliminary Stormwater Site Plan

CITY OF BELLINGHAM

PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT

HEARING EXAMINER

September 13, 2023

PROJECT NO.: Queen Mountain Cluster Preliminary Plat (SUB2022-0021/VAR2022-0007) and SEPA Checklist (SEP2022-0024)

APPLICANT: Nick Palewicz, PE, Freeland and Associates; 2500 Elm Street, Bellingham, WA 98225

OWNER: Queen Mountain Homes, LLC; 4638 Celia Way, Unit 202, Bellingham WA 98226

I. OVERVIEW

A. PROPOSAL

The phased development of approximately 36 acres located in Area 12 of the King Mountain Neighborhood through the land division process for a proposal commonly referred to as Queen Mountain (Proposal). The preliminary plat proposes 11 single-family cluster lots, 5 Reserve Tracts for future development of multifamily and infill housing, storm water tract and 4 total Open Space Tracts. **Attachment A.1**

Public infrastructure necessary to serve the preliminary plat will be reviewed for consistency with the comprehensive plan and the municipal code. The Proposal includes the dedication of land for and/or construction of public infrastructure, including streets, sidewalks, stormwater management facilities and trails. Phased construction of the required infrastructure is anticipated.

The site contains wetlands, wetland buffers, habitat conservation areas, and geologic hazard areas, all of which are critical areas regulated by Bellingham Municipal Code 16.55. These features are shown on **Attachments F and G**. Impacts to critical areas are proposed with 1,100 square feet of direct wetland impact, 49,775 square feet of indirect wetland impact and 66,575 square feet of buffer impact. Mitigation for these impacts is proposed to occur within the boundaries of the preliminary plat.

Approximately 60-percent of the site's forest cover is proposed to be retained. Additional analysis will be necessary to determine appropriate tree retention and replacement requirements for the remaining portion of the site pursuant to BMC 16.60.080 and 23.08.030.

The applicant is requesting a variance from street construction requirements associated with Montgomery Road.

B. APPLICATION REVIEW PROCEDURES

The Proposal, inclusive of the preliminary plat, critical areas and subsequent development of Reserve Tracts 1-5, requires approval of both Type II and Type III land use decisions. As allowed per BMC 21.10.050, the applicant did not consolidate the review of the Type II and III applications.

The preliminary plat is a Type III application that requires approval by the Hearing Examiner and is the subject of this staff report.

The critical areas application is an administrative decision and requires a Type II review process. The critical areas application was reviewed and noticed concurrently with the preliminary plat, but the land use decision will be issued after the preliminary plat decision. As stated in detail below, the critical areas application is sufficient to determine that the preliminary plat as presented sufficiently meets the critical area provision of Chapter 16.5 BMC if appropriately conditioned.

Development of Reserve Tracts 1-5 is not proposed at this time and will require additional land use decisions requiring public comment through the Type II application process. Open Space Tracts 1-4 are anticipated to be protected with conservation and/or public access easements.

C. LOCATION

4175 Iron Gate Road / Area 12, King Mountain Neighborhood; Single-family zoning with a cluster designation and 7,200 square foot overall density. Lengthy legal description.

Assessor's parcel numbers: 380308 336210.

Land use and comprehensive plan designations: Land use: Residential-Single, Detached/Cluster/Mixed; Comprehensive plan: Single Family Residential, Medium Density.

II. STAFF RECOMMENDATION

Approve the Queen Mountain Preliminary Plat (**Attachment A**) with the recommended conditions in Section XII of this report.

III. JURISDICTION

The Hearing Examiner is granted authority to hold hearings and make decisions on preliminary plats and subdivision variances pursuant to RCW 58.17 and BMC 2.56.050(A)(1 and 3).

IV. BACKGROUND

April 30, 2018 (PRE2018-0053): Pre-application conferences with City staff occurred for the Proposal.

October 6, 2021 (PRE2018-0127): The applicant held a pre-application neighborhood meeting for the Proposal. Issues raised at the meeting included traffic (increase and cut-through resulting from the proposed connector), loss of vegetation and density.

June 3, 2022 (CON2022-0011): The City issued a Temporary Certificate of Multimodal Transportation Concurrency for the preliminary plat. **Attachment B**

NOTE: This certificate is for a previous plan design but adequately covers the proposed single-family lots. Subsequent certificates of concurrency will be required to develop the proposed reserve tracts. Additionally, the applicant voluntarily commissioned a Traffic Impact Analysis (**EXHIBIT 3**) concluding no additional offsite mitigation is warranted. City staff concurs.

