

**FINDINGS AND RECOMMENDATION  
OF THE HEARING EXAMINER**

In the Matter of the Application of

**KOKEN LANDS, LLC.**

**SUB14558**

for preliminary plat approval for a  
subdivision known as “Opal Ridge II”

**Background**

Koken Lands, LLC. applied for preliminary plat approval for “Opal Ridge II”, a nine lot subdivision located at Opal Ridge Lane west of Gazzam Lake. The Director recommends approval of the subdivision, subject to numerous conditions. The open record public hearing was held on April 24, 2008, and the parties were represented as follows: the Director, Planning and Community Development Department (PCD or Department), by Joshua Machen, Senior Planner, and the Koken Lands (“Applicant”) by Matthew MacLearnsberry, project engineer, and Bill Carruthers and Albert Goethals, principals. The Hearing Examiner closed the record on May 2, 2008.

For the purposes of this recommendation, “BIMC” and “Code” refer to the Bainbridge Island Municipal Code, as amended.

After due consideration of all the information in the record, including that presented at the public hearing, the following shall constitute the findings, conclusions, and recommendation of the Hearing Examiner in this matter.

**Findings**

**SITE DESCRIPTION**

1. Two parcels comprise the subject site, Tax Lot Numbers 332502-1-070-2009 and 332502-2-015-2005, and total 21.34 acres in area. The site is located to the west of the Opal Ridge I short subdivision which has access via a private roadway connecting with Lynwood Center Road. The site is east of Gazzam Lake Park and south of City-owned property containing the refuse transfer station. The subject site is undeveloped and is completely forested except for an area that has been cleared for a future road. [Exhibit 53, Staff Report]

2. The legal description for the subject property is:

Tract C of City of Bainbridge Island Short Plat No. BI-186 (FSPT-11616) recorded under Auditor’s File Nos. 200504220031 and 200504220032 being a portion of the Southwest quarter of the Northeast quarter, Section 33, Township 25 North, Range 2 East W.M., in Kitsap County Washington. TOGETHER WITH the North one-half of the Southeast quarter of the Northwest quarter of Section 33, Township 25 North, Range

2 East, W.M., in Kitsap County, Washington. AND TOGETHER with an easement for access and utilities as described in City of Bainbridge Island Short Plat No. BI-186 (FSPT-11616) recorded under Auditor's File Nos. 200504220031 and 200504220032. [Exhibit 56]

3. The subject property is relatively level but in the northeast corner there are slopes varying from 15-40 percent so a geotechnical report was required. The report determined that these slopes were stable and did not qualify as geologically hazardous areas. There are no wetlands or other critical areas on the site. [Testimony of Machen; Exhibit 10]

4. Access to the site will be from a new public roadway within the plat extending west from Opal Ridge Lane, which is to be dedicated and further improved. Lynwood Center Road, a secondary arterial, leads to Opal Ridge Lane.

5. The subject site is zoned R-0.4, 1 Unit per 2.5 Acres (100,000 sq.ft.), and the Comprehensive Plan designation is OSR-0.4, Open space residential. Land surrounding on all sides is also zoned R-0.4. The City's refuse transfer station is located to the north, Gazzam Lake Park adjoins the west side of the subject property, the Opal Ridge I single family development is to the east, and land to the south is largely undeveloped.

#### SUBDIVISION PROPOSAL

6. An application for the "Opal Ridge II" subdivision was filed on June 7, 2007. The application [Exhibit 16] proposes nine residential lots and two tracts under the flexible lot design subdivision regulations.

7. Subdivisions established pursuant to the flexible lot design process are subject to the development standards of BIMC 17.04.080.A, including the following applicable to this application:

*A. Development Standards...*

*1. Density.*

*a. The number of residential lots created in a subdivision shall not exceed the density provisions of BIMC Title 18;*

*\* \* \**

*2. Minimum Lot Size Requirements.*

*\*\*\**

*b. Twelve thousand five hundred square feet or as specified by the health district if septic drainfield is located within the lot...*

*\* \* \**

*3. Lot Setbacks and Dimensional Requirements.*

*a. All lots shall be 50 feet wide as measured at the minimum lot width...*

*b. Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines...size, shape, and orientation of lots shall be appropriate for the type of development and use contemplated...*

*c. Setbacks.*

*i. Building to building...minimum 10 feet separation;*

*ii. Building to exterior property line...Minimum 25 feet in R-0.4 only;*

*iii. Building to right-of-way ...15-foot setback*

*d. Maximum Lot Coverage...as specified in BIMC Title 18...shall be assigned to each lot...*

