



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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Larry Keeton, Director

STAFF REPORT And INFORMATION FOR THE HEARING EXAMINER

Report Date: June 1, 2016
Hearing Date: June 9, 2016

Application Submittal Date: August 22, 2014
Application Complete Date: August 29, 2014

Project: Woodbridge Crossing - Development Agreement

This staff report was prepared by Jeff Smith, Senior Planner based on information available up until the time the report was prepared. New information relevant to review of this application may become available prior to the hearing. Staff may wish to change their analysis based upon that new information, and reserves the right to do so.

Project Description:

The request is a proposed Development Agreement (DA) between Kitsap County and Kitsap LLC and Donna Markwick, in accordance with the approved Conditional Use Permit (CUP), preliminary plat/Performance Based Development (PBD), Department of Community Development (DCD) File No.08 52086 and 14 01757 (major amendment), for 551 single-family homes and multi-family residential units with both mixed-use and individual commercial land uses. The development is contemplated to occur in six distinct development areas through project phasing. The applicants Kitsap LLC and Donna Markwick wish to enter into a DA with Kitsap County to vest approved land use permits. Both Kitsap County Code (KCC) and the Revised Code of Washington (RCW) require a public hearing be held on the DA, which the Board of County Commissioners (BCC) delegated to the Hearing Examiner (HE) by resolution on May 23, 2016. Once the hearing is held, the HE will make a recommendation to the Board on the approval of the DA, pursuant to KCC Title 21 Land Use and Development Procedures. The DA is included (Exhibit 10).

The DA is authorized by RCW 36.70B.170 through 36.70B.210, and KCC 21.04.220 (collectively, DA Laws). The DA ensures that the project meets the goals and purposes for which the DA Laws were enacted, and determines that the agreement is in the public interest, will serve a public use, will promote the health, safety, prosperity and general welfare of the citizens of the County by, among other things, eliminating uncertainty in long-term planning; provides for the orderly development of the Project on a comprehensive basis consistent with the Growth Management Act; and effectively utilizes County resources.

The DA outlines the requirements for approvals for future project phases, including requirements, as applicable, for SEPA requirements and Site Development Activity Permits (SDAPs), and outlines requirements for mitigation. The applicants has applied for a SDAP for the first phase, and thereafter will apply for an SDAP or other permit for subsequent phases. The DA outlines the County approval process for future activities including, as applicable, timber harvesting, forest practices, clearing, grading and excavation, and other associated development activities.

The DA states that all mitigation requirements will be in accordance with the CUP, Plat/PBD including requirements for transportation and stormwater mitigation.

Application Number: 16 02288

Type of Application: DA, Type IV legislative approval

Project Request:

The request is for approval of a DA to develop the site for a period of up to 10 years.

Assessor's Account #: 092501-4-094-2006
092501-4-095-2005
162501-1-002-2004

Applicants and Owners:

Kitsap LLC
PO Box 1009
Mukilteo, WA 98275

Donna Markwick
18243 Viking Way
Poulsbo, WA 98370

Project Engineer:
NL Olson and Associates Inc.
2453 Bethel Avenue
Port Orchard, WA 98366

BACKGROUND

The applicant applied for a Hearing Examiner CUP and Plat/PBD in June of 2008, proposing approximately 551 single-family and multi-family residential units with both mixed-use and individual commercial uses. The applications were determined complete on June 26, 2008 and is the vesting date for the applications.

The project is proposed with subdivision of approximately 122 acres into 38 acres of open space, 46 acres of single family residential development and 37.5 acres of assisted living/condominium/apartment development. The following is the breakdown of the proposed development areas:

- P-1: 38 acres (approx.) of open space;
- P-2: 42-lot plat for detached single family residential home development;
- P-3: 54-lot single-family development;
- P-4: 120-lot single-family development;

P-5: 150-unit condo/apartment/duplex; and

P-6: 185-unit multi-family/assisted living/cottage development.

Additional improvements include open space trails and park amenities, regional stormwater control, utility systems and a local sub-collector roadway (spine road) that will connect to Silverdale Way to the Ridgetop Roadway system that will include bike and pedestrian connectivity. The Hearing Examiner approved the CUP and Plat/PBD on July 10, 2009 as revised and the decision was issued on December 31, 2014 subject to 63 conditions of approval.

PROPOSED ACTION

The DA is authorized by RCW 36.70B.170 through 36.70B.210, and Kitsap County Code 21.04.220. The DA ensures that the project meets the goals and purposes for which DA Laws were enacted, and determines that the agreement is in the public interest; will serve a public use; will promote the health, safety, prosperity and general welfare of the citizens of the County by, among other things, eliminating uncertainty in long-term planning; provides for the orderly development of the Project on a comprehensive basis consistent with the Growth Management Act; enables Kitsap LLC. and Donna Markwick to respond to economic cycles appropriate for development; and effectively utilize County resources.

