

**DECISION OF THE HEARING EXAMINER  
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Appeals of the

**CHRISTENSEN SHORT PLAT**

**SPT13104**

by the Applicant and by the Kallgren Road  
Preservation Society; Objecting to Conditions  
of the Director's Approval of the Short Plat

**Introduction**

The Director granted conditional approval for the Applicant to divide an 18 acre parcel into four lots. The Applicant appealed conditions of that decision, as did a group of neighbors (referring to themselves as the "Kallgren Road Preservation Society"). The Hearing Examiner conducted the hearing on this matter beginning on November 3, 2005 and concluding on November 15, 2005. Parties were represented at the hearing as follows: Director, Planning and Community Development Department (PCD or Department), by Rosemary Larson, Attorney for the City of Bainbridge Island; Applicant/Appellant Deni Christensen, by Dennis Reynolds, attorney at law; and, Appellant Kallgren Road Preservation Society by Rebecca Robins, Susan Phillips McGee, Jamie Acker, and Jim Wiggins *pro se*. The record was reopened on December 19, 2005 to allow parties an opportunity to object and/or comment on several documents [Exhibits 139, 140, and 141] that had been referred to, but had not been entered into the record. After comment by the parties, Exhibits 139 and 140 were admitted into the record; Exhibit 141 was denied. The record was closed on December 28, 2005.

After due consideration of all the evidence in the record, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner on this appeal.

**Findings**

Site and Vicinity

1. The subject site (tax lot #112706-2-010-2006) is 18.23 acres (794,099 sq. ft.) in size and is located southeast of the intersection of Madison Avenue and Day Road in the Rolling Bay neighborhood, several miles north of Winslow. The property is rectangular in shape, with Day Road forming the northern boundary, Madison Avenue the western boundary, and the unopened right-of-way of Kallgren Road on the east. Residential property borders the southern property line. [Exhibit 74; Staff Report, Exhibit 114, pages 1-2; Exhibit 121A; Testimony of Katai]

2. The legal description of the property [Exhibit 5, "A"] follows. The "exceptions" represent right-of-way dedications (made in 1955) to Kitsap County.

THE NORTH HALF OF THE NORTHWEST QUARTER OF THE  
NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 25 NORTH, RANGE  
2 EAST, W.M.,

EXCEPT THE WEST 30 FEET THEREOF FOR MADISON ROAD;  
EXCEPT THE NORTH 30 FEET THEREOF FOR DAY ROAD;  
AND EXCEPT THE EAST 30 FEET THEREOF FOR KALLGREN ROAD;

SITUATE IN THE CITY OF BAINBRIDGE ISLAND, COUNTY OF KITSAP,  
STATE OF WASHINGTON.

3. The western quarter of the site is developed with a residence, a mobile home, and several outbuildings. There are two driveways providing access to Madison Avenue; one to the residence and one to the mobile home. (The status of the mobile home is unclear and its future on proposed Lot D was not addressed.) An old orchard and mowed areas dominated by grasses, surround the buildings. The site, most of it undeveloped and forested, has elevations ranging from 305 ft. near the center of the parcel, to 320 ft. in the northwest and to 315 ft. in the northeast. [Exhibit 2B, page 2 and Exhibit 74; see also Finding 86] The upland vegetation is dominated by large stands of tall Douglas fir, red alder, and western red cedar, with traces of western hemlock and big leaf maples. The understory is dominated by a thick growth of salal and salmonberry, with patches of Indian plum, Oregon grape, ocean spray, and evergreen huckleberry. The forest floor has a herbaceous layer comprised of sword fern, bracken fern, and trailing blackberry. [Exhibit 4, pages 1-4]

4. A 2.55-acre Category II wetland in the center of the site comprises approximately 14% of the total property [Staff Report, Exhibit 114, pages 1 & 3] and has been identified as a critical and delineated in a Wetland Analysis Report [Exhibit 4]. This Report notes that the wetland "appears to be confined to the basin and is the main water storage area for this basin" and is "a depressional emergent scrub shrub community that is semi-permanently flooded...comprised of a mosaic of pacific willow, Sitka willow and Spiraea rooted in deep standing water with slough sedge dominating the more shallow areas around the margins." [Exhibit 4; page 8]

5. The zoning is R-0.4 (residential, one unit per 2.5 acres) and the Comprehensive Plan designation is OSR-0.4 (Open Space Residential). [Staff Report, Exhibit 114, page 1 and 4; Testimony of Katai]

6. The R-0.4 zone is the residential zone with the City's largest minimum lot size: 2.5 acres (100,000 sq. ft.) per unit.

7. BIMC 18.36.010 gives the purpose of this zone as follows.

*The purpose of the R-0.4 zone is to provide low density housing in a rural environment consistent with other land uses, such as agriculture and forestry, and the preservation of natural systems and open space. The low density of housing does not require the full range of urban services and facilities.*

8. Development in the vicinity consists of single-family residences developed on large lots. Several single-family homes have access to Kallgren Road from a 15-ft. wide, unpaved easement road that parallels the southern boundary of the subject property for about 500 ft. west from Kallgren Road. Directly to the east (across from Proposed Lots B and C) are two relatively new homes, part of “Keating’s Old 4-Lot Short Plat” [see Finding 11]. These two homes take access via a 12-ft. wide gravel driveway built in the eastern portion of the 60-ft. wide Kallgren Road right-of-way. Wilkes Elementary School is to the west, across Madison Avenue at the southwest corner of the Madison Avenue/Day Road intersection. R-0.4 zoning predominates to the north and south in the immediate vicinity; there is R-1 zoning (1 acre minimum lot size) further to the east and west. [Exhibit 74; Staff Report, Exhibit 114, page 4; Exhibit 134]

9. The Comprehensive Plan designations are the same as the zoning designations. In aerial photographs [Exhibits 135 and 136], the subject site appears as one of a few remaining large, forested tracts in the vicinity north of Roberts Road and east of Madison Avenue [also see parcel map included in title report, Exhibit 5]. Areas cleared for residential development and agricultural uses are also noticeable.

10. Kallgren Road is paved from Winthers Road north to the southern boundary of the subject property, where the road dead ends (a dirt trail continues, providing pedestrian access to Day Road). The distance from Winthers Road to the subject property is approximately 2,000 ft. More than twenty lots take access from Kallgren Road (no verified count of lots served was submitted at hearing; witnesses gave estimates ranging from 24 to 30). [Testimony of Wiggins; Testimony of Mustain] The right-of-way is 60 ft. wide where it abuts the subject property, but further south it appears to be narrower in a couple places and offset in a couple places. The pavement is generally quite narrow (estimates of width ranged from 10-13 ft. at the narrowest, to 18 ft. at the widest). Except for that part of the road immediately to the south which was widened and paved a few months ago by the Keating short plat, the roadway surface is rough in many places with patches, potholes and irregular edges. [Exhibit 5; Exhibit 50; Exhibit 78; Exhibit 136; Testimony of Wiggins]

11. The current condition of Kallgren Road is not reflected in the plan submittals. There is now a 12 ft. wide gravel driveway (constructed for access to 12612 and 12624 Kallgren Road), directly across from proposed Lots B and C. This driveway is part of what is labeled “Keating’s Old 4-Lot Short Plat” in the aerial photo [Exhibit 135]. The clearing that was done in conjunction with construction the new residences at 12612 and 12624 Kallgren Road can be seen in Exhibit 135, but the access driveway cannot. The roadside clearing this past summer that removed mature trees and hedges along Kallgren Road in front of “Keating’s New 3-Lot SPT” [see Exhibit 135] occurred too recently to be depicted in the photo. Reportedly, Keating was required to widen (18 ft.) and pave

Kallgren Road to the southern end of the subject short plat. [Exhibit 102; Exhibit 103; Exhibit 127; [Testimony of Robins; Testimony of Wiggins; Testimony of Acker]

12. An access road on the north/south boundary between Keating's "new" and "old" short plats has been constructed on a 20-ft. wide easement extending east from Kallgren Road to the interior lots of those short plats. [See easement location on parcel map in Exhibit 5.] The area cleared for road construction was still forested when the aerial photo [Exhibit 135] was taken.