*4. Landscape Buffers*

*\* \* \**

*c. . Park Buffers....a 25-foot buffer...where the land adjacent to the subdivision boundary is a park...*

*\* \* \**

*B. Landscape Standards. Landscaping shall be established consistent with the requirements of subsection A.4 of this section and street tree planting requirements of Chapter 18.85 BIMC, and any other significant tree retention requirement.*

*C. Roads and Pedestrian Access Performance Standards.*

*1. Existing roadway character shall be maintained where practical. This may be accomplished through the reduction of roadway width consistent with subsection C.3 of this section, the minimization of curb cuts, and the preservation of roadside vegetation.*

*2. Roads and access shall be consistent with the standards set forth in "City of Bainbridge Island Design and Construction Standards and Specifications." To minimize impervious surfaces, public rights-of-way, access easements and roadways shall not be greater than the minimum required to meet standards. Connections to existing off-site roads which abut the subject property shall be required where practicable, except through critical areas and/or their buffers.*

*3. Variation from Road Requirements. A variation from the road requirements and standards contained within the "City of Bainbridge Island Design and Construction Standards and Specifications" may be approved by the city engineer, if such a reduction meets the purposes of this chapter.*

*4. Street names, traffic regulatory signs and mailboxes shall be provided. The location of these shall be indicated on the plat.*

*5. Transit stops shall be provided as recommended by Kitsap Transit.*

*6. Pedestrian and bicycle circulation and access within a subdivision and onto the site shall be provided through walkways, paths, sidewalks, or trails and shall be consistent with the nonmotorized transportation plan, Ordinance 2002-09. Special emphasis shall be placed on providing pedestrian access to proposed recreational and/or open space areas.*

8. The proposed lots would range in size from one to five acres. [Exhibit 56] Tract A was part of Opal Ridge I short plat and will remain a separate tract to be used for stormwater infiltration. Tract B encompasses the steeper area in the northeast corner and extends the open space on around the subdivision.

9. The proposed subdivision is consistent with the density provisions for the R-0.4 zone under the flexible lot design standards. The subject site has a total area of 929,623 square feet and the minimum lot size in the zone is 2.5 acres or 100,000 sq. ft. With the flexible lot design standards, the individual lots may be less than the minimum where the overall area average meets the minimum for required area. Here, there are lots less than 2.5 acres but the average for the subdivision meets the minimum. [Exhibits 53 and 56]

10. All proposed lots are in excess of 50 ft. wide at the minimum lot width measurement, as required by the BIMC 17.04.080A(3)(a). The sizes, shapes, and orientation are appropriate. The configuration of the lots would allow for compliance with required setbacks and Recommended Condition 34 would require listing the following setback requirements on the final plat:

- Building to building separation- Minimum 10 ft.
- Residence to residence separation – 50 ft. (Fire Protection Separation)
- Building to subdivision boundary-Minimum 25 ft. setback
- Building to open space-Minimum 10 ft. setback
- Building to right-of-way-Minimum 15 ft.

11. The 10 percent maximum lot coverage limitation for the R-0.4 zone applies to the entire property due to the flexible lot standards. The applicant has assigned lot coverage to the individual lots as required by Section 17.04.080A(3)(d). Proposed Lots 1-5 and 8 may cover 6,470 square feet, proposed Lot 6, 7,440 square feet, proposed Lot 7, 8,540 square feet and proposed Lot 9, 32,380 square feet. [Exhibit 56, p. 4] Recommended Condition 34 would also require that the maximum lot coverage for each lot be listed on the final plat.

12. The applicant proposes to dedicate a 40 ft. wide right of way for a roadway extending Opal Ridge Lane from the adjacent short plat into Opal Ridge II in a cul-de-sac. That roadway would have 18 ft. of hard surface with three-foot wide shoulders. The existing roadway in Opal Ridge I will be improved and dedicated as well, as required by a condition of the short plat approval in the event of subdivision of the subject site. [Exhibit 3; Testimony of Machen] A 31 ft. wide easement extending west from the cul-de-sac would serve proposed Lot 9. To provide connectivity or street access for property to the south when it is developed, the applicant worked with the Public Works Department and agreed to provide a stub road in the southeast corner from the public right of way south to the property line and dedicate an unimproved right of way between proposed Lots 5 and 6 from the cul-de-sac south to the property line, thereby allowing the opportunity for a looped roadway system to serve future development of the land to the south. The City Engineer approved in concept an exception to the 12 percent grade limitation for a portion of the access road because of existing topography. [Exhibit 54] With that approval, the proposed roads would satisfy the City's design standards. A condition of approval [Recommended Condition 12] would require the proposed street be developed consistent with City's standards for this type of access. The Applicant has agreed to construct the street improvements and make the rights-of-way dedications as required but City Code.

