

SUB2023-0031: List of Attachments

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

Attachment A Architectural and Civil Plans including Landscaping Plans update May 31, 2024

Attachment B Consolidated Design Review & Critical Areas Permits and SEPA review (DR2023-0018 and CAP2023-0026)

Attachment C Vicinity Map, School Map, and Transit Map

Attachment D Zoning and Comprehensive Plan Designation Map

Attachment E Land Use Application materials
E1 Land Use Application
E2 Applicant Narrative updated December 17, 2023

Attachment F City Request for Information Letters (July 27, 2024, and February 2, 2024)

Attachment G Applicant Response to RFIs (December 12, 2023, March 19, 2024, April 24, 2024, and May 31, 2024)

Attachment H Public Comment

Attachment I SEPA Determination of Non-significance dated 4/23/24

Attachment J Public Works Memorandum

Attachment K Preliminary Stormwater Report from Davis Philips, PE, with Freeland & Associates, Inc., dated November 29, 2023

Attachment L Revised Critical Area Report prepared by Miller Environmental Services, LLC, dated May 31, 2024

Attachment M Revised Wetland Buffer Exhibit prepared by Freeland & Associated, dated May 28, 2024

Attachment N Traffic Memorandum prepared by Kimley Horn and dated March 2022

CITY OF BELLINGHAM

**PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT**

HEARING EXAMINER

July 10, 2024

PROJECT NO.: 4193 Northwest Avenue Townhomes Preliminary Cluster
Subdivision and Subdivision Variance (SUB2023-0031)

APPLICANT: Ali Taysi, AVT Consulting, 1708 F Street, Bellingham WA 98225

OWNER: Victor and Galina Shintar, 4193 Northwest AVE Bellingham WA
98226

I. OVERVIEW

A. PROPOSAL - Attachment A

Proposed 20 lot infill toolkit preliminary cluster subdivision on an approximately sized 2.24-acre property. The existing single-family residence (SFR) is proposed to be retained and a total of 19 infill townhomes are proposed to be developed in accordance with BMC 20.28.140 on the other 19 lots.

Due to the presence of a wetland bisecting the subject property, the proposed subdivision is configured as two separate east/west development areas fronting Arctic/Mahogany AVEs and Northwest AVE respectively.

A shared access lane with the southern neighbor (4185 Northwest AVE) is proposed off Northwest AVE and the existing driveway will be decommissioned. A Public Works administrative variance has been approved per BMC 13.52.120 for secondary access off Mahogany AVE for the western development area. A privately constructed and maintained trail with a public access easement is proposed through the west development area connecting Mahogany AVE to the southern property at 4197 Dover ST. Pursuant to BMC 23.48.040, the applicant is requesting a subdivision variance from improving the abutting Division RD per the terms of Title 13 (BMC).

B. APPLICATION REVIEW PROCEDURES

The Proposal, inclusive of the preliminary cluster subdivision, subdivision variance, design review, critical areas, and SEPA applications, requires approval of Type I, II, and III land use decisions. As allowed per BMC 21.10.050, the applicant did not consolidate the review of these applications.

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

The remaining Type I and II applications require administrative decisions and were reviewed concurrently through the Type II process. These applications were decided in a single Consolidated Permit (DR2023-0018 and CAP2023-0026), granting approval for design review of the infill townhouses pursuant to Chapters 20.25 and 20.28 BMC and critical areas pursuant to Chapter 16.55 BMC. The Consolidated Permit was issued on 6/26/24.

Attachment B

NOTE: The Proposal is exempt from having to obtain planned development approval per BMC 20.28.030(B) provided this preliminary cluster subdivision is approved. Since a planned development application was not submitted for this Proposal, approval of the Consolidated Permit was appropriately conditioned to require approval of this preliminary cluster subdivision and subdivision variance and the Consolidated Permit is subject to the terms and conditions of the hearing examiner's decision for the preliminary plat.

C. LOCATION

Address: 4193 Northwest AVE.

Assessor's parcel number: 380211 435125 0000

Legal Description: Lot 8 of the Northwest Baker View Tracts except the portion dedicated to the City identified in Auditor's File No. 2017-0401662

II. STAFF RECOMMENDATION

Approve the 4193 Northwest Avenue Townhomes Preliminary Cluster Subdivision and Subdivision Variance from street improvements to Division Road (**Attachment E1 & E2**) 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 variances to the Land Division Ordinance pursuant to BMC 2.56.050(A).

IV. BACKGROUND

On 11/23/2021, the applicant completed a pre-application conference with City staff (PRE2021-0112).

On 3/31/2022, the applicant held a virtual pre-application neighborhood meeting (PRE2022-0029). The land use consultant and City project planner were in attendance and no members of the public attended the meeting.

On 6/27/2023, the City issued a Multimodal Transportation Concurrency Certificate (CON2023-0008).

On 6/29/2023, the applicant submitted applications for Preliminary Cluster Subdivision, Subdivision Variance from street improvements (SUB2023-0031), Design Review (DR2023-0018), Critical Areas (CAP2023-0026), and a SEPA checklist (SEP2023-0024) (**Attachment A and E**).

On 7/27/2023, city staff issued a Notice of Complete in accordance with Title 21 (BMC).