13. From where Kallgren Road deadends at the southeastern corner of the subject property, a dirt trail winds through the wooded right-of-way to Day Road. This trail is much used and much beloved by residents who live along Kallgren Road and neighbors further away. It provides a unique "walk in the woods", connecting the end of the paved portion of Kallgren Road, with Day Road. [See public comment letters; Testimony of Wiggins; Testimony of Robins]

#### Proposal

14. The Applicant testified that the subject property has been owned by her family for several generations (since 1910). She proposes to create three new large lots (Lots A, B, and C) as a way of preserving the property in keeping with that history. She understands that houses would be developed on the new lots, but believes the subject short plat is preferable to selling to a developer who would create lots inconsistent with the neighborhood. [Testimony of Christensen]

15. The application seeks the subdivision of the subject property into four lots: Lots A, B and C, each 2.3 acres in size on the eastern portion of the site adjoining Kallgren Road and Lot D, 11.32 acres in size, which includes the existing residence and comprises the western 60% of the site. [Exhibit 74] Development is not proposed by this applicant; Lots A, B, and C would be sold for individual residential development, and Lot D would be held for the requisite five years before making application to subdivide it into three lots. [Exhibit 6, page 1-2; Exhibit 115; Exhibit 41, Staff Report, pages 1, 8-9; Testimony of Katai; Testimony of Christensen]

16. The proposed lots are allowed to be less than the 2.5 acre minimum because the flexible lot standards of BIMC 1712.090 apply (including minimum lot size) rather than the R-0.4 zone standards.

17. The Environmental Checklist [Exhibit 6, A6] prepared by the Applicant, describes the proposal as follows:

The 18.33 acre parcel will be divided into four lots, three of which will be sized at approximately 100,000 square feet and sold for residential building sites. The fourth lot will be held for the required five years and then short platted again. The goal of the applicant's proposal is to enable development of each lot as above described while providing for protection

of the wetland on site in conformity with municipal environmental regulations.

18. A Wetland Analysis Report [Exhibit 4; see Finding 4], was included in the application submittal. Consistent with BIMC 16.20.090.H, the wetland near the center of the site would be protected with a 100 ft. wide wetland buffer and a 15 ft. wide building setback beyond the wetland buffer [see Page 2 of 3, Exhibit 2B]. As depicted in Exhibit 2B, Lots A, B, and C would not contain any wetland, but the western part of each lot would include some wetland buffer and the 15 ft. wide building setback.

19. The wetland, wetland buffer, and building setback are correctly shown on Exhibit 2B. However, as critical areas do not “count” in calculating the required “open space” [see Finding 49], they are improperly labeled on Exhibit 2B. (This confusion may have arisen because the on-going preservation and maintenance of wetlands is to be addressed in an “Open Space Management Plan” [see BIMC 16.20.090.D] even though critical areas are not included toward the fulfillment of the minimum standards for required open space.)

20. The application includes an “Open Space Management Plan” [Exhibit 2C] for the wetland as well as for the landscape buffers designated along the several rights-of-way (as noted on the face of the plat: Sheet 2 of 3, Exhibit 2B).

21. The two existing driveways would remain to provide Lot D access from Madison Avenue. Access for Lots A, B, and C has been subject to considerable discussion and debate. The plans filed with the application on May 9<sup>th</sup> [Exhibit 2A], show Lots A, B and C each with a driveway to the Kallgren Road right-of-way (labeled “unimproved”), connected to Day Road on the north and extending to a “T”-shaped turnaround just south of the northern property line of Lot C. The plans were revised in a June 6<sup>th</sup> submittal [Exhibit 26] showing Lots B and C with driveways connecting to the Kallgren Road right-of-way (still labeled “unimproved”), and Kallgren Road extending to the north and terminating in a “T”-shaped turnaround just north of the southern property line of Lot B. Lot A is shown with a driveway to Day Road. [Testimony of MacLearnsberry]

22. Water would be supplied by Kitsap County Utility District [Application, Exhibit 10]. The application was revised in a July 5, 2005 submittal [Exhibit 74] to document that the existing well on proposed Lot D would remain and continue to serve that lot.

23. Individual on-site waste disposal (sewage) systems are proposed for Lots A, B, and C; there is an existing system serving the residence on Lot D. Individual lot stormwater infiltration systems are also proposed. Specific designs for these systems would be required at the time of building application submittal. [Application, Exhibit 10, page 7; Exhibit 2A]

24. Maximum lot coverage allowed is 10% (*i.e.*, 10,000 sq. ft. for Lots A, B, and C; and 49,300 sq. ft. for Lot D). The site plan submitted with the application [Exhibit 2B,

Page 2 of 3] shows a 25 ft. setback from Kallgren Road. The application [Exhibit 10, pages 9-11] shows setbacks and lot dimensions as follows:

	<u>Proposed</u>	<u>Minimum Required</u>
Building to building separation	50 ft.	10 ft.
Building to subdivision boundary	25 ft.	25 ft.
Building to right-of-way: Day and Madison	50 ft.	50 ft.
Building to right-of-way: Kallgren	25 ft.	15 ft.
Building to trail or open space	15 ft.	10 ft.
Minimum lot width	209 ft.	50 ft.
Minimum lot size (with on-site septic)	100,209 sq. ft.	12,500 sq. ft.
Landscape perimeter buffer width	25 ft.	25 ft.

#### Director's Decision

25. BIMC 2.16.025.A provides that consideration of applications for the short subdivision of property (*i.e.*, division into four or fewer lots) are administrative land use decisions to be made by the Director and processed in accord with BIMC 2.16.095.

26. The subject application was received on May 9, 2005 [Application, Exhibit 10]. Page 1 of the site plan was revised twice [see Exhibit 26 and Exhibit 74]. Exhibit 74 shows the final configuration of lots, wetland areas and perimeter setbacks.

27. On May 25, 2005, the Director gave notice of the application and the SEPA comment period [Exhibit 24].

#### Public Comment

28. Many comments were received during the comment period [see Exhibits 17-19, 20-22, 27, 30-100, 103-113]. The PCD Staff Report includes a list of the public comments received and summarizes the subject matters of the comments [Exhibit 114, Attachment E, pages 1-4]. The comments submitted by the public are nearly unanimously opposed to the Director's conditions that would require that Kallgren Road be connected through to Day Road.

29. Neighbors report that traffic on the "deadend" section of Kallgren Road is so light that it allows for significant and regular pedestrian and bicycle use and other recreational activities. The narrow deadend road is the quintessential "country lane"; a pleasant and safe place for children's play, pets, bike riding, dog-walking, jogging and the place where locals "meet and greet". Some neighbors would like Kallgren Road to be made more pedestrian-friendly and advocate that "traffic calming" features (speed bumps, etc.) be added and the speed limit lowered to accomplish that. [See *e.g.*, Exhibits 50, 55, 63-67, 78, 83, 95; Testimony of Wiggins; Testimony of Robins]

30. The trail through the Kallgren Road right-of-way beyond the deadend provides "non-motorized" access to Day Road.

## Agency Review

31. As a part of its standard application review procedure, PCD asked a variety of City and other agencies to review and comment on this short plat proposal [Exhibit 9].

32. Clearing (*e.g.*, removing trees and other vegetation to make way for driveways, and home sites) would occur in the future as a part of residential construction. While the Applicant will not be “harvesting” timber [Application, Exhibit 104], the Forest Practices Coordinator for the State Department of Natural Resources has noted that any removal of 5,000 board feet or more of timber requires a Forest Practices Application [Exhibit 19].

33. The Kitsap County Utility District No. 1 can provide water service for all the proposed lots and will honor the commitment to do so when binding Water Availability Letters have been purchased and issued [Exhibit 8]. Although the water district can provide water to all proposed lots, the Applicant intends to continue to use the existing water well on proposed Lot D to serve that lot [Exhibit 101; Exhibit 74, Note (1); see also Finding 22].

34. On-site waste disposal is proposed, with continued use of the existing onsite system on Lot D. The Kitsap County Health District did a preliminary review of the subject application in June 2005 [Exhibit 99]. At that time, the Health District found no problem with the undeveloped lots. There was concern about the existing well and on-site septic system; possibly misinterpreting these for new facilities being proposed. The Applicant subsequently advised [Exhibit 101] that the well was being retained and revised the site plan [Exhibit 74] to make that clear. As final plat approval is dependent upon receiving Health District approval, the conditions of preliminary short plat approval should include obtaining the binding Water Availability Letters and approval of on-site sewage systems approved for Lots A, B, and C.

35. The Fire Marshall reviewed the application and made recommendations to the Director [Exhibits 98 and 113; Testimony of Davis] requiring a new fire hydrant at the end of Proposed Lot C and requiring that Kallgren Road be constructed to connect with Day Road. See discussion of Condition 5 below.

36. The City Engineer reviewed the application and recommended to the Director that several conditions be included with approval of the short plat [Exhibit 140; Testimony of Mustain]. The conditions included: dedication of “two 50 foot radii for right-of-way”; constructing the extension of Kallgren Road in accordance with City standards (and allowing for possible change in those standards); disallowing any driveway access to Day Road; requiring that final site plans meet City standards; submitting on-site storm water plans/designs at time of building permit application; and, requiring the Applicant to hold a public meeting regarding required road improvements. See discussion of Condition 6 below.

