



## Department of Planning and Community Development

### Staff Report

**Project** Soundview Drive Lot 5 RUE & VAR  
Soundview Drive Lot 6 RUE & VAR

**File No.** PLN50850A RUE & VAR / PLN50850B RUE & VAR

**Date** June 28, 2018

**To** Andrew Reeves, Hearing Examiner

**Project Manager** Annie Hillier, Planner

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#### I. INTRODUCTION

<b>Request</b>	The proposal is for two reasonable use exceptions (RUE) and two major zoning variances on adjoining vacant lots encumbered by a category III wetland and associated 110 ft. buffer. The proposed zoning variances would reduce the front yard setbacks from 25 ft. to 5 ft. along Soundview Dr. NE.
<b>Location</b>	Lot 5: 2171 Soundview Dr. NE Lot 6: no situs address
<b>Zoning Designation</b>	R-2, two residential units per acre
<b>Comprehensive Plan Designation</b>	OSR-2, open space residential, two residential units per acre
<b>Environmental Review</b>	A Mitigated Determination of Nonsignificance, in accordance with the State Environmental Policy Act (SEPA) WAC 197-11-355, was published on May 15, 2018 with the appeal period ending May 29, 2018. No appeal was filed.
<b>Recommendation</b>	Approval of the RUE and VAR for each lot, subject to conditions.

#### Hearing Examiner Review

The hearing examiner shall review the reasonable use exception (RUE) and major variance applications and conduct a public hearing pursuant to the provisions of BIMC 2.16.100. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's compliance with all of the RUE and major variance review criteria in subsection E of this section.

## **Recommendation**

Approval of the RUE and major variance applications for each lot with the following conditions:

### **SEPA Conditions:**

1. In order to protect the ground water and the wetland flora and fauna from the proposed development, the roofing shall be of a non-leaching material that is not harmful to the environment. Examples of non-leaching materials are, but not limited to, metal and tile roofs. Any alternative method proposed requires approval by the City prior to final building permit issuance, and must address BIMC water quality standards, Chapter 13.24, to assure that wetland flora and fauna functions and values are maintained/enhanced.
2. Prior to commencing any construction activity, the applicant shall have the wetland buffer temporarily fenced between the areas of construction activity, a maximum of 15 feet from the proposed residence. The fence shall be made of durable material and shall be highly visible. The fence shall be inspected as part of the building permit. The temporary fencing shall be removed once the construction activity is complete and replaced with permanent fencing (see condition #3, below).
3. A split-rail type fence shall be installed along the edge of the native vegetation buffer area. The rails shall be high enough to allow small mammals and wildlife to pass through. The fence shall be indicated on the building permit application and in place prior to final inspection on the building permit.
4. A minimum of two signs per lot indicating the presence of a protected wetland buffer shall be placed on the fence, prior to final inspection on the building permit. Signs shall be made of metal or a similar durable material and shall be between 64 and 144 square inches in size.
5. The wetland mitigation plan, including mitigation goals and objectives, performance standards, maintenance and monitoring measures, and contingency actions, shall be submitted with the building permit application and approved prior to final building inspection. All plantings shall be installed prior to final building permit inspection, or an assurance device shall be provided in accordance BIMC 16.20.180.
6. Any modification to the culvert must be supported with a hydraulic and hydrologic analysis consistent with the Department of Ecology's 2014 Stormwater Management Minimum Requirement #8 (MR #8), Wetlands Protection and must include a quantitative downstream analysis of the downstream system. The quantitative downstream analysis shall demonstrate that the storage of stormwater and attenuation of peak flows will not be altered to the detriment of the downstream property owners, wetlands, and drainage channels and conveyances. The Wetlands Protection analysis must demonstrate compliance with Guide Sheet 3B to maintain the existing hydroperiod of the wetlands; the analysis shall demonstrate that daily and monthly inputs to the adjacent wetland and downstream wetlands do not vary by more than 20% and 15% respectively, compared to existing conditions. Any anticipated impacts to landowners or downstream flow increases must be mitigated up to the 100-year storm discharge. These analyses shall be submitted with the Critical Areas permit applicant (Condition #7).
7. All required permits and approvals shall be obtained prior to culvert replacement, including a Right-of-Way (ROW) Permit from the Department of Public Works, a Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife, and Critical Areas Permit from the Department of Planning and Community Development. A copy of the HPA shall be included in the materials submitted with the Critical Areas Permit application and ROW Permit application.