On 7/27/2023, city staff also issued a Request for Information Letter (**Attachment F**). Requested information pertained to fire addressing, stormwater regulations, revisions to the critical area report and mitigation plan to depict buffer impacts and comply with the 15' building setback from buffer, notification of required ADU permit approval concurrently with the consolidated permit or with the future building permit, revisions to the Narrative to explain preliminary cluster subdivision request, density regulations, and to remove reference to the invalid minor modification request from BMC 20.28.050G.1. and BMC 20.28.140.F.1 because the proposal fronts all units on either a lane or street, revisions to the project to incorporate a pedestrian connection to the south neighboring property, provision of street and lane trees, recommendations on townhouse orientation, reduction of driveway widths, provision of landscape beds near garages, required minor modification for setback reduction from lanes, designing modulating units, information on refuse storage, and information on heat pump locations and screening.

On 12/19/2023, the applicant submitted revised materials in response to the 7/27/23 RFI (**Attachment G**).

On 1/19/2024, city staff issued a Notice of Application and Optional Determination of Non-Significance and mailed notice was provided in accordance with Title 21 (BMC).

One request for information was received during the public comment period (**Attachment H**). The commentor requested a PDF copy of the plans set to review. Staff provided the document and the commentor had no further questions or opinions. All correspondence was forwarded to the applicant.

On 2/2/2024, city staff issued a Request for Information Letter (**Attachment F**). Requested information pertained to revisions to the mitigation plan to account for buffer impact related to the proposed trail construction and provision of a tree survey. Design related revisions included changes to the four-unit townhouse building along Northwest Ave to orient the building to the street, provide entrances along the pedestrian corridor, provide modulation, and emphasize front porches. Other design related revisions pertained to the provision of windows on the three-unit townhouse buildings to resolve blank walls as well as define the programming in the proposed common usable space between the three-unit townhouse buildings.

On 3/19/2024, the applicant submitted revised materials in response to the 2/2/24 RFI.

On 4/22/2024, the applicant and city staff held a meeting to discuss minor code compliance items and design options pertaining to the location of lane trees, landscaping near garages, provision of windows, and orientation of the pedestrian pathways.

On 4/23/2024, a SEPA threshold determination of non-significance was issued for SEP2023-0024 (**Attachment I**).

On 4/24/2024, the applicant submitted updated plans in response to the 4/22/24 meeting. Staff found the revisions adequately addressed the previous code compliance items except for the location of lane trees. Condition B1 of the Consolidated Permit (**Attachment B**) requires demonstration of lane tree planting requirements and gives PCDD discretion to require lane trees be relocated, impervious surface area be reduced, and/or landscape beds be increased in size to accommodate required lane trees.

On 5/31/24, the applicant submitted a narrative, a revised site plan, and a revised critical area report denoting changes to the stormwater plan for the eastern portion of the development. The

narrative explained that coordination with the southern neighbor's contracted civil engineer regarding the proposed shared stormwater infrastructure resulted in changes to site plan layout and wetland impacts. Stormwater infrastructure was proposed to be closer to the subject site and south of the proposed two-unit townhouse. Infrastructure includes a stormwater vault located on the property line between the two projects and a stormwater outfall to the wetland located in the center of the subject property. To meet the required setbacks from the stormwater vault and outfall, the two-unit townhouse was shifted north and rotated slightly to achieve a 10-foot setback from the detention vault wall. The outfall extends northwest from the vault and in order to catch grade, the outfall pipe extends a short distance into the buffer (the minimum necessary). These changes resulted in small additional wetland impacts as shown in the updated mitigation plan and on the updated site plan. The shift in the two-unit townhouse to the north did not generate additional buffer impacts, was generally consistent with previous modification requests, and the overall development maintains compliance with development regulations including floor area ratio requirements. Staff reviewed the proposed changes and determined them consistent with previous analysis and the DNS.

On 6/25/24, the City issued a Notice of Hybrid Public Hearing.

On 6/25/24, a Consolidated Design Review and Critical Area Permit (DR2023-0018 and CAP2023-0026) was approved with conditions contingent upon Hearing Examiner approval of the Preliminary Cluster Plat and Subdivision Variance from street improvements. The appeal period closes on 7/10/24. As of the writing of this staff report, an appeal has not been received by the City.

On 7/10/24, the Hearing Examiner is scheduled to hold a public hearing to consider the Preliminary Cluster Plat and Subdivision Variance from street improvements.

V. EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION

The property is located in Area 2 of the Meridian Neighborhood and zoned Residential Single with a Planned Mixed-use qualifier with Infill Toolkit uses as an allowed use. The land use designation of the subject site is Residential Single, Low to Medium Density. The base density for the zoning is 3,600 square feet (sf) per unit when developed with infill housing pursuant to BMC 20.28.050(B) and BMC 20.00.100. Single family detached cluster lots require a minimum lot size of 4,000 sf pursuant to BMC 23.08.050(A)(3). The maximum allowed density for the subject property is 27 units.

Area 2 of the Meridian Neighborhood (BMC 20.00.110) contains special conditions for access, spacing of curb cuts along Northwest Ave; drainage; wetlands; and buffers.