## Conditional Approval

37. BIMC 17.12.106 provides that the Director “*may approve, approve with modification or disapprove an application for preliminary short subdivision based on the criteria in BIMC 17.12.107.*”

38. On August 3, 2005, the Director gave notice of administrative decision for conditional approval of the short plat and a SEPA Determination of Nonsignificance (DNS) [Exhibit 115].

39. The Staff Report indicates the “largest environment impact” associated with the short plat would be requiring the extension of Kallgren Road [Condition 2b]. However, no information or impact analysis is provided as to the number and size of significant trees to be removed and other natural resources potentially destroyed or damaged in order to satisfy this condition of approval expressly intended to “prevent unnecessary circuitous travel...” It is noted [Staff Report, Exhibit 114, pages 7 and 10] that “The character of the existing Kallgren right-of-way likely will be altered irrevocably...” No mitigation measures are required for environmental impacts associated with road construction and use.

40. The Director’s seven conditions of approval were included with the notice of decision [Exhibit 42, Staff Report, pages 1-3]. Some of the conditions have several subsections which complicates their description and analyses.

#### Appeals

41. The administrative decision procedures of BIMC 2.16.095.H provide that: “*The decision of the Department director may be appealed to the hearing examiner in accord with the procedures of BIMC 2.16.130.*”

42. BIMC 2.16.130.F.1 authorizes the Hearing Examiner, after holding an open record public hearing on the appeal of the Director’s decision, to: “*affirm the decision; reverse the decision; affirm the decision with modifications; or remand to the decision to the department director for further consideration..*”. BIMC 2.16.130.F.2 directs that the Hearing Examiner is to render a decision on the appeal “*giving substantial weight to the decision of the department director.*” The Hearing Examiner “*may include conditions...to ensure conformance with this code, the city’s comprehensive plan and other applicable laws or regulations.*”

43. On August 17, 2005, appeals of the Director’s decision were timely filed by the Applicant, Deni Christensen [Exhibit 117], and a group of concerned neighbors, the “Kallgren Road Preservation Society” [Exhibit 116]. Neither appeal challenged the approval of the short plat; both challenged one more of the conditions that the Director attached to that approval. The Kallgren Road Preservation Society challenged those portions of Conditions 5 and 6 that would require extending Kallgren Road through to Day Road. The Applicant appealed the same portions of Conditions 5 and 6, but also appealed: Condition 2 (open space management plan); Condition 4 (trail through

perimeter buffer); Condition 5a (fire hydrant); Condition 6a (dedication for right-of-way radii); Condition 6c (disallowing driveway access to Day Road); Condition 6f (requiring a public meeting); and, Condition 7 (noting setback requirements on the final plat).

44. Notice of the appeal hearing was properly made with posting, mailing, and publication completed by October 4, 2005 [Exhibit 121]. The hearing was held beginning on November 3, 2005 and continuing on November 15, 2005.

#### Condition 2: Open Space Management Plan

45. There are Code requirements for preparation of an Open Space Management Plan (OSMP) for both the flexible lot required open space and for the wetland [see Findings 49 and 57]. Condition 2 notes specifics to be included in the final version:

2. The open space management plan shall include the following information:
  - a. Significant trees are to be identified consistent with the standards of the Landscaping Ordinance (BIMC 18.85) and 30 percent of the tree canopy should be preserved. The Open Space Management Plan shall identify adequate preservation/replacement methods.
  - b. Uses within the open space containing the wetland and/or the wetland buffer shall be compatible with uses listed in BIMC 16.20.090F&G; uses within the open space designated perimeter buffer may be compatible with BIMC 17.12.092G.
  - c. Removal of invasive species shall be addressed.
  - d. Herbicides and pesticides shall not be used on the site.
  - e. Prior to removal of any evergreens, the Department of Fish & Wildlife must be contacted to determine whether a habitat management plan is needed.

46. Appellant Christensen objects to the Open Space Management Plan, questioning why it is necessary and specifically arguing that Condition 2c (to include provisions in the Plan to address removal of invasive species) should be eliminated. The appeal [Exhibit 117, paragraph 4.13] asserts that the City's authority to regulate development and use of critical areas does not extend to requiring an obligation "to restore areas which have suffered intrusion of invasive species...predating adoption of the GMA..." The nature, extent, and even the presence of invasive species on this site are not documented in this record. It was not established that there are such species present now and/or, if present, when they arrived.

47. The Applicant's argument against Condition 2 [see Hearing Brief, Exhibit 122, pages 15-16] generally focuses on the cumulative amount of property "off limits to development", rather than assigning error to the Director's condition to impose the Code-required Open Space Management Plan.

Open Space

48. BIMC 17.12.090.D directs that open space, consistent with existing “valued open space features” noted in the Code, be provided up to a maximum of 25% of the property. BIMC 17.04.082E provides that landscape roadside and perimeter buffers “*may be included in the required open space calculations...*” The wetland and wetland buffers are established through critical area review and as such, they are critical areas not open space. Critical areas do not “count” toward meeting the minimum open space requirements and are not included in the 25% maximum for open space [see note following BIMC 17.04.080.A.4.g below).

49. The standards for landscape buffers are in BIMC 17.04.080.A.4:

*a. Purpose. The purpose and intent of landscape buffers are to enhance and retain the character of the Island by maintaining native vegetation along roadways and preserving on- and off-site views; providing visual relief along public roads and between subdivisions and other existing development; reducing the impact of undesirable sights, sounds or odors.*

*b. Roadside Buffers. For...R-0.4...where established vegetation of a forested nature is located adjacent to public roads that are designated as collector or arterial roads...a 50-foot-wide vegetative buffer shall be maintained...The provisions for buffer averaging provided in subsection A.4.f of this section shall apply. The roadside buffer may contain multipurpose trails or bikeways if those trails could be accommodated without compromising significant vegetation or hazardous slopes.*

\* \* \*

*e. Allowed Landscape Buffer Activities:*

*i. Potable water wells and well houses;*

*ii. On-site storm water infiltration systems where the vegetated features of the buffer are not adversely impacted;*

*iii. Ingress and egress, where the access runs approximately perpendicular to the landscape perimeter;*

*iv. Underground utilities, where they run approximately perpendicular to the landscape perimeter; provided, that disturbance is minimized and the buffer is revegetated after construction;*

*v. Nonmotorized trails and trail maintenance necessary to provide for safety and visibility; and*

*vi. Planting of vegetation.*

*f. Landscape Buffer Requirements.*

*i. In order to buffer the visual impact of the proposed subdivision and protect off-site views, filtered screen landscaping, pursuant to BIMC 18.85.070.B.3 and 18.85.070.C, shall be required...*

*ii. All native shrubs and significant trees shall be retained within all landscape buffers, except that limited removal may be allowed for permitted activities located within the buffer area.*

*iii. Required landscape buffer width may be reduced through buffer averaging in accordance with the criteria in BIMC 18.85.070, Perimeter landscape requirements...*

*g. Landscape buffers may be included in the required open space calculations..\*.*

*\*Excepting those buffers established pursuant to critical area review....*

50. With the required 50 ft. wide buffer provided along both Madison Avenue and Day Road [BIMC 17.12.090.A.4.b], and 25 ft. wide setback along Kallgren Road, approximately 141,850 sq. ft. of the site (18%) would be “open space”. (This calculation is based on the dimensions shown on Exhibit 74.) The open space calculations offered by the Applicant incorrectly include the wetland and wetland buffers, which substantially inflates the percentage of open space relative to the total site.

51. BIMC 17.04.082.B.5 directs that areas designated open space should “*enhance or retain the Island character through the minimizations of disturbance of roadside vegetation.*” The designated open space perimeter buffers [see designated setbacks, on Page 2 of 3, Exhibit 2B] would be fully consistent with BIMC 17.04.082.B.5.

52. BIMC 18.85. 010 defines “*Significant tree*” to mean “A. *Evergreen tree 10 inches or greater in diameter...* B. *Deciduous tree 12 inches or greater in diameter...or* C. *All trees within a required critical area buffer...*”

53. The flexible lot open space standards, at BIMC 17.04.082.H, require that:

*Open space areas shall be permanently maintained. An applicant shall submit a draft open space management plan (OSMP) for review as part of the preliminary plat application. Final approval of the OSMP will occur at the time of final plat approval.*

54. The BIMC 17.12.092.H standards for the contents of an OSMP for short subdivisions include: 1) a list of approved uses; 2) a plan for maintenance indicating the frequency and scope of maintenance activities (with provisions for: replacement of significant trees, identification of who is responsible for maintenance, protection during construction, and removal of invasive species).

55. The BIMC 17.12.092.H requirement that an OSMP address removal of invasive species is not limited to sites where such species are already present. It requires having a plan for removal of invasive species - if and when they occur - as a part of ongoing maintenance and preservation. This is not a requirement for “restoration” to some previous condition.

