



Planning and Community Development Department
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DECISION AND PERMIT FOR CRITICAL AREAS

CAP2024-0036/SEP2024-0028

2825 Lindshier Ave.

Cool Runnings Cluster Short Plat Type II

I. SUMMARY OF DECISION

Proposal – Exhibit A

Cluster short plat creating 4 lots for future residential development fronting on Lindshier Ave. on a 4.9 acre undeveloped property (**Exhibit A**). Approximately 13 units are proposed. Infrastructure improvements include sanitary sewer and water main extensions and driveway access from Lindshier Ave. The proposal includes improving Lindshier Ave. to meet $\frac{3}{4}$ street improvements with a sidewalk abutting portions of the subject property and extension of Lindshier Ave. east to provide access to proposed Lot 4. The applicant is requesting a variance from the requirement to improve Lindshier Ave. the entire frontage of the subject property for access. Pursuant to BMC 23.08.070.B, the short subdivision requires all rights-of-way within and abutting a land division to be improved in accordance with BMC 13. The proposal includes installation of a fire turnaround and fire hydrant for emergency services. The proposal includes 2,958 sf of direct wetland impacts and 8,451 sf of indirect wetland impacts. To mitigate wetland impacts the proposal includes 0.068 credit of direct wetland mitigation and 0.097 credit of indirect wetland mitigation utilizing the Lummi Nation Wetland and Habitat Mitigation Bank. The applicant has revised the land use application to include an additional Variance from the Clearing requirements requesting to clear the developable portion of the property simultaneously with the infrastructure improvements required to finalize the cluster short plat.

The future development of the proposed residential units on Lots 1-4 will be served by the existing water main in Lindshier Ave. An extension of the water/sewer main and potentially stormwater main is required in order to service the proposed development. Additionally, improvement and extension of Lindshier Ave. is required in order to service the proposed development.

Stormwater management for the construction of residential development will be reviewed for compliance with 15.42 of the BMC prior to final plat approval and at the time of Building Permit.

This Type II permit includes review of the project proposal as it relates to critical areas. The cluster short plat and associated variance #1 and variance #2 is under concurrent

review through the Type III review process with a final decision issued by the hearing examiner.

Applicant: Bill Geyer AICP, 1008 16th St., Bellingham WA 98225
Owner: David Campbell & Kristin Danielson, 1139 Nevada St., Bellingham WA 98229
Decision: Approval, with conditions.
Date: **April 9, 2025**

II. PROPERTY DESCRIPTION

Address: 2825 Lindshier Ave., Bellingham WA 98226

Legal Description: LINDSHIER GARDENS BLK 1-SUBJ TO PIPELINE ESMT REC AF 776474

Whatcom County Assessor ID#s: 380316-159249-0000

Land use and comprehensive plan designations:

Land use: Area 29, Barkley Neighborhood; Residential-Single, Detached/Cluster; Density 7,200 sf per unit. Infill housing forms are permitted under the cluster use qualifier.
Comprehensive plan: Single Family Residential, Medium Density.

III. PERMIT PLANS

This approval includes the following attached plans, subject to any modifications and conditions contained in Section V of this permit:

Exhibit A – Short Plat Maps

Exhibit B - Land Use Application materials

Exhibit C – Notice of Application/Mailing list

Exhibit D – Public Comment

Exhibit E – SEPA Determination of Non-significance dated 4/9/25

Exhibit F – Notice of Public Hearing

Exhibit G – Geotechnical Engineering Report prepared by GeoTest dated 6/8/22

Exhibit H - Critical Areas Report prepared by Miller Environmental Services LLC dated 5/10/24

Exhibit I - Conceptual Mitigation Bank Use Plan prepared by Miller Environmental Services LLC dated 12/2/24

Exhibit J - Critical Areas Mitigation Bank Use Plan prepared by Miller Environmental Services LLC dated 3/3/25

Exhibit K - Applicant response dated 12/26/25 to Request for Information

Exhibit L - Preliminary Stormwater Report prepared by Complete Design, Inc. dated 3/21/25

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The subject property is located in Area 29 of the Barkley Neighborhood and zoned Residential-Single Detached/Cluster, medium density. The land use designation of the

subject site is Residential Single, medium Density. The proposal as conditioned is consistent with the underlying zoning and the Barkley Neighborhood Plan for Area 29 on the date the proposal was deemed complete.