B. EXISTING CONDITIONS

The subject property is 96,184 square feet (sf) (2.24 acres) according to Whatcom County Assessor's information and developed with a single-family residence and two detached accessory buildings.

The property contains wetlands and associated buffers which are regulated critical areas subject to the City of Bellingham's Critical Area Ordinance, Title 16.55 (BMC). Following review of the submitted critical area report and wetland impact plan (**Attachments L and M**), a

Consolidated Design Review and Critical Area Permit was conditionally approved (**Attachment B**).

Properties immediately south are in the same subarea. Preliminary plat approval has been granted (HE-23-PL-022) for 4185 Northwest AVE for nine (9) shared court infill toolkit units and ten (10) infill toolkit townhomes. As of the writing of this decision, land use application(s) have not been submitted for the southern undeveloped property at 4179 Dover Street. Properties north of the subject site are developed with single family residential uses, are in Area 20 of the Cordata Neighborhood, and zoned residential single detached, cluster, cluster attached, and cluster detached and mixed limited duplex and multifamily. Property to the east across Northwest Ave is developed with an electric substation, is in Area 19 of the Cordata Neighborhood, and zoned Commercial, Planned. Property to the west across Aldrich Road is developed with Costco, is in Area 5 of the Meridian Neighborhood, and zoned Industrial/Commercial Planned, mixed.

The Whatcom Transit Authority (WTA) provides bus service along Northwest Avenue abutting the subject property (hourly service for route 27 servicing Cordata and Whatcom Community College). The nearest stops are approximately 525 feet south (Stop ID 2255) and approximately 1,200 feet to the north (Stop ID 3259).

Northwest Avenue is a principal arterial street which requires a minimum 80-foot right-of-way width per BMC 13.04.030. Northwest Ave is constructed to full city standard abutting the subject property with two travel lanes, a center turn lane, bicycle lane, curb and gutter, and a sidewalk. Northwest Ave is a substandard width where it abuts the property, only 60 feet, therefore a 10-foot right of way dedication should be required as a condition of preliminary cluster plat approval. Arctic and Mahogany Ave's are also arterial streets constructed to full city standard abutting the subject property with two travel lanes, a center turn lane, bicycle lane, curb and gutter, and a sidewalk. Unimproved Division Road abuts the property to the north. This right-of-way is 30 feet wide, encumbered by critical area wetlands and buffers, and is not necessary for access as determined by the Public Works and explained in the submitted Public Works Memo (**Attachment J**). The applicant is requesting a Subdivision Variance to not improve Division Road per Title 13 (BMC) standards and this analysis is provided in **Section IX** of the staff report.

Water: There is a low pressure, 16" water main located in Northwest Avenue. There are 12" mains in Mahogany and Arctic Ave's. The nearby 8" main in Dover Street is high pressure.

Sewer: An 8-inch gravity sewer main is located in the abutting Mahogany Ave. The sewer main in Northwest Ave is an 8-inch pressurized line. An extendable 8-inch gravity sewer main exists in Dover Street.

Storm: Stormwater mains are located within all abutting rights-of-ways, Arctic Ave, Mahogany Ave, and Northwest Ave.

VI. APPLICATION

Please refer to **Attachment E1 & E2** for the submitted land use application.

VII. 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 creation of 10 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 23.48.010, any action which will result in the subdivision of any lot, tract, parcel, or plot of land including a request to modify a requirement of Title 23 shall be processed as an administrative departure or variance under BMC 23.48 subject to a Type IIIA process.

Pursuant to BMC 23.16.010(C), the cluster provisions may be utilized for residential-single zoned areas containing a cluster use qualifier.

VIII. CLUSTER PRELIMINARY PLAT CRITERIA AND ANALYSIS

Pursuant to BMC 23.08, preliminary plats shall be given approval, 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 E2.**

Staff analysis: The provisions in Title 23-Land Division are SEPA compliant regulations and with through the adoption of these regulations they were determined to be consistent with the City's comprehensive plan. Additionally, approval of the Consolidated Permit demonstrates that development of the proposed lots will be compliant with the Bellingham comprehensive plan and the BMC.

The zoning's Special Conditions are applicable to this proposal and will be addressed through code compliance of access management on arterials (Chapter 13.52 BMC), stormwater management (Chapter 15.42 BMC) and the Critical Area Ordinance (Chapter 16.55 BMC).

The Proposal satisfies the intent of the land use, housing, capital facilities and utilities, economic development, 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-3 Encourage well-designed infill development on vacant or underutilized properties.

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.

Economic Development

Policy ED-40 Identify and remove barriers to redeveloping underutilized and/or vacant land and buildings.

Environment

Policy EV-34 Encourage the preservation and planting of street trees and trees on private property using the “right tree, right place” concept.

2. The proposal is consistent with the applicable provisions of BMC 23.08.

Applicant’s response: **See Attachment E2.**

Staff Analysis: The following is staff’s code compliance review of Chapter 23.08 BMC.

23.08.020 Purpose. The Proposal satisfies the general purpose statements of this code section by:

- a. Adding infill development opportunities to a neighborhood that contains a network of walkable facilities that connects the Proposal to commercial and recreational areas in the vicinity,
- b. Having an overall design that efficiently utilizes the land while maximizing the overall unit yield,
- c. Adding ‘eyes on the street’ through the development of townhouse units with designs that provide natural surveillance of the abutting streets, and
- d. Proposes lot designs that integrate open space and outdoor, private usable areas into the design’s development.