8. The replacement culvert shall be installed prior to final building permit inspection for the first SFR, or an assurance device shall be provided in accordance with BIMC 16.20.180.
9. If the required analyses (Condition #6) proves the culvert replacement infeasible or the applicant decides to retract the culvert replacement proposal, an amendment to the RUE with an alternative mitigation proposal shall be approved prior to building permit issuance, and conditions 6-8 do not apply.
10. If the performance standards in the mitigation plan are not met, a contingency plan shall be submitted to the Department of Planning and Community Development for approval. Any additional permits or approvals necessary for contingency actions shall be obtained prior implementing the contingency plan.
11. To reduce impacts to the wetland, the applicant shall limit the amount of lighting on the exterior of the residence to the minimum necessary, shall install motion sensor lights to the rear of the house facing the wetland, and record a covenant to limit the use of pesticides on the properties.
12. Disturbance to the 60-foot wide right-of-way (ROW) from construction activities shall be restored in accordance with the Public Works ROW restoration requirements. Disturbed road shoulders and vegetation strips shall be replaced with the standard 3-foot wide crushed surfacing top course gravel ballast shoulder. Disturbed areas beyond the road prism shall be regraded to provide drainage via grassed swales and/or replanted. The house construction shall allow drainage from the ROW to continue to the wetlands along the sideyards to match existing drainage patterns, where it occurs.
13. Each lot shall submit a bid comparison/analysis to demonstrate that the applicant has considered utilizing the minimal excavation foundation systems per the 2012 Low Impact Development Guidance Manual for Puget Sound as a means of minimizing impacts to the site and adjacent wetlands. The bid/comparison analysis shall demonstrate that the applicant has engaged with the appropriate design and construction professionals to explore this foundation system option. The bid shall be obtained from a designer or installer with previous experience building with this technology.
14. Surface stormwater from driveway and parking spaces shall receive pre-treatment prior to discharging to the wetlands or leaving the site by directing stormwater to vegetated dispersion strips, rain gardens where soils allow, or the use of permeable pavement (outside of the ROW only), or other alternatives consistent with MR #5, On-Site Stormwater Management of the stormwater manual.
15. Hardscaping shall be constructed of permeable materials or contain wide permeable jointing where feasible to allow infiltration or shallow subsurface filtration of surface stormwater.
16. Diffuse flow methods (i.e. BMP C206: Level Spreader, or BMP T5.10B: Downspout Dispersion Systems) shall be used to discharge roof surface stormwater into the wetland where full-infiltration on-site is not feasible.

**Project Conditions:**

17. The proposed residence shall meet the setback and height requirements for the R-2 zoning district, with the exception of the twenty-five ft. front setback. To ensure the 5 ft. front yard setback is met, the applicant shall have the setback marked and inspected by planning staff prior to commencing construction.
18. The ARPA shall be documented on a site plan included with the building permit applications.

19. The applicant shall record a notice to title of the presence of the wetland, mitigation plan, and ARPA prior to the issuance of the building permits.
20. The proposed single family residences are subject to the Fort Ward Overlay design guidelines and shall be reviewed for compliance with the guidelines at building permit submittal.
21. A stormwater management plan is required and must meet minimum requirements 1 through 9 of the 2014 SWMMWW as adopted by the Bainbridge Island Municipal Code at the time of the first building permit application.
22. A building clearance for Sewered Properties (Sewered BC) is required prior to the issuance of the building permits.
23. The proposal and future building permits shall comply with all provisions of the adopted Fire Code. Future development may require the installation of fire hydrant(s) or residential fire sprinklers to meet fire flow requirements.

## STAFF ANALYSIS

### II. FINDINGS OF FACT

#### A. Site Characteristics

##### 1. **Assessor's Record Information:**

- a. **Tax lot numbers:** 41460040050004 (Lot 5) and 41460040060003 (Lot 6)
- b. **Owner of record:** Inhabit Limited Liability Company
- c. **Lot sizes:** 0.21 acres (Lot 5) and 0.16 acres (Lot 6)

##### 2. **Terrain:**

The properties are relatively flat, with a five foot contour change across Lot 6 and a ten foot contour change across Lot 5.

##### 3. **Site Development:**

The sites are undeveloped.

##### 4. **Access:**

Vehicular access to the site is from Soundview Dr. NE.

