

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

In the Matter of the Application for

**UPPER BLAKELY/HARBOR MEADOW**

**CUP/RUE 13379**

Conditional Use Permit and Reasonable Use Exception

**BACKGROUND**

The Applicants seek a Conditional Use Permit and a Reasonable Use Exception to establish 27 building sites on two adjacent parcels and, in future, individually construct up to 27 dwellings (one per building site). The Director has reviewed the application and recommended approval with conditions. The Hearing Examiner held a public hearing on July 27, 2006. Parties represented at the hearing were: the Director, Department of Planning and Community Development (Department or PCD), by Marja Preston, Planner; and, the Applicants, Harbor Meadow LLC and Upper Blakely LLC, by Scott Shelton.

At the public hearing, the Hearing Examiner requested revision of the proposed Open Space Management Plan [OSMP] to clarify permitted and prohibited activities and future use. A revised OSMP was submitted on November 2, 2006, and the hearing was reconvened on December 7, 2006, to discuss it. The record was left open following the reconvened hearing to allow the applicants to submit a revision responsive to the directions of the Hearing Examiner. On December 13, 2006, with receipt of a revised OSMP [Exhibit 73], the record was closed.

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

**FINDINGS**

Site Description

1. The site consists of two adjacent parcels located between Toe Jam Hill Road (on the west), NE Country Club Road (on the north and northeast), and Upper Farms Road (on the east). A narrow gravel roadway (used as a logging road in the 1950's and as a waterline maintenance road since 2000) provides vehicular access from Toe Jam Hill Road, to the interior of the site. The 104-acre site, overlooking Blakely Harbor, includes Lot A (NE 1/4, Sec. 11, T.24N., R.2E.) and Lot B (NW 1/4, Sec. 12, T.24N., R.2E.) See legal description Exhibit 18. [Exhibits 12, 52, 63; Testimony of Preston, Shelton]

<u>Parcel</u>	<u>Owner</u>	<u>Size</u>	<u>Tax Assessor Acct. No.</u>
Lot A	Harbor Meadows LLC	61.20 acres	112402-2-043-2000
Lot B	Upper Blakely LLC	<u>46.86 acres</u>	122402-2-017-2009

Total: 104.06 acres

2. The site is undeveloped and covered with second-growth hardwood and conifer forest. Vegetation includes moderately dense stands of mature alder, maple, cedar, and fir trees and a dense understory of sword ferns, berry bushes, vine maple, and broad leaf ground cover, including Oregon grape and salal. [Exhibits 26, 52, 61, 68, 69; Testimony of Preston, Shelton]
3. Four wetlands and three streams have been identified on the site. The wetlands (delineated and classified in 1990, 1992 and 1997 and verified in 2000) were re-examined by a qualified wetland scientist in 2004 [see reports and recommendation, Exhibit 12].
4. Geologic conditions on-site have been subject to assessment in geotechnical reports, including Exhibit 61 which summarizes previous reports and provides recommendations for the subject proposal. The site topography generally has three elements: 1) steep north- and northwest facing slopes, with localized steeper slopes along the north-south trending ravine; 2) center area with slopes less than 15%; and, 3) south central area with slopes of 20-30%, flattening to less than 15%. Some slopes are defined as geologically hazardous under the City’s Critical Areas Ordinance. There is evidence of older slide activity in the lower slopes and an active slide area exists at the northwest corner of Parcel A affecting a portion of the Country Club Road right-of-way. [Exhibits 13, 57, 58, 59].
5. The zoning of the subject site is residential (R-0.4, one dwelling per 100,000 sq. ft.). Single-family dwellings are permitted outright in this zone; multifamily dwellings are permitted as conditional uses. The Comprehensive Plan designation is SUR (Semi-Urban Residential). Zoning in all directions surrounding the subject site is R-0.4 (with SUR Comprehensive Plan designation) and, except for the Country Club to the east, all uses in the immediate vicinity are residential. The northernmost portion of the site is within the City’s shoreline and has a “Rural” designation. [Staff Report, Exhibit 52, page 10; Testimony of Preston]

Proposal

6. The site plans [Sheet 1/7 through 7/7; see Exhibit 4] were revised in the course of the review of the application. This decision relies on the most current plans available as follows (other versions are considered superseded):

<u>Sheet</u>	<u>Exhibit</u>	<u>Title (Depicting)</u>	<u>Date</u>
1/7	63	Conditional Use Permit (basic info; legal descriptions)	07/05/06
2/7	70	Parcel A, Harbor Meadow LLC (wetlands; topography)	10/30/06
3/7	63	Parcel A, Harbor Meadow LLC (Building Sites A1 - A15)	07/05/06
4/7	70	OSMP Areas and Tree Retention Plan: Parcel A	10/30/06
5/7	63	Parcel B, Upper Blakely LLC (wetlands; topography)	07/05/06
6/7	63	Parcel B, Upper Blakely LLC (Building Sites B1 - B12)	12/07/06
7/7	70	OSMP Areas and Tree Retention Plan: Parcel B	10/30/06

7. The two families who own these adjacent parcels propose to develop the site as a condominium for residential use by family members (a “family compound”). Parcel A would have 15 building sites (A1 through A15; see Sheet 3/7, Exhibit 63) and Parcel B would have 12 building sites (B1 through B12; see Sheet 6/7, Exhibit 71). The applicants

propose to initially construct basic infrastructure and clear a 7-acre meadow area. Subsequently, family members would build and own their individual dwellings and share equally in the ownership of the commonly-held property outside of the designated building sites. [Exhibits 15, 16, 52, 70 (Sheet 7/7); Testimony of Shelton, Preston]

8. The road improvements and infrastructure would be constructed after approval of this application. Individual dwellings would be constructed by family members over “generations”, with fewer than five houses expected to be built in the first 10 years, and as many as seven in 20 years. Impervious surfaces (road and buildings) at “full build out” would cover less than 10% of the total site. The maximum number of dwellings constructed would be 27 (one dwelling per building site); each dwelling would have a separate building permit application (including review of on-site septic system). It is anticipated to take on the order of 40-60 years to reach “full build out”. [Exhibits 15; 52; Testimony of Shelton, Preston]

9. The existing road would be improved and extended approximately 1500 ft. to provide vehicular access to the 27 building sites. This private gravel road would be 12 ft. wide (plus shoulders), with turnouts at 300 ft. intervals. Runoff would be collected in a ditch along the side of the road and routed into existing culverts. Drainage from the new portions of the road (the Upper Blakely “loop road”) would be collected in a biofiltration swale/ditch along side of the road, then routed to a detention pond sized in accordance with current regulations. [Exhibits 11, 15, 52; Testimony of Shelton]

10. Approximately 80% of the site would be designated as Open Space and managed according to an Open Space Management Plan (OSMP). The originally proposed OSMP was revised during the hearing process [see Finding 29].

