

SUB2024-0006/USE2024-0012: List of Attachments

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

Attachment A Land use applications, including:

- A1 Application narrative and decision criteria responses
- A2 Site and building plans
- A3 Preliminary plat map

Attachment B Birchwood Neighborhood Zoning Map, Table and Area 1 description

Attachment C Notices, including:

- C1 Notice of Application
- C2 Affidavit of posting
- C3 Notice of Hybrid Public Hearing
- C4 Affidavit of posting

Attachment D SEPA Threshold Determination

Attachment E Coal Mine Hazard Evaluation

Attachment F Public Comment

CITY OF BELLINGHAM
PLANNING AND COMMUNITY DEVELOPMENT
STAFF REPORT

HEARING EXAMINER

KCLT LaFreniere Court Housing
September 25, 2024

PROJECT NO.: Incentive Program for Innovative Affordable Homeownership Projects (SUB2024-0006) and City Sprouts Farm (Agricultural Nursery (USE2024-0012))

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

OWNERS: Kulshan Community Land Trust (KCLT), 1715 C Street #201, Bellingham, WA 98225

NOTE: This staff report includes the review and recommendation for both land use applications listed above. Staff recommends the Hearing Examiner conduct one public hearing for the applications with separate decisions based on each application's specific decision criteria.

I. OVERVIEW

A. PROPOSAL - Attachment A

Request for approval of a land division to subdivide approximately 2.79 acres into 9 residential lots and one reserve tract through the Incentive Program for Innovative Affordable Homeownership Projects (Incentive Program) pursuant to Chapter 20.29 Bellingham Municipal Code (BMC). The proposal includes the code-authorized 50% density bonus and requests for regulatory modifications from minimum lot size, lot design standards, and parking. Demolition of the existing buildings is proposed.

Each lot is proposed to contain a primary dwelling unit and an accessory dwelling unit, with separate ownership of accessory dwelling units established through the condominium process. All units are proposed to be permanently affordable.

The proposal includes a conditional use permit for an agricultural nursery. The City Sprouts Farm (Farm) is an existing use that operates in the northern portion of the site, but the City has no record of land use approvals to authorize its existence. The application materials show the Farm within a use easement over several of the residential lots.

Vehicular access to the residential lots and the Farm is proposed from a private driveway off Birchwood Avenue. **The construction of public street and utility improvements are required and proposed to comply with City code.**

B. APPLICATION REVIEW PROCEDURES

The Proposal requires approval of Types I and III land use decisions. As allowed per BMC 21.10.060, the applicant is requesting a consolidated review of the Type III Incentive Program and Conditional Use applications.

The land division, compliance with development regulations, and design review are reviewed through the Incentive Program and the agricultural nursery is reviewed through the Conditional Use provisions. Both are Type III applications that require approval by the Hearing Examiner and are the subject of this staff report.

The ADU and critical areas permit applications require an administrative decision and are reviewed through the Type I process. The applicant did not request the consolidated review of these Type I applications with the other Type III applications. **The ADU applications have been reviewed and determined to be generally compliant with the ADU provisions in BMC 20.10.036.** Staff anticipates issuing the ADU permits prior to public hearing for the Incentive Program.

An application for critical areas is required and has not been submitted at this time. A critical areas permit specifically for the coal mine hazard shall be approved prior to the issuance of any construction permits for either infrastructure or residential buildings.

C. LOCATION

2912 Birchwood Avenue / Area 1, Birchwood Neighborhood. Lengthy legal description.

Assessor's parcel number: 380223 562531 0000.

Land use and comprehensive plan designations: Land Use: Residential-Single, Detached, Mixed with a 20,000 minimum lot size requirement; Comprehensive plan: Single Family Residential, Low Density. **Attachment B**

II. STAFF RECOMMENDATION

Approve the applications for the Incentive Program for Innovative Affordable Homeownership Projects and the Conditional Use Permit for the City Sprouts Farm with the recommended conditions in Section XIII of this report.

III. JURISDICTION

BMC 2.56.050(B)

The decision of the hearing examiner on the following matters which shall be within the jurisdiction of the hearing examiner, notwithstanding any other provision of the Bellingham Municipal Code, shall be final, subject only to judicial challenge as follows:

12. Applications for conditional use permit pursuant to Chapter 20.16 BMC.

17. Applications for innovative affordable homeownership projects under Chapter 20.29 BMC.

IV. BACKGROUND

1. February 7, 2024: The City received land use applications for the Incentive Program.
2. March 6, 2024: The City determined the application sufficient to begin review and deemed the Incentive Program application complete.
3. March 8, 2024: The project narrative submitted with the Incentive Program application did not include discussion of the ADUs and the City had previous conversations with the applicant that a Conditional Use Permit was required to establish the existing City Sprouts Farm as a legally established use. The City discussed these elements of the proposal with the applicant who agreed these should be considered concurrently with the Incentive Program application. In response, the City issued a Request for Information for the submittal of land use applications for a Conditional Use Permit for an agricultural nursery and the proposed accessory dwelling units.
4. April 24, 2024: The applicant submitted a response to the March 8, 2024 Request for Information, which included applications for a Conditional Use and ADUs.
5. May 28, 2024: The city issued a Notice of Application establishing a comment period through June 12, 2024 compliant with BMC 21.10.200. **Attachment C1** In response to this notice, the city received public comment concerning parking, density, neighborhood character, property valuation, safety and incorrect and misleading application materials regarding zoning, critical areas, clearing, neighborhood character, and overall impact to the neighborhood. The public comment will be discussed in further detail in Section V of this staff report.