2. The site is 4.9 acres in size and is undeveloped.
3. Access is provided and proposed from Lindshier Ave.
4. The property abutting to the north, south and east are all Residential Single zoning with density ranging from 7,200 sf to 10,000 sf. The property located to the west is zoned Public Open Space. The property to the north and west is undeveloped with steep topography and critical areas. The property to the south and east and developed with single family residences.
5. 4/12/22: The City conducted a pre-application conference for the Proposal (PRE2022-0024). A preliminary Transportation Concurrency Analysis was provided by staff. The applicant shall be required to obtain Multimodal Transportation Concurrency approval from the Public Works Department concurrent with future land use approvals and/or building permits associated with development of the subject property.
6. 7/19/22: The applicant held a pre-application neighborhood meeting and there were concerns expressed from the public regarding the prior proposed industrial use of the property, increased traffic, critical areas and stormwater impacts regarding the proposal.
7. The subject property went through a Comprehensive Plan Amendment/Rezone (REZ2022-0012) & SEPA review (SEP2023-0010) to change the zoning of the property from Industrial to Residential under Ordinance 2023-11-033. The property is currently zoned Residential Single with a Detached/Cluster use qualifier and 7,200 sf density.
8. 6/27/24: The City received land use applications for a short subdivision, critical areas and variance (**Exhibit B**).
9. 7/3/24: A Notice of Incomplete Application was issued by staff.
10. 9/4/24: A Notice of Complete Application was issued by staff.
11. 9/19/24: A SEPA checklist (SEP2024-0028) was submitted.
12. 9/19/24: A Request for Information was issued by staff.
13. 10/7/24: A Revised Request for Information was issued by staff.
14. 12/26/24: The applicant provided a response to the Request for Information.
15. 1/22/25: A Notice of Application/Public Hearing/Optional SEPA DNS was issued by staff (**Exhibit C**). Staff received one public comment opposed to the proposal as of 3/31/25. The commentor expressed concerns having adequate time to be present for the public hearing and increased traffic issues on E. Sunset Dr. (**Exhibit D**)

Staff response: *The Notice of Public Hearing will be mailed to property owners within 500' and posted on site in accordance with the requirements under the BMC for all projects with a public hearing with the Hearing Examiner. The Public Works Department has reviewed the proposal and determined the proposed development will be required to improve Lindshier Ave. to ¾ street improvements abutting the proposal as specified under **Exhibit A** prior to final short plat approval. Additionally, the proposal will be required to pay transportation impact fees at the time of Building Permit for residential units. The City has made significant improvements to E. Sunset Dr., including additional lanes for increased capacity which include 2 drive lanes on each side, a center turn lane and bicycle lanes on each side along with sidewalks on each side. Following review from City staff there are not additional transportation infrastructure improvements required to serve the proposal.*

16. 2/11/25: A Request for Information was issued by staff.
17. 3/24/25: The applicant provided a response to the request for information which included variance #2 (VAR2025-0002) and was determined adequate by staff to continue processing.
18. 4/9/25: A SEPA Determination of Non-significance was issued by staff (**Exhibit E**).
19. 4/1/25: The Public Hearing notice was issued by the Hearing Examiner's department staff and mailed in accordance with BMC 21.10.200.D (**Exhibit F**).
20. 4/16/25: The hearing examiner is scheduled to hold a public hearing to consider the Cluster Short Plat.

Critical Areas

1. The site contains slopes which meet the definition of geologically hazardous areas and therefore are regulated under the Critical Areas Ordinance. Development within 50' of a landslide or erosion geologically hazardous area requires a Critical Area Permit. The property contains a higher shelf area on the north side of Lindshier Ave., then a steep slope through the center of the property draining water to the northwest. Water drains across the site to the northwest and down the steep slope.
2. The applicant submitted a Critical Area Report for a Critical Areas Assessment of landslide and erosion geologically hazardous areas prepared by GeoTest dated 6/8/22 (**Exhibit G**). As recommended by the qualified professional, all areas disturbed by construction practices should be vegetated or otherwise protected to limit the potential for erosion as soon as practical during and after construction. Areas requiring immediate protection from the effects of erosion should be covered with either plastic, mulch, or erosion control netting/blankets. Areas requiring permanent stabilization should be seeded with an approved grass and seed mixture, hydroseeded with an approved seed-mulch-fertilizer mixture or landscaped with a suitable planting design. In order to achieve design standards for factors of safety, the qualified professional recommends that structures be setback from the top of the slope by a minimum distance of 40 lineal feet. In addition, the qualified professional recommends the plans include a 10-foot non-disturbance zone from the slope crest for any site improvements. As determined by the qualified professional, the proposed development as conditioned and recommended incorporates adequate mitigation against the potential geological hazards that are present at the project site and satisfies the geological hazardous area performance requirements as detailed in BMC 16.55.450. It is the qualified professional's determination that the proposed development will not increase the risk of destabilizing the designated geohazards areas and that the improvements will not increase the threat of the geological hazards to adjacent properties beyond predevelopment conditions and will not adversely impact other critical areas.
3. Nine wetlands are located on the subject property, two extending off site to the north and one extending off site to the southeast. Two additional wetlands are located in the undeveloped portion of the Lindshier Ave right of way adjacent to the east of the property. Based on the information provided by the qualified professional in **Exhibit H**, the on-site wetlands are all category III.
4. The Washington State Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) Mapper indicates only big brown bats over the entire township that includes the property. No other priority habitats or species are shown on the property. Several steep drainages were observed on the property. These are located within steep erosional ravines down the steep slope. These would be considered non-fish streams under City of Bellingham