23.08.030 Performance standards

Staff concurs with the applicant’s analysis. The following is staff’s general summary of compliance with performance standards in BMC 23.08.030 regarding community design, natural features, clearing and grading, dedication, pedestrian features, and streets.

The zoning of the property supports low and medium density residential development. Area 2 of the Meridian Neighborhood is an island of residential zoning surrounded by

commercial and mixed commercial/industrial zoning which has experienced significant redevelopment including the relocation of Costco. The subject property along with many neighboring properties in the vicinity are developed with existing single-family residences in a low density pattern more rural in character. Newer residential development in the area consists of a mix of infill housing and multifamily development. The redevelopment of the low density properties, such as the subject site, are anticipated to redevelop in a similar manner as that proposed in the application.

The proposed design incorporates 19 infill toolkit townhouse units, private lanes, landscaping and both common and private open space areas on land underutilized with an existing single family residence. The proposal orients housing units towards abutting streets (Northwest Avenue, Artic Avenue, and Mahogany Avenue) in accordance with Infill Toolkit and Multifamily Design requirements.

The subject property is developed with an existing single-family residence and forested wetlands bisecting the property. The site design preserves native vegetation creating two distinct pockets of development outside of these forested wetlands. As reviewed and conditioned in the Consolidated Design Review and Critical Area Permit **(Attachment B)** the project scope proposes to remove 13 significant trees (larger than 6" diameter) outside of wetland and wetland buffers. As conditioned therein, to comply with the Clearing and Grading section of the Multifamily Residential Handbook and the Clearing Chapter of the BMC (16.60), a 1:1 replacement ratio for all removed significant trees is required and must be demonstrated the final landscape plan submittal with building permit.

The project includes pedestrian facilities integrated into the project design including a proposed privately constructed and maintained trail with public access easement to the southern property at 4197 Dover Street. Northwest Ave is a designated arterial street with a minimum required width of 80' and access spacing limitations under Title 13 of the BMC. The proposal includes a shared access driveway with the southern abutting property along Northwest Ave as well as a 10' right-of-way dedication.

23.08.040 Maximum number of lots:

The subject property is in Area 2 of the Meridian Neighborhood and zoned Residential Single with a Planned/Mixed use qualifier. The zoning table in BMC 20.00.110 establishes a residential single density of 4 units per acre (10,000 sf detached lot size) which can be increased to 7 units per acre provided compliance with Attachment 2, Minimum Performance Criteria, under the Table of Zoning and Purchase of Development Rights from the Lake Whatcom watershed landowner or use "fee-in-lieu-of" option can be used to allow 10 units per acre. Residential multiple density of one unit per 3,600 sf which can be increased to 1,800 sf provided compliance with Attachment 2, Minimum Performance Criteria under the Table of Zoning and Purchase of Development Rights from the Lake Whatcom watershed land owner or use "fee-in-lieu-of" option for increased density.

Pursuant to BMC 20.28.050.B, density shall be as specified in the associated area in the zoning table. If there is more than one density listed, the highest listed density for any housing type specified in the applicable neighborhood subarea pursuant to zoning tables in Chapter 20.00 BMC shall be considered the maximum possible density. The overall

project complies with the maximum allowed density of 3,600 sf per unit (96,184 sf / 20 lots = 4,809 sf per unit).

Purchasing Development Rights or documenting compliance with the Minimum Performance Criteria under Attachment 2 of the Table of Zoning is not required.

23.08.050 Minimum lot size:

There are no minimum lot dimensions, lot sizes or minimum street frontage requirements for infill toolkit projects in accordance with BMC 20.28.050(C). The proposed single-family detached cluster lot (Lot 20) complies with the minimum required 4,000 sf lot size pursuant to BMC 23.08.050(A)(3).

23.08.060 Lot design standards:

(A & B) Logical Boundaries/Reasonable Use. The proposal provides logical boundaries and accommodates reasonable use of the property.

(C) Alley Access. The site does not abut a public alley nor propose to dedicate a public alley.

(D) Building Envelope. Infill toolkit housing forms are exempt from building envelope requirements. Proposed Lot 20 contains the existing single-family residence and complies with minimum building envelope requirements in Table 23.08.060(A).

(E) Abutment – Public Infrastructure. Infill toolkit uses shall provide access to a public right-of-way whether directly or by easement or other means acceptable to the Planning Director in accordance with BMC 20.28.050(C). All infill lots comply with these sections as they abut either a public right-of-way (Northwest Ave, Mahogany Ave, or Arctic Ave), or lane and access easement. The single family detached cluster lot (Lot 20) complies with BMC 23.08.060(E) with abutment to Northwest Ave via the lane and access easement identified in **Attachment A**.

The subject property abuts water, sewer and stormwater mains in Northwest Ave and Mahogany Ave.