CORRECTION: The Notice of Application incorrectly stated the issuance date but did include the correct comment period duration. The affidavit of mailing attached to the Notice of Application verifies this notice was issued on May 28, 2024.

6. June 3, 2024: The applicant informed the City that the public notice signs had been posted adjacent to Birchwood Avenue. **Attachment C2**
7. September 4, 2024: The City issued a Determination of Nonsignificance for the Proposal. **Attachment D** This determination was issued compliant with BMC 21.10.220.
8. September 11, 2024: The City issued a Notice of Hybrid Public Hearing. **Attachment C3**

9. September 16, 2024: The applicant informed the City that the Hybrid Public Hearing Notice had been posted on the site on September 11, 2024. **Attachment C4**
10. September 18, 2024. The applicant submitted a revised lot layout for 9 residential lots with easements over some lots for the common driveway, utilities, parking and Farm use.

EXISTING SITE CHARACTERISTICS

A. LAND USE AND ZONING DESIGNATION – Attachment B

The subject site is in Area 1 of the Birchwood Neighborhood and zoned Residential-Single, Detached, Mixed with a minimum 20,000 square-foot detached lot size. **This zoning designation lacks a cluster designation and therefore does not outright allow infill housing units pursuant to BMC 20.28.020.** The provisions of the Incentive Program do allow attached-single family units, which are proposed. **Development on the 2.79-acre site yields a total of 6 units under the 20,000 square-foot minimum lot size.**

The zoning table for Area 1 of the Birchwood Neighborhood (BMC 20.00.020) does not list any special conditions or prerequisite considerations. The special regulation explains that the 'mixed' use qualifier is intended to allow agricultural uses and the raising of farm animals outright provided that these are not for commercial purposes. **The 'mixed' designation does not immediately allow the Farm since it is a commercial use.**

The land use designation is Single Family Residential, Low Density.

B. EXISTING CONDITIONS

The subject site consists of a 2.79-acre parcel developed with two buildings that are proposed for demolition and includes the Farm. Access to the site is from a single driveway off Birchwood Avenue.

The remaining portion of the site consists of a mix of vegetation, including trees and shrubs. No wetlands have been identified on or within 150 feet of the site.

The site is over a historic coal mine that is regulated by the City's critical area ordinance. The site is in a location identified as having a moderate potential for subsidence. In response, the applicant submitted a Coal Mine Hazard Evaluation concluding there appears to be a low potential for subsidence from the Bellingham No. 1 Coal Mine (see p. 3 of 7, Attachment E) that does not warrant mitigation for the construction of infrastructure or the residences.

The abutting properties are located within the same land use and zoning subareas as the proposal and are developed with single-family residences and a nonconforming multifamily use. The single-family uses in the general vicinity are on lots with site areas ranging from approximately 7,200 to 41,000 square feet.

The Birchwood Elementary School and the Congregation of Jehovah's Witnesses church are located within approximately 300 feet of the subject site.

The subject property abuts Birchwood Avenue, which is a local residential street. Public water, sewer and stormwater mains abut the site. **The city has determined this infrastructure has sufficient capacity to serve the Proposal.**

V. **PUBLIC COMMENT** – Attachment F

Public comment letters raised concerns how the proposal does not provide sufficient parking, is too dense for the neighborhood, and the application materials include incorrect and misleading information. Staff evaluated the public comment for consistency with adopted development standards in the municipal code and City policies to evaluate and determine if the issues raised in the public comment warrant mitigation.

Parking

The proposal meets the City's parking regulations by providing 18 parking spaces for the single-family uses and 9 parking spaces for the ADUs. Staff is proposing parking for the Farm and residential uses be shared since they have different peak times for demand. Staff believes the parking is sufficient for the proposed uses and is not recommending additional mitigation. The proposal includes an area labeled for temporary overflow staging. **The use of this area for site and home construction is acceptable.** This area should not be used for overflow parking for the residences or the Farm. Placing an open parking area here is inconsistent with the character of the neighborhood. The City's design standards discourage parking between the development and the street and the single family uses do not include large open parking areas adjacent to the street (Birchwood Ave).

Density

The proposal includes a request for a modification to allow a 50% density bonus pursuant to BMC 20.29.030(F)(1). The applicant's justification for this request is provided in Attachment A and staff's response is provided below. **In summary, staff believes the applicant has demonstrated the appropriateness and need for the density bonus modification. The Incentive Program was specifically created to allow increases in density in exchange for guaranteed affordable housing, which the community desperately needs.**

Safety

The safety of the neighborhood should not be judged by the activities of community members that are not associated with the development. The proposal has been designed with safety in mind for its residences as it relates to site and building layout. There is no evidence to substantiate the neighborhood will be less safe as a direct result of this proposal.

Property valuation

Property valuations are established by Whatcom County. The taxation of properties owned by KCLT are valued at a different rate than market rate units, which are lower than market rate units. The property valuations of the market rate units are not affected due to its location to a KCLT owned property. There is no evidence that this project will affect property values in the neighborhood.

Application materials – Inaccurate and Misleading

Concerns were submitted commenting that the application materials include inaccurate information and provide misleading information. The concerns can be summarized into two main topics: Property description and land division criteria.