#### Wetland

56. A Category II wetland has been identified, its boundaries delineated by field investigation, a 100 ft. wide buffer around the wetland has been designated, and a building setback of 15 ft. beyond the buffer established. The Wetland Analysis Report [Exhibit 4, page 8] recognizes that potential impacts should be mitigated by the large size of the lots and presumes required buffers. The wetland and wetland buffers have been marked on the face of the plat [see site plan, Exhibit 74]. In these designated areas, no buildings can be constructed or significant trees removed and the uses allowed must be restricted to those appropriate to the protection and preservation of the critical area.

57. BIMC 16.20.090.D (emphasis added) requires that restrictions on the use of the “...wetlands, or wetlands buffer shall be included in the open space management plan and noted on the plat.” Therefore, although the wetland and wetland buffer are not “open space” for the purpose of meeting flexible lot subdivision open space standards [see Finding 48], here the Open Space Management Plan is to address the wetland and wetland buffer, in addition to the open space designated as perimeter buffer pursuant to BIMC 17.04.082.

#### Open Space Management Plan

58. In compliance with BIMC 17.04.092.H, the Applicant included a draft OSMP with the application [see Sheet 3 of 3, Exhibit 2C]. The Director’s Staff Report criticizes the draft OSMP and Condition 2 notes specifics to be included for final plat approval [see text of conditions in Appendix A]: identification of significant trees and preservation of 30% of the tree canopy; specifying methods for preservation and replacement of significant trees; restricting uses consistent with the Critical Areas ordinance (for wetland and wetland buffer) and the flexible lot open space standards (for the perimeter buffer); provisions for addressing removal of invasive species; prohibiting herbicides and pesticides; and, determining if the Department of Fish & Wildlife requires a habitat management plan.

59. The “Open Space Management Plan” submitted with the application [Exhibit 2C] does not include all the elements required by BIMC 17.04.082.H. Condition 2 should require the draft be revised so that the final version is consistent with the Code and it can be approved with the final plat. As all of significant trees in the critical area and in the designated open space must be retained and preserved, identifying and marking which would be retained is unnecessary. Also, the factual and legal basis for the possibility that the Department of Fish & Wildlife (DFW) may require a habitat management plan should have been established during the Director’s review. (Any such requirement would operate independently from the subject application and need not be included as a condition.)

#### Condition 4: Trail in Perimeter Buffer

60. Condition 4 requires that a pedestrian trail be constructed through the perimeter buffer for the safe passage of school children “within the new lots” who will go to Wilkes Elementary School.

4. For the school children within the new lots that will go to neighboring Wilkes, a trail through the perimeter buffer must be established.

61. The “new lots” in this context would be Lots A, B, and C. Lot D is adjacent to Madison Avenue and a trail through the perimeter buffer along Day Road would not be used by children going from Lot D to Wilkes school.

62. Appellant Christensen objects to the expense of building the trail and to burdening future property owners with on-going maintenance and liability for a public trail through the privately-owned open space. [Testimony of Christensen]

63. The Applicant's engineer estimates that construction of a trail (6 ft. wide, graded and surfaced with gravel or wood chips) would be \$10-\$12/ linear feet for approximately 1280 ft. [Testimony of MacLearnsberry]

64. Comments received from neighbors indicate that there are school children in the neighborhood who walk north on Kallgren, use the existing trail to reach Day Road, then walk along Day Road to reach Wilkes school at Day and Madison. However, with no sidewalk and high vehicle speeds, Day Road is also not considered a safe route. [See *e.g.*, Exhibits 36, 66, 68; 83]

65. The trail required by Condition 4, linking Kallgren Road with Wilkes school, would fulfill the mandate of RCW 58.17.110 for subdivisions to have sidewalks or other "...features that assure safe walking conditions for students..." However, as there are only three future residences (Lots A, B, and C) to be served in this subdivision (and the potential for a similarly very small number of students walking to school), requiring the Applicant to build, and future owners maintain, a public trail through Lots A and D, would be an undue and continuing burden; disproportionate to impact of this subdivision.

66. Day Road is two lanes paved in a 60 ft. right-of-way. It was not explained why the path is required to be on the subject property, rather than within the public right-of-way. As the path would be public (*i.e.*, for safe passage of all neighborhood children walking to school), the public right-of-way seems a more logical choice. Some members of the public did observe that, as an alternative to extending Kallgren Road, a path along Day Road connecting with the existing Kallgren Road trail would provide a welcome and safe route to Wilkes school [see *e.g.*, Exhibits 56 and 83].

67. A path within the public right-of-way could meet the edict of RCW 58.17.110, would be consistent with the Comprehensive Plan and the Non-Motorized Transportation Plan, and would not be an on-going burden for the property owners. Without more information in the record, it cannot be considered a viable alternative for a condition here. However, if the neighborhood were to seek to make such improvements in the future, the lots in this short plat would be affected and the Applicant should promote that effort in the form of a no-protest agreement.

#### Condition 5: Fire Marshall Recommendations

68. Condition 5 adopts the following recommendations of the Fire Marshall for a new fire hydrant installed near Lot C and that Kallgren Road be connected to Day Road.

5. Except as provided in Condition 6 below, all recommended conditions of the Fire Marshal shall be conditions of approval (see Attachment C.4 received August 3, 2005):

a. The plan indicates compliance with fire flow regulations using building separation. This is approved, providing there is insufficient fire flow available on Day Road. If there is a water line in Day Road that is six inches in diameter or larger, then an 8-inch water line shall be extended to the end of Lot "C" with a new fire hydrant.

b. The access road/public right-of-way shall be constructed for connection to Day Road in accordance with the road standards appropriate for this area. Pursuant to Section DIO7.1 exception No.2 of the international Fire Code "*The number dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development as determined by the fire code official.*" Therefore because of life safety concerns, the requirement for connecting Kallgren Road to Day Road is a condition of Fire Department approval of this short plat.

#### Condition 5a: Fire Hydrant

69. The short plat would comply with the fire flow regulations by providing a 50-ft. separation between buildings (Application, Exhibit 10, page 8; Exhibit 113). In addition, on the recommendation of the Fire Marshall, Condition 6a would require the installation of a fire hydrant at the end of Lot C. [Exhibit 113; Staff Report, Exhibit 114, page 2] A fire hydrant has recently been installed very near the southeast corner of Lot C (*i.e.*, 420 ft. from the southeast corner of proposed Lot A) on the east side of the Kallgren Road right-of-way (*i.e.*, part of improvements required of the Keating short plat). [Testimony of MacLearnsberry; Testimony of Davis; Testimony of Walkowski]

70. The Fire Marshall indicated that as a general rule, a hydrant will be required if one is not within 600 ft. of a new development. The Fire Marshall also indicated that building separation and providing sprinklers within buildings are ways of meeting fire flow requirements. [Testimony of MacLearnsberry; Testimony of Davis]

71. Based upon this record, Condition 2a, requiring a hydrant "at the end of Lot C", has been satisfied. If additional measures are needed in future to ensure an appropriate level of fire protection for residences constructed on these lots, sprinklers could be included in those structures.

#### Condition 5b: Kallgren Road Extension

72. The access road condition, Condition 2b, would require that Kallgren Road be made a through street: extended north and connected to Day Road. Applicant/Appellant Christensen objects to this condition because it would be inconsistent with neighborhood character and a financial burden disproportionate to the impacts of the short plat. Neighborhood appellants argue that the required street would be the source of unwarranted and detrimental change to their neighborhood.

73. The Fire Marshall recommends that Kallgren Road be extended because it would allow faster emergency response and provide an alternative access route [Testimony of Davis]. Lots B and C could be reached from Phelps Station via Day Road approximately two minutes faster than coming north on Kallgren Road as is done now. The testimony of the several credible witnesses who estimated travel time, establish that response time to Lots B and C from the Phelps station (located west on Day Road) with the Kallgren Road extension/connection to Day Road, would be on the order of 2½ minutes and without that extension/connection, approximately 4½ minutes. (Emergency response dispatched from the Madison station would still approach from the south on Kallgren Road and the route and response time would not change from current conditions.) [Testimony of Davis; Testimony of Walkowski; Testimony of MacLearnsberry; Testimony of Wiggins]

74. It is the Fire Department’s policy to maintain a self-imposed average response time of six minutes. If Kallgren Road is not extended/connected to Day Road, the response time from Phelps station (4½ minutes) would be well within the 6 minute standard. The Fire Department takes the position that, when it comes to response time, faster is always better and so is connectivity. The recommendation for putting Kallgren Road through to Day Road is primarily based upon it providing for the faster response time noted in Finding 73. [Testimony of Davis; Testimony of Walkowski]

75. BIMC 17.12.020 (emphasis added) directs that short subdivisions be in accord with the Comprehensive Plan, and specifically that they “further” the residential open space goal and policies:

*...promote the public health, safety and general welfare of the citizens of the city in accordance with state law and the city’s comprehensive plan. To carry out this purpose and further the comprehensive plan policies addressing residential subdivision of land (specifically the land use element of the comprehensive plan – residential open space goal and policies), this chapter establishes a flexible lot design process that requires the preservation of open space... This process facilitates the fair and predictable division of land, maintains the current character of the city, encourages efficient and cost-effective provisions for infrastructure, limits the development impact area, minimizes impervious surface area and provides for greater flexibility in the division and establishment of residential lots...to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewage, storm water drainage, parks and recreation areas, sites for schools and school grounds and other public requirements; to provide for proper ingress and egress; to provide a variety of housing opportunities; and to maintain the quality of life...*

76. The following Residential Open Space goal and policies of the Land Use Element support allowing access as proposed, rather than requiring that Kallgren Road be extended:

#### **GOAL 1**

Preserve the open space...through a development pattern which will enhance the character of the area - forested areas...narrow roads bordered by dense vegetation - and the valuable functions the open space area...