The DA outlines the criteria applicable to future project phases, including SEPA review requirements; designation of a separate phase for each active development, timing of phases; timing and duration of (SDAPs); and anticipated development within each phase, including, as applicable, timber harvesting, forest practices, clearing, grading and excavation.

The DA also addresses utility infrastructure and development standards for roadways, water, sewerage and stormwater, as well as construction standards applicable to building permits. Importantly, the DA requires compliance with the CUP, Plat/PBD, including mitigation conditions; compliance with all other laws and regulations as they relate to the project; and compliance with all other governmental permits, including DOE permitting, and Puget Sound Clean Air Agency permitting. The DA establishes a term, which may be extended if approved by Kitsap County, and the CUP term will coincide with the term of the DA. Provisions are also included in the DA which establishes vested rights in land use laws, regulations and resolutions applicable to the Project.

ANALYSIS AND CONCLUSION

The scope of the project remains the same. The terms, conditions and mitigation conditions of previous HE approval have not been changed. The DA implements the requirements of the mitigation conditions by addressing the phasing schedule, timing, and applicable development standards.

The CUP conditions have not been modified, and remain in effect. The DA incorporates the CUP, Plat/PBD, and mitigation conditions as the foundation upon which the framework is established for compliance with the CUP and all other permits associated with the project. The DA implements the CUP, Plat/PBD, and mitigation conditions, but will not change the scope or the impacts beyond the level described in the MDNS. Any

amendments to the CUP would be subject to additional SEPA evaluation.

Project Location

The project is located at 11420 Silverdale Way NW, Silverdale, WA Central Kitsap County. This project and properties in the surrounding area are zoned Urban Low Residential (UL) and Urban Medium (UM). Regional setting is within NE ¼ of the NW ¼ of Section 34, Township 23 North, Range 02 East, W.M.

Physical Characteristics

The project site is approximately 122 acres, located northeast from the Silverdale commercial center, and southwest side of Ridgetop neighborhood, which is a master planned neighborhood. The site has been logged and graded as part of a SDAP that was previously issued. The development site discharges into Wetland A on the south side of the property, then to Clear Creek. The downstream drainage was discussed in detail as part of the master plan application and preliminary Storm Drainage Report for Woodbridge Crossing, dated June 2008. Discharge from the constructed detention pond is into Wetland A.

Policies and Regulations Applicable to the Subject Proposal:

The Growth Management Act of the State of Washington, RCW 36.70b.170

Kitsap County Code (KCC)

21.04.220 Development agreements

Hearing Examiner Review

Pursuant to KCC § 21.04.220 The Kitsap County Board of County Commissioners finds that it is in the interest of the public and efficiency of the land use process for the Kitsap County Hearing Examiner to hold a public hearing on the proposed DA and that the Hearing Examiner make a recommendation to the Board of County Commissioners based upon his review of the proposal, the staff recommendations, and testimony regarding the proposal. The Hearing Examiner may recommend approval, deny, or approve the application with conditions to the Board of County Commissioners. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are enumerated in KCC Chapter 2.10 Hearing Examiner.

Applicable Evaluation Criteria

RCW 36.70b.170

Development agreements — Authorized.

(1) A local government may enter into a Development Agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a DA for real property outside its boundaries as part of a proposed annexation or a service agreement. A DA must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the

development of the real property for the duration specified in the agreement. A DA shall be consistent with applicable development regulations adopted by a local government planning under chapter [36.70A](#) RCW.

Staff Comment: The DA does set forth development standards, mitigations and provisions vesting the approved Plat/PBD and CUP for up to 10 years. The DA is consistent with KCC Title 21.criteria below.

(2) RCW [36.70B.170](#) through [36.70B.190](#) and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

Staff Comment: The DA addresses impact fees in paragraph #4.4.

(c) Mitigation measures, development conditions, and other requirements under chapter [43.21C](#) RCW;

Staff Comment: All 63 conditions with the approved Conditional Use Permit are applicable under the DA.

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

Staff Comment: The DA addresses the standards for traffic, water and sewage, and stormwater. The agreement sets thresholds for traffic improvement to mitigate traffic impacts and public safety at key intersections.

(g) Phasing;

Staff Comment: The Phasing Plan was submitted with the land use application and deemed complete on July 26, 2008, vesting the CUP, Plat/PBD and in accordance with Condition #4 in the CUP, Plat/PBD approval.