13. The Director found that the proposed subdivision has the appropriate dedication of rights-of-way. The Applicant would be required to complete the necessary improvements needed to serve the plat prior to final plat approval or to provide a performance assurance [Recommended Condition 17].

14. Emerald Heights Water, Inc., has committed to provide nine hookups and water service for the subdivision. [Exhibit 14]

15. The subdivided lots would be served by individual private septic systems. The Kitsap County Health District has given preliminary approval of the on-site waste disposal system and water supply, subject to water system expansion for available connections. [Exhibits 3 and 4]
16. A preliminary drainage plan for the proposed roadways was submitted and reviewed by the Public Works Department. Stormwater collected from the proposed cul-de-sac roadway would go to an infiltration system in Tract A. That from the roadway east of there would go into a system located near the Lynwood Center Road. Runoff from roofs and other hard surfaces on individual lots would be infiltrated on each lot. Recommended Conditions 5-10 would require that stormwater control facilities be designed in conformance with the applicable City and DOE regulations as determined by the City Engineer, and that an easement be granted the City for access to and maintenance of the off-site facility.
17. School impact fees are to be paid as required by BIMC Chapter 15.28.
18. The preliminary plat shows street names and the proposed mailbox locations as required. [Exhibit 56]
19. Section 18.85.060 requires that, for the interior, either 30 percent of the tree canopy or 15 percent of the significant trees be retained. The applicant proposes to meet the requirement by preserving 30 percent of the site in open space, rather than doing a significant tree inventory. [Testimony of Machen] The Code requires that up to 25 percent of the site be open space so the proposal exceeds the requirement. BIMC 17.04.082D.
20. Section 17.04.082A sets out the objectives to be accomplished by the designated open space:
  1. *Conservation and enhancement of natural or scenic resources, including wildlife habitat;*
  2. *Protection of streams and/or the water supply;*
  3. *Conservation of soils, wetlands, beaches or tidal marshes;*
  4. *Enhancement of the value to abutting or neighboring parks, forests, wild preserves, nature reservations or sanctuaries;*
  5. *Enhancement of recreational and community agricultural opportunities;*
  6. *Preservation of farmland and historic sites;*
  7. *Preservation of unique natural land or rock features; or*
  8. *Preservation of visual qualities along highway, road and street corridors or scenic vistas.*
21. Pedestrian trails within the open space would provide connections to the park on the west. The open space would accomplish objectives related to habitat, recreation, and forest and park enhancement.

22. BIMC 17.04.082(B) establishes guidelines for open space configuration. The proposal does concentrate the open space in a large area, as required, it connects to the park with trails, and it will preserve vegetation on the steepest part of the site.
23. Because the subject site is adjacent to Gazzam Lake Park, the Code requires a 25 ft. buffer along the west property line of proposed Lot 9. Section 17.04.080A(4)c. Filtered screen landscaping is required within park buffers if existing vegetation does provide such screening. A condition (Recommended Condition 30) is recommended to assure that the required screening is in place.
24. Within designated open space and park buffer areas, vegetation removal should be limited. Recommended Condition No. 15 would limit that activity to a six ft. wide swath for trails and require that trails be designed to avoid removal of significant trees.
25. The trails will be required to be constructed to Public Works design guidelines including being graveled. Applicant's representatives urged a more natural treatment. [Testimony of Carruthers] Mr. Machen has observed trails built to these standards and reported that over time they take on a very natural look, and they require little maintenance.
26. The proposal includes an Open Space Management Plan, as required by BIMC 17.04.082H.
27. Grading may be necessary for construction of the road, trails, driveways and homesites. Clearing and/or grading would require a permit [Recommended Conditions 1 and 2] and all graded materials hauled from the site would be required to be properly disposed of [see Recommended Condition 3]. During construction, these measures would have to be implemented along with whatever precautions found by the Puget Sound Clean Air Agency to be necessary to control dust emissions [see Recommended Condition 4].