11. The subject property has approximately 1800 linear feet of shoreline along the south shore of Blakely Harbor. No building sites are proposed within the shoreline and the required 50-ft. wide native vegetation zone would be maintained as Open Space [*i.e.*, within Areas 1 and 2A, see Sheets 4/7 and 7/7 in Exhibit 70]. The applicants propose to dedicate an easement for a public trail within Open Space Area 1. (The Owners have volunteered the easement and continued cooperation; they are not intending to fund the design or construction of a trail in the shoreline within the easement.) Open Space Area 2A, at either end of Area 1, would have commonly-owned shoreline amenities and serve as “buffers” for adjacent residences. Certain accessory structures (*e.g.*, a boathouse up to 200 sq. ft., and deck up to 120 sq. ft.) could be permitted within the native vegetation zone in Open Space Area 2A [see BIMC16.12.260B.9]. Such structures are not currently proposed in the subject application. [Exhibits 8, 52; Testimony of Preston, Shelton]

12. Due to geologic instability, Country Club Road is currently restricted to one lane of travel where it passes through the subject site. To remedy this situation, the applicants have agreed to allow the City to relocate Country Club Road (and its right-of-way) south of its present location. [Exhibits 8, 9, 52; Testimony of Preston, Shelton]

13. Water to the subject site would be supplied by Island Utility Company which already has an eight-inch main installed on the property. Puget Sound Energy would

provide electric service; Quest and Comcast would provide phone and cable services respectively. [Exhibit 15]

#### Director's Review and Recommendation

14. The future dwellings would be single-family structures (*i.e.*, one dwelling unit per structure), but are considered “*multifamily*” [see BIMC 18.06.320] because there would be more than one dwelling per lot (*i.e.*, 15 building sites on Parcel A and 12 on Parcel B). In the R-0.4 zone, “*multifamily*” dwellings may be allowed as a Conditional Use [see BIMC 18.108.040.A, Finding 36].

15. The application [Exhibit 21] for the Conditional Use Permit (CUP) was submitted to PCD on November 16, 2005 and deemed complete on November 20, 2005 [Exhibit 26]. On November 30, 2005, PCD published notice of the application and of the SEPA Comment Period [Exhibit 28]; re-notice of the application and extension of the SEPA comment period was published on December 12, 2005 [Exhibit 39]. Because the existing access road is located within the wetland buffer, a Reasonable Use Exception (RUE) is also required.

16. During the comment period several concerned neighbors submitted comments to the Director [Schairer, Exhibit 30; Berdan, Exhibit 31; Kallas, Exhibits 32 and 36; Cameron/Bight, Exhibit 33; Blackman, Exhibit 40; Hacker, Exhibit 41; Morgan, Exhibit 43]. Some of the comments indicated opposition to the proposal as being too much development and having adverse impacts on wildlife in what many consider one of the last “pristine and wild areas on Bainbridge”. Others questioned how the proposed open space would be kept undeveloped in future. The potential for clearing and development to increase stormwater runoff (drainage) downslope was a major concern; the adequacy of on-site septic systems was also challenged. The precise location of the Country Club Road realignment was a particular concern to adjacent residents. The South Bainbridge Community Association submitted comment [Exhibit 42] commending the applicants for the low density proposed and the offer to grant an easement for a public path along the waterfront. The Association also expressed concern that the application would not be subject to the recently adopted Critical Areas Ordinance.

17. The PCD Staff Report [Exhibit 52, page 11] includes a discussion of the comments received and accurately responds to questions regarding: density; public shoreline access; provisions for stormwater drainage; on-site septic systems; and, the inapplicability of the City's new Critical Areas Ordinance.

18. The Director referred the application to various City departments for review and comment [Exhibit 20]. The Public Works Department advised that the applicants would be required to improve their side of the Tow Jam Hill Road right-of-way. Stormwater drainage facilities for residential development would also have to meet City standards applicable at the time individual building permit applications are submitted. [Exhibit 44].

19. The Fire Marshall specified that the access road must meet Public Works standards, including turnouts at 300 ft. intervals. Paving and/or residential sprinkler systems could be required depending upon the road grades. [Exhibits 16 and 29].

20. The Public Works Department provided a Certificate of Concurrency attesting that existing transportation facilities would not be unduly burdened by the development anticipated [Exhibit 64]. The Certificate of Concurrency, premised upon 9.5 Average Daily Trips (ADT) per dwelling unit and a total of 27 dwelling units, notes a total of 258 ADT and 27 Peak Hour Trips associated with full build out. The project was exempt from the traffic study requirement of BIMC 15.40.060 because the applicants agreed to make dedications and right-of-way improvements. [Exhibits 9, 44; Testimony of Shelton].

21. The Island Utility Company provided a commitment letter for water service [Exhibit 7]. The Kitsap County Health District indicated that it would do its review (soils and septic system design) at the time each building site application (BSA) is submitted [Exhibits 50 and 55]

22. Two bald eagle nests are known to exist in the vicinity. In association with the Forest Practices application for the tree cutting proposed for creation of the meadow [see Finding 7], a Bald Eagle Management Plan [Exhibit 10] has been drafted by the property owners in cooperation with the State Department of Fish and Wildlife. The Director recommends that conditions in that Plan be made conditions of approval [see Condition 22].

23. On May 9, 2006, the Director issued a SEPA Mitigated Determination of Nonsignificance (MDNS) [Exhibit 45]. The MDNS was not appealed.