**OS 1.4:** Existing vegetated buffers should be retained to preserve the Island's character and the forested view from the road.

**OS 1.5:** New development should strive to be responsive to the natural landscape...sited so as to have the least visual and environmental impact on the Island landscape. Features which enhance the Island's character...should be retained and encouraged.

77. The framework for the Land Use Element also directs that accommodating growth should be done "...in a manner which retains the Island's character and the quality of life which its residents so highly value." The discussion note for this policy recognizes that the Island's "rural appearance with forested areas, meadows, farms, and winding, narrow, and heavily vegetated roadways" represents "the Island character that is so highly valued by its residents..." and that development on the Island "is not characterized by urban development with a full range of urban facilities and services..." The expected "rural" nature of the R-0.4 zone embodies these policies and advises that "*full range of urban services and facilities are not required*" [see Finding 7].

78. The first of the Comprehensive Plan's five overriding principles is that "the special character of the Island" be preserved. Another of the principles requires balancing property owners' cost and benefits when making land use decisions.

- 1) Preserve the special character of the Island which includes forested areas, meadows, farms, marine views, and winding roads bordered by dense vegetation.
- 2) Protect the water resources of the Island.
- 3) Foster the diversity of the residents of the Island.
- 4) Balance the costs and benefits to property owners in making land use decisions.
- 5) Base development on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

79. The Introduction section of the Comprehensive Plan's Transportation Element makes clear that retaining Island character is included in transportation priorities that are to guide decision-making:

The most significant transportation priority for Bainbridge Island residents is the desire for a convenient and safe transportation system which strongly emphasizes alternatives to the automobile (transit, bicycle, and pedestrian) and yet retains the character of the Island – narrow, winding roads traversing forested, agricultural, and shoreside areas.

80. The Transportation Element consistently articulates the need to consider and balance the issues of maintaining Island character and environmental resources as the

roadway system is developed and expanded. The list of “community transportation issues” in the Transportation Element recognizes both, including:

Environmental impacts – ...environmental qualities... should be maintained...these resources may be adversely impacted or lost to future roadway expansion and widening.

Neighborhood traffic impacts – ...impacts of high traffic volumes and travel speeds need to be controlled to maintain the quality of the neighborhood.

Roadway connectivity – Bainbridge Island’s roadway system has few roadways that contribute to the development of a “network.” Many parts of the Island have only a single way to access the area...Mobility, emergency access, emission reduction, and circulation can all be improved with better roadway connections.

81. The “Transportation Vision” includes both improved mobility and respect for neighborhood and environment:

Provide a...transportation system that is consistent with and supports the other Elements of the Comprehensive Plan. The transportation system should respect community character, environment, and neighborhoods; improve mobility and safety...and promote...non-motorized travel...

82. The Goals and policies of the Transportation Element repeatedly address system efficiency and maintaining neighborhood character together. Both values are to be taken into account; character and neighborhood are more frequently mentioned.

**GOAL 1: COMMUNITY CHARACTER** Develop transportation improvements that respect the Island’s natural and historic character and are consistent with both the short- and long-term vision of the Comprehensive Plan.

**TR 1.2 Road development guidelines** Encourage the appearance of winding, narrow roadways serving less densely developed areas through the provision for and retention of appropriate roadside vegetation and trees, and following of the natural topography whenever possible.

**GOAL 2: ENVIRONMENT** ...maintain a transportation system that respects the natural environment, including the quality of the Island’s air, water, and natural habitat.

**TR 2.1 Environment sensitivity** Minimize impacts of road construction on environmentally sensitive areas; minimize damaging runoff and pollution from road use...

**GOAL 3: NEIGHBORHOODS** Consider the special needs of neighborhood safety, pedestrian and bicycle facilities...and traffic flow in the development of transportation improvements that affect neighborhoods.

**TR 3.1 Neighborhood cut-through traffic** Protect residential neighborhoods from the impacts of cut-through...traffic by providing appropriate connecting routes and impact-

minimizing design features...and applying appropriate traffic-calming measures to control vehicle volumes while maintaining emergency vehicle response times.

**TR 3.3 Neighborhood circulation** Develop a circulation and access management plan for neighborhoods...so that as properties develop, connectivity and circulation are maintained, cut-through vehicle traffic is discouraged, and appropriate speeds are encouraged, while maintaining access and response times for emergency vehicles.

**TR 4.1 Road development guidelines** Construct, modify, and maintain roads to: 1) meet safety needs, 2) provide for transit, pedestrian travel, and bicycling, 3) correct LOS deficiencies, 4) improve connectivity and emergency response times, and 5) meet Comprehensive Plan goals, including Goal 1 and supporting policies that address community character.

**TR 4.2 Street design guidelines** Set street design guidelines that use universal design principles; establish street widths; reflect the desired vehicle speeds; accommodate bicycle, pedestrian, and transit uses; and provide for emergency vehicle access while also considering community character.

**TR 9.1 Non-Motorized mobility and connectivity** Provide a non-motorized transportation system...which effectively serves...pedestrian, bicycle, and equestrian users and encourages non-motorized travel and provides a continuous network of attractive sidewalks, footpaths, multi-purpose trails, and bikeways...

83. Making Kallgren a through road is not “required”. As proposed, the short plat makes appropriate provision for access, consistent with the Code and with the Comprehensive Plan. Indeed, leaving Kallgren Road a deadend and adding and improving “traffic calming” features (speed bumps, enhancing/restoring roadside vegetation, *etc.*), could align nicely with the policies favoring neighborhood character, natural resource protection, and a non-motorized transportation network. If such improvements are sought in the future, the lots in this short plat would be benefited. The Applicant should be required to promote that effort in the form of a no-protest agreement.

#### Condition 6: City Engineer’s Recommendations

84. Condition 6 adopts the recommendations of the City Engineer and includes several subparts. Those parts of Condition 6 that have been appealed (see **highlighted** emphasis added to the text) are: 6a: right-of-way dedications for radii; 6b: construction of the Kallgren Road extension to City “Residential Optional Suburban” standards (or post surety and defer construction up to two years, then construct to new standards); 6c: take no access on Day Road; 6f: applicant required to hold public meeting to address neighborhood concerns about the required Kallgren Road extension.

6. All recommended conditions of the city engineer shall be conditions of approval (see Attachment C.3. dated August 1, 2005):

a. **Dedicate two 50 foot radii** for right-of-way; one at the SE corner of

Madison Avenue and Day Road, and the other at the SW corner of Day Road and Kallgren Road. Please show these on the plat map. .

- b. **Construct Kallgren Road** to the City of Bainbridge Island's Design and Construction **Standards and Specifications DWG. 7-065 (Residential Optional Suburban)** from Day Road to the south property line of the proposed short plat, connecting to the existing Kallgren road end. Design the road to minimize the impact of construction on trees and other vegetation and to preserve the existing path. Realign or replace the existing path as necessary to maintain non-motorized accessibility separate from the new road. Please show this on the final site plan.
  - i. The applicant **may defer commencement of actual construction** of these road improvements for up to two years if it **provides a surety** (such as assignment of account or construction bond) to the City in a form approved by the Planning Director in the estimated cost of the improvements as determined by the Public Works Director. If during that two-year period the City adopts revised road standards, the required road **improvements will be reviewed in light of the new standards**. The surety must assure the availability of sufficient funds for three years in the event that the City has to contract for construction of the improvements.
  - ii. During the two-year period when construction of the road improvements is held in abeyance, driveways may be built in the potential road footprint. The driveways must originate from the existing Kallgren road end. Insofar as possible, the driveways should be designed to serve as part of the future road, but regardless, the applicant shall be responsible for all construction costs if the final decision is to build the road.
- c. **Do not take any access from Day Road** other than the extension of Kallgren Road through to Day Road.
- d. Ensure final site plans meet the City Design and Construction Standards and Specifications. Show proposed utilities, including water mains, service connections and meters (note: service lines may not run parallel within the right-of-way).
- e. Prepare on-site storm water management plans and designs for each newly created building lot at the time of building permit application. Storm drainage design must meet the storm water requirements current at the time of building permit application. Please show this requirement on the plat map.
- f. Prior to design and construction of the required improvements, **hold a public meeting** in a manner and with notice as specified by the Public Works Director to demonstrate compliance with the City's requirements and receive comments from all persons who commented on the application addresses the neighborhood's concerns.