#### SEPA COMPLIANCE

28. As part of its consideration of the subject application, the Department did environmental review, including a SEPA threshold determination. An Environmental Checklist [Exhibit 11] was included with the application and the Department gave proper notice of the SEPA comment period that began on July 14, 2007. [Exhibit 22].
29. The Department received and responded to two comment letters during its review of this application. [Clark, Conlon and Holmes, Exhibit 24; Wenzlau Architects, Exhibit 18] The Staff Report [Exhibit 53 at p. 10] summarized the concerns raised and responded (in bold below) as follows:

- Access: One of the comment letters requested than an easement or right-of-way access be granted from the new proposed road to connect to an existing City right-of-way to the south of the subject property. This access connection would allow for future connection and help to create a connection between the adjacent neighborhoods. **The Public Works Department has recommended that the applicant dedicate a 30 foot right-of-way connecting the proposed**

**extension of Opal Ridge Lane with the existing right-of-way to the south east of the subject property (Condition #11).**

- **Zoning:** A concern was raised that in approving the subdivision, the City would be changing the zoning and as a result there would be increased traffic construction activity, noise and degradation of living conditions. **While this proposal does not change the zoning of the properties, it facilitates the construction and development of nine new residential building lots. The proposal is in compliance with the OSR-0.4 designation of the Bainbridge Island Comprehensive Plan.**

30. On March 31, 2008, the Director issued a SEPA Mitigated Determination of Nonsignificance (MDNS) [Exhibit 49]. Notice of that decision was properly given. The MDNS was not appealed. [Testimony of Machen] The MDNS was subject to 29 conditions mitigating impacts disclosed in the environmental checklist. The Director recommends that those conditions be attached to approval of the preliminary plat. [Exhibit 53, pp. 2-6]

31. The Director found that the proposed subdivision did not provide adequately for demands for and on recreation facilities and for protection of transit/school bus users. The SEPA condition, No. 14, to require pedestrian trails throughout the open space to provide recreation and connection to the park, would mitigate the impact on recreation. A condition, No. 27, was imposed requiring a transit/school bus shelter along Lynwood Center Road for shelter for transit passengers and school children to mitigate this impact.

COMMENT BY OTHER AGENCIES AND PUBLIC

32. The Fire Marshall reviewed the application and addressed height clearance, the necessity of paving Opal Ridge Lane and road standards in his comments. [Exhibits 20 and 35]

33. The Public Works Department recommended approval of the preliminary subdivision subject to conditions requiring an approved Storm Water Pollution Prevention Plan and acceptable final inspection, the roadway built to City standards and dedicated, a construction stormwater permit, acceptable inspection report of proposed infiltration facilities, an easement to the City for access and maintenance of the public stormwater facilities located offsite with a reserve area, design measures to protect the public stormwater infiltration facilities during construction of plat infrastructure and development on the lots, staking of lot corners, lot access to interior roads only, an acceptable operations and maintenance plan and declaration of covenant for stormwater facilities, completion and acceptance of required improvements prior to final subdivision submittal, two year maintenance bond for infiltration facilities, compliance with stormwater management requirements at time of building permit application and acquisition of all required permits prior to any construction activity on individual lots. [Exhibit 54]

34. The Public Works Department issued a Certificate of Concurrency [Exhibit 55] in conformance with Section 15.32.040. The certificate shows that the City Engineer has

determined that affected transportation facilities have adequate capacity to serve the proposed development without adversely affecting the level of service standards at those facilities. Transportation facilities are available and reserved for the the volumes shown in the memorandum dated January 22, 2008. That memorandum estimates that development on the site will generate an average of 86 weekday trips with 9 of those in the PM peak hour. [Exhibit 44]

35. Kitsap County Health District gave preliminary approval of the on-site waste disposal system and water supply subject to water system expansion for available connections. [Exhibit 19]

36. No new transit stops were recommended by Kitsap Transit.

37. In addition to the agency comments, a written comment [Schroer, Exhibit 58] was submitted at hearing regarding the rutted condition of Opal Ridge Lane and concern about the effect of additional traffic on the road's condition. The proposal includes dedicating and improving the existing road.

#### DIRECTOR'S RECOMMENDATION

38. The Staff Report regarding the subdivision application was issued on March 31, 2008. The Director recommended that the subdivision be approved with numerous conditions. [Exhibit 53, pp. 2-7] Recommended conditions No. 1-29 are the conditions the Director determined are necessary to mitigate adverse environmental impacts for issuance of the SEPA MDNS. Though the applicant asked that Conditions Nos. 14 and 15 be modified, the applicant would need to have appealed the MDNS for modification to be considered and the MDNS was not appealed. The remainder of the recommended conditions, Nos. 30-34, address the adequacy and protection of the park buffer, protection of the designated open space, and technical requirements for and before the final plat. Department staff noted that Recommended Condition No. 30 should refer to the "west" 25 feet of Lot 9, rather than the east 25 feet. The Recommended Conditions, as corrected, are in Appendix A at the end of this Recommendation.