24. The City's Wetlands Advisory Committee indicated its endorsement of the Reasonable Use Exception after visiting the site and interviewing the applicants. The Committee based its approval on its belief that the intrusion of the existing road into the wetland buffer is too small to require further mitigation and that moving the road would cause more environmental harm than the proposed improvements. [Exhibits 51]

25. The designated Category II wetlands (Wetland 39, 41, 46) are required to have 100-ft. wide buffers. A 50-ft. wide buffer is required for the Category III wetlands (west of building site A1, near Toe Jam Hill Road and Wetland 40, near the eastern property boundary). A 15-ft. wide building setback is required around the wetland buffers. Buffers 25-ft. wide are required on either side of the centerline of identified streams, plus 15-ft. wide building setbacks from those buffers. A 50-ft. buffer is required from the edge of steep slopes. [Exhibits 63, 70, 71]

26. The Director correctly determined that this proposal: 1) complies with the applicable Conditional Use Permit criteria of BIMC 18.108.040 for "*multifamily dwellings*" on the subject site; 2) meets the requirements of BIMC 16.20.090 for approving a Reasonable Use Exception to allow the proposed improvements of the existing road in the wetland buffer; and, 3) is consistent with applicable policies of the Comprehensive Plan. The Staff Report [Exhibit 52, pages 12 through 19] provides thorough and accurate analyses of the proposal's compliance with zoning code requirements and Comprehensive Plan consistency. These analyses, unless specifically contradicted by other parts of this decision, are adopted as Findings. The Director's

recommended Conditions 1 through 56 [Exhibit 52, page 2-8] are also adopted (except as modified in this decision [see Conditions of approval on pages 11-16]).

### Public Hearing

27. The hearing, originally scheduled for June 22, 2006, was continued to July 13, 2006. Notice of the public hearing was properly given and complete as of June 28, 2006 [Exhibit 54]. At the hearing, the Applicant described and explained the proposal [Testimony of Shelton] and the Director presented the staff report and Recommended Conditions [Testimony of Preston].

28. During the public comment portion of the hearing on July 13, 2006, several members of the public spoke [Testimony of Black, Citron, and Davis]. Concerns and questions included: how can open space be preserved through time; the need for enforceable covenants to not develop land that is designated “open space”; the potential to increase runoff to downslope properties (already experiencing drainage problems); and, the adequacy of the access. A representative from the Parks District verified the applicants’ cooperation for developing a public trail in the shoreline and for being a partner for shoreline restoration [Barrett].

29. The Open Space Management Plan (OSMP) originally proposed [Exhibit 53] did not have an appropriate level of detail regarding activities that would be allowed and those that would be prohibited. The revised OSMP (including revised plans identifying the various open space “areas”) was the focus of discussion at the reconvened hearing held on December 7, 2006 [Exhibits 70 and 72]. The record remained open following the reconvened hearing so that the applicants could incorporate the changes discussed. A revised version was submitted December 13, 2006; the resultant OSMP [Exhibit 73] requires additional modification in order for it to provide appropriate open space protection and management in the future. Condition 34 requires that the modified version of the OSMP, presented in Appendix A, be adopted, recorded and implemented.

30. Further, to ensure that it is made clear that all the open space areas noted in the OSMP maps [Sheets 2/7 and 4/7, dated 10/30/06, in Exhibit 70] are part of this decision, the site plans that depict the Conditional Use Permit proposal [Sheet 1/7 and Sheet 3/7, dated 7/5/06 in Exhibit 63, and Sheet 6/7, dated 12/7/06 in Exhibit 71] must be revised. The revisions required (prior to the issuance of the CUP) are: 1) include on Sheet 1/7 that portion of the subject property that lies north of Country Club Road; 2) note a cross-reference on Sheet 3/7 indicating that Parcel A includes the open space areas north of Country Club Road as depicted on Sheet 4/7; and, 3) note a cross-reference on Sheet 6/7 indicating that Parcel B includes the open space areas north of Country Club Road as depicted on Sheet 7/7.

### Bainbridge Island Municipal Code [BIMC]

31. BIMC 18.06.320 defines “*Dwelling, multifamily*” (emphasis added) to mean “*a building or portion of a building containing two or more dwelling units or more than one dwelling unit on one lot, not including accessory dwelling units*”. Future residences here would be considered “*multifamily*” dwellings because there would be more than one dwelling per lot (up to 15 on Parcel A and up to 12 on Parcel B). However, these future

dwelling would be separate units; each would look like and function like a single family residence (see BIMC 18.06.330).

32. Pursuant to BIMC 18.36.030, “*multifamily dwellings*” may be permitted as a conditional use in the R-0.4 zone [see also Staff Report, Exhibit 52, pages 17-19]. Applicable development standards include 10% maximum lot coverage [BIMC 18.36.050] and 30-ft. maximum building height [BIMC 18.36.070]. Due to the clustering proposed, the yard requirements of BIMC 18.36.060 do not apply.

33. Chapter 16.20 of the Municipal Code categorizes wetlands, streams, and steep slopes as “Critical Areas”; protections are required for some critical areas. [See BIMC 16.20.090; BIMC 16.20.080; and, Finding 25].

34. The proposed open space areas generally incorporate buffers and setbacks required by the Critical Areas Ordinance [BIMC 16.20]. However, some portions of the existing road are located within the wetland buffer. The applicants seek a Reasonable Use Exception to improve the road in its present alignment.