Condition 6a: Right-of-Way Dedication

85. The Condition 6a requirement for the right-of-way dedications would provide space for future improvements at the subject intersections. Each dedication would be 540 sq. ft. No evidence was provided that supports the notion that such improvements would ever be anticipated at these locations. It was not even suggested that existing or likely future traffic volumes and/or turning movements make it reasonable to anticipate that there is a present or future need for additional right-of-way for turning radii. On its face it appears reasonable that future conditions could have need of a turn lane at the southeast corner of the intersection of the two arterials (Day and Madison) to support the dedication requirement from Lot D, but no facts or professional judgment were offered. As there is no intersection at Day and Kallgren, there is no basis for requiring that dedication.

#### Condition 6b: Kallgren Road Extension

86. This condition requires that the Applicant construct Kallgren Road to the “Residential Optional Suburban” standards (approximately 630 ft. long, 12 ft. wide paved roadway with 3 ft. gravel shoulders and ditches for drainage). Condition 6b directs that the road be designed so as to “minimize the impact of construction on trees and other vegetation and to preserve the existing path.” It also anticipates that some or all of the existing path might need to be relocated or replaced to maintain it as separate from the new roadway. [Exhibit 114, Staff Report]

87. The Applicant’s engineer estimated the cost of clearing and construction at appropriately \$71,700. There was no information presented as to whether cutting or filling would be required. The City Engineer does not consider the terrain “difficult”, but contour lines on the site map [Page 2 of 3, Exhibit 2B] indicate that the elevations go from 305 ft. to 295 ft. within the northernmost 50 ft. of the right-of-way where it intersects with Day Road. [Testimony of Mustain; Testimony MacLearnsberry; Exhibit 74]

88. The City Engineer’s recommendation for Condition 6b, requiring access from Kallgren Road is, in part, based upon section 6-03 of the Design and Construction Standards and Specifications: “Where a property has frontage on more than one roadway, access will generally be limited to the lowest volume roadway where the impacts of a new access will be minimized.” [Testimony of Mustain] No roadway volumes were placed into this record, but as Day Road is an arterial, it is not unreasonable to presume it to have the higher traffic volume. The 6-03 “standard” has been applied here without any consideration of actual traffic volumes, roadway conditions, or what the nature and extent of “impacts” to Day Road and Kallgren Road would be. (To apply this general rule here also requires treating an unopened right-of-way as if it is a “roadway” presently handling some “volume” of traffic. It is not apparent why this interpretation should be accepted.)

89. Further, as neither the relative traffic impacts (Kallgren vs. Day) nor the environmental impacts of construction of the Kallgren extension (loss of habitat with removal significant trees and other mature vegetation, grading/cutting/filling, etc.), have been defined, it has not been established that the access requirement of Conditions 5b and 6b would “minimize impacts”. The long term impacts of extending Kallgren include

“irrevocably” altering the “character of the existing right-of-way” [Exhibit 114, Staff Report. page 10]. Another long-term impact would be that Kallgren would cease to be a tranquil deadend country-road (with only traffic that has origin or destination here), and would become just another part of the street system – an alternate (“cut through”) route for travel through the neighborhood. [Testimony of Wiggins; Testimony of Robins; Testimony of McGee; public comments, see *e.g.*, Exhibits 50, 75, 77, 86, 92, 95, 100].

90. The record includes no credible empirical data or analysis that identifies existing or likely future traffic volumes associated with requiring the extension of Kallgren or with allowing access by driveways as proposed. The neighbors conducted an informal “survey” with results suggesting that the overwhelming proportion of existing trips have destinations to the south (*e.g.*, the Ferry Terminal, Winslow, *etc.*) so that connecting to Day Road would not result in fewer miles traveled. [Exhibit 126; Testimony of Wiggins] The logic underlying the destination choices is sound, but the methodology of the “survey” and its estimated and generalized results are not. The City Engineer’s informal scenario regarding the extra miles traveled (and associated fuel use and air pollution) if Kallgren is not connected with Day, is also flawed (*i.e.*, based upon untested travel assumptions). Neither approach provides evidence that should be relied upon in making this decision.

91. In the discussion of TR 4.5, the Comprehensive Plan policy addressing concurrency (conditioning development on available capacity), the Transportation Element notes (emphasis added) that:

The Public Works Department is responsible for the review of traffic studies that analyze the anticipated impacts for proposed land use actions. If the development will adversely affect the established LOS, the City Engineer will apply the required conditions necessary for infrastructure improvements that mitigate the anticipated impacts of the development. These conditions...become part of the requirements for project approval.

92. No traffic studies were prepared to provide information about existing conditions and no analyses were done on the potential impacts. The City Engineer did not note any existing traffic safety or volume/capacity (congestion or LOS) problems. With the potential for future development of only three new residences, it would not seem likely to have any noticeable impact on traffic. [Testimony of Mustain]

93. The City Engineer’s recommendation of Condition 6b for the extension of Kallgren Road relies on the policies and standards favoring connectivity. Preference for connectivity is based upon the observation that, as a general rule, connectivity improves mobility, safety, reduces miles traveled and emergency response times. With this viewpoint, connecting streets is a good thing; always to be preferred to not having them connected. (This must be a frustrating point of view to hold on Bainbridge Island, where deadend streets are so common and cherished by many residents as the epitome of “island character”.) [Testimony of Mustain; Testimony of Wiggins; Testimony of McGee]

94. An excerpt from the Island Wide Transportation Study [Exhibit 125] lists 17 “connectivity improvements”. Kallgren Road is not one of these (the closest connectivity problem identified is well to the east, where Phelps and Day Roads intersect with SR 305).

95. There are some deadend roads on the Island (an unidentified number) even longer than Kallgren Road. Regarding “street ends”, Section 8-01 of the Design and Construction Standards and Specifications, indicates that street ends over 1000 ft. long “are discouraged”, but “will be considered” in certain circumstances (*i.e.*, where the lots are large or the terrain is difficult). There is a proviso that exceptions are intended only for street ends serving 25 or fewer lots or having 250 or fewer average daily vehicle trips (ADT). No ADT data for Kallgren Road was put into the record.

96. The Kallgren Road “deadend” (*i.e.*, north of Winther) is approximately 2,000 ft. long and serves approximately 24 lots. [Testimony of Mustain] The City Engineer incorrectly reads 8-01 to require large lots and difficult terrain and, while it the number of lots served would certainly exceed 25 with the subject short plat, there is no information as to the traffic volume. Based upon this record, the City Engineer’s conclusion that the exception criteria of 8-01 are not met may be mistaken. If traffic volume does not exceed 250 ADT, Kallgren would meet the criteria.

97. Condition 6b has provisions [i. and ii.] that would allow the Applicant, with the posting of a surety, to defer construction of Kallgren Road to Day Road for up to two years. The intent is to allow time for possible changes in “road connectivity standards”. In October, City Council passed Resolution No. 2005-36 resolving to review connectivity standards. [Testimony of Mustain; Testimony of Robins; Exhibit 126]

98. The City Engineer testified that City Council has revised the residential suburban standards so that he can, and would, authorize gravel (rather than pavement) be used here. The image is of a 12 ft. wide gravel roadway, winding through the trees within the 60 ft. right-of-way, with the trail realigned as necessary to keep it separate. It was not determined if this would mean that fewer significant trees would be removed. [Testimony of Mustain] It was also not established what effect the lower speeds allowable on this kind of road might do to the anticipated improvement in emergency response time to Lots B and C.

99. The Applicant’s engineer estimated that a gravel road would cost approximately \$60,000. The City Engineer indicated he would expect the cost to be more like \$28,000 (based on \$100/linear ft.) cost, but found the \$60,000 estimate acceptable. [Testimony of Mustain; Testimony of MacLearnsberry]

Condition 6c: Disallow Lot A Access from Day Road

100. Condition 6c would disallow access from Day Road except for the Kallgren Road extension required in Condition 5b. In effect this would deny the driveway access

proposed for Lot A [see Page 1 of 3, Exhibit 74]. This condition is based upon section 6-03 of the Design and Construction Standards and Specifications; no other rationale was cited for the City Engineer’s recommendation. As with the requirement that Kallgren Road be connected to Day Road [see discussions above], reliance on a general “rule” is not sufficient basis for the imposition of Condition 6c.