- code, requiring a 50 foot minimum buffer. Wetland areas are shown on the northwest corner (base of the slope) extending offsite to the north and west.
5. The City of Bellingham Habitat Restoration Technical Assessment shows the property within forest block 072, designated as forest block protection – due to the large area of extended forest habitat, associated with wetlands (to the northwest) and Squalicum Creek (to the northwest). Additionally, the City of Bellingham Wildlife Corridor Analysis shows the forest area to the north and west including the property as an important wildlife habitat area.
 6. Pursuant to Section 404 of the Federal CWA, the Corps regulates the discharge of dredged and/or fill material into waters of the United States, including wetlands. Impacts to onsite wetlands would likely require a Nationwide Permit (for up to 0.5 acre of wetland fill) or an Individual Permit (for greater than 0.5 acre of wetland fill). If impacts to the onsite wetlands are proposed, a Corps permit will be required for the project.
 7. Ecology is the state agency responsible for administering the State CWA Section 401 Water Quality Certification program. Impacts to wetlands may require approval or a waiver from the Department of Ecology. If impacts to wetlands are proposed, Ecology approval will likely be necessary for this project.
 8. The City of Bellingham regulates critical areas including wetlands and fish and wildlife habitat conservation areas and their associated buffers under BMC 16.55. Impacts to wetlands and buffers require a Critical Area Permit and compensatory mitigation. Buffer widths are determined based on the proposed land use intensity, wetland category, and habitat score. Wetlands C, G, H and J are exempt from buffer requirements and mitigation sequencing due to their wetland rating (Category III), small size (less than 1,000 sf), hydrologic isolation and lack of special characteristics. The drainages located on the property were designated as non-fish streams, due to their small size and extreme gradient. Under City of Bellingham Code non-fish streams require a minimum 50 foot buffer.
 9. Indirect impacts will be offset at a 0.5 to 1 ratio (impact to bank credit) per Washington State Department of Ecology guidance. (April, 2021) Per the approved mitigation bank instrument, Category III wetlands are offset at a 1 to 1 ratio (impact area to bank credit) and Category IV wetlands are offset at a 0.85 to 1 ratio.
 10. The proposal includes 2,958 sf of direct wetland impacts and 8,451 sf of indirect wetland impacts. To mitigate wetland impacts the proposal includes 0.068 credit of direct wetland mitigation and 0.097 credit of indirect wetland mitigation utilizing the Lummi Nation Wetland and Habitat Mitigation Bank. Accordingly, 0.165 credit will be required at the Mitigation Bank (**Exhibit J**).
 11. Based on the information provided by the applicant in **Exhibit K**, the proposal preserves forested slope and lowlands on the slope which accounts for approximately 72% of the subject property. Clearing is proposed within the remaining approximately 28% of the property, approximately 60,000 square feet. The tree inventory identified 215 trees in the 60,000 sf surveyed area. Of the surveyed trees 74 are proposed to be preserved north of the proposed clearing limits while 141 trees are proposed to be cleared.
 12. Based on the information provided by the applicant, the proposed clearing limits appear to include removal of 5 landmark trees. Pursuant to the emergency landmark tree ordinance, approval from the landmark tree committee is required prior to removal of landmark trees associated with the project. Based on the tree survey provided by the applicant, removal of landmark trees does not appear to be required associated with the infrastructure improvements required to final short plat approval.
 13. Pursuant to BMC 23.08.030.C, natural features, that may or may not be regulated by other code provisions, including but not limited to trees, topography, shorelines, streams, wetlands, habitat, geologically hazardous areas, and associated critical area/shoreline

buffers, should be incorporated into the overall land division design through preservation to the extent feasible. Trees are clearly a natural feature regulated under the land division ordinance.