35. BIMC 16.20.090L4 provides that a RUE may be approved if, without it an applicant would be deprived of “*reasonable use of the property*”, and it meets the following criteria:

*a. The proposed activities will result in the minimum intrusion, alteration or impairment of the wetlands, stream or required buffer including impacts to their functional characteristics, while permitting some reasonable use of the property. In all cases, disturbance of a regulated wetland or stream shall only occur if no reasonable use can be achieved by disturbance of the buffer only;*

*b. The proposed activities are located to minimize impacts to the continued existence of endangered, threatened, rare, sensitive, or monitor species as listed by the federal government or the state of Washington;*

*c. The proposed activities include mitigation as appropriate to avoid measurable degradation to groundwater or surface water quality;*

*d. The proposed activities comply with all relevant state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;*

*e. Alterations to wetland, streams and buffers will be mitigated to the extent feasible considering the extent of the disturbance, the size of the site and the necessity for the proposed activities;*

*f. There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property;*

*g. The inability to derive reasonable use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter;*

*h. The reasonable use exception will not allow a use or activity that is inconsistent with the uses and activities and limitations of other properties in the vicinity and zone in which the property is located;*

*i. For a nonresidentially zoned site, the reasonable use exception should consider alternative uses that minimize impacts to wetlands, streams, and buffers, as well as the applicant's proposed use;*

*j. The reasonable use exception is the minimum necessary to provide reasonable use of the property;*

*k. The reasonable use exception is consistent with all other provisions of this code and is in accord with the comprehensive plan.*

36. BIMC 18.108.040A provides that a conditional use “*may be approved or approved with modification*” if:

*1. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property;*

*2. The conditional use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities and storm drainage facilities;*

*3. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;*

*4. The conditional use is in accord with the comprehensive plan;*

*5. The conditional use complies with all other provisions of this code;*

*6. The conditional use will not adversely affect the area or alter the area's predominantly residential nature; and*

*7. All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.*

37. Following the decision procedures of BIMC 2.16.100, the Hearing Examiner is to hold a public hearing and then make a decision to “*approve, approve with modifications, deny or remand an application*”. In making this decision, the Hearing Examiner is required to “*consider the applicable decision criteria of this code, all applicable law, and any necessary documents and approvals.*” [See also BIMC 2.16.025 and BIMC 16.20.090I.2.b]

## **CONCLUSIONS**

1. The Hearing Examiner has jurisdiction to hear and decide this matter.

2. Appropriate notices of the application and of the public hearing were given and the hearing was properly convened and all comments, testimony, and other evidence offered and admitted to the record have been considered.

3. The applicants propose to develop the subject property in allowable residential use at a density considerably less than that permissible under existing zoning. Residential construction would be allowed only within the 27 designated building sites and only one dwelling could be constructed on each building site. The applicants have shown a noteworthy and commendable regard for the natural features, wildlife, and habitat of this remarkable property. The owners' commitment to long-term habitat protection and restoration is supported by the provisions of the required Open Space Management Plan [Appendix A].

4. Approval of the Reasonable Use Exception is necessary and appropriate. As observed by the Wetlands Advisory Committee, the proposal would be less damaging to the environment than moving the road so that such an exception would not be required. The proposal, as conditioned, meets the Reasonable Use Exception criteria for approval and should be approved.

5. As conditioned, the proposal meets the criteria for Conditional Use Permit approval and the requested Conditional Use Permit should be approved. The implementation of the Open Space Management Plan [see Appendix A and Condition 34] is fundamental to this conclusion and to the approval of the Conditional Use Permit.

### **DECISION**

The application of Harbor Meadow LLC and Upper Blakely LLC for a Conditional Use Permit and a Reasonable Use Exception for "Upper Blakely/Harbor Meadow" is **APPROVED WITH CONDITIONS** 1 through 56 that follow on pages 11-16.

Entered this 9th day of January 2007.

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Signed in Original

Meredith A. Getches  
Hearing Examiner

### **Concerning Further Review**

NOTE: It is the responsibility of a person seeking judicial 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, Chapter 36.70C.

**Upper Blakely/Harbor Meadow**  
**CONDITIONS OF APPROVAL**  
**CUP/RUE 13379**

SEPA Conditions:

1. Prior to any clearing or grading on individual building sites, a **clearing, grading, or building permit** shall be obtained from the City.
2. All **construction plans shall contain the endorsement of a Geotechnical Engineer** establishing that he/she has reviewed the plans and approved them as being in conformance with his/her recommendations for construction of roads and residences.
3. Prior to any construction, **temporary erosion and sedimentation control plan (TESCP)** must be submitted and approved by the City Engineer. Construction shall be restricted to dates between May 1 and September 30, unless specifically allowed by the City Engineer and the Geotechnical Engineer. The TESCP shall directly address wet weather conditions that may occur during construction. A Certified Erosion Control Professional shall be retained to oversee the project and shall be available 24/7 throughout construction of roads, drainage facilities and other subdivision infrastructure. (Reference Department of Ecology, Stormwater Management Manual for Western Washington, February 2005, see “Project Management of SWPP-Element 12”.)
4. All **graded materials** removed from the project **shall be hauled to and deposited at City approved locations**. Haul routes must have prior approval by the Department of Public Works.
5. To mitigate impacts on air quality during earth moving activities, contractors shall **conform to Puget Sound Clean Air Agency Regulations**.
6. All **construction staging shall be outside critical areas and their buffers**. Construction fencing or silt fencing shall be placed adjacent to critical area buffers prior to issuance of any permit that allows clearing in the vicinity of critical areas and their buffers.
7. The **wetland and stream buffers shall be identified with a two-rail fence where the buffers come within 15 feet of the designated building sites**. The fencing shall be installed prior to earth moving activities or prior to building permit issuance, whichever comes first.
8. **No fertilizers, pesticides, or herbicides shall be used in the wetland/wetland buffer or the streams and/or their buffers**. The use of these products elsewhere on the site is discouraged, but if necessary they shall be used consistent with Integrated Pest Management (IPM) strategies. Strategies are defined in the *Puget Sound Pest Management Guidelines, A Guide for Protection of Our Water Quality* [Menzies, G. and B. Peterson, Puget Sound Pest Management Guidelines, A Guide for Protecting Our Water Quality, WSU Cooperative Extension, 1993].
9. In order to mitigate the impact on wildlife and the streams and wetlands on the property, the **delineated buffers shall be preserved in native vegetation**. Removal of invasive/non-

native species is encouraged and shall be implemented with a City approved replanting plan indicating the type of vegetation being removed and the type and quantity of native plants being provided. Replanting shall occur with shrubs on three foot centers and native ground covers to provide complete coverage within three years. Hazard tree removal may be allowed with appropriate City approval and replanting.