101. The Applicant’s engineer observed that the driveway location proposed for Lot A would have adequate sight distance and, due to the topography, he believes that it would be safer than the Kallgren/Day intersection required by Condition 5b. The proposed driveway location [see Page 2 of 3, Exhibit 2B and Page 1 of 3, Exhibit 74] is at about the middle of Lot A’s northern property line. As shown on Page 2 of 3, Exhibit 2B, this is the approximate location in the Day Road right-of-way and in the designated open space buffer where several small areas of steep slopes are mapped.

Condition 6f: Require a Public Meeting

102. This condition requires that the Applicant, in planning for the construction of the road, hold a public meeting regarding the design of the improvements. Requiring the Applicant to hold such a meeting is neither reasonable nor constructive as road design and construction are subject to prescribed standards and controlled by a City agency. The Applicant would not be in a position to change the design in response to neighborhood input. This is an untenable requirement.

Condition 7: Show Required Setback on Plat

103. Condition 7 reads as follows:

7. The following setback and lot coverage information shall be noted on the face of the final plat

<b>Requirement type</b>	<b>Required distance</b>
Building-to-building (fire requirement)	50 feet separation
Building to Right-of-Way (Day & Madison)	Minimum 50 feet, perimeter buffer
Building to Right-of-Way (Kallgren)	Minimum 15 feet
Building to Trail, Open space or access easement	Minimum 10 feet
Lot coverage maximum on Lots A, B, &C	11,000 SF
Lot coverage maximum on Lot D	46,410 SF

104. Appellant Christensen objects to the setback requirements, not that such information be noted on the final plat. See the discussion regarding Condition 2 for wetland and perimeter setback requirements.

105. The application [Page 2 of 3, Exhibit 2B] shows a 25 ft. wide setback from the Kallgren Road right-of-way. This is consistent with the 25 ft. front yard setback required

in the R-0.4 zone [BIMC 18.36.060.A] and with the 15 ft. minimum building to right-of-way setback for flexible lots [BIMC 17.12.090.A.3.c]. The chart should be amended to reflect the 25 ft. setback. The application [Page 1 of 3, Exhibit 74] correctly depicts the required 15 ft. wide building setback from the wetland buffer. The chart in Condition 7 indicates a required 10 ft. setback from elements that not proposed or required. The chart should be changed to accurately reflect the required 15 ft. building setback from the wetland buffer as depicted in the application.

#### Bainbridge Municipal Code: Subdivisions

106. BIMC 17.04.050.A provides that: “*All residential subdivisions shall be designed consistent with the flexible lot design process....*” and the flexible lot development standards of BIMC 17.04.080 apply to those subdivisions. As conditioned, the proposed short plat meets all the development standards (density, minimum lot size, minimum lot setbacks and dimensions, maximum coverage).

107. As defined in BIMC 17.12.040, “*short subdivision*” is the division of land “*into four or fewer lots...for the purpose of sale, lease or transfer of ownership...*”

108. BIMC 17.12.107.B provides the criteria that must be met for an application for a short plat to be approved. This preliminary short subdivision meets these criteria.

*1. The applicable subdivision development standards of BIMC 17.12.090, 17.12.092, 17.12.095 are satisfied;*

*2. The preliminary short subdivision makes appropriate provisions for the public health, safety and general welfare, and public use and interest, including those items listed in RCW 58.17.110;*

*3. The preliminary residential short subdivision has been prepared consistent with the requirements of the flexible lot design process and applicable flexible lot design standards;*

*4. Any portion of a short subdivision which contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter;*

*5. The city engineer determines that the preliminary subdivision a. ...conforms to regulations concerning drainag...b. will not cause an undue burden on the drainage basin...c. streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties [and] d. ...are adequate to accommodate anticipated traffic...e. conforms to the requirements of this chapter and the standards in the “City of Bainbridge Island Engineering Design and Development Standards Manual,” except as otherwise authorized by in BIMC 17.12.090.D.3;*

*6. The proposal complies with all applicable provisions of this code, Chapters 36.70A and 58.17 RCW, and all other applicable provisions of state and federal laws and regulations;*

*7. The proposal is in accord with the city’s comprehensive plan.*

## **Conclusions**

1. The Hearing Examiner has jurisdiction to hear and decide this matter and, in making that decision, must give substantial weight to the decision of the Director.
2. To overcome the substantial weight accorded the Director, it must be shown that the Director's decision was clearly erroneous. Under this standard of review, the Director can be reversed if the Hearing Examiner is left with the definite and firm conviction that a mistake has been made.
3. The Director did not err in finding that this preliminary short subdivisions meets the criteria for short plat approval [BIMC 17.12.107.B, see Finding 108]. The appeals raise objection to the conditions the Director imposed with that approval and the question on appeal is whether imposition of those conditions should be affirmed or if there has been error and one or more of the conditions should be modified or eliminated.
4. Director's Condition 1 was not appealed, but agency comments [Exhibit 8 and Exhibit 99] indicate that it should be revised to clarify what is required for the final plat submittal to evidence that sewage disposal and water supply can be provided to Lots A, B, and C.

#### **Condition 2: Wetland and Buffer – Open Space Management Plan**

5. The wetland is not part of the required open space. The open space, comprised of the perimeter buffers, would not exceed the 25% maximum prescribed by BIMC 17.12.092.D.1. The plat map should be revised with proper labels and legend to clarify this.
6. Appellant Christensen's argument that the open space buffers and the critical areas protections are improper requirements, is not persuasive. No evidence was presented to show the Director erred in requiring them.
7. The Code requires an Open Space Management Plan (OSMP) that addresses both the critical area and the designated open space perimeter buffers. Appellant Christensen provided no evidence to show the Director to have been mistaken in requiring an Open Space Management Plan that includes provisions for both. To the extent that the draft OSMP was deficient in specificity, it should be revised for submittal with the final plat application.
8. At the hearing the Applicant expressed a sincere and credible desire to "preserve" the property and the neighborhood in keeping with her family's long history of ownership. Ironically, the Applicant appealed the required perimeter buffers, critical area protections, and Open Space Management Plan that would serve that objective.

#### **Condition 4: Trail Requirement**

9. This condition is an unduly burdensome and disproportionate requirement in these circumstances and should be eliminated. As a less onerous option of requiring a path constructed in the Day Road right-of-way was not analyzed, there no record upon which to determine whether it would be an appropriate and sustainable condition. However, as it would be consistent with the requirement that subdivisions make provision for the safe passage of children who walk to school [see Finding 65], if in the future an LID or similar mechanism is established to construct such a path, the lots in this short plat should contribute their fair share to that effort. The Applicant should provide a no protest agreement to that end.

#### **Condition 5a: Fire Hydrant**

10. It was an error to condition approval of this short plat on the installation of a fire hydrant in a location where one is presently installed. This condition is unnecessary as it has been satisfied by the action of others.

#### **Condition 5b: Kallgren Road Extension**

11. The Fire Marshall and the Fire Chief recommended the road extension as they support all measures available to decrease emergency response time. It is not their job to weigh other public interests or individual circumstances: quicker is always better. Getting help to where it is needed the quickest way possible is their job. It is appropriate and correct that they are single-minded in this regard.

12. The Director, however, must weigh conflicting Comprehensive Plan policies, as well as competing values in the public interest. The Director erred here in not considering the goals and policies of the Land Use Element, especially the residential open space goal and policies as BIMC 17.12.020 directs. The residential open space goal and policies (*e.g.*, to enhance the character of the area – narrow roads bordered by dense vegetation, retain vegetated buffers to preserve Island character, site to have the least visual and environmental impact, retain and encourage features that enhance the Island’s character) weigh in heavily on the side of not requiring a through street. Similarly, although many are cited in the Staff Report, the policies of the Transportation Element that favor maintaining neighborhoods and “character” are not given weight equal to those emphasizing efficiency of the system. That one of five “overriding principals” of the Comprehensive Plan is to “preserve the special character of the Island” should make plain that disregarding or undervaluing these policies would be a mistake.

13. It was an error to have imposed the requirement that Kallgren Road be extended to connect to Day Road without having made an individualized determination that it was necessary and appropriate in these circumstances. The environmental impacts of road construction, as well as the traffic and other continuing impacts detrimental to the neighborhood, were not taken into account. Neither policies nor facts dictate that “connectivity” automatically trumps “character”. It was a mistake to not consider the individual circumstances to inform this decision. Here, the emergency response time to the new lots would be adequate, easily within the Fire Department’s standard. The

response time to the neighborhood is, and would remain, adequate; other residents would not be negatively affected nor would a bad situation be made worse. Similarly, there are no traffic safety or service level problems created or aggravated that would require mitigation with the road extension. Access as proposed is consistent with the Comprehensive Plan and maintains adequate emergency response time. Condition 5b should be eliminated.