May 11, 2022: Applications for preliminary plat and subdivision variance (SUB2022-0021/VAR2022-0007), critical areas (CAP2022-0018), design review (DR2022-0013) and SEPA (SEP2019-0011) were submitted. NOTE: The design review application was submitted with the previous lot design and is no longer relevant to the proposal.

June 8, 2022: The submitted applications were deemed complete. **EXHIBIT 2**

September 14, 2022: A Request for Information (RFI) was issued for additional information related to the overall plat design, clearing and grading, public infrastructure, parks and recreation, emergency services, critical areas/natural resources and design review. **EXHIBIT 2**

October 6 and 17, 2022: Staff met the applicant on-site regarding two separate elements of the proposed preliminary plat, trail alignment and wetland and mitigation analysis, and both parties acknowledged that additional time was needed to respond to the RFI.

February 28, 2023: The applicant submitted a response to the RFI (**Attachment 1**). This response revised the overall preliminary plat design, as shown on **Attachment A.1**, that reduced impacts to critical areas, provided a more efficient road layout and responded to neighborhood concerns. The City determined the response sufficient to continue review of the applications.

April 12, 2023: A Notice of Application was issued establishing a public comment period through April 26, 2023 (**EXHIBIT 2**). Public comments received in response to this notice include retention of upland forested areas of the site, preservation of large, mature trees, proposed housing forms, wildlife, stormwater runoff, soil contamination, and recreation opportunities.

City staff responded to these public comments through the SEPA review and provided responses in the Report attached to the SEPA threshold determination.

June 22, 2023: The City issued a phased SEPA threshold determination of non-significance (SEP2022-0024) for the Proposal (**Attachment C**) establishing a 14-day comment period. The City did not receive any comments in response to noticing of this determination.

August 29, 2023: The City issued a Notice of Hybrid Public Hearing. **EXHIBIT 2**

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION

The property is located in Area 12 of the King Mountain Neighborhood and zoned Residential-Single, mixed with a 7,200 square foot density. The mixed qualifier allows limited duplex and multifamily development within the single-family zoning designation. (**Attachment D**). The land use designation of the subject site is Single Family Residential, Medium Density.

Area 12 of the King Mountain Neighborhood (BMC 20.00.095) contains special conditions related to public trails and a prerequisite consideration specific to Iron Gate and Montgomery Roads and public water and sewer.

B. EXISTING CONDITIONS

The site is a vacant 36-acre parcel located between Montgomery Road (extended), Iron Gate Road (extended), June Road (vacated by operation of the law) and Richards Road (vacated by operation of law). Public right of way, water and sewer abut the southeast corner of the site in Iron Gate Road. An informal neighborhood trail system meanders through the site.

The site contains a wetland complex in the northeast and southeast portions of the site, wetlands C and A, respectively. There is a historic fill site of materials believed to mostly consist of construction debris between wetlands A and C. The topography of this portion of the site has slopes east to west of less than 10%.

The north and southwestern portions of the site are forested with a mix of native vegetation. This portion of the site contains more substantial topography, including geologically hazardous areas, with slopes in excess of 40% with the peak of Queen Mountain located north of the subject parcel.

Abutting properties are located in Areas 5 and 6 (residential single zoning) of the King Mountain Neighborhood and Areas 11 and 13 (industrial zoning) of the Iron Gate Neighborhood. The site's northern property line is the City limits and urban growth boundary. The zoning for each subarea is identified and listed in **Attachment E**. The

abutting residentially zoned parcels are developed with single-family residences are large parcels and the abutting industrially zoned parcels are developed with industrial uses.

Whatcom Transit Authority does not directly serve the site. The nearest transit bus stop is located approximately ½ mile walking distance west of the Proposal on the corner of E. Bakerview Street and Kramer Lane (Route 48).

VI. APPLICATION

Please refer to **Attachment A** for the submitted land use applications, as amended by the applicant's response to the City's request for information.

VII. ANNEXATION AND TRANSFER OF DEVELOPMENT RIGHTS

In September 2009, the subject property was annexed into the City by Ordinance No. 2009-08-054 as part of the Van Wyck/James Street annexation, which encompassed approximately 233 acres. As a condition of annexation, property owners within the annexation areas are required to purchase or transfer a development right for every five acres of land annexed into the City by executing a Covenant to Purchase or Transfer Development Rights (Covenant). The Covenant for the subject site was recorded under Whatcom County Auditor File number 2090900285. This Covenant includes a provision that states that the 'purchase or transfer of development rights shall occur prior to the approval of development'. The preliminary plat must be appropriately conditioned to require fulfillment of this Covenant. Staff recommends that fulfillment of this obligation be required for the entire preliminary plat boundary prior to or concurrent with filing of the first final plat application associated with the preliminary plat. Once the obligation is fulfilled, staff would recommend the existing covenant associated with the subject site be released.