10. **Removal of vegetation for installation of the stormwater conveyance systems and road construction shall be the minimum necessary.** The **disturbed areas shall be replanted** during the next available planting season following the construction with native shrubs on a maximum of three foot centers.
11. To minimize adverse impact to wildlife habitat, **removal of significant trees inconsistent with the Open Space Management Plan and/or without applicable City approval, will be subject to fines and require replacement.** Tree replaced will be required as follows: new trees shall be at least two inches in caliper if deciduous and six to eight feet high if evergreen, with replacement at a rate of 1.5 inches of diameter for every one-inch diameter of the removed significant tree or trees within a tree stand; replacement trees shall be of the same type, evergreen or deciduous, as trees removed; and, replacement trees shall be planted in the same general location as the trees removed.
12. Any non-exempt tree harvesting shall require **appropriate Forest Practices Permit from the Department of Natural Resources.** The conditions of this decision shall become conditions of the Forest Practices Permit.
13. **On-site mobile fueling from temporary tanks is prohibited** unless the applicant provides and is granted approval for a Permit and Best Management Plan that addresses proposed location, duration, containment, training, vandalism and cleanup. (Reference 1. Uniform Fire Code 7904.5.4.2.7 and 2. Department of Ecology, Stormwater Management Manual for Western Washington, February 2005, see Volume IV “Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment”; Chapter 173-304 WAC)
14. In order to mitigate any noise impacts, **all construction activities must comply with BIMC 16.16.025, Limitation of Construction Activities.**
15. In order to mitigate the impact of the development on the ridgelines of the community, the **significant trees and vegetation in the open space should be maintained.** Trees may be **limbed and pruned for views as provided in the Open Space Management Plan. Hazard trees may be removed after the City has reviewed and approved** an arborist report, received concurrence from the geotechnical engineer, and approved a replanting plan.
16. To provide safe **pedestrian access within the project**, a private four foot wide trail linking the building sites may be constructed as approved by the Department of Planning and Community Development. The trail shall have a pervious surface of gravel or bark and construction can be phased relative to the construction of individual residences. (This is not a requirement for the applicants to design and build the public trail for which they are dedicating an easement in Open Space Area 1.)
17. The contractor is required to **stop work** and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation **if any historical or archaeological artifacts are uncovered** during excavation or construction.
18. **School impact fees** in effect at the time of building permit submittal shall be paid prior to building permit issuance for each dwelling unit.

### Non-SEPA Conditions

19. **No more than 27 dwelling units may be developed on the project site.** This condition does not preclude the property owners from transferring the residual single-family residential development rights to another property at a later time.
20. The **infrastructure for the project**, including road construction and construction of any required stormwater or drainage facility, **must be completed within three years of this project approval.** Once construction of the infrastructure is completed, this Conditional Use Permit approval for multifamily dwellings (one dwelling per building site) shall be effective and not expire until completion of construction of the final (27<sup>th</sup>) home. Future changes to the site plans or building site layout may be permitted through a conditional use permit amendment procedure.
21. A **clearing permit** must be obtained from the City prior to any clearing on the site.
22. All conditions of the **Bald Eagle Management Plan** date-stamped November 16, 2005 are conditions of this project. An updated Bald Eagle Management Plan may be required prior to future clearing activities not covered in the plan date-stamped November 16, 2005.
23. **Clearing of a meadow** area in the center of the Parcel B homesites shall be allowed with a clearing permit. An approved Forest Practices Permit must be submitted to the City prior to issuance of a clearing permit.
24. Prior to issuance of a clearing permit for any portion of the property, the applicant shall **flag the wetland boundaries, the wetland buffers and the stream buffers.** The wetland and stream buffers shall be fenced with orange construction fencing for visibility and with silt fencing adjacent to construction areas prior to issuance of a clearing permit. **Erosion control measures** shall be in place prior to commencement of construction and throughout all phases of construction adjacent to the critical area buffers.
25. Split-rail type fencing shall be installed along the outer edge of all wetland and stream buffers that are adjacent to any of the building areas prior to issuance of the first building permit. Signs indicating that only passive uses of the critical areas are allowed shall be placed at appropriate intervals along the fencing.
26. A **mitigation and monitoring plan** shall be submitted to mitigate impact to 2,100 square feet of critical area. The **mitigation may occur as restoration of shoreline or other habitat.** The mitigation plan must be approved by the Department of Planning and Community Development prior to issuance of the first building permit on the property.
27. The **existing road prism may not be widened in the wetland or stream buffers;** the road shall be limited to 14 feet in width, including shoulders, where the road crosses critical areas.
28. Prior to issuance of a development utilities permit for infrastructure construction, the applicant must **submit to the City copies of the recorded Conditional Use Permit (CUP) documents** approved by the Director of Planning and Community Development as consistent with the CUP approval, including, but not limited to: **final site plans** (Sheets 1/7 through 7/7, revised if and as necessary to be consistent with this decision and its conditions; see Conditions 6 and 29); the **Hearing Examiner's decision, including conditions** of approval; and, the required **Open Space Management Plan** [Appendix A].
29. Appropriate **building permits** must be obtained from the City prior to construction. Site plans for the building permits must be in substantial conformance with the site plans used in making this decision [see Finding 6 and revisions required in Finding 30).