(h) Review procedures and standards for implementing decisions;

Staff Comment: Paragraph outlines SDAP and permit approvals.

(i) A build-out or vesting period for applicable standards; and

Staff Comment: The vesting period requested is up to 10 years.

(j) Any other appropriate development requirement or procedure.

Staff Comment: The DA also addresses construction standards, and amendments to the CUP and (in the future, if warranted) the DA.

(4) The execution of a Development Agreement is a proper exercise of county and city police power and contract authority. A Development Agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A Development Agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Staff Comment: KCC Title 21 Land Use and Development Procedures authorizes development agreements.

KCC Title 21.04.220 Development agreements.

A. Purpose and Authority. As authorized by, and in accordance with, Chapter [36.70B](#) RCW, Kitsap County has sole discretion to enter into development agreements where it is shown to be in the public interest. Development agreements are an optional, Type IV legislative process subject to the procedures set forth in this chapter.

B. Content of Agreement. A Development Agreement must, at a minimum, set forth the following elements:

1. The names of the parties.
2. A precise legal description of the property covered by the development agreement.
3. The development standards that shall apply.
4. The term of the development agreement, which shall be the duration in which all development proposed under the agreement shall be completed. Unless amended, all approvals and permits shall expire upon the date of termination.
5. A statement consistent with RCW [36.70B.190](#) that during the term of the development agreement, it is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.
6. That it is compliant with RCW [36.70B.170](#) through [36.70B.210](#) and the KCC.

Staff Comment: The DA has met these criteria 5 through 6 with the inclusion of Attachment A (Development Agreement).

C. Public Hearing. The board of county commissioners may approve a Development Agreement by resolution or ordinance after a public hearing, which may be delegated to the planning commission or hearing examiner as appropriate.

Staff Comment: The Board of Commissioners has delegated the public hearing to the HE by resolution.

D. Decision Criteria. The board of commissioners may adopt a Development Agreement by resolution, with findings that:

1. The proposed agreement is consistent with the goals and policies of the Comprehensive Plan;
2. The proposed agreement is consistent with the local development regulations; provided, that standards may be modified only if the board makes further findings that:
 - a. Variation of the standard provides a public benefit; and
 - b. The proposal subject to the modified standard remains consistent with the Comprehensive Plan; and
 - c. All adverse impacts are mitigated;

Staff Comment: All of the decision criteria have been satisfied. No variations are requested. All adverse impacts are mitigated through the 63 conditions in the CUP Plat/PBD

3. The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided, that if the development is not defined at the project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts at the time of project development; and

Staff Comment: The impacts were examined and mitigated by the Mitigated Determination of Non-Significance (MDNS), dated May 21, 2009 and revised MDNS, dated December 4, 2014.

4. The proposed agreement reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Staff Comment: No additional serious threats to health and safety have been identified.

E. Concurrent Rezone. If the proposal requires a zoning map change, the zoning change shall be adopted by ordinance concurrently with the resolution approving the development agreement.

Staff Comment: None are requested.

F. Recording/Binding Effect. An approved DA must be recorded with the county auditor. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the property covered by the development agreement.

Staff Comment: *The approved DA will be recorded with the Kitsap County Auditor.*

G. Amendments. Any amendments to an approved DA must be approved by the board of commissioners and property owner following a public hearing on the amendment.

Staff Comment: *Amendments are discussed in the DA and comply with this requirement.*

H. Appeals. There are no administrative appeals of development agreements. Appeals of development agreements shall be as required by law.

Staff Comment: *A DA is type IV decision. Appeals are heard by Superior Court or as otherwise required by law.*

Staff Communication:

<u>Document</u>	<u>Exhibit #</u>	<u>Dated or date stamped</u>
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(For documents and special reports, see the project index to be included into the public record for the Development Agreement.)

Public Comment:

Pursuant to KCC Title 21, Land Use, and Development Procedures, the Department gave proper public notice for the Development Agreement. As of writing this staff report the Department has not received public comments.

Recommendation:

Based upon the information above, the Department of Community Development recommends that the Hearing Examiner recommend **approval** to the Board of County Commissioners for the Development Agreement addressing the Woodbridge Crossing Plat/PBD and CUP per KCC Title 21 and RCW 36.70b.170.

Attachment A: Draft Development Agreement

cc: **DISTRIBUTION LIST**

- XX Applicant: Kitsap LLC, Donna Markwick
- XX Engineer/Surveyor: NL Olson and Associates Inc.
- XX DCD Staff Planner: Jeff Smith