14. Eliminating the requirement to make Kallgren Road a through street should help maintain existing neighborhood character and would relieve the owner of what would have been an undue and disproportionate burden. However, in the future if an LID or similar mechanism is established to enhance Kallgren Road with “non-motorized” features, the lots created by this short plat would surely benefit and should contribute their fair share to that effort. The Applicant should provide a no protest agreement to that end.

15. The proposed driveway access to Lots B and C should be allowed provided that grading and the removal of significant trees in the unopened Kallgren Road right-of-way and in the designated open space adjacent to it, shall be minimized.

#### **Condition 6: Engineering and Design Standards**

16. Condition 6a: No basis in fact was provided to support requiring these dedications of right-of-way. This condition should be eliminated.

17. Condition 6b: The tenuous nature of this condition (allowing deferral up to two years while standards may or may not get changed) would constitute a delay, not a solution. Allowing gravel instead of asphalt would not necessarily save significant trees as, with either surface, clearing and grading 30 ft. wide would be standard. Also, making Kallgren a through-street would change how it functions here, regardless of the surface material. As it is, Kallgren Road provides the neighborhood access to the rest of the Island and it is a source of “community” for this neighborhood. As a through street, it would still provide access for the neighborhood, but the community function would fade away or be lost in the service of providing circulation as part of a network of roads. (There is little consolation in the conjecture that the volume of through traffic would be small due to low speed limits or inconvenience. If this surmise proves wrong, the neighbors’ worse fears get realized; if it is accurate, then Kallgren is relatively inconsequential to “connectivity”.) Requiring that Kallgren Road be constructed in accordance with City design standards and specifications is unnecessary in light of the conclusions regarding Director’s Condition 5b.

18. Condition 6c: As Condition 5b is eliminated, this condition must also fail. Driveway access from Day Road to Lot A should be permitted. As it is located within the designated open space, the size of the driveway should be restricted to the minimum necessary for safe access to Day Road consistent with minimizing grading and the removal of significant trees.

19. Conditions 6d and 6e: Evidence was not offered challenging these conditions; they should be affirmed.

20. Conditions 6f: As Condition 5b is eliminated, the requirement for the Applicant to hold a public meeting [Condition 6f] is unnecessary and should be eliminated.

**Condition 7: Chart of Minimum Setbacks**

21. Minimum setback distances, minimum buffer widths, and maximum lot coverage should be noted on the final plat.

**Decision**

The decision of the Director approving the Short Plat application of Deni Christensen [SPT13104] is hereby **AFFIRMED AS MODIFIED** with Conditions 1 through 10 that follow on pages 29 through 31.

Entered this 6<sup>th</sup> day of January 2006.

\_\_\_\_\_  
-signed in original-  
Meredith A. Getches  
Hearing Examiner *pro tem*  
City of Bainbridge Island

**CONCERNING FURTHER REVIEW**

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

Request for judicial review of this decision by a person with standing can be made by filing a land use petition in superior court within 21 days in accordance with the Land Use Petition Act, Revised Code of Washington (RCW), Chapter 36.70C.

**SPT13104**  
**CONDITIONS OF APPROVAL**

1. Kitsap County Health District approval for on-site sewage disposal and binding Water Availability Letters from Kitsap Public Utility District shall be included in final plat application for Lots A, B, and C.
2. Prior to final plat approval, the Open Space Management Plan included on the face of the plat in the preliminary plat application [*i.e.*, Page 3 of 3, Exhibit 2C) shall be revised as follows:
  - a. The last sentence in the third paragraph of Page 3 of 3, Exhibit 2C, shall be revised to read: “This Open Space Management Plan limits uses and activity in those areas depicted as wetland, wetland buffer, wetland buffer setback, landscape and/or roadside perimeter buffer on Page 2 of 3 in the final plat map.”
  - b. On Page 2 of 3 in the final plat map [Exhibit 2B]: (1) Change Legend label “Open Space” to “Open Space Management Plan Areas”; (2) add to the Legend the dashed line symbol used to show perimeter buffer setbacks with the label “Buffer Limits” (leave dimensions as shown); (3) revise both Legend and map to show the wetland and wetland buffer with separate symbols (removing the diagonal lines from the wetland area, label the diagonal lines symbol as “Wetland Buffer” and adding the wetland symbol and label to the Legend would accomplish this); (4) add label “15 ft. Building Setback” to identify that area on the map; (5) eliminate text in the Legend regarding “open space” acreage and percentage.
  - c. Preface the list of activities permitted [Page 3 of 3, Exhibit 2C] by noting that “No activities, uses, structures or vegetation removal are allowed in any area covered by this Open Space Management Plan except as permitted by this Open Space Management Plan.”
  - d. Add provisions to specify placement of temporary fences, flags or similar markers to mark the boundaries of the areas cover by this Open Space Management Plan during any construction that comes within 15 ft. of those areas.
  - e. Make the following changes to the list of permitted activities (Page 3 of 3, Exhibit 2C), revising Items 1 through 4 and adding Items 5 and 6. The last three paragraphs shown on the draft OSMP to remain unchanged.

Permitted Activities

1. Narrow pervious pedestrian trails (not to exceed 5 ft. wide) may be constructed and maintained within the areas covered by this Open Space Management Plan, except they shall NOT be permitted in the designated wetland area.
2. Passive recreation, including but not limited to birding, walking, and photography, shall be permitted.
3. Individual lot owners shall be responsible for maintaining the designated in their own lots. No significant trees may be cut or removed, except that diseased trees may be removed if and as determined necessary by a qualified

arborist. The areas shall be maintained as natural areas, with the expectation that natural forest growth will replenish the forest. To the extent that significant trees are lost through natural processes, or diseased trees are removed, individual property owners shall replace them within six months of the date of loss or removal.

4. Low impact fencing and/or signs shall be placed in the wetland buffer area as necessary to protect the wetland (consistent with BIMC 16.20.090.G.5) and low impact fencing is permitted (but not required) to mark the perimeter landscape buffer boundary (consistent with BIMC 17.12.092.H.2.g).
  5. Site investigative work necessary for land use applications shall be permitted (consistent with BIMC 16.20.090.F.4) and, in all cases, impacts shall be minimized and disturbed areas immediately restored.
  6. Control and removal of invasive/exotic species by individual property owners is encouraged and may be accomplished with manual methods, hand-held power equipment, or other means as approved by the Director (consistent with BIMC 16.20.090.F.6). Herbicides and pesticides shall not be used in the areas covered by this Open Space Management Plan.
3. One-half of the school impact fees are due at the time of final plat approval; one-half are due at the time of building permit issuance for homes on the individual lots. The half-fees are based on the amount required at the time of payment. (BIMC 15.28.)
4. Record an agreement, binding on current and future owners of Lots A, B, C and D, to not protest formation of a LID for the purpose of improving the south side of Day Road right-of-way with a path to provide safe pedestrian access to Wilkes Elementary School.
5. Driveway access from Kallgren Road for Lots B and C shall be the minimum length necessary to reach the respective building sites and the minimum width necessary to allow for construction equipment and for fire department. The design and location of the driveways shall be designed so as to minimize the removal and/or damage to significant trees and the need for grading or filling. The existing driveway in the Kallgren Road right-of-way shall be incorporated into the driveway design so that additional clearing north in the right-of-way should be unnecessary.
6. Driveway access from Day Road for Lot A shall be the minimum length necessary to reach the respective building sites and the minimum width necessary to allow for construction equipment and for fire department access. The design and location of the driveways shall be designed and located so as to minimize the removal and/or damage to significant trees and the need for grading or filling.
7. Record an agreement, binding on current and future owners of Lots A, B, and C, to not protest formation of a LID for construction of improvements for non-motorized travel in the Kallgren Road right-of-way between Winthers Road and Day Road.
8. Ensure that final site plans meet the City Design and Construction Standards and Specifications; show proposed utilities, including water mains, service connections and meters.
9. Note on the face of the plat that: Storm water drainage plans, meeting requirements current at the time of building permit application, shall be required as part of the building permit application for each newly created lot.

10. Include the following chart of setback and lot coverage information on the final plat and continue to show locations of properly dimensioned setbacks on Page 2 of 3 of the final plat.

<b>Setback/Coverage:</b>	<b>Required distance:</b>
Building-to-building separation	Minimum 50 feet
Building to Right-of-Way (Day & Madison)	Minimum 50 feet,
Building to Right-of-Way (Kallgren)	Minimum 25 feet
Building to Subdivision Boundary	Minimum 25 feet
Building to wetland buffer	Minimum 15 feet
Coverage Lots A, B, & C	Maximum 11,000
Coverage Lot D	Maximum 46,410