30. Individual building permits for each of the building sites **must comply with Kitsap County Health District regulations, building code, zoning code height restrictions, drainage and geotechnical requirements in effect at the time of submittal of the building permit applications.**
31. The **allowed lot coverage** of building footprints for each of the 27 building sites shall not exceed 16,940 square feet per building site.
32. The approval of this conditional use permit does not imply or guarantee that each of the designated building sites is a feasible building site; **construction on each site must meet building code, geotechnical and health district requirements applicable at the time of each building permit submittal.**
33. **All exterior lighting shall be directed downward and shielded** so light trespass does not occur off the subject property.
34. **Activities within the designated Open Space Areas** on the “Open Space Management Plan Areas and Tree Retention Plan” maps (Sheets 4/7 and 7/7 dated 10/30/06, see Exhibit 70) **shall limited as prescribed by the Open Space Management Plan (OSMP) that comprises Appendix A** of this decision. These maps and the requisite OSMP shall be recorded with the Conditional Use Permit approval [see Condition 28]. There shall be no construction in or use of any designated Open Space Area except: 1) as contemplated by the decision and conditions of approval of CUP/RUE 13379; or, 2) provided for in the Open Space Management Plan.
35. The **existing tree canopy must be retained as indicated on the Tree Retention Plan maps** (Sheets 4/7 and 7/7 dated 10/30/06, see Exhibit 70). Except for invasive/non-native species and hazard trees (see Condition 9) native trees and plants should be retained in areas with slopes greater than 15%.
36. **An easement for a public pedestrian trail shall be dedicated through Open Space Area 1** at such time that Country Club Road is relocated. The easement shall provide for a four-foot wide trail with a pervious surface, accessible for public use. The location of this trail easement and the relocation of Country Club Road (and dedication of right-of-way) are subject to agreement with the City. The trail easement would meet the requirement for public access trails. The applicants and the subsequent property owners are not required to design, construct, and/or maintain the public trail developed through Open Space Area 1. However, they shall continue cooperate with the City, the Parks District and/or other entities to assist in establishing the trail. At the completion of the construction of the trail, appropriate signs shall be erected at both ends of the trail to distinguish the publicly accessible trail from nearby private property.
37. A **50-foot native vegetation zone is required in the shoreline**. In this zone the native vegetation zone shall be maintained; no native vegetation, including trees, shrubs and herbaceous vegetation may be removed. Any non-native vegetation removed from the native vegetation zone shall be replaced with native vegetation appropriate for the site.
38. Shoreline regulations currently allow a boathouse (up to 200 sq. ft.) within the Native Vegetation Zone as an exempt development. Such a boathouse (or other exempt structure) could be allowed on both Parcel A and Parcel B. If and when they wish to construct such structures, the property owners would have to submit Shoreline Substantial Development Exemption and/or other applicable application(s).

39. A **copy of these conditions shall be attached to any construction plans** throughout construction on the site.
40. **All recommendations of the geotechnical report** prepared by Aspect Consulting, Inc. (date-stamped July 5, 2006) **shall become conditions of this approval**, unless subsequent geotechnical reports make conflicting recommendations based on updated data or techniques. Building permits for each of the building areas shall also follow all applicable geotechnical requirements in effect at the time of building permit application.
41. The applicants must obtain an **approved development utilities permit** from the Department of Planning and Community Development prior to construction of any on-site infrastructure, including the road and utilities. The Department of Public Works will review **final engineering plans for the road construction and final stormwater/drainage plans** before the development utilities permit is issued. The required road improvements and utilities must be approved by the Department of Public Works **prior to issuance of the first building permit on the property**.
42. Final **engineering design for the road and for utilities** must be reviewed and approved by a licensed geotechnical engineer prior to issuance of a development utilities permit for the infrastructure construction. The applicant's engineer shall develop full engineering drawings for the construction of the roadways and utilities prior to issuance of a development utilities permit. Surface, stormwater collection, conveyance and treatment shall be accomplished by a civil engineer that is registered in the State of Washington. Stormwater civil plans shall be designed in accordance with the City of Bainbridge Island Municipal Code (BIMC 15.20 and BIMC 15.21).
43. **Appropriate stormwater facilities shall be provided** for the entire length of the access road to the satisfaction of the City Engineer. The applicant shall provide concurrence from a geotechnical engineer for the engineered plan prior to the issuance of a development utilities permit.
44. As recommended by the Aspect Consulting geotechnical report (date-stamped July 5, 2006), **a full stability study of impacts must be submitted prior to approval of on-site infiltration for each of the building sites**.
45. If tightlining of the stormwater directly to Puget Sound is proposed, a Shoreline Conditional Use permit would be required.
46. The applicant's engineer shall design all utilities to **minimize adverse effects on roadside amenities and to preserve trees and other roadside vegetation**.
47. The applicant is required to obtain a **National Pollutant Discharge Elimination System (NPDES), Phase II Construction General Permit (CGP), prior to issuance of a grading permit for road or utility construction**. The Phase II permit is administered by the Department of Ecology. The NOI (Notice of Intent) is available on the website at [http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html#permit\\_factsheet](http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html#permit_factsheet)
48. The applicant shall construct all **regulatory and street name marker signs in accordance with City Standards**, the Manual of Uniform Traffic Control Devices (MUTCD) and requirements of the City Engineer. Signage locations to be established on the design drawings for approval. All signs in the public right-of-way shall have a minimum clearance of seven feet from bottom of the sign to grade, be mounted on a cedar or break-away steel post and not be installed in concrete. All signs shall be privately maintained and shall be marked as "PVT".

49. If during the course of construction the project is found to be out of compliance with the water quality standards established in WAC 173-201A-030 more than three times in any single wet season, construction shall be halted until April 1 of the following year.
50. Privately held stormwater facilities require ongoing future operation and maintenance as established in the DOE stormwater manual. Prior to final approval of utility construction, the applicant shall name a responsible party that can appropriately maintain, repair or replace the facility. The applicant shall submit **an Operation and Maintenance Plan for the stormwater facilities** and record a Declaration of Covenant to meet the requirements of BIMC 15.21 prior to final approval of utility construction.
51. Prior to issuance of the first building permit, the applicants shall **provide “half-street” improvements along the subject property’s Toe Jam Hill Road frontage** to the satisfaction of the City Engineer.
52. To the satisfaction of the City Engineer, the applicant’s **engineer shall design the intersection of the access driveway and Toe Jam Hill Road** in compliance with AASHTO site distance requirements. The applicant shall submit the complete site distance calculations with the submittal of the development utilities permit application for the road.
53. **Mailbox location and design** shall be approved by the local Postmaster. Mailboxes or their support systems shall not extend over or within one-foot of any traveled way, including sidewalks and paths, bicycle lanes, shoulders, or auto lanes. The applicant shall provide details for mailboxes as part of each building permit.
54. The **access road shall meet City Standards and shall include turnouts at 300-foot intervals**; turnouts shall transition to 18-feet wide in a 50-foot length.
55. The access road shall not exceed a 12% grade at any point unless it is paved. If paved, the access road shall not exceed a 15% grade. If the road exceeds 15% grade at any point, residential sprinkler systems will be required in all residences.
56. **Fire hydrants** shall be installed and spaced at 600-foot intervals in accordance with City Municipal Code requirements. New fire hydrants shall be equipped with four-inch “STORZ” adapter couplings.