23.08.070 Public infrastructure, dedications and improvement requirements:

(A) Dedication. The Proposal is located adjacent to the existing platted right-of-way of Northwest Ave which is 60' wide and developed with two travel lanes going each way, a center turn lane, bicycle lanes and a sidewalks and curb and gutter stormwater abutting the subject property. In order to provide the required right of way for an arterial street pursuant to BMC 13.04.030, as a condition of preliminary cluster plat approval, the applicant is required to dedicate 10' of additional right-of-way abutting Northwest Avenue to accommodate future transportation and associated infrastructure improvements in alignment with the southern abutting property.

(B) Street standards. The proposed development is served by Northwest Avenue for the eastern portion of the site and Mahogany and Arctic Avenues for the western portion of the site. These streets are developed to arterial standards. The project site abuts undeveloped Division Road right-of-way to the north which is encumbered by critical

area wetlands and buffers and not necessary for access as determined by the City of Bellingham Public Works Department (**Attachment J**). The applicant is requesting a subdivision variance to not improve Division Road and this analysis is provided in **Section IX** of the staff report.

- (C) Access. The BMC limits access points on an arterial street and encourages use of combined access points where appropriate to ensure safety. In accordance with BMC 13.52.070, a shared access lane with the southern neighbor (4185 Northwest AVE) is proposed off Northwest Ave and the existing driveway will be decommissioned. A Public Works administrative variance has been approved per BMC 13.52.120 for secondary access off Mahogany Ave for the western development area. The approved variance allows for the two distinct development areas to have separate access to Mahogany Avenue and Northwest Avenue (arterial streets). The applicant has submitted a Traffic Memo prepared by Kimley Horn and dated March 2022 (**Attachment N**) which analyzes the two accesses and impacts to surrounding traffic. Per the memo, "This variance is justified since the two areas of the Shintar Development are anticipated to generate a low number of trips and the existing roadway sections along Mahogany Avenue and Northwest Ave provide left-turn channelization" which "should minimize the impacts of the proposed accesses to Mahogany Avenue and Northwest Ave. Additionally, both accesses are anticipated to have adequate sight distance in each direction." The Public Works Department has reviewed the requested variance in accordance with BMC 13.52.120 and determined it feasible and consistent with the intent of the chapter. More so, as explained in the Public Works Memo (**Attachment J**) "The proposed location of the access from Mahogany Ave is greater than the spacing required in BMC 13.52.080. The volume of traffic on Mahogany Ave appears to be at a level where restricting turning movements from the development is not required. We will not be recommending this access to be right-in/right-out."
- (D) Water, Sewer and Stormwater management. Public water, sewer and stormwater mains are located within Northwest Ave, Mahogany Ave, and the abutting Artic Ave contains water and stormwater mains. The east side of the project proposes a water main extension from the neighboring project 4185 Northwest Ave, connecting the water line from Dover Street to Northwest Ave. The west side of the project proposes a water main extension form Mahogany Ave. The east side of the project proposes a sewer main extension from the neighboring project 4185 Northwest Ave connecting to the sewer main in Dover Street. The existing SFR is currently served by a septic system which will be decommissioned as part of the project and SFR connected to the proposed sewer main extension. The west side of the project proposes a sewer main extension from the main in Mahogany Ave. The applicant provided a Preliminary Stormwater Report from Davis Philips, PE, with Freeland & Associates, Inc., dated November 29, 2023 (**Attachment K**) for the proposed development which was reviewed by City staff. Stormwater from the eastern portion of the site is proposed to discharge to a detention and treatment system being installed on the neighboring property to the south (4185 Northwest AVE). Stormwater outfall is proposed from the vault onto the subject property with dispersion into the wetland buffer behind the proposed two-unit townhomes. Stormwater facilities should be dedicated to the city unless determined otherwise by the City engineer. Stormwater from the western portion of the site is proposed to discharge to the City of Bellingham North End Regional Pond (NERP). The applicant is required to provide a Final Stormwater Report identifying compliance with BMC 15.42 for Public Works' review and approval prior to final plat approval.

- (E) Street Naming and Addressing. This provision will be met with the recording of the final plat and this 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. There is an existing newly constructed park (Cordata Park) located approximately 1.5 miles northeast from the proposal. A small public neighborhood park (Northern Lights Park) will also be constructed within the residential development abutting Talus Way, northwest of the subject site by approximately 750 feet. There are no proposed public amenities on or adjacent to the subject property in the adopted Bellingham Parks, Recreation and Open Space Plan. The application includes a proposed privately constructed and maintained trail with a public easement connecting the neighboring property to the south (4179 Dover Street) through the subject site and to Mahogany Avenue. The Parks Department has reviewed this proposed trail and generally supports and approves its development on the following conditions: Prior to final plat for western development area phase, the applicant shall construct a pedestrian trail as proposed in **Attachment A** and record a 10' public access easement overtop on a form approved by the City. The easement should specify that the trail is for public access and privately maintained and be noted on the final plat.

23.08.080 Landscaping and design of infrastructure:

This subsection is applicable to the Proposal only as it relates to street trees. A landscape plan for the design for the street trees was submitted for review with the Consolidated Permit. City staff anticipates that these provisions can be met with the proposed plat design and the preliminary plat should be appropriately conditioned to require approval of a street tree permit pursuant to this provision.