VIII. CRITICAL AREAS

Critical areas are regulated by Chapter 16.55 BMC. Qualified professionals evaluated the site and determined the site contains wetlands and their associated buffers, habitat conservation areas and geologically hazardous areas. The proposal includes impacts to these critical area types and therefore, a critical area permit is required. Staff has evaluated the technical studies and reports submitted for each of the critical areas. The City has worked with the applicant while considering public concerns to configure a plat design that minimizes critical area impacts while maximizing preservation of the site's forested areas, especially along the western property line. These critical areas are represented on **Attachments F and G**.

Wetlands: The site contains 8 wetlands; wetland A is a category II, wetlands B-F are category III and wetlands G, I and J rate as category IVs. All wetlands have moderate water quality and habitat functional scores. Wetlands A, C and F have moderate hydrologic functional scores while the remaining wetlands have low hydrologic scores. The proposed preliminary plat layout proposes to directly impact approximately 1,100 square feet of

wetland A. Indirect impacts to wetlands A, C-E, G and I total approximately 49,775 square feet and direct buffer impact is approximately 66,575 square feet.

Staff performed a site visit with the wetland biologist of record to further clarify the characteristics of wetland A as well as the feasibility of the proposed wetland creation along the northern portion of wetland A.

Proposed mitigation includes approximately 40,800 square feet of wetland creation, 114,800 square feet of wetland preservation, 92,430 square feet of buffer enhancement and restoration to temporary impact areas is proposed to be onsite.

Please note that the mitigation square footages above include an approximate 3.62-acre storage and debris pile area that straddles the existing small roadbed and tucked in between wetlands A and C-F. This area will be completely removed and/or restored to wetland and/or wetland buffer. This area is shown in light gray shading on **Attachment F**.

City staff review of the wetland and buffer impacts and proposed mitigation on the subject site anticipates that there will not be a net loss in critical area functions and values, consistent with BMC 16.55.350.

Habitat Conservation Areas: Approximately 21-acres of the 36 total include habitat conservation areas that will remain protected via conservation easements. Essentially, these are the open space tracts. Habitat on these preserved areas, in addition to wetlands and buffers include a mix of conifer and deciduous forest as well as snags and logs useful for the pileated woodpecker. (*A candidate species*) Other common species such as black-tailed deer, coyote, raccoon, squirrels, songbirds, owls and falcons will continue to utilize these areas for movement to adjacent habitat corridors and blocks to the southeast towards the Baker Creek riparian corridor and northeast also towards the upper Baker Creek corridor up into the Squalicum Creek valley and floodplain. These protected areas are also utilized for foraging and nesting.

Geologically Hazardous Areas: **Attachment G** shows that the site contains landslide hazard areas. The geologist of record has demonstrated that there are sufficient buildable areas outside of landslide hazard areas to enable the proposed configuration, with the exception of Mars Road and Montgomery Roads between Open Space Tracts 1 and 2 and wetland I where direct alteration is proposed while remaining consistent with the applicable requirements in BMC 16.55.460. In other words, public roads and utilities are allowed to alter landslide hazard areas if no feasible alternative exists. Please see **Attachment G** for landslide hazard areas that have been avoided for individual lot development.

Overall, and consistent with BMC 16.55.250, mitigation sequencing has been utilized to minimize the amount of direct, indirect and alteration impacts to critical areas. The proposed configuration results in the least amount of square footage and functional impact. Eight different plat configurations are provided in **Attachment F.1**. Each alternative, dating from May 22, 2019, to February 28, 2023, indicates the evolution towards the current plat configuration. These alternatives also indicate the effort applied by the applicant to minimize impacts to these critical areas based upon City direction and responding to public comments. In addition, these alternatives have been simultaneously addressing the requirements for infrastructure while attempting to maintain a necessary level of density.

(Please note that the base density of the subject parcel, at 7,200 square feet per unit, is approximately 218 units.) Finally, addressing these factors has led to a configuration that is anticipated to achieve the necessary level of density in a variety of housing forms including infill toolkit and a limited percentage of multi-family development.

A Type II permit is required to allow the proposed impacts to critical areas. As of the issuance of this staff report, a critical area permit has not been issued. Issuance is likely to occur prior to or concurrently with the review and approval process of a Public Facilities Construction Agreement (PFC), which is the permit authorizing construction of the required public infrastructure. Subsequent critical area review will be required at the time of application for future development of each Reserve Tract.

Staff have preliminarily determined, that as conditioned, the proposed configuration will be consistent with the applicable requirements in Chapter 16.55 BMC.