39. The conditions that the Director recommends be attached to the preliminary plat approval would provide appropriate mitigation of potential environmental impacts and assure compliance with relevant regulations as follows:

- a. Mitigation of environmental impacts associated with construction as related to: erosion/sedimentation, runoff, pollution [1,2,3,5,6,7,10,23]; air quality [4]; protection for significant trees [31]; noise [24]; historic/archaeological resources [26].
- b. Mitigation of environmental impacts associated with long-term residential use of the site as related to: stormwater control [8,9,16,18,19]; preservation of significant trees [21,22,30,31]; schools [28]; light and glare [25].
- c. Provision of: adequate vehicular and pedestrian access [11,12,13,14,15,27]; appropriate utility infrastructure and improvements

[17,]; compliance with zoning requirements and conditions of subdivision approval [20,32,33,34].

40. The Director concluded that, as conditioned, the proposed subdivision is consistent with the Comprehensive Plan and the applicable sections of the Bainbridge Municipal Code, including the Subdivisions Ordinance and the Zoning Ordinance.

#### SUBDIVISION REVIEW PROCESS AND CRITERIA

41. BIMC 2.16.025.B.2 classifies action on a subdivision application as a quasi-judicial land use decision. BIMC 17.04.093 further provides that subdivisions are to be reviewed by the City Council in accordance with the decision procedures of BIMC Chapter 2.16 and the decision criteria of BIMC 17.04.094.

42. BIMC 2.16.110.C.2 directs the Hearing Examiner to make a recommendation to the City Council prior to the final decision on a subdivision application. The Hearing Examiner is to hold a public hearing; transmit the recommendation to the City Council in a consolidated report.

43. Notice of the public hearing on the application was mailed, posted, and published as required by BIMC 2.16.085D. [Exhibit 52]

44. The criteria for preliminary subdivision approval, found at Section 17.04.094, are:

A. *The subdivision may be approved or approved with modification if:*

1. *The applicable subdivision development standards of BIMC 17.04.080, 17.04.082, and/or 17.04.085 are satisfied;*

2. *The preliminary subdivision makes appropriate provisions for the public health, safety and general and public use and interest...*

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

4. *Any portion of a subdivision that 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 meets the following:*

a. *The subdivision conforms to regulations concerning drainage...*

b. *The subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream.*

c. *The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties.*

d. *The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic.*

e. *The subdivision conforms to the requirements of this chapter and the standards in the "City of Bainbridge Island Design and Construction Standards and Specifications," except as otherwise authorized by in BIMC 17.04.080.C.3;*

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

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

*B. A proposed subdivision shall not be approved unless written findings are made that the public use and interest will be served by the platting of such subdivision.*

45. RCW Ch. 58.17 sets out factors to be considered in approving subdivisions:

*(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.*

\* \* \*

RCW 58.17.110.

46. Consistent with BIMC 17.04.094.A(1), the flexible lot standards of BIMC 17.04.080 for density, lot size, setbacks and dimensions, and lot coverage are satisfied by this subdivision as shown in Findings Nos. 9, 10, 11, 12, 13, 18, 19, and 21 above, as well as the Flexible lot design open space standards of BIMC 17.04.082 for park buffers, open space standards and provision of and Open Space Management Plan as shown in Findings Nos. 21-26.

47. As required by BIMC 17.04.094.A(2), the proposed subdivision, as conditioned, would make appropriate provisions for the public health and safety by providing for all necessary and appropriate open spaces, roadways, utilities, recreation, school support, and dedications. The public interest would be served by new housing opportunities and tax base.

48. In satisfaction of BIMC 17.04.094.A(3), the subdivision has been prepared consistent with flexible lot design process.

49. As the site contains no critical areas, BIMC 17.04.094.A(4) does not apply.

50. BIMC 17.04.094.A(5) requires that the City Engineer determine that a subdivision conforms to the applicable regulations and standards pertaining to drainage and water quality and will not interfere with the use of properties downstream. This requirement is met as the Public Works Department has reviewed and approved the preliminary subdivision submittals, has proposed conditions to assure conformance with regulations and standards, and has final approval authority for the construction and installation of those improvements. Conditions Nos. 4-10. The Public Works Department also proposed conditions to assure that the streets are adequate to serve anticipated traffic and coordinate properly with adjacent properties. Conditions Nos. 12-14. Other conditions were proposed by the city engineer to assure that the subdivision would conform to the standards in the City of Bainbridge Island Design and Construction Standards and Specifications, except where deviations are approved.