Property description

The application materials accurately state the subject site's location and zoning. The proposal is consistent with the Residential Single zoning and the **Incentive Program allows an applicant to request to attach the units (BMC 20.29.030(F))**. Staff does not believe the application materials are misleading by leaving out a discussion regarding the 'mixed' designation. The application materials recognize the Farm is a commercial use and cannot operate under the 'mixed' designation that allows agriculture and animal husbandry. In response, a Conditional Use Permit has been submitted for consideration to allow the Farm as a commercial use.

The application materials could have been further expanded to explicitly state the only critical area on the subject site is the coal mine hazard. The application materials do discuss the coal mine in the SEPA checklist and the Coal Mine Hazard Report concludes there is a low potential for subsidence from the Bellingham No. 1 Coal Mine.

Subdivision criteria

The community design performance criteria can only be met for the Farm if the Conditional Use Permit is approved. **The Conditional Use Permit application does not include a request to maintain the Farm's operations as they are currently existing and does not include a request to expand the Farm to a full commercial operation that could allow uses such as onsite retail uses.** The Conditional Use Permit, if approved, would run with the land and not the current operator. **Any future operator would be subject to the terms of the Conditional Use Permit. If the Farm ceases to operate, KCLT as underlying property owner would and should have the same rights as any other property owner to consider and request further development opportunities under current or future land use codes.**

The Incentive Program was adopted under the City's current comprehensive plan and therefore, a proposal found to meet the provisions of this program regardless of the number of modifications requested is consistent with the comprehensive plan. Staff has provided many comprehensive plan goals and policies that support the underlying purpose of both the program and the specific proposal.

The neighborhood character has changed with recent short subdivision approvals and the construction of ADUs. Change is healthy when done appropriately within the parameters of the existing codes. The application materials presented for consideration will be evaluated for their conformance with these codes.

The site does contain significant deciduous trees, which are mostly cottonwoods. The trees within the proposed development footprint of the residential uses are proposed for removal. These trees are generally not suitable for close proximity to residential structures and should be removed. Staff agrees with the public comment that cottonwoods have a high ecological value and their importance in the overall ecosystem should be valued when their location is suitable for the environment.

The concerns raised suggesting the proposal will be a detriment to the neighborhood are

unsubstantiated by code. The City Council has identified the existing housing stock lacks affordability. The application, which includes the density bonus, is a direct response to this crisis. Use of the Incentive Program was intended to be used city-wide in all residential single, multifamily and urban village residential-transition zones.

Development that does not utilize the Incentive Program would require more infrastructure to serve the same number of lots and utilize the entire site to meet minimum lot size requirements. This would be an irresponsible action for the current owner to take and would not result in affordable housing. Affordable housing should have the opportunity to exist in all neighborhoods, including the Birchwood Neighborhood.

VI. APPLICATIONS

Please refer to **Attachment A** for the submitted Incentive Program and Conditional Use Permit applications and supporting information from the applicant.

VII. INCENTIVE PROGRAM FOR INNOVATIVE AFFORDABLE HOMEOWNERSHIP PROJECTS – Chapter 20.29 BMC (Incentive Program)

Introduction

The Incentive Program allows organizations to create innovative owner-occupied affordable homes when they can demonstrate an ability to finance, manage and monitor affordable home sales to assure continued affordability. The Incentive Program limits the form of these homes to either single-family detached or attached units.

The Incentive Program does not limit or explicitly provide the method to create home ownership opportunities to ensure residential uses are available for sale. Ownership opportunities for this proposal include land division and condominiums.

The proposed 9-lot short plat is reviewed as a component of the Incentive Program. The Hearing Examiner will make a decision based on the short plat and incentive program criteria.

The residential uses are subject to single-family development regulations pursuant to Chapter 20.30 BMC and ADU regulations pursuant to BMC 20.10.036.

BMC 20.29.010 and .020

Please refer to **Attachment A1** for the applicant's justification of how the proposal satisfies these code provisions.

Staff response: Staff supports the applicant's responses to these code provisions and recommends the Hearing Examiner conclude that the proposal meets the intent of the Incentive Program and that KCLT offers, through the land trust model, mechanisms to ensure the housing units are affordable to income-qualified buyers.

BMC 20.29.030 – Approval requirements

Pursuant to BMC 20.29.030, innovative affordable home ownership projects are subject to the following eligibility requirements:

(A) – Project Applicant

The site's owner, Kulshan Community Land Trust, meets the eligibility criteria as a qualified applicant. KCLT has various examples of affordable homeownership opportunities throughout the City that are for-sale products with restrictive ground lease covenants guaranteeing permanently affordable units for income qualified buyers. KCLT is also the only organization that has successfully used the Incentive Program on other projects.

For additional information, please refer to the application narrative in **Attachment A1**.

(B) – Single-Family Ownership and (C) Guarantee of Affordability

The project consists of 9 single-family lots with each lot containing a primary single-family dwelling unit and an ADU. The land division allows KCLT to sell each single-family residence separately to an income-qualified buyer. The ADU regulations further allow the sale of the ADU units through the condominium process. KCLT is proposing through both the land division and condominium processes to make 100% of the units, the 9 single-family attached home and the associated 9 ADUs, affordable for sale products.

KCLT's legal framework as a land trust allows them to create affordable, for-sale single-family residences with sufficient controls to meet the affordability portions of these provisions. Any funding received by the City for this project would also require the project to establish affordable housing units.

For additional information, please refer to the application materials in **Attachment A1**.

(D) – Project Location

The subject site is located in a residential-single zone and not located in the Lake Whatcom watershed.