The stormwater vault is not located on the subject property and more so, it will be below grade and will be paved for surface parking and landscaped as an open space amenity. Site development does not include the construction of any retaining walls.

The decision should be appropriately conditioned to require compliance with this provision as a condition of final subdivision approval in the event the overall utility design changes requiring compliance with these provisions.

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 E2.**

Staff analysis: The project provides for coordinated development with adjoining properties and future development. Shared access and storm water facilities are proposed with the adjacent property to the south at 4185 Northwest. Water and sewer service is proposed to extend through 4185 Northwest Avenue from Dover Street then through the subject site and connecting to Northwest Avenue. The proposed design includes a privately constructed trail with a public easement connecting the neighboring property to the south at 4179 Dover Street through the subject site to Mahogany

Avenue. To comply with BMC 15.12.040, prior to final plat, the existing septic system serving the single-family residence should be decommissioned and a new sewer line be provided to the home from the main extension off Northwest Avenue as shown in **Attachment A**.

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 E2**.

Staff analysis: The application materials provide sufficient information to conclude this provision is met and development of the proposed lots will not require approval of future variances not already included in the subject application. As evidenced by the approved Consolidated Permit, proposed Lots 1-19 can be developed in accordance with BMC 20.28 and all lots can comply with the critical area ordinance regarding sufficient building envelope outside of regulated critical area buffers. Proposed Lot 20, which retains the existing single family residence, maintains the home's conformity with single family residential development regulations in BMC 20.30 on the condition that prior to final plat, the existing garage proposed for demolition be replaced with a garage providing at least two 9'x18' parking spaces as proposed in **Attachment A** or two 9'x18' surface parking spaces located outside the front yard setback and surfaced with no less than 3" crushed gravel in accordance with BMC 20.30.

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; and

Applicant's response: **See Attachment E2**.

Staff analysis: The proposal is located adjacent to improved arterial streets with sidewalks and water/sewer/stormwater mains. The application includes a proposed privately constructed and maintained trail with a public easement connecting the neighboring property to the south (4179 Dover Street) through the subject site and to Mahogany Avenue. The proposed trail connection is supported by the Parks Department as it provides access to the future neighborhood park located in the Aurora Court Plat north of Mahogany Ave.

Based on the Bellingham School District website, the subject site will be served by Alderwood Elementary School, Shuksan Middle School and Squalicum High School (**Attachment C**). The school aged residents in the plat will rely on school district transportation and therefore, the provision to provide safe school routes is not applicable.

Transit service is provided along Northwest Avenue with hourly service to Cordata and Whatcom Community College. The nearest stops are approximately 525 feet south (Stop ID 2255) and approximately 1,200 feet to the north (Stop ID 3259). Adequate pedestrian facilities are provided from the subject site to these transit stops (**Attachment**

C).

The Sanitary Services Company (SSC) has reviewed the proposed refuse locations and access and found them adequate for trash servicing. The proposal has been reviewed by the Fire Marshal and complies with life safety regulations in BMC 17.20.

Staff find the Proposal provides adequate provisions for planning features that assure safe walking conditions for pedestrians and school aged children to transit, parks, and schools, and adequate infrastructure for drainage, utilities, trash, and fire service.

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 E2.**

Staff analysis: Compliance with the current zoning and the City's subdivision regulations for preliminary plats ensures that appropriate provisions are made for open spaces, drainage ways, streets and alleys, potable water supplies, and sanitary wastes.

Staff finds that the provisions of RCW 58.17 are met, and the public's use and interest will be served by the proposal with the recommended conditions through the addition of 19 infill housing units and retention of the existing single-family residence.

BMC 23.12.030(B)

Notwithstanding the approval criteria set forth in subsection (A) of this section, in accordance with RCW 58.17.120, as amended, a proposed subdivision may be denied because of flood, inundation or presence of environmentally sensitive areas as regulated by Chapter 16.55 BMC. Where any portion of the proposed subdivision lies within both a flood control zone, as established pursuant to Chapter 86.15 RCW, and the area of special flood hazard, as defined in Chapter 17.76 BMC, the city shall not approve the preliminary plat unless it imposes a condition requiring the applicant to comply with the applicable regulations in Chapters 16.55 and 17.76 BMC and any written recommendations from the Washington Department of Ecology. In such cases, no development permit associated with the proposed subdivision shall be issued by the city until flood control problems have been resolved.

Staff analysis: This provision is not applicable to the Proposal.

BMC 23.16.010(E) Phasing:

NOTE: The following is not subject to Hearing Examiner approval but is included in the record for reference.

The applicant is requesting the final plat be allowed to develop in phases in accordance with BMC 20.16.010. Per this section, a preliminary plat may be developed and recorded in phases provided a phasing plan is reviewed and approved by the city concurrently with the public facilities construction agreement for the first phase. Each phase shall consist of a contiguous group of lots that meets all pertinent development standards on its own and shall not rely on future phases for meeting any city codes. Specific

improvements or dedications necessary to demonstrate compliance for the entire development may be required to be completed with the first phase, regardless of phase design or completion schedule of future phases, including but not limited to storm water, open spaces, landscaping, and dedications.