IX. CLUSTER PRELIMINARY PLAT – Chapter 23.16 BMC

Pursuant to BMC 23.16.010(A), any action which will result in the division of any lot that utilizes the cluster subdivision provisions for five or more lots shall require preliminary plat approval based on the criteria and procedures pursuant to BMC 23.16.030 and be subject to approval by the City Hearing Examiner. Pursuant to BMC 23.16.010(C), the cluster provisions may be utilized for residential-single zoned areas containing a cluster use qualifier.

X. CLUSTER PRELIMINARY PLAT CRITERIA AND ANALYSIS

Pursuant to BMC 23.16.030, preliminary plats shall be given approval, including preliminary plat approval subject to conditions, upon finding by the hearing examiner that all of the following have been satisfied:

1. It is consistent with the applicable provisions of this title (Title 23 Land Division), the Bellingham comprehensive plan and the Bellingham Municipal Code (BMC).

Applicant's response: **See Attachment A.**

Staff analysis: The provisions in Title 23-Land Division are SEPA compliant regulations and with their recent adoption were determined to be consistent with the City's comprehensive plan. The Proposal satisfies the intent of the land use, housing, capital facilities and utilities and environmental chapters of the comprehensive plan by 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 grounds.
- 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.
- Policy CF-3 Encourage and support development in areas where adequate public facilities and services exist or can be provided in an efficient manner.
- Policy CF-4 Protect public health, enhance environmental quality, and promote conservation of natural resources through appropriate design and installation of new public facilities.
- Policy CF-17 New development should pay its proportional share of the cost of new public facilities that serve the subject development.

Environment

- Policy EV-23 Protect habitat and habitat corridors used by wildlife, fish, and pollinators from the impacts of development, where feasible.
- Policy EV-26 Limit public and pet access and their impacts to the most sensitive and unique habitats and employ measures to minimize impacts from public access.
- Policy EV-27 Minimize light and noise impacts on fish and wildlife habitat.
- Policy EV-28 Provide natural area and open space linkages within developed areas.

2. It is consistent with the applicable provisions of Chapter 23.08 BMC.

Applicant's response: **See Attachment A.**

Staff analysis: The following is staff's code compliance review of Chapter 23.08 BMC.

23.08.030 Performance standards: Staff concurs with the applicant's analysis and would like to add the following information to the record.

During pre-application review of the site, the City identified the importance of providing a through vehicular and pedestrian connector while maximizing density within a newly created neighborhood and maximizing preservation of the onsite natural features. The Proposal satisfies these standards by:

1. Providing a development with an acceptable mix of both single, infill housing and multifamily development in a neighborhood and location that is appropriate and consistent with anticipated residential development in the vicinity,
2. Preserving the site's significant natural features by retaining almost 60% of the site in its existing vegetated condition,
3. Minimizing the clearing and grading necessary to develop the site while still providing an 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
4. Providing the dedications and construction necessary to continue the orderly extension of public infrastructure, including streets, utilities and trails consistent with the King Mountain and Iron Gate Neighborhood Plans.

The subject site was platted by the recording of the Garden Addition to Whatcom on December 12, 1883. The preliminary plat map shows platted rights of way Mars, Richards, June and Ross Roads abutting the site. The surveyor of record for the Proposal has stated pursuant to RCW 36.87.090 that these rights of way have been vacated by operation of law. City staff agrees.

What is not immediately clear is the ownership status of these vacated rights of way. In response to staff inquiry concerning ownership, the applicant acknowledged the owner would be establishing ownership through quiet title proceedings. It is necessary to ensure ownership of these rights of way to ensure the current owner has authority to perform some of the proposed plat attributes, like the single-family lots at the dead end of the cul-de-sac, dedication and construction of the trail and dedication of some of the proposed rights of way.

Pursuant to the authority given in this code section, staff provided direction that rededication and construction of the vacated right of way in their current alignments are not conducive to the site's topography and would not likely benefit the immediate Proposal or abutting parcels. Instead, the City staff provided direction to establish right of way dedications that could benefit adjacent properties to the maximum extent. This will be discussed in greater detail below.

23.08.040 Maximum number of lots/units:

Density is based on a gross land area calculation and the cluster provision assumes the transfer of density throughout a development site. The zoning and site area yield a maximum unit count of 218 residential units utilizing the 7200 square-foot density provision. Staff anticipates the sites topography and critical areas will prevent the site developing to the 7,200 square-foot density limitations.

A density bonus has not been requested. The Proposal consists of five reserve tracts with unspecified densities and 11 single-family, cluster lots.

The remaining density of 207 units may be developed with infill housing or, pursuant to the zoning special regulation, may include up to 25% of the allowed density (218 units)

as duplex and multifamily units. The 25% limitation yields a maximum of 54 duplex/multifamily units.