14. Pursuant to BMC 23.08.030.D, in addition to demonstrating compliance with the land clearing (Chapter [16.60](#) BMC), grading (Chapter [16.70](#) BMC) and Lake Whatcom Reservoir (Chapter [16.80](#) BMC) regulatory provisions, as applicable, the proposed layout of a land division should include the standards identified under BMC 23.08.030.D.1.a&b. The clearing provisions under BMC 16.60 apply to the proposed land division.
15. Pursuant to BMC 16.60.080.A.1, no clearing or removal of vegetation shall be permitted on any undeveloped or partially developed lot, parcel, street or utility without a valid building, street or utility construction permit or an approved management plan for the nonstructural activities listed in subsection [\(A\)\(2\)](#) of this section.
16. Pursuant to BMC 16.60.080.A.3, no clearing shall be permitted within preliminary plats except for within street or utility rights-of-way. All debris storage and handling shall occur within the right-of-way so as to not damage the adjacent land. Pursuant to BMC 16.60.080.B.4, a tree prevention plan is required that identifies the species and size of all significant trees on site. Said plan shall identify all trees that will be removed and preserved, and include the method by which the critical root zone of retained trees will be protected during construction, such as fencing. Significant trees that must be removed shall be replaced at a ratio to be determined by PCDD.
17. Pursuant to BMC 16.60.030, the purpose of the land clearing chapter is to: minimize the destruction of existing vegetation and maintain its existence for as long as possible; encourage the incorporation of existing vegetation into final site plans; reduce the time lag between land clearing and the start of actual construction; and to require appropriate methods, materials and timing for land clearing with a minimum of disruption.
18. Following review of proposed variance #2, staff does not believe the variance complies with the requirements under BMC 16.60, BMC 23.08 or BMC 23.48 or BMC 16.55.250.B. Staff recommends the review of approval of the proposed clearing limits be accomplished during the review of the proposed building permits when adequate information has been provided to document compliance with the requirements under the BMC and logically and reasonably prescribed clearing limits can be achieved. In the meantime clearing should be limited to the amount necessary to install infrastructure required for final plat and the trees within the proposed development footprint should be retained in accordance with the Clearing, Land Division, Critical Areas regulations under the BMC to protect the public welfare, protect property and improvements within the vicinity and minimize environmental impacts in accordance with mitigation sequencing requirements under BMC 16.55.250.B.

Compliance with BMC

Based on the findings of fact within this permit, the city concludes that the Proposal meets the applicable provisions of Chapters 16.20, 16.55 BMC if appropriately conditioned. Any additional permit required to construct the infrastructure and/or buildings associated with the Proposal must be consistent with this decision and the BMC.

V. DECISION AND CONDITIONS OF APPROVAL

Based upon the Findings of Fact and Conclusions of Law, the Director of the Planning and Community Development Department (PCDD), or Designee, approves this Consolidated Permit subject to the following conditions:

A. GENERAL

1. All development and use of the property legally described in Sections I and II of this permit shall be generally consistent with the permit plans listed in Section III, except as modified by this permit, and all other conditions contained in the permit.
2. Development of the property shall be consistent with all applicable provisions of the Bellingham Municipal Code and does not excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project.
3. Development of the property shall be consistent with all applicable conditions of the Cool Runnings Cluster Short Plat (SUB2024-0032 & VAR2024-0004 & VAR2025-0002) as determined by the hearing examiner and all conditions of the hearing examiner decision shall be deemed conditions of this consolidated permit. This permit decision shall be deemed null and void if the cluster short plat is not approved or conditionally approved in a manner determined inconsistent with this permit that couldn't otherwise be approved as a minor amendment consistent with the terms of this permit.
4. Prior to approval of any building or construction permits, the City shall determine compliance with the terms and conditions of this permit.
5. All applicable impact fees approved by City ordinance shall be paid prior to building permit issuance for a dwelling unit.
6. The applicant shall be required to obtain Multimodal Transportation Concurrency approval from the Public Works Department concurrent with future land use approvals and/or building permits associated with development of the subject property.