Due to the project design containing two distinct development areas (east side, independently accessing Northwest Avenue, and west side independently accessing Mahogany Avenue) the applicant is requesting to develop each of the two development areas separately, in two phases. The east and west development areas consist of a contiguous group of lots that can meet applicable development standards reliance on future phases to meet City codes. Access, garbage, utility connections, stormwater management, frontage improvements, and other relevant project components are each independent for the two proposed phases.

Planning, Public Works, and the Parks Department have reviewed the proposal and compliance with phasing requirements in BMC 20.16.010(E) and determined phasing should be allowed considering the east and west development areas do not rely on one another to achieve code compliance. Per the Public Works Memo (**Attachment J**), "The east and west portions of the site drain to separate Threshold Discharge Areas (TDAs), so phasing is feasible and appears to satisfy BMC23.16.010(E). The eastern portion of the site will drain stormwater to the south and the western portion of the site will drain to the City's North End Regional Pond (NERP)." Critical area mitigation should not be phased and all required mitigation planting, fencing installation, and conversation easements should be completed prior to final plat. The proposed privately constructed and maintained trail with public easement should be completed concurrently with the west development. The required public easement should be recorded concurrently with this phase.

IX. SUBDIVISION VARIANCE

Pursuant to BMC 23.48.040, the hearing examiner may grant a variance from any term of this title, except minimum lot size, if it is shown that the proposal is consistent with the criteria in this section.

The project includes a variance request from BMC 23.08.070(B) to not improve Division Road per the terms of Title 13. Per this section, "all rights-of-way within and abutting a land division are improved in accordance with BMC Title 13." Title 13 standards require that the abutting unopened Division Road right of way be improved to a $\frac{3}{4}$ standard along the full property frontage.

Variance Criteria Analysis:

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

Applicant's response: **See Attachment E2.**

Staff analysis: The subject property and abutting Division Road right-of-way include numerous

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site constraints. The subject property is developed with an existing house proposed to be incorporated into the preliminary subdivision. A large wetland is located in the center of the subject property and extends north into the abutting Division Road right-of-way (**Attachments L and M**). This wetland area is forested with a mixture of mature evergreen and coniferous trees. The topography of the Division Road right-of-way is variable with an overall 10-foot grade change between Mahogany and Northwest created by two steep embankment areas as evidenced by the topographic survey (**Attachment A**). Enforcement of BMC 23.08.070(B) regarding improving the unopened Division Road right-of-way would involve significant clearing and grading, would conflict with avoidance techniques required by the critical area ordinance (BMC 16.55), and would not enhance plat design nor increase density due to existing development and critical areas.

Staff find Criteria 1a is met due to the multitude of existing constraints on the subject site and within the subject right-of-way.

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 E2.**

Staff analysis: Not applicable. Justification via criterion 1a.

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 E2.**

Staff analysis: The Public Works Department has analyzed the requested variance from improving Division Road and determined its construction is not necessary for traffic circulation. Per the submitted Public Works Memo (**Attachment J**), "With the [City's] construction of Mahogany Ave northerly of this site, the improvements to the unopened right-of-way bordering the northern boundary of this site (Division Road) as required in BMC 23.08.070(B) and BMC 13.52.040 appears unnecessary. Proposed access for the western portion of this development can be provided across the unopened right-of-way to Mahogany Ave and the eastern portion can be provided from Northwest Ave." The City defined the traffic pattern in the area through the dedication and construction of Mahogany Ave. As such, Division Road is no longer needed for circulation and its alignment creates unnecessary intersections with arterial streets. Division Road should not be constructed and instead, access should rely on abutting improved streets, Northwest Ave, and Mahogany Ave.

The only other property that could benefit from the construction of Division Road is the neighboring property north of Division Road (4209 Northwest Avenue). 4209 Northwest Avenue abuts Mahogany Avenue and Northwest Avenue. Redevelopment of 4209 Northwest Avenue is feasible without improvement to Division Road.

Not improving Division Road is in the interest of the public welfare as it preserves critical area wetlands and buffers, mature forests, and prevents additional intersections along two arterial streets.

Staff find Criteria 2 is met as Division Road is not needed for traffic circulation needs, the property which abuts Division Road is not precluded of development opportunities if Division Road is not constructed, and not constructing Division Road preserves critical areas and prevents excessive intersections along arterials.

X. ENVIRONMENTAL REVIEW AND EVALUATION

The city reviewed the Proposal for compliance with Chapter 16.20. A SEPA threshold determination of non-significance was issued for SEP2023-0024 on 4/23/2024 (**Attachment I**). The threshold determination was issued based on the environmental checklist prepared by the applicant, submitted technical documents, and the project description.

XI. CONCLUSION

Based upon staff's analysis of the subdivision application and all supporting materials referenced in this staff report, staff finds the subdivision application compliant with the municipal code if properly conditioned and recommends the Hearing Examiner issue an approval, with conditions.

The Proposal furthers the goals and policies of the Comprehensive Plan by providing an infill development opportunity in an area where existing infrastructure and services can be adequately provided to service the proposal. The Proposal is consistent with the current zoning and applicable regulations, as such preliminary plat approval should be granted. 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.