(E) – Design Review

Design review is required to ensure the project protects, maintains, or enhances neighborhood character and compatibility through the proposal's site and building designs. The design provisions of this section are intended to improve the streetscape public realm and sense of security by providing greater opportunity for more eyes on the street and social interaction, and minimizing the presence of garages. Where these standards conflict with other provisions in BMC Title 20, these standards shall apply. The proposal includes a request to modify a design standard concerning the dimensions of the front porches.

The applicant's responses to the following design provision are in **Attachment A1**. The preliminary civil and architectural plans are in **Attachment A2**.

1. Emphasize single-story massing elements on front facades by incorporating porches, stoops, balconies, bays and trim work to provide greater visual interest from the fronting street, lane or pedestrian corridor.

Staff response: Staff supports the applicant's response to this provision and finds this standard is in part met by providing covered front porches that face common pedestrian corridors.

2. Employ a change of materials, colors or textures on front facades of individual homes to provide further articulation and additional variety and character.

Staff response: This standard is not readily met. The overall design of the buildings should be amended to include building materials and architectural detailing to clearly delineate the individuality of each unit on all sides of the buildings.

3. Apply trim details used on the front facade in a consistent manner to all elevations of a building.

Staff response: The building elevations and renderings appear to show consistent trim detail on all sides of the buildings.

4. Each dwelling shall have a covered front porch or stoop with the main entry facing a street, lane, or pedestrian corridor.

Staff response: This provision is met.

5. Front porches and stoops shall have no dimension less than five feet and shall occupy no less than 30 percent of the front facade of a building. The longest dimension of a porch or stoop shall be parallel to the fronting street, lane, or pedestrian corridor.

Staff response: This provision is partially met for all units. The porches do occupy at least 30% of the front façade of the ground floor of each building but are not designed to meet the 5-foot dimensional requirements.

The applicant has requested a modification from this provision. Staff's response to the request for modification is provided below.

6. Each residence shall include a front swing door (no slider) access to the corresponding front porch or stoop.

Staff response: This provision is met for all units. The overall design of the buildings should be amended to include building materials and architectural detailing to clearly delineate the individuality of each unit on all sides of the buildings.

7. A walkway shall be provided from the front porch or stoop to the abutting public street, lane or pedestrian corridor.

Staff response: This provision is partially met for the site. The private driveway serving the site has a 4-foot pedestrian walkway on the west side that connects two separate pedestrian corridors that provide access to both the east and west groupings of the residential buildings.

To enhance the pedestrian experience, the proposal should be revised to include a similar 4-foot pedestrian walkway along the east side of the private driveway. These walkways should be constructed flush with the driving surface of the driveway and the overall width of the driveway, inclusive of both walkways, should be reduced to 20 feet. Narrowing the width of the driveway will slow traffic and enhance a safe pedestrian experience.

The proposed width of the internal walkways serving the individual units is wider than needed to achieve pedestrian circulation. The common walkways should be reduced to 42 inches and the individual walkways associated with each residential unit should be reduced in width to 3 feet.

8. Minimize the impact of the garage on the streetscape or lane by the following:

- a. Set garages back at least four feet from the front face of the building (excluding front porches and stoops).
- b. Restrict garage width to no more than 40 percent of the front facade of a building.

Staff response: Garages are not proposed and therefore this provision is not applicable.

9. Fencing located between the primary building and the street, lane or pedestrian corridor is limited to 42 inches in height and may be no more than 60 percent opaque. Chain-link or cyclone fencing is not allowed adjacent to a street, lane, or pedestrian corridor.

Staff response: Fencing is not proposed at this time but this provision should continue to be an ongoing design provision of development.

10. Landscaping.

- a. Use planting materials and landscape structures such as trellises, raised beds and fencing adjacent to streets, lanes and pedestrian corridors to unify the overall site design and enhance the public realm.
- b. Landscape beds shall include trees and a mix of small, medium and large plantings for a “layered” appearance, except where landscaping standards require a hedge, or an alternative design is approved by the planning and community development director.

Staff response: The application materials included a draft landscape plan that does not meet these provisions. Staff did not identify any inherent reasons why these provisions cannot be met. A final landscape plan demonstrating compliance with these provisions is required.

(F) and (G) – Requests for Regulatory Modification/Staff Recommendation

Project applicants must meet all other applicable development regulations in the Bellingham Municipal Code pertaining to single-family detached or attached houses. Requests for regulatory modification must accompany the preliminary plat, short plat, binding site plan, or lot line adjustment application and must be noted on submitted site plans. The applicant has submitted requests to modify density, lot size, land division regulations, front porch design and setbacks regulations as outlined by the applicant in **Attachment A1**.

During a thorough review of the application materials, staff identified that two additional modifications concerning parking location and parking stall dimensions were required. And as discussed below, the requested setback modification is not required.

Staff response: Staff has reviewed the proposal for compliance with applicable single family development regulations and finds the proposal compliant with the development regulations in Chapter 20.30 BMC, with the exception of the requested modifications.

BMC 20.30.040

(B). Minimum site area. The proposal includes a modification from the requirement to provide 20,000 square foot lots. Proposed lot areas range from 3,338 to 28,502 square feet.

(C) Main building/Principal use. The proposal meets this provision by locating one main building on each lot that includes one principal use. The ADUs are accessory to the primary residence and therefore are not considered an additional principal use or second building.

(D) Open space. Each lot meets the minimum 30% open space requirement.

(E) Height. The proposed height of the tallest structure is 23' 3" under Height Definition No. 1. This height meets the code allowed 35-foot height.

(F) Yards.