51. This subdivision complies with all applicable provisions of the Bainbridge Island Municipal Code and the other state statutes listed in BIMC 17.04.094.A(6).

52. As required by BIMC 17.04.094.A(7), the proposed subdivision is in accord with the Comprehensive Plan. Consistent with its Open space residential designation, the subdivision as conditioned, would reflect community character in density and type of residential development by preserving open space, providing a buffer to the park and trails for recreation and connection to the park.

53. As noted in Finding No. 47 above, public use and interest would be served as the subdivision provides nine new residential lots with the necessary and appropriate utilities and public improvements [roadway improvements, stormwater facilities, domestic water plus trails and openspace].

### **Conclusions**

1. The Hearing Examiner has jurisdiction to make a recommendation to the City Council on the subdivision application pursuant to BIMC 2.16.110.

2. The requirements for notice of the public hearing and an opportunity to comment have been met. This matter will be properly before the City Council consistent with the provisions of BIMC 17.04.095 that govern Council's consideration of preliminary subdivisions.

3. A SEPA Determination of Nonsignificance (MDNS) was properly issued by the Department. That determination was not appealed. The MDNS conditions, 1-29, should be imposed to ensure the necessary and expected mitigation.

4. The findings show that the subdivision has been prepared consistent with the requirements for the flexible lot design process, that applicable standards of BIMC 17.04.080 and 17.04.082 are satisfied, that the city engineer has determined that with appropriate conditions the subdivision will conform to regulations concerning drainage, will not cause an undue burden on the drainage basin or water quality, will not unreasonably interfere with the use and enjoyment of downstream properties, that the streets and pathways are appropriately aligned and are adequate for the traffic anticipated, and that improvements will conform to the City's Design and Construction Standards and Specifications except for the approved exception, the subdivision would be in accord with the Comprehensive Plan and, therefore, be consistent with Ch. 36.70A RCW. The findings show that the proposal complies with Ch. 58.17 RCW.

5. The subdivision, subject to the proposed conditions that were shown to be necessary and appropriate, should be approved as it meets all the preliminary subdivision decision criteria of BIMC 17.04.094.A and it would serve the public use and interest [BIMC 17.04.094.B] by providing new housing opportunities consistent with the policies of the Comprehensive Plan while preserving open space.

### **Recommendation**

It is the recommendation of the Hearing Examiner that the application of Koken Lands, LLC, for the nine lot subdivision known as "Opal Ridge II" [SUB14558] be **APPROVED** subject to the conditions listed in Appendix A.

Entered this 6<sup>th</sup> day of May 2008.

*(Original Signed 5/6/08)*

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Margaret Klockars  
Hearing Examiner, *Pro Tem*

### **Concerning Further Review**

The City Council makes the City's final decisions on preliminary subdivision applications. City Council decision procedures are found at BIMC 2.16.110.

### **APPENDIX A**

#### **RECOMMENDED CONDITIONS**

#### **OPAL RIDGE II SUBDIVISION [SUB14558]**

#### **SEPA Conditions:**

1. The following note shall be placed on the final plat: Prior to any clearing or grading on individual lots, a clearing, grading, or building permit shall be obtained from the City.
2. No clearing or grading for roads, drainage facilities, trails or other subdivision improvements shall occur until a plat utilities permit has been submitted by the applicant and approved by the City.
3. All graded materials removed from the subdivision shall be hauled to and deposited at City approved locations (Note: local regulations require that a grade/fill permit be obtained for any grading or filling of 50 cubic yards of material or more, and a SEPA Threshold Determination be issued for any fill over 100 cubic yards).
4. To mitigate impacts on air quality during earth moving activities, contractors shall conform to Puget Sound Clean Air Agency Regulations, which insure that reasonable precautions are taken to avoid dust emissions. (Section 16.08.040, BIMC).