## UPPER BLAKELY/HARBOR MEADOW

### Article 1: OPEN SPACE MANAGEMENT PLAN

**1.0 Creation of Open Space Areas.** Declarant hereby reserves and establishes Open Space Areas as depicted in the Sheets 4/7 and 7/7 (“Open Space Management Plan Areas and Tree Retention Plan”, dated 10/30/06; attached hereto as “Exhibit A”), to be managed as open space in accordance with the terms of this Open Space Management Plan.

**1.1 Purpose of Open Space Areas.** The Open Space Areas subject to the terms of this Open Space Management Plan are all privately owned lands to be managed for the use and benefit of the Owners of Parcel A and Parcel B and the building sites (*i.e.*, A1 through A15 and B1 through B12) within those parcels as established by CUP/RUE 13379. All Owners shall be obligated hereunder to maintain and preserve the Open Space Areas in accordance with the terms of this Open Space Management Plan.

**1.2 Changes and Amendment.** The terms of this Open Space Management Plan may be changed or amended in future by a majority of the Owners in order to reflect and be consistent with changes in applicable laws and regulations.

**1.3 Open Space Area 1 – Country Club Road Corridor:** Open Space Area 1 consists of commonly-owned areas along both sides of the existing alignment of Country Club Road as depicted in Exhibit A.

**1.3.1 Permitted Activities.** Activities permitted in Open Space Area 1 are limited to passive recreational activities, such as walking, bird watching and photography. The construction of a publicly accessible pedestrian path/trail, traversing west/east on the shoreline side of Country Club Road within Open Space Area 1, is expressly permitted; provided, such path/trail shall not exceed 4 ft. in width and is designed, constructed and maintained to minimize adverse environmental impacts. (Installation of environmentally sensitive fences within Open Space Areas 2A at or near the east and west ends of the public path/trail in Open Space Area 1, shall be permitted to protect the privacy of adjoining property owners.)

**1.3.2 Prohibited Activities.** Prohibited activities in Open Space Area 1 include: (i) construction of any buildings; (ii) installation of ball fields, sports courts and/or similar facilities; (iii) operation of motorized vehicles; (iv) hunting; (v) livestock or animal housing or grazing; (v) dumping and/or storage of waste materials (including but not limited to trash, sawdust, lawn clippings, tires, bricks, metal, wire, automobiles, etc.); and, (vii) vehicle parking areas.

**1.3.3 Vegetation Retention Plan.** Native vegetation and Significant Trees shall be retained in Open Space Area 1. Normal non-destructive pruning and limbing of native vegetation and trees may occur as maintenance and/or to provide for preservation of reasonable views toward Puget Sound from adjoining properties; provided, such pruning and limbing shall not threaten the health of the vegetation or trees. Hazard tree removal may be allowed with City approval and replanting. Removal of invasive/non-native vegetation is permitted.

**1.4 Open Space Area 2 - Generally:** Open Space Area 2 encompasses commonly owned areas having slopes 40% or less. (Activities permitted and activities prohibited in the “Meadow” portion of Open Space Area 2 are different from those generally permitted and prohibited in Open Space Area 2 and are address separately in Section 1.5 below.)

**1.4.1 Permitted Activities.** Activities permitted in Open Space Area 2 include activities appurtenant to home ownership, as permitted by City zoning, including (i) installation of pedestrian paths/trails; (ii) passive recreation; (iii) planting of trees and/or other plants consistent with existing vegetation or natural habitat; (iv) gardens and/or livestock/animal grazing on slopes not exceeding 15% and which will not cause or increase erosion and/or adversely impact water quality on-site; and, (v) construction of fences. Permitted activities in Open Space Area 2 shall not interfere with or intrude into any critical areas and may require site specific reports and permits from the City of Bainbridge Island. An approved farm plan must be obtained from the Kitsap Conservation District before housing and grazing of large animals shall be permitted.

**1.4.2 Prohibited Activities.** Prohibited activities in Open Space Area 2 include: (i) impervious surfaces; and, (ii) dumping and/or storage of waste materials (including but not limited to trash, sawdust, lawn clippings, tires, bricks, metal, wire, automobiles, etc).

**1.4.3 Vegetation Retention.** Not less than 30% percent of the existing tree canopy and native vegetation shall be retained; see the Tree Retention Plan (Exhibit A, Sheets 4/7 and 7/7). Open Space Area 2 is intended to remain a forested open space and trees and native vegetation should not be removed except as necessary and appropriate to provide for Permitted Activities noted above. Dead, diseased, or otherwise hazardous trees and plants may be removed if and as needed for safety of the Owners or the long-term health of this forested open space.

**1.5 “Meadow” Within Open Space Area 2:** The designated “Meadow” in Open Space Area 2 is a commonly-owned, private recreation area within Parcel B (surrounded by Lots B-1 to B-12, see area labeled “Meadow” in Exhibit A).

**1.5.1 Permitted activities.** In addition to the activities generally permitted in Open Space Area 2 [see Section 1.4.1], permitted activities the Meadow include: (i) private active and passive recreation by Owners and their guests; (ii) the installation and use of facilities commonly associated with recreation areas including, but not limited to, sport courts, swing sets, benches, challenge courses, etc.; (iii) landscaping; and, (iv) patios, decks, gazebos or similar accessory structures. Some projects may require specific permits from the City of Bainbridge Island.

**1.5.2 Prohibited activities.** In the Meadow portion of Open Space Area 2, the prohibited activities include any activity not consistent with private recreational use as provided in Section 1.5.1. Dumping and/or storage of waste materials (including, but not limited to trash, sawdust, tires, bricks, metal, wire, automobiles, etc.) is specifically prohibited. This prohibition, however, shall not prevent the Owners having a private communal site for composting or recycling of plant material.