Front. The front yards for Lots 5 and 7 are those abutting Birchwood Avenue and the access easement. The structures on these lots provide the required setbacks of 50 feet measured from the centerline of Birchwood Avenue and 10 feet from the access easement. The remaining lots do not have front yards.

Side. A modification as requested by the applicant from this provision and staff has determined the proposed 0-foot setback complies with the requirements pursuant to BMC 20.30.

Rear. All units provide the required 10-foot setback.

(H) Street trees. The draft landscape plan includes the required street trees along Birchwood Avenue. Additional street trees are proposed along the private driveway. The driveway is the development's primary access, for both pedestrian and vehicular, and these trees are important and should be installed at the same rate of 1 tree/50' of driveway frontage.

BMC 20.30.060 - Parking

(B) Number of spaces. The proposal requires 2 parking spaces per primary dwelling and 1 parking space for each accessory dwelling unit, for a total of 27 parking spaces. Parking for the accessory dwelling units is required because street parking is not provided on Birchwood Avenue. The proposal provides the required number of parking spaces for the residential units.

(C) Parking design. The parking design meets these provisions with the exception of the requirement to provide parking within each lot and from the parking stall dimensions.

Parking for single-family uses must be located on site. Parking for the single-family uses are predominately located offsite in a common easement area. This overall parking design is a more efficient use of land and results in a pedestrian oriented development.

The proposed parking stalls don't meet the required 9' X 18' dimensions. The proposed dimensions are consistent with minimum stall dimensions for open parking areas pursuant to the municipal code. If the Hearing Examiner approves the requested modification to allow common open parking, the modification to allow a reduced parking stall dimension should also be approved.

Staff has reviewed the modification requests and finds the applicant has demonstrated the modifications should be granted to fulfill the purpose and intent of the Incent Program.

Additionally, the requested modifications are necessary to maximize the number of affordable dwelling units while preserving the opportunity to retain the Farm and facilitate future development opportunities. If the Conditional Use Permit for the agricultural nursery is not approved, the modifications requested for lot size, building envelope and setbacks should be reevaluated to determine if there are alternative design approaches that do not necessitate modifications that would provide the maximum yield of affordable housing units while satisfying the overall purpose and intent of this Incentive Program.

(H) Request for Exemption from Impact Fees and Stormwater Fee.

The code does not give the Hearing Examiner authority to consider the payment of impact fees. This request will be processed separately from the Hearing Examiner proceedings.

VIII. LAND DIVISION CRITERIA AND ANALYSIS

The proposal includes the division of the site into 9 residential lots as shown on **Attachment A3**. Pursuant to Title 23 BMC, land divisions shall be given approval, including short plat and preliminary plat approvals 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 A1.**

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

The affordability component of the proposed residential development is consistent with the comprehensive plan by furthering the following goals and policies:

Land Use

- GOAL LU-1 Support sense of place in neighborhoods.
- Policy LU-1 The Single-Family Residential designation permits a range of housing densities to achieve the City's housing diversity and affordability goals. In undeveloped or infill areas, new housing may include single-family detached, single-family attached, townhouses, cottage housing, accessory dwelling units, clustered housing and other small-scale housing forms. Accessory, public and semi-public uses are also allowed.
- Policy LU-4 Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.
- Policy LU-5 Foster neighborhoods with a balanced mix of housing prices that are compatible with the wages and incomes in the community.
- Policy LU-6 Support higher-density development with parks, art, schools and other public amenities.
- Policy LU-10 To achieve a healthy mix of housing that is affordable to a wide range of incomes, implement and seek new, innovative tools, including, but not limited to:
- Density bonuses;
 - Inclusionary zoning;
 - Cluster subdivisions that preserve open space, retain natural features and provide other public benefits;
 - The Infill Housing Toolkit, which includes small lot homes, townhomes and other housing forms;
 - Accessory dwelling units;
 - Adaptive reuse of existing buildings;
 - Purchase and transfer of development rights (TDR) programs; and
 - Public-private partnerships for shared parking facilities, wetland mitigation, and regional stormwater management.
- GOAL LU-10 Foster community connectedness to improve the health of residents.
- Policy LU-81 Increase access to healthy food for all Bellingham residents by encouraging and supporting healthy food retail, farmers markets, and small-scale urban farms (e.g. residential and community gardens).
- Policy LU-82 Explore incentives and regulatory changes to encourage grocery stores, farmers markets, food carts and other mobile vendors to locate

in underserved areas.

- Policy LU-83 Encourage development patterns that support healthy, affordable food access.
- Policy LU-84 Encourage healthy food purveyors, such as grocery stores, farmers markets and community food gardens, to be located near residential areas and public transit.
- GOAL LU-5 Support the Growth Management Act's goal to encourage growth in urban areas.

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 backgrounds.
- Policy H-3 Encourage well-designed infill development on vacant or underutilized properties.
- Policy H-13 Consider the impacts on Citywide housing capacity, affordability and diversity when making land use policy decisions and code amendments.
- Policy H-14 Actively coordinate with public and private partners in efforts to meet regional housing needs.
- Policy H-15 Support fair and equal access to housing for all persons, regardless of race, religion, ethnic origin, age, household composition or size, disability, marital status, sexual orientation or economic circumstances.
- GOAL H-2 Foster housing that is safe, healthy, livable, and affordable for all income levels in all neighborhoods.
- Policy H-16 Increase the supply of affordable rental and ownership housing that is context sensitive throughout the City, especially in areas with good access to transit, employment, education and services (see Land Use Chapter for definition of "context sensitive").
- Policy H-17 Consider the impacts of transportation costs on housing affordability and accessibility of services and other opportunities when planning for housing.
- Policy H-19 Continue providing incentives to support housing affordability (e.g. density bonuses, expedited permitting, multi-family tax exemption program and fee reductions) and consider including workforce housing as part of certain incentives programs.
- Policy H-22 Support and expand low-income housing programs and public funding (e.g. the Housing Levy and HUD entitlement funds).
- Policy H-26 Support organizations that construct, manage and provide services for affordable housing, including permanently affordable housing.