5. A Storm Water Pollution Prevention Plan (SWPPP) for the proposed development shall be provided for City review and approval in accordance with BIMC 15.20. The plans must be approved, the improvements constructed (or a construction bond provided if applicable), and an acceptable final inspection obtained prior to final subdivision application. The design submittal shall incorporate all proposed subdivision improvements including complete civil plans, grading and erosion control plans, roadway plan & profile, storm drainage facilities and drainage report, and shall be prepared by a professional engineer currently licensed in the State of Washington. A Construction Stormwater Permit (NPDES) will be required prior to construction plan approval in accordance with BIMC 15.20.030.B (4). More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Charles Gilman at (360) 407-7451, email [chgi461@ecy.wa.gov](mailto:chgi461@ecy.wa.gov). This permit is required prior to any construction activities.
6. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Public Works Engineering.
7. The infiltration facilities shall remain off-line until the drainage areas are stabilized and the water quality treatment facility is adequately established.
8. An easement to COBI for access and maintenance of the proposed public stormwater facilities located offsite will be required prior to submittal of the final subdivision.
9. The applicant shall provide a 100% reserve area for stormwater infiltration facilities that are to be publicly maintained, or shall provide an alternate solution subject to approval by the City Engineer. An easement to COBI for stormwater facilities construction and maintenance shall be granted to the city over this reserve area. Soils log information to verify suitability of the reserve area for infiltration shall be provided prior to final subdivision submittal. The reserve area shall be designated on the construction drawings and verified on the As-Built drawings.
10. The applicant's engineer shall provide specific erosion and sedimentation control design measures as part of the SWPPP to protect the public stormwater infiltration facilities during construction of both the plat infrastructure and the individual lot development. The final plat shall contain a note for future property owners of this requirement.
11. The private roadway accessing this project, located within the adjacent short subdivision of Opal Ridge, must be built to COBI standards and the right-of-way dedicated to COBI prior to submittal of the final subdivision as stipulated in the conditions and covenants of the short subdivision.
12. The public roadway section shall provide a minimum 18-foot wide paved driving surface with an additional 3-foot wide paved or gravel shoulder on each side, together

with appropriate storm drainage facilities per COBI Design Standard Section 7-060. The roadway shall be built to COBI Design standards. Due to topographic constraints, the applicant has requested a technical adjustment to allow roadway grades in excess of 12%, with no gradient exceeding 15%. Conceptually, Public Works supports this request; however, complete civil plans will be required prior to granting the request.

13. The proposed right-of-way dedication at approximate STA 10+70 shown on the preliminary access road plan sheet date stamp received by the COBI January 31, 2008 shall include the area from the east property line of the plat to the east property line of proposed Lot 8, and shall extend to the south property line of the subdivision.
14. In order to provide recreation and safe pedestrian access within the subdivision and to the adjacent Gazzam Lake Park, a four to six foot wide trail shall be developed within open space Tract B and across the northern open space on Lot 9. The trail shall commence near the southeast corner of Tract B and meander through Tract B and the northern open space of Lot 9 to the northwest corner of Lot 9 where the trail shall join the existing Gazzam Lake Park trail network. Another trail shall be developed either within the proposed unimproved right-of-way between Lots 5 & 6 or within the open space east of Lot 5. The aforementioned trail shall connect the proposed cul-de-sac to the proposed trail easement at the south side of Lot 9.
15. Removal of vegetation shall be limited to a six foot swath for trail construction, no soil disturbance shall occur outside of the six foot trail construction corridor. The trails shall be “field-fit” between or around existing trees, so that significant tree removal shall be avoided. Limbs and branches up to nine feet over the trail and within one foot of the trail edges shall be removed. The four to six foot wide trail shall be constructed with a four inch layer of crushed  $\frac{3}{4}$  inch gravel over a geotextile mat barrier. All pedestrian improvements shall be installed prior to the issuance of the first residential building permit within the plat.
16. Prior to final plat submittal, an Operations and Maintenance Plan and Declaration of Covenant for all constructed stormwater facilities shall be provided for City review and approval in accordance with BIMC 15.21.
17. Public and private improvements, facilities, and infrastructure on and off the site that are required for the subdivision shall be completed, have final inspection and approval prior to final subdivision submittal. Approval of public facilities will be shown by a formal letter of acceptance from the City Engineer. A surety device acceptable to the City may be used (in lieu of physical completion) to secure and provide for the completion of necessary facilities which are not considered by the City to be life, health, or safety related items. Any such surety device shall be in place prior to final plat submittal, shall enumerate in detail the items being assured and shall require that all such items be completed and approved by the City within one year of the date of final plat approval. While lots created by the recording of the final plat may be sold, no occupancy of any structure will be allowed until the required improvements are formally accepted by the City. Additionally, a prominent note on the face of the Final plat drawing shall state: **“The lots created by this plat are subject to conditions of an assurance device for the completion of certain**

**necessary facilities. Building permits may not be issued or occupancy granted until such necessary facilities are completed and approved by the City of Bainbridge Island. All purchasers shall satisfy themselves as to the status of completion of the necessary facilities.”** This note shall be listed on the face of the final plat.