B. PERMITTED USES/DENSITY

Infill Toolkit uses under BMC 20.28 and Residential uses under BMC 20.30.030 are outright permitted uses under the subject Residential Single zoning with a Cluster use qualifier pursuant to BMC 20.28.020.A.1.a. Pursuant to BMC 20.28.050.B, the highest listed density for any housing type specified in the applicable neighborhood subarea pursuant to the zoning tables shall be considered the maximum possible density which is 28 infill toolkit units.

C. DEVELOPMENT REGULATIONS

The development regulations for infill housing shall comply with BMC 20.28 and single family residences shall comply with BMC 20.30.

D. CRITICAL AREAS

1. The applicant shall be required to provide documentation confirming purchase of Lummi Nation Wetland Mitigation Bank credits in accordance with the wetland mitigation plan specified in **Exhibit J**, prior to issuance of construction permits which would impact wetlands or associated buffers.
2. The applicant shall be required to obtain US Army Corp of Engineers and Washington State

Department of Ecology approvals required for wetland impacts.

3. In accordance with BMC 16.55.340.C.2.e.v, the applicant shall be required to construct a wildlife permeable fence and post conservation easement signs between Lots 1-4 and the conservation easement boundary pursuant to condition #6 below prior to final plat approval or as determined by staff.
4. In accordance with BMC 16.55.340.C.2.e.vii the applicant shall be required to record a permanent conservation easement approved by the City and recorded with the Whatcom County Auditor to protect the critical areas and associated buffers on-site prior to final plat approval.
5. Based on the information provided by a qualified professional in **Exhibit G**, a minimum 40' setback from the top of the slope for structures and 10' non-disturbance zone from the slope crest for any site improvements is required. The applicant shall be required to comply with the recommendations and conclusions of the Geotechnical Engineering Report prepared by GeoTest dated 6/8/22 (**Exhibit G**) or as amended under the review of the Building Permits.
6. Prior to issuance of any construction permits on individual lots (or the PFC), the clearing limits and the 40-foot building setback shall be surveyed and marked in the field. An ISA certified arborist shall make recommendations on trees to be retained within the 40-foot building setback from the geologically hazardous areas. These trees shall be marked and included on the tree retention plan pursuant to condition #7 below. Orange construction fencing shall be installed in a manner that protects these trees and their critical root zones. After the clearing limits fence is installed, the applicant shall contact Ryan Nelson (rnelson@cob.org or 360-778-8368) to schedule a site inspection.
7. Prior to issuance of any construction permits on individual lots (or the PFC), the applicant shall be required to submit a tree replacement plan prepared by an ISA certified arborist in accordance with BMC 16.60.080.B.4 for staff review and approval.
8. The applicant shall be required to have the following Inadvertent Discovery Plan on site and followed should archaeological resources or human remains be encountered:

Inadvertent Discovery of Archaeological Resources:

Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927-2944) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055)

"If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those

remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains" (DAHP).

VI. AMENDMENT

Amendments to this permit may be requested by the owner and approved by the Director in writing, provided such amendments do not substantially change or alter major elements of the project.

VII. EXPIRATION

This approval for critical areas permit is valid for five (5) years pursuant to BMC 21.10.260 (C)(1).

Pursuant to BMC 21.10.260 (C)(3), if a complete building permit application is filed prior to the expiration of the land use permit, the vested status of the permit shall be automatically extended for the time period during which the building permit application is pending prior to issuance; provided, that if the building permit application expires or is cancelled, the vested status of the permit or approval shall also expire or be cancelled. If a building permit is issued and subsequently renewed, the vested status of the subject permit or approval under the permit shall be automatically extended for the period of the renewal.

VIII. EFFECTIVE DATE

The critical area permit shall be effective after the close of the appeal period, or if an appeal is filed, after the withdrawal of, or final decision on an administrative appeal (BMC 21.10.240.C.3). Therefore, the effective date of this permit is 4/23/25, unless an appeal is filed.

IX. APPEAL

Pursuant to BMC 21.10.110(K), this combined permit may be appealed within 14-days from the date of the Notice of Decision to the City's Hearing Examiner. Procedures for appeal to the Hearing Examiner are contained within BMC 21.10.250. Any appeal must be filed with the Planning and Community Development Department on the appropriate forms and be accompanied by a filing fee as established by the City Council prior this established appeal period.

Prepared by:



Ryan Nelson, Planner II

Approved by:



Steve Sundin, Senior Planner