Capital Facilities and Utilities

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

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

Applicant's response: **See Attachment A1.**

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 compact residential development with housing and site design elements that provide natural surveillance within the development, 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.

23.08.040 Maximum number of lots/units:

The application includes a modification request from this provision pursuant to BMC 20.29.030(F). This provision will be implemented through the Incentive Program.

23.08.050 Minimum lot size:

The application includes a modification request from this provision pursuant to BMC 20.29.030(F). This provision will be implemented through the Incentive Program.

23.08.060 Lot design standards:

(A) and (B) Logical Boundaries and Reasonable Use. The proposed single-family lots meet these provisions.

(C) Alley Access. The proposal does not abut a platted alley and therefore, this provision is not applicable.

(D) Building Envelope. The application includes a modification request from this provision pursuant to BMC 20.29.030(F). This provision will be implemented through the Incentive Program.

(E) Abutment – Public Infrastructure. All lots are proposed to provide abutment on public infrastructure either through direct abutment on Birchwood Avenue or via abutment by an easement(s). For those lots providing abutment by easement, the City should review the necessary legal documents as to form and content as determined necessary to provide each lot with abutment on and access to public infrastructure, including street, water, sewer and stormwater.

The provisions concerning the number of lots that can be served by a single driveway (BMC 23.08.060(E)(4) and the overall design of the driveway (Table 23.08.060(B)) are not met. The application includes modification requests from these provisions pursuant to BMC 20.29.030(F)(2)(b). These provisions will be implemented through the Incentive Program.

(F) Cluster Short and Cluster Preliminary Plats. The zoning does not contain a cluster use qualifier and therefore this provision is not applicable.

23.08.070 Public infrastructure, dedications and improvement requirements:

(A) Dedication. No additional dedication of land for public rights of way is needed but staff anticipates that the dedication of public and private easements for water, sewer and stormwater will be necessary. These dedications should be required as needed to service the individual lots and compliance with this provision should occur through the final subdivision approval process.

(B) Street standards. Birchwood Avenue does not meet the City's three-quarter standard for a residential street. Additional improvements are required.

(C) Access. The single, shared vehicular access meets the access provisions pursuant to Chapter 13.52 BMC.

(D) Water, Sewer and Stormwater management. Public water and sewer mains are proposed to be extended, as necessary, in accordance with the City code to serve the individual lots. No additional extensions are required to provide for the orderly extension of public infrastructure to adjacent properties.

The application materials provide sufficient information to evaluate the preliminary plat for general compliance with these provisions. Full compliance with this provision will be determined upon submittal of final engineered drawings during the public facilities construction agreement review process. The preliminary plat should be appropriately conditioned to require compliance with this provision as a condition of final subdivision approval.

(E) Street Naming and Addressing. The City will assign a new street name and addresses as determined necessary. 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 does not identify any public recreation facilities on the subject site.

23.08.080 Landscaping and design of infrastructure:

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

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 A1.**

Staff analysis: City staff determined the subject site is not required to share access with adjacent parcels and the extension of public infrastructure is not needed for the coordinated development of abutting parcels.

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 A1.**

Staff analysis: The application materials provide sufficient information to conclude this provision is met provide the requested modifications associated with the Incentive Program application are approved.

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 A1.**

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

6. It will serve the public use and interest and is consistent with 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 A1.**

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

Transit does not immediately serve the site. There are two transit stops that are approximately ½ mile from the subject site that are located on Northwest Avenue, which is approximately east of the proposal, and one on W Maplewood Avenue, which is northeast of the proposal. The Northwest Road transit stop is the only stop that is accessible by a continuous network of pedestrian facilities.

The residential developments in the vicinity of the site are not immediately served by public parks or trails for recreational purposes. There are two neighborhood parks within ½ mile of the subject site but only one park is accessible by a continuous network of pedestrian facilities. However, access to the Bay to Baker Trail, which links Birchwood Park, Squalicum Creek Park and Little Squalicum Park, is located approximately 1,500 feet to the south of the property off Pinewood Ave. This street is developed with pedestrian facilities.

Appropriate provisions for schools and schoolgrounds exist. School aged residents in the plat would attend Birchwood Elementary, Shuksan Middle School, and Squalicum High School. 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. The school aged residents in the plat will rely on school district transportation for only the middle and high schools. A safe school route to the elementary school is provided via an at-grade walkway in Birchwood Avenue.

Staff finds that the provisions of RCW 58.17 are met and the public's use and interest will be met if the preliminary plat is properly conditioned as recommended in this staff report.

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.

IX. CONDITIONAL USE PERMIT – AGRICULTURAL NURSERY

The Hearing Examiner shall approve a Conditional Use Permit for an application after determining the applicable decision criteria pursuant to BMC 20.16.010(B)(1-3) and 20.16.010(E) are met. Additionally, the Hearing Examiner must find that the proposed use will satisfy any listed special requirement pursuant to BMC 20.16.020. The applicant's responses to these criteria are provided in **Attachment A1**.