**1.5.3 Enlarging or adding Meadow(s) in the future.** The majority of the Owners may enlarge the designated Meadow and/or create other meadow(s) in Open Space Area 2; provide, no part of any critical area, critical area buffer, or slopes exceeding 15% may be included in any such meadow expansion or creation. Expansion of the designated Meadow and/or creation of other meadow(s) shall adhere to all conditions and limitations

of Sections 1.5.1, 1.5.2 and 1.5.3. Applicable permits for additional clearing must be obtained from the City of Bainbridge Island and other agencies with jurisdiction.

**1.6 Open Space Area 2-A - Waterfront:** Open Space Area 2A consists of two commonly-owned areas waterward of Country Club Road that flank Open Space Area 1.

**1.6.1 Permitted Activities.** Activities permitted in Open Space Area 2A include all activities appurtenant to waterfront home ownership as allowed by zoning and applicable shoreline regulations, including: (i) all shoreline recreational activities allowed by applicable shoreline regulations; (ii) construction of a deck not exceeding 120 square feet with pervious surface (*i.e.*, one deck within Parcel A and one deck within Parcel B); (iii) planting native plants and trees within the 50-ft. wide shoreline native vegetation zone with City approval; (iv) construction of environmentally sensitive fences not to exceed four feet in height (including fencing for the privacy of adjoining property owners; see Section 1.3.1); (v) planting trees and other vegetation outside of the 50-ft. wide shoreline native vegetation zone; (vi) construction of a boathouse not exceeding 200 sq. ft. (*i.e.*, one boathouse within Parcel A and one boathouse within Parcel B); (vii) parking areas having pervious surface, located outside of the 50 foot native vegetation zone and accommodating no more than two cars (one parking area on Parcel A and one parking area on Parcel B). Activities permitted in Open Space Area 2A shall not interfere with any critical areas and may require site specific reports and permits from the City of Bainbridge Island and/or other government agencies with jurisdiction.

**1.6.2 Prohibited Activities.** Activities prohibited in Open Space Area 2A include: (i) construction of any buildings or other impervious surfaces except those included as Permitted Activities in Section 1.6.1 and/or as allowed via applicable permit(s) issued by the City of Bainbridge Island; (ii) dumping and/or storage of waste materials (including, but not limited to trash, sawdust, lawn clippings, tires, bricks, metal, wire, automobiles, etc); and, (iii) any action or activity not allowed under the City's Shoreline Master Program effective at the time.

**1.6.3 Vegetation Retention.** Open Space Area 2A is a protected critical area with a 50-ft. wide shoreline native vegetation zone. Any clearing or removal of trees and/or other vegetation shall require prior approval from the City of Bainbridge and/or other government agencies with jurisdiction.

**1.7 Open Space Area 3:** This commonly-owned open space area in the western portion of Parcel B shall have the same regulations as Open Space Area 2; see Sections 1.4.1, 1.4.2, 1.4.3, and 1.5.3.

**1.8 Open Space Area 4 – Environmentally Critical Areas:** Open Space Area 4 consists of features defined as Environmentally Critical and regulated under current City ordinances. These commonly-owned areas within both Parcel A and Parcel B, include: slopes in excess of 40%, stream corridors, wetlands, and associated buffers and building setbacks.

**1.8.1 Permitted Activities.** Activities permitted in Open Space Area 4 are limited to: (i) passive recreational activities, such as walking, bird watching and photography; (ii) non-destructive pruning and limbing of native vegetation and trees to provide for reasonable views toward Puget Sound from building sites A1 through A15 and/or B1 through B12, provided such pruning and limbing does not threaten the health of the native vegetation or trees; (iii) removal of hazard trees with City approval and replanting as required by the City; and, (v) removal of invasive non-native vegetation.

**1.8.2 Prohibited Activities.** Consistent with protection and preservation of the environmentally critical areas designated as Open Space Area 4, all activities or actions not expressly allowed by Section 1.8.1 are prohibited unless permitted by City of Bainbridge Island pursuant to the Reasonable Use Exception and/or other critical area review and approval process(es) applicable at the time of application.

**1.8.3 Vegetation Retention.** Open Space Area 4 consists of protected environmentally critical areas and is a 100 % retention area. Except as provided by Section 1.8.1, all must be retained.

**1.9 Open Space Area 5 – Tidelands:** The Tidelands located within Parcel A and Parcel B comprises Open Space Area 5.

**1.9.1 Permitted Activities.** Activities permitted in Open Space Area 5 include the recreationally activities allowed by the State of Washington and the City of Bainbridge Island within tidelands.

**1.9.2 Prohibited Activities.** Any activity not permitted in tideland areas by the State of Washington and/or the City of Bainbridge Island shall be prohibited in Open Space Area 5.

**1.10 Individually Owned Building Sites:** The designated building sites (*i.e.*, A1 through A15 within Parcel A and B1 through B12 within Parcel B; see Exhibit A) shall be the exclusive location of residences on the subject property and are not designated Open Space Areas.

**1.10.1 Permitted Activities.** All activities and structures normally appurtenant to single-family residential use as provided by City of Bainbridge Island Municipal Code and other applicable regulations may be permitted within the individually-owned building sites. Permitted activities include: (i) construction of one residence on each building site (with appurtenant driveways, garages, outbuildings, patios, decks, *etc*); (ii) planting of trees and/or other landscape materials; (iii) livestock or animal grazing and housing if and as permitted by Code; (iv) fences; and, (v) septic drain fields, storm drainage facilities, and other infrastructure and utilities to serve the residences. The permitted activities shall not interfere with, damage, or intrude into critical areas and may require site specific reports and approvals from the City of Bainbridge Island. An approved farm plan must be obtained from the Kitsap Conservation District before housing and grazing of large animals.

**1.10.2 Prohibited Activities.** Any activity not expressly permitted by Section 1.10.1 shall be prohibited. Dumping and/or storage of waste materials (including but not limited to trash, sawdust, lawn clippings, tires, bricks, metal, wire, automobiles, *etc.*) is specifically prohibited. This prohibition shall not prevent composting or recycling of plant material by individual Owners on their own building sites.

**1.10.3 Vegetation Retention.** A minimum of 30% of the existing tree canopy shall be retained on each individually-owned building site. Hazard trees, noxious weeds, invasive, non-native plants may be removed. To promote slope stability, significant trees and native vegetation should be retained on slopes exceeding 15%.

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