Pursuant to BMC 20.28.050(D)(1), infill housing units shall be located on fee simple lots created through the final plat procedures. Multifamily development must also occur on lots created through the final plat procedures.

Use of the cluster provision for the preliminary plat allows development of the reserve tracts to occur at densities exceeding the underlying zoned density provided the density for the overall site is met.

The City believes this code provision is met if properly conditioned to require site development consistent with the underlying zoning limitations.

23.08.050 Minimum lot size:

(A)(3) Cluster Subdivisions. The proposed single-family lots meet or exceed the 4,000 square-foot minimum lot size requirement for detached units. This provision is met.

(A)(4) Infill Toolkit. Pursuant to BMC 20.28.050(C), There are no minimum lot dimensions, lot sizes or minimum street frontage requirements unless otherwise specified in this chapter. Small lots are the only housing form requiring a maximum lot size of 5,000 square feet. If small lots are proposed with subsequent development of the reserve tracts, compliance with this lot size would be required.

There are no minimum or maximum lots sizes for the reserve tracts.

Compliance with this code provision will be determined at final plat.

23.08.060 Lot design standards:

(A) and (B) Logical Boundaries and Reasonable Use. The proposed single-family lots meet these provisions. This provision does not apply to either infill housing or multifamily lots. These provisions are met.

(C) Alley Access. This provision is not applicable.

(D) Building Envelope. The lots within this plat are exempt from providing a building envelope with the exception of the single-family lots. The proposed single-family cluster lots provide the required 40'X40' building envelope.

BMC 20.28.050(C) provides the authority exempting the infill housing from minimum lot design requirements.

Lots created for multifamily uses are also exempt for this code provision.

This code provision is met.

(E) Abutment – Public Infrastructure. The single-family lots and reserve tracts are proposed to provide direct abutment on public infrastructure.

This provision is met.

(F) Cluster Short and Cluster Preliminary Plats. The Proposal does not abut nor is it located across the street from a developed single-family zoned neighborhood and therefore is not required to provide a lot size transition. The Proposal is also reserving at least 15% of the site as open space. This provision is met.

23.08.070 Public infrastructure, dedications and improvement requirements:

(A) Dedication. During preapplication discussions with the applicant, the City identified its overall objective to provide neighborhood connections and to provide for the orderly extension of public infrastructure. To meet these objectives, the City identified the Proposal would require dedication of land for the extensions of Montgomery and Iron Gate Roads. **Attachment H**

The Proposal satisfies these objectives with dedications for both extensions. These dedications do not provide full connections to James Street or Hannegan Road and the project does not warrant the level of impact to impose these connections at this time. The through connections will be dedicated and constructed with the development of the abutting parcels to the west and east.

Based on the level of information provided, the proposed alignments meet city standards and are designed to minimize critical area impacts and allow the future extension of each right of way. The application materials did not include a centerline study demonstrating that the proposed alignment of Montgomery Road can be extended further west to provide a connection in accordance with City street standards. The preliminary plat should be conditioned to require further analysis to demonstrate Montgomery Road's terminus at the western property line includes a centerline study using existing City data (critical areas/topography/building locations) to demonstrate an alignment that allows construction of a residential street meeting City standards and minimized critical area impacts. This analysis should be submitted concurrently with the first Public Facilities Construction agreement for the preliminary plat.

Staff identified the abutting parcel at the northeast corner of the Proposal lacks street frontage due to the vacation status of abutting rights of way. This parcel is not within the City limits or the City's urban growth area and therefore City codes do not require the extension of public infrastructure to serve this parcel. All other abutting parcels have abutment on a public right of way.

(B) Street standards. Prerequisite considerations of the zoning identify the extension of Iron Gate Road to full secondary arterial standards and the improvement of Montgomery Road to a collector arterial street. Mars Road requires full standard construction of a residential street.

Pursuant to BMC 20.06.030, a prerequisite consideration is an item that must be addressed for any development proposal which is discretionary or semi-discretionary in

nature. Perquisite considerations provide recommendations on what should occur or what will need to happen prior to some future level of development in an area. A preliminary plat is discretionary and therefore the City can recommend the appropriate street standard for these rights of way.

Staff evaluation of Iron Gate Road warrants construction to full arterial City-standard which consists of two travel lanes and bike lanes, curb, gutter and sidewalks both sides.

Staff's evaluation of Montgomery Road determined this road does not warrant arterial improvements and instead should be classified as a residential street. The Proposal includes the construction of Montgomery Road within the plat to a residential street and a variance from the requirement to construct it to full-city standard. The variance is discussed in further detail below.