Staff response: The applicant has the burden to demonstrate how the proposal satisfies the applicable decision criteria.

An agricultural nursery, pursuant to BMC 20.16.020, is an establishment where trees, shrubs, vines, and other plant stock are grown, propagated and/or stored for the purpose of sale or wholesale. The application materials describe a use that is consistent with this definition and further verifies that at least 50% of that portion of the site reserved for the Farm is devoted to growing produce.

The Farm distributes its produce to underserved areas within the city at offsite locations. Produce grown on the Farm is not sold directly from the subject site.

Staff finds the applicant has provided sufficient justification to demonstrate the proposed agricultural nursery satisfies the decision criteria pursuant to BMC 20.16.010(B)(1-3) and 20.16.010(E) provided the operation of the nursery is limited to those operational procedures and limitations described in the application. The specific operational procedures that are notably important to mention are the limited number of full and part time employees, seasonal operation, limited hours of operation and lack of direct retail activity on the site.

The Farm is supported by the following comprehensive plan goal and policies:

- GOAL LU-10 Foster community connectedness to improve the health of residents.
- Policy LU-81 Increase access to healthy food for all Bellingham residents by encouraging and supporting healthy food retail, farmers markets, and small-scale urban farms (e.g. residential and community gardens).
- Policy LU-82 Explore incentives and regulatory changes to encourage grocery stores, farmers markets, food carts and other mobile vendors to locate in underserved areas.
- Policy LU-83 Encourage development patterns that support healthy, affordable food access.
- Policy LU-84 Encourage healthy food purveyors, such as grocery stores, farmers

markets and community food gardens, to be located near residential areas and public transit.

BMC 20.30.040(A)(3) states that the regulations of BMC 20.30.040 shall apply to the development of any permitted conditional use unless other applicable regulations appear with Chapter 20.16 BMC. The only development regulations applicable to the proposal at this time is parking.

Pursuant to BMC 20.10.010(B), the number of parking spaces required for an agricultural nursery is determined during application review. Staff recommends the Hearing Examiner allow parking between the residential uses and the Farm to be shared and not require additional parking.

The application narrative describes the Farm as a low intensity use due to its limited number of staff, seasonal operation, hours of operation and not open to the general public. The hours of operation between 9:00AM and 4:00PM are optimal times to share parking with the residential uses. The peak demand for the proposed uses is not at the same time of the day. Residential parking is typically in the evening through to early morning hours and stated above, the peak demand for the Farm will be during the day.

The site contains temporary greenhouses that will likely be removed and/or relocated as result of the residential development. Replacement of these structures may require building and/or fire permits. Pursuant to BMC 20.30.040(C), staff recommends that the Hearing Examiner allow this use to have more than one primary building as it is apparent that the site is currently benefiting from the use of more than greenhouse and storage sheds. The remaining development regulations pursuant to Chapter 20.30 BMC should continue to be an ongoing obligation of the Farm.

Public comments were raised suggesting this portion of the site should continue to be open spaces and/or a community garden if the Farm ceases to operate. Staff does not believe the codes give the Hearing Examiner authority to limit the use of this portion site beyond the requested land use applications should this use cease to operate. If the use ceases to operate, the Conditional Use Permit would become null and void. Staff does not recommend imposing any use restrictions or development limitations beyond requiring development to comply with applicable development regulation in the BMC.

X. FUTURE DEVELOPMENT OPPORTUNITIES

Residential

The Washington State Legislature approved House Bill 1110 in the 2023 legislative session. HB 1110 requires the City to implement these changes within 6 months of adopting the comprehensive plan update. The current timeline for adoption of HB 1110 is planned to occur no later than the end of June 2026.

HB 1110 will allow additional residential development on the subject site. The City is mandated to apply HB 1110 City wide. It is not known how implementation of HB 1110 will change zoning and allowable densities in the City. Staff's review of the current proposal does not take into consideration future opportunities or propose limitations of the regulations that

are included in this new legislation.

Commercial

The applicant presented a concept at the neighborhood meeting that included a neighborhood commercial center on the portion of the site adjacent to Birchwood Avenue. Public comments have raised concerns about locating a commercial use at this location.

The existing zoning does not allow neighborhood commercial uses and therefore, the application materials can't and don't include commercial uses except for those associated with the Farm. Under the current code, the only opportunity to establish a commercial use at this location is through a comprehensive plan amendment and a rezone which is a legislative process through the City Council.

XI. ENVIRONMENTAL THRESHOLD EVALUATION

The SEPA Official issued a SEPA Determination of Nonsignificance on September 11, 2024.
Attachment D

XII. CONCLUSION

Based upon the application materials and staff's review, the applicant has demonstrated compliance with both the decision criteria pursuant to Chapters 20.16 and 20.29 BMC, if properly conditioned. Staff recommends the Hearing Examiner approve the proposal, including the requested modifications.

The Proposal furthers the goals and policies of the Comprehensive Plan by allowing affordable, urban infill development in an area already served by municipal utilities and establishes an agricultural use that benefits members of the community that are underserved and lack resources and availability to fresh produce.

XIII. RECOMMENDED CONDITIONS

Based upon staff's analysis above, staff recommends the Hearing Examiner conditionally approve the application for Incentive Program for Innovative Affordable Homeownership Projects (Incentive Program) for the KCLT LaFreniere Court Housing proposal and the Conditional Use Permit for an agricultural nursery for the City's Sprouts Farm, as described herein and as provided in **Attachments A through E**.