XII. CONDITIONS

Based upon staff's analysis above, staff recommends the Hearing Examiner approve the preliminary cluster plat and subdivision variance from street improvements to Division Road for the Proposal as described herein and as provided in **Attachments A-N** subject to the following conditions:

A. GENERAL REQUIREMENTS

1. The plat shall be developed generally consistent with the lot layout on **Attachment A** as conditioned.
2. Modifications to this decision shall be processed in accordance with BMC 23.16.090.
3. A clearing and grading plan for the property, including rights-of-way, shall be submitted for review and approval by the Planning and Public Works Departments concurrent with review of civil drawings for the infrastructure.
4. Development of the property shall be consistent with the provisions of BMC Title 23, and with the description of the Proposal contained in the Determination of Non-significance, except as otherwise provided herein.
5. Impact fees for transportation, schools and parks shall be paid in accordance with applicable BMC requirements.
6. Preliminary plat approval shall expire as provided in BMC 23.16.070.

7. All conditions of the Consolidated Permit (**Attachment B**) shall be deemed conditions of this decision.

B. CONDITIONS FOR FINAL PLAT APPROVAL

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 23.16 BMC.

1. Phasing shall be allowed in accordance with BMC 23.16.010(E). A phasing plan shall be submitted for review and approval by the City concurrently with the public facility construction agreement for the first phase.
2. Access to the eastern site shall be provided through a shared access easement with the southern abutting property to Northwest Ave and improved to a full lane standard as shown on **Attachment A**. The existing driveway curb cut off Northwest Ave shall be removed. The applicant shall be required to submit a shared access easement for City review and approval which shall be recorded with the Whatcom County Auditor prior to final plat approval.
3. Secondary access shall be allowed and provided off Mahogany Avenue as shown on **Attachment A**.
4. The applicant shall be required to dedicate 10' of additional right of way abutting Northwest Ave to the City for potential future public infrastructure improvements prior to final plat approval.
5. The applicant shall be required construct a pedestrian trail connecting to 4179 Dover Street and dedicate a 10' public access easement overtop as shown in **Attachment A**. The easement shall indicate it is for public access and privately maintained. Said easement shall be completed prior to the permitting of the west phase of the project.
6. The applicant shall be required to obtain a Public Facilities Construction Agreement and obtain final approval from the City for the extension of water/sewer/stormwater mains in accordance with Public Works Department requirements prior to final plat approval. The public utility main extensions shall be generally consistent with **Attachment A** and require public utility easements reviewed and approved by the City and recorded with the Whatcom County Auditor prior to final plat approval. The required public infrastructure construction shall be completed and accepted by the City prior to final plat approval.
7. The applicant shall decommission the existing septic system on Lot 20 and provide a new sewer service line for the single-family residence from the main extension off Northwest Avenue as shown in **Attachment A**.
8. The existing garage on Lot 20 shall be demolished and replaced with a garage providing at least two 9'x18' parking spaces as proposed in **Attachment A** or replaced by two 9'x18' surface parking spaces located outside the front yard setback and surfaced with no less than 3" crushed gravel in accordance with BMC 20.30.
9. The applicant shall provide evidence to demonstrate compliance with BMC 23.08.070 (E and F).
10. The applicant shall be required to submit private covenants, conditions and restrictions (CC&Rs) for vehicular/pedestrian access, parking, utilities, open space amenities, waste/recycling, mail service, etc. for City review and approval prior to final plat approval. The private CC&Rs shall be recorded with the Whatcom County Auditor with the recording of the final preliminary plat.
11. The applicant shall be required to submit common wall agreement(s) for all townhomes in accordance with BMC 20.28.050(F) for City review and approval prior to final plat approval. The common wall agreement(s) shall be recorded with the Whatcom County Auditor with the recording of the final preliminary plat.
12. Prior to final plat approval, conservation easements required by CAP2023-0026 shall be

- recorded with the Whatcom County Auditor.
13. Mailboxes shall be installed as approved by the United States Postal Service.
 14. The applicant shall be responsible for obtaining any and all necessary Federal and/or State approvals associated with the proposal.
 15. The following shall be shown on the face of the plat, as applicable:
 - i. Notice of the associated land use approval for Design Review and Critical Area Permitting (DR2023-0018 and CAP2023-0026).
 - ii. All existing, required, and proposed easements.
 - iii. A ten-foot-wide easement adjacent to public rights-of-way reserved for utility purposes, as determined necessary by the utility providers.
 - iv. 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.
 - v. A note referencing any existing private covenants and any covenants specific to the proposed lots.
 - vi. Stormwater limitations.
 16. Stormwater management shall be provided in accordance with Chapter 15.42 BMC and all stormwater facilities shall be dedicated to the city unless determined otherwise by the City Engineer.
 17. Street trees shall be installed pursuant to BMC 23.08.080(G)(5) and 23.08.080(C).
 18. Pursuant to BMC 16.60.080(A)(1), no clearing is permitted on an undeveloped lot without a valid Building Permit or Public Facility Construction Agreement.
 19. The applicant shall be required to take reasonable efforts to preserve existing significant trees on site particularly along the perimeter boundaries of the site and within open space areas not impacted by utilities. Prior to the issuance of a building permit and/or any site disturbance, the applicant shall schedule a site visit with the planning project manager to inspect the clearing limits and tree/critical root zone protection.

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Approved By:



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