This provision is met if appropriately conditioned to require the construction of all rights of way to full standard, except as may be amended through approval of the requested variances.

(C) Access. The plat design meets this provision.

(D) Water, Sewer and Stormwater management. Public water and sewer mains are proposed to be extended in accordance with City code, which includes extending both mains from those in Iron Gate Road.

Water is proposed to be extended in Iron Gate and Montgomery Roads in a manner that can provide the orderly extension to benefit abutting properties that are currently within the City limits.

Sewer cannot be extended to provide gravity service to the abutting properties to the west and instead is proposed to extend sewer for a distance necessary to serve the western most reserve tracts.

The Proposal is not required to extend water and sewer facilities in a manner that will serve the abutting properties not located in the City limits or the City's urban growth area.

Stormwater management is proposed to comply with City code, Chapter 15.42 BMC. It is the city's current policy to require dedication of stormwater facilities that serve single-family lots created through the land division process. Stormwater from multifamily development may not be provided in a publicly dedicated pond unless otherwise approved by the City. Any drainage facility dedicated to the City must be designed and constructed through a public facilities construction agreement per Chapter 15.42 BMC.

The Proposal can only be found to comply with this provision if the Proposal is appropriately conditioned to require the extension of the public water and sewer mains as discussed above and provide stormwater management compliant with Chapter 15.42 BMC.

(E) Street Naming and Addressing. This provision will be met with the recording of the final plat. The decision should be appropriately conditioned to require compliance with this provision as a condition of final subdivision approval.

(F) Electrical and Communication Facilities. This provision will be met with the recording of the final plat. The decision should be appropriately conditioned to require compliance with this provision as a condition.

(G) Parks and Recreation. The Parks, Recreation & Open Space (PRO) Plan identifies a public trail corridor through the site connecting the residential neighborhood south of the Proposal to the City-owned parcels north of the site. See **Attachment I**. The Proposal is designed to fulfill this provision with the dedication and construction of the trail located along the western property line.

The City's PRO Plan includes parking facilities to serve the City-owned Queen and King Mountain open space areas north of the Proposal. An ideal location for this parking facility is at the end of Mars Road. Ideally, this parking lot would be constructed concurrently with the plat, but the City lacks funding at this time. The City intends to have further discussions with the developer requesting private construction of this parking facility concurrently with the Public Facilities Construction agreement for the plat in exchange for park impact fee credits.

23.08.080 Landscaping and design of infrastructure:

This subsection is applicable to the Proposal. At the preliminary stage in the development of the site, a landscape plan for the design for the street trees, open stormwater facility and retaining walls has not been submitted for review and approval by the City. The City anticipates that these provisions can be met with the proposed plat design. The decision should be appropriately conditioned to require compliance with this provision as a condition of final subdivision approval.

3. The division of land provides for coordinated development with adjoining properties or future development of adjoining properties through, where appropriate, the extension of public infrastructure, shared vehicular and pedestrian access, and abutment of utilities.

Applicant's response: **See Attachment A.**

Staff analysis: The Proposal meets this criterion through compliance with BMC 23.16.030(2), above, with the dedication of rights of way for Iron Gate and Montgomery Roads through the subject site, extension of public water and sewer mains to the maximum extent feasible as discussed above, and establishment of a public trail corridor through the site.

4. Each lot in the Proposal can reasonably be developed in conformance with applicable provisions of the BMC, including but not limited to critical areas, setbacks, and parking, without requiring a variance that is not processed concurrently with the subdivision application pursuant to Chapter 23.48 BMC.

Applicant's response: **See Attachment A.**

Staff analysis: The application materials provide sufficient information to conclude this provision is met. Development of the proposed single-family lots should not require approval of subsequent land division variances.

Staff believes that each lot can be reasonably development, however proposed that development of the Reserve Tracts should be eligible to request administrative modifications from Title 20 BMC processed through subsequent land use applications.

5. There are adequate provisions for open spaces, drainage ways, rights-of-way, sidewalks, and other planning features that assure safe walking conditions for pedestrians, including students who walk to and from school, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds, and schools.

Applicant's response: **See Attachment A.**

Staff analysis: See combined response to Criteria 5 and 6 below.

6. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The director shall be guided by the policy and standards and may exercise the powers and authority set forth in Chapter 58.17 RCW, as amended.

Applicant's response: **See Attachment A.**

Staff analysis Criteria 5 and 6: Compliance with the current zoning, land division regulations for preliminary plats and critical areas regulations ensures that appropriate provisions are made for open spaces, drainage ways, streets and alleys, potable water supplies, and sanitary wastes.