Approval of the Incentive Program includes the requested modifications for 50% density bonus and the regulatory modifications from density, lot size, land division regulations, front porch design, and parking regulations.

This decision should be appropriately conditioned to require compliance with the following:

A. GENERAL REQUIREMENTS

1. The proposal, including the Incentive Program and the Conditional Use Permit, shall be developed and operate generally consistent with the application materials and lot layout as shown in **Attachments A1-A3**.

2. Modifications to this decision shall be processed in accordance with applicable provisions of the BMC.
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. Heavy equipment and construction work shall be compliant with Chapter 10.24 BMC, except that no exterior work shall occur after 7 P.M.
5. Impact fees for transportation, schools and parks shall be paid in accordance with applicable BMC requirements unless waived through applicable sections of the BMC.
6. This land use decision shall expire as provided in Chapter 21.10 BMC.
7. This land use decision is subject to the issuance of ADU permits and a minor critical areas permit for the site's location in a mine hazard area.

B. CONDITIONS FOR INCENTIVE PROGRAM

1. The proposed development shall be consistent with the plans, specifications and other materials submitted in support of the proposal, except as modifications are required to comply with other conditions set forth herein. The proposed site plan is included in **Attachment A2**.
2. The proposed lots shall be used for single-family residences. They shall be maintained as permanently affordable, owner-occupied homes. Each unit shall be occupied by a purchaser who qualifies in accordance with BMC 20.29.020A. The housing expenses for each purchaser shall be limited as provided in BMC 20.29.020B.
3. Controls shall be maintained to ensure that each of the residences remains owner-occupied by a qualified purchaser and that they remain affordable, as defined by BMC 20.29.020 and 20.29.030 C. The ground lease and other documents establishing these controls shall be subject to the review and approval of the Director of the Planning and Community Development Department.
4. The Applicant shall submit a report on or before January 1st of every odd-numbered year as required in BMC 20.29.050. The first report shall be submitted in 2027.
5. The Applicant shall not transfer ownership of the land without prior approval of the City of Bellingham. The land may only be transferred to another qualified organization or to qualified purchasers with controls in place to ensure affordability and qualified owner occupancy.
6. The overall design of the buildings shall be amended to include building materials and architectural detailing to clearly delineate the individuality of each unit on all sides of the buildings.
7. The private driveway serving the site shall include a 4-foot, pedestrian pathway on each side of the driveway that is constructed of a material that is differentiated from the driving surface. The total width of the driveway, inclusive of these pathways, should not exceed 20 feet in width.
8. The width of the internal walkways serving the individual units should be reduced to 42 inches for the main common walkway and the individual walkways associated with each residential unit should be reduced to 3 feet.
9. A final landscape plan for the entire site meeting the provisions of Chapter 20.29 BMC, inclusive of trees spaced 50 feet on center along the private driveway, shall be submitted for City review and approval prior to issuance of the first building permit.

10. Except as modifications are provided herein the project shall comply with all applicable provisions of the Bellingham Municipal Code, state and federal laws.
11. The following modifications to Bellingham Municipal Code regulations are approved:
 - a. A density increase of 50 percent to allow 9 single-family units on the subject property.
 - b. Reduction in lot sizes from 20,000 square feet to a minimum of 3,338 square feet.
 - c. Allow group open parking and a reduced parking stall width from 9 to 8 feet 5 inches.
 - d. Allow a reduced minimum front porch dimension from 5 to 4 feet.
 - e. Relief from the land division regulations that would otherwise limit the number of lots that can be served by a single driveway to 8 and the building envelope dimensions to accommodate the proposed lot layout shown on **Attachment A3**.

C. CONDITIONS FOR CONDITIONAL USE PERMIT

1. The agricultural nursery shall be limited in operation as described in **Attachment A1**, including the following:
 - a. Hours of operation are generally limited to 9:00AM to 4:00PM, with allowance for occasional working hours outside of these time parameters.
 - b. There shall be no more than 5 employees or volunteers on site at any one time.
2. Building permit applications, as required, for the installation of greenhouse structures shall be obtained.
3. Onsite retail sale of any material grown on the site is prohibited unless a modification to this decision is approved compliant with code.
4. Modifications may be requested pursuant to Chapter 20.16 BMC.

D. CONDITIONS FOR FINAL LAND DIVISION APPROVAL

The applicant shall obtain all necessary permits and/or approvals from the city necessary to satisfy the following conditions prior to final land division approval pursuant to Title 23 BMC.

1. The preliminary lot layout is approved as shown on **Attachment A3**.
2. Access to the site shall be limited to one driveway off Birchwood Avenue as shown in **Attachment A2**.
3. Birchwood Avenue shall be improved to $\frac{3}{4}$ -city standard of a residential street across the full frontage of the property.
4. The extension of public water and sewer mains to serve each lot 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 and all stormwater facilities shall be dedicated to the city unless determined otherwise by the City Engineer.
6. A landscape plan for the open stormwater facilities and street trees meeting the provisions of BMC 23.08.080 shall be submitted for City review and approval prior to issuance of the required construction permits for public infrastructure.
7. Street trees. A street tree permit application shall be submitted and these trees shall be installed pursuant to BMC 23.08.080(C and G).
8. 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 recorded concurrently with the final plat. Required easements include, but are not limited to, common wall, conservation, private access, parking, and public utilities.

9. The applicant shall provide evidence to demonstrate compliance with BMC 23.08.070 (E and F).
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 final plat, as applicable:
 - a. All existing and required 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 private 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.

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Approved By:



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