18. A minimum two-year maintenance bond period for the infiltration facilities is required. The maintenance period will begin after final construction acceptance of the subdivision, and shall run for a minimum period of two years or until 80 percent of the homes in the subdivision have been constructed and the respective lots permanently stabilized. Regular maintenance of the stormwater system is required during this period. Documentation of maintenance shall be provided to the city on an annual basis. Wording to this effect must be listed on the plat and in the plat covenants.
19. At the time of building permit application for the proposed individual residences, demonstration of compliance with applicable storm water management requirements shall be required in accordance with BIMC 15.20. This note shall be listed on the face of the final plat.
20. Prior to any construction activities on individual lots, the applicant shall obtain the appropriate permits from the COBI, including but not limited to a Storm Water Pollution Prevention Plan (SWPPP), Road Approach, building, clearing, and/or grading permit. This note shall be listed on the face of the final plat.
21. In accordance with BIMC Chapter 18.85060 (C). and to discourage the removal of wildlife habitat, significant trees that are removed from designated protection areas without prior City approval will be subject to fines and will be replaced with new trees as follows: New trees measuring 1.5 inches in caliper if deciduous and four to six feet high if evergreen, at a replacement rate of 1.5 inches diameter for every one-inch diameter of the removed significant tree or trees within a tree stand. The replacement rate determines the number of replacement trees. The trees removed shall be replaced with trees of the same type, evergreen or deciduous. The replacement trees shall also be replaced in the same general location as the trees removed.
22. Any non-exempt tree harvesting shall require the appropriate Forest Practices Permit from the Department of Natural resources. The conditions of the Opal Ridge II Subdivision SUB14588 shall become conditions of the Forest Practices Permit.
23. 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, August 2001, see Volume IV “Source Control BMPs for Mobile Fueling of Vehicles and Heavy Equipment”.) (Chapter 173-304 WAC)
24. In order to mitigate any noise impacts, all construction activities must comply with BIMC 16.16.025 Limitation of Construction Activities.

25. All lighting within the subdivision shall comply with the City's Lighting Ordinance, BIMC Chapter 15.34.
26. 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.
27. The applicant shall construct a school bus shelter along Lynwood Center Road. The applicant shall consult with the Bainbridge Island School district in determining an appropriate location for a bus shelter to serve the children of the subdivision. The bus shelter shall be constructed before submission of a final plat application or an assurance device shall be provided to ensure the construction prior to the issuance of the first single-family building permit within the recorded plat.
28. School impact fees shall be paid in accordance with the following provisions. For each of the created lots, prior to final plat approval the applicant shall pay one half of the school impact fee in effect at the time of final plat approval. Subsequent to plat recordation and prior to building permit issuance, an applicant constructing a residence on any of the created lots shall pay one half of the school impact fee in effect at the time of building permit issuance.
29. Prior to final plat submittal, the Kitsap Health District shall grant approval of the water system expansion.

**Non-SEPA Conditions:**

30. The west 25 feet of Lot 9 shall be designated as a no cut/no build park buffer. If the existing vegetation is not sufficient to meet the filtered screen landscaping requirements pursuant to Bainbridge Island Municipal Code 18.85.070 B.3., then the 25-foot buffer shall be planted and maintained with native vegetation to meet the requirement.
31. Either low impact fencing (i.e.: split rail/wood horse fence) or signs placed at 50 foot intervals shall be erected at the edge of all designated open space areas between the open space and propose lots or homesites. The fencing or signs shall be installed prior to final plat submittal or proper assurance device shall be provided to ensure their installation prior to the issuance of any single-family building permit issuance.
32. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes. A survey of the property must be completed and submitted with the final plat application.
33. A plat certificate shall be provided with the final plat application.
34. Building setback and lot coverage requirements must be shown on the final plat specifically:
  - Building to Building - Minimum 10 feet separation.
  - Residence to residence separation – Minimum 50 feet (Fire Protection Separation)

- Building to subdivision boundary-Minimum 25 foot setback
  - Building to open space-Minimum 10 foot setback
  - Building to right-of-way-Minimum 15 foot setback
  - Maximum Lot Coverage shall be as follows: Lots 1-5 and 8; 6,470 square feet  
Lot 6; 7,440 square feet  
Lot 7; 8,540 square feet  
Lot 9; 32,380 square feet
35. The final plat shall be submitted in substantial compliance with preliminary plat drawings date stamped received January 31, 2008.
36. Conditions 1, 3-4, 10, 14, 17-19, 21, 24-26, 28, 30, 31, and 34 shall be listed on the final plat mylar.