Appropriate provisions for schools and schoolgrounds are existing. School aged residents in the plat would attend Northern Heights Elementary, Shuksan Middle School, and Squalicum High School. See **Attachment J**. The City has been working with the Bellingham School District (District) on capital development and can testify that the District is aware of the development potential of the vicinity and is currently in application for a comprehensive plan amendment and rezone to designate the parcel shown on **Attachment K** to a Public zoning designation for the construction of a new elementary school. This new elementary school is proposed to be a 'swing school' for the district to facilitate uninterrupted schooling of students while the schools in other elementary attendance areas are replaced/remodeled. The school aged residents in the plat will likely rely on school district transportation during the time this new school is a 'swing school'. Once the other school projects are completed, the school district is likely to redistrict the attendance areas and at that time identify safe school routes.

The Bellingham School District was notified of the Proposal and did not submit comment. Impacts of the Proposal on the public school system are mitigated through payment of impacts fees in the amount established by ordinance.

Transit does not directly serve the site. The nearest transit stop is located south and west of the subject site at the corner of E Bakerview Road and Kramer Lane, approximately ½ of a mile from the subject site. See **Attachment L**. Adequate pedestrian facilities do not exist and are not required to be provided from the subject site to the nearest transit stop. Whatcom Transit Authority, the regional provider of transit for the City, recognizes this northern area of town is not well served by transit. In response to this and other service issues, WTA is engaged in a long-range effort to plan for areas anticipated for growth and will identify routes to best serve these areas.

Staff finds that if the plat is properly conditioned, as necessary to determine compliance with the subdivision codes, the provisions of RCW 58.17 are met and the public's use and interest will be served.

XI. FUTURE RESERVE TRACTS

Development of infill and multifamily uses on the future reserve tracts will require separate land use approvals for design review and, as determined required, critical areas for geologically hazard areas. The preliminary plat should be appropriately conditioned to require the submittal of subsequent land use applications for the development of these reserve tracts for city review and approval.

XII. VARIANCE – BMC 23.48.040

23.48.040 Subdivision Variance

The applicant is requesting a variance from the requirement to construct Montgomery Road to full City-standard of a residential street and to allow determination of the final standard through the Public Facilities Construction agreement process (**Attachment M**). The hearing examiner may grant a variance from any term of Title 23 BMC, except minimum lot size, if it is shown that the proposal is consistent with the following criteria:

Criterion 1.a. Because of unusual shape, the location of preexisting improvements, other extraordinary situation or condition, or physical limitation including, but not limited to, exceptional topographic conditions, geological problems, or environmental constraints, in connection with a specific piece of property, the literal enforcement of this title would involve difficulties, result in an undesirable land division or preclude a proposal from achieving zoned density; **or**

Criterion 1.b. The granting of the variance will establish a better lot design resulting in a development pattern found to be consistent with the neighborhood character including, but not limited to, development orientation to the street, setbacks, lot orientation, or other contextual element associated with the proposed development; and

Applicant's response: See Attachment M.

Staff analysis: Staff supports the applicant's response to Criterion 1.a. The applicant indicated construction of the sidewalk along the southern portion of Montgomery Road abutting Open Space Tract 3 is likely to result in critical area impacts that could be avoided. Consistent with critical area regulations, all critical areas located in the Montgomery Road right of way are accounted for with appropriate mitigation.

The preliminary engineering for Montgomery Road (**Attachment A**) assumes the variance request is approved and has not been designed to include the full standard construction with a sidewalk on the south side of the road. Based on the applicant's statement, the topography adjacent to the south side of the right of way is steep. The road as designed, without the sidewalk, utilizes the distance from back of curb to the edge of the right of way to provide the necessary 2:1 slope for the street and does not require construction of retaining walls to support the street. Construction of Montgomery Road to full standard will push the street improvements further south in the right of way and likely require the construction of retaining walls and/or slopes to support the road. Both of these road designs are likely to result in additional critical area impact.

The applicant is proposing to construct an offsite sidewalk along Iron Gate Road south of the Proposal to connect with the existing sidewalk abutting the Stonecrop Subdivision as mitigation for the loss of the internal pedestrian connectivity. The City supports this mitigation and believes this offsite improvement will provide a greater pedestrian circulation in the vicinity and a walking route from these residences to the proposed Cougar Road elementary school.

Criterion 2. The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located.

Applicant's response: See Attachment M.

Staff analysis: Based on the information provided by the applicant, failure to grant the variance could result in avoidable critical area impact and would eliminate an offsite pedestrian connection that Staff believes has significant public benefit.

Conclusion

Staff agrees with the applicant's justification that the site contains extraordinary situations concerning topography and critical areas that warrant the flexibility to determine the appropriate street standard for Montgomery Road until such time final engineering is appropriate. Additionally, the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or land use designation in which the subject property is located.

Staff recommends the Hearing Examiner approve the variance with the following conditions:

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

XIII. EMERGENCY ACCESS

The preliminary engineering drawings show streets in excess of 12% grade. Any residential lot served by a street that is in excess of 12% must be equipped with an approved automatic sprinkler system. For emergency access purposes, no road may exceed 15%.

The preliminary plat will not exceed the maximum allowed number of units, 200 for multifamily or 30 for single-family, that may be served from a single emergency access and therefore requires a dedicated second full-time emergency access road. The City Fire Marshal recognizes a second full time access is not likely at this time and would like to explore alternative means of mitigation to compensate for the single emergency access. This review and determination of mitigation should occur with the submittal of final engineering drawings through the PFC application review.

These above requirements and recommendations for emergency access should be imposed as conditions of preliminary plat although they are implemented through the building code. As such, the preliminary plat does not vest the Proposal to the standards.

XIV. SEPA ENVIRONMENTAL EVALUATION

The City reviewed the Proposal for compliance with Chapter 16.20 BMC. The phased threshold Determination (**Attachment C**) of Non-significance and SEPA Report was issued on June 20, 2023 based on the environmental checklist prepared by the applicant with additional comments by staff in response to the checklist, public comment and all supporting technical studies referenced on the determination. (SEP2022-0024)

The City did not receive any comments in response to this determination.

XV. CONCLUSION

Based upon staff's analysis of the preliminary plat and variance applications and all supporting materials referenced in this staff report, staff finds the preliminary plat and variance applications compliant with the municipal code if properly conditioned and recommends the hearing examiner issue an approval, with conditions.

In accordance with Title 23 BMC, this Proposal can only be found to comply with the municipal code in accordance with an approved critical areas permit. Final plat may only be granted after determining all conditions of this decision and an issued critical area permit are met.

The Proposal furthers the goals and policies of the Comprehensive Plan by providing development in an urban area, providing a mix of housing types, providing the orderly extension of public infrastructure to adjacent properties and minimizing the impacts to onsite critical areas. The Proposal is consistent with the current zoning. An approval would not excuse the applicant from complying with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.

XVI. CONDITIONS

Based upon staff's analysis above, staff recommends the Hearing Examiner approve the preliminary plat known as the Plat of Queen Mountain as described herein and as provided in **Attachments A through M and EXHIBITS 1-7**, subject to the following conditions:

A. GENERAL REQUIREMENTS

1. The plat shall be developed generally consistent with the lot layout on **Attachment A**.
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.

B. VARIANCE

The following variance has been approved with the stated conditions:

Montgomery Road

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

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

C. CONDITIONS FOR FINAL PLAT APPROVAL

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

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

1. Iron Gate Road. Sixty feet of land shall be dedicated to the City for right of way purposes for the extension of Iron Gate Road through the site in a location generally as shown on the approved preliminary plat map, **Attachment A**. Iron Gate Road shall be constructed with the first phase of development and to City-arterial standards from the existing constructed portion of Iron Gate Road to the intersection of Montgomery Road.
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 Gate Road (extended) to the western plat boundary in a location generally as shown on the approved preliminary plat map with the first phase of development, **Attachment A**.

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

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

3. Mars Road. Fifty feet of land shall be dedicated for City rights of way purposes for Mars Road in a location generally as shown on **Attachment A**. Mars Road shall be constructed to full residential standard for a cul-de-sac.
4. The extension of public water and sewer mains to serve each lot and to provide the orderly extension of utilities shall be installed as determined necessary by the City engineer through a public facilities construction agreement.
5. Stormwater management shall be provided in accordance with Chapter 15.42 BMC. Any open treatment and detention system, including swales, rain gardens, and rock

vaults, shall be designed to fit within the natural surroundings to the maximum extent practicable and be accessible for maintenance. Landscaping for these systems shall be designed by a licensed landscape architect and/or wetland biologist. The landscape plan shall be reviewed and approved by the City and include an irrigation system if drought tolerant plants are not used.

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

6. Phased development is permitted pursuant to BMC 23.16.010(E). The City shall have the full authority to determine specific dedications and/or improvements that are required with each proposed phase.
7. Street trees. Street trees shall be installed pursuant to BMC 23.08.080(G)(5) and 23.08.080(C).
8. Parks, recreation and open space. 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 **Attachment 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 ten-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 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 Chapter 20.30 BMC, Chapter 16.60 BMC and BMC 16.55 pertaining to landslide hazard areas.

RESERVE TRACTS

1. The Reserve 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 Chapter 20.32 BMC.
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 Reserve Tract from requesting and/or receiving approval of an administrative modification as may be allowed by Title 20 BMC.

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