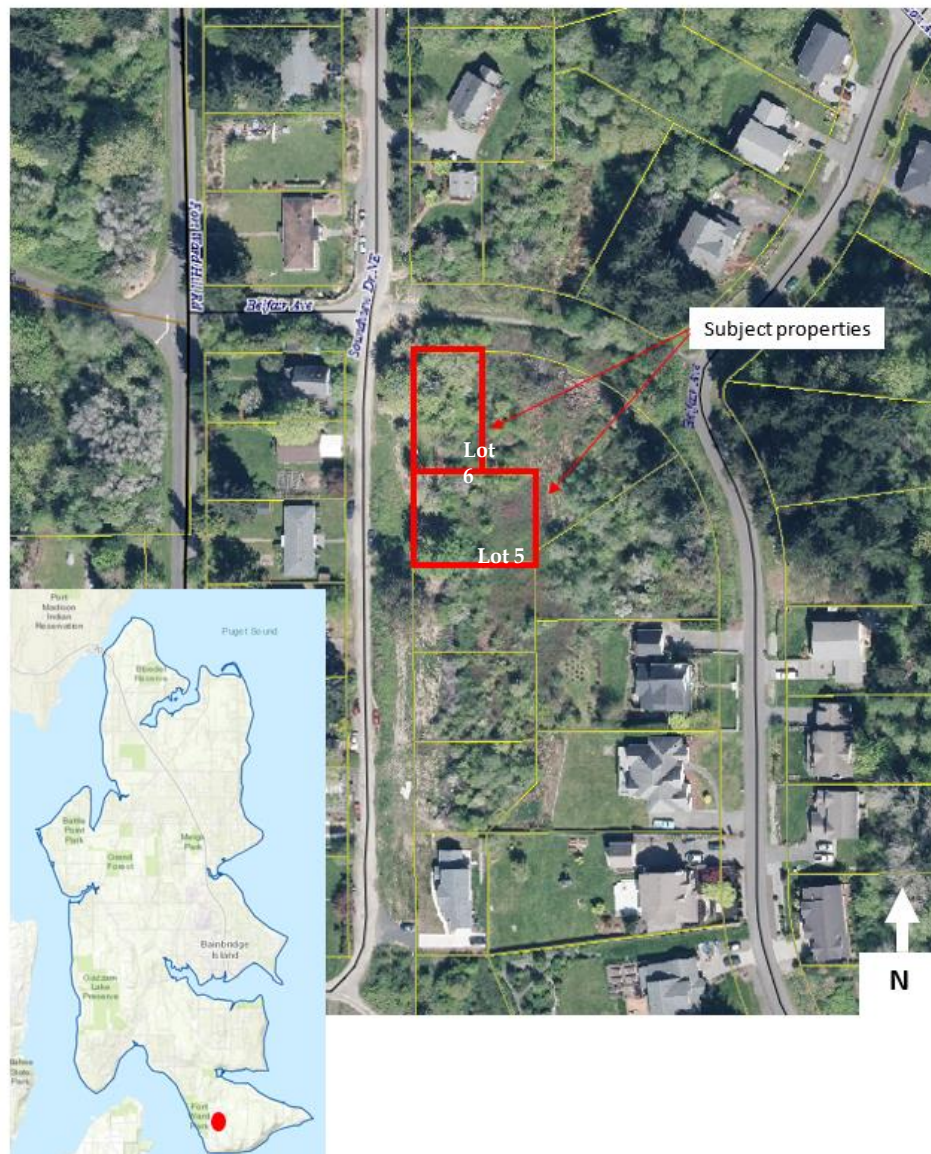
##### 5. **Public Services:**

- a. **Police:** Bainbridge Island Police Department
- b. **Fire:** Bainbridge Island Fire District
- c. **Septic:** Kitsap Sewer District 7

##### 6. **Surrounding Uses:**

The properties immediately to the west and north contain single family residences. The three properties immediately to the south each received an RUE and major zoning variance in 2017 for the development of single family residences, but are currently undeveloped or in the process of development. The properties immediately to the east are encumbered by the category III wetland and are undeveloped.

7. **Existing Zoning:**  
The site is zoned R-2, two units per acre.
8. **Surrounding Zoning:**  
The surrounding zoning is R-2, two units per acre.
9. **Existing Comprehensive Plan Designation:**  
The City Comprehensive Plan Land Use Map designates the site Open Space Residential two units per acres (OSR-2).
10. **Surrounding Comprehensive Plan Designation:**  
The City Comprehensive Plan Land Use Map designates the surrounding area Open Space Residential two units per acres (OSR-2).
11. **Vicinity Map and Aerial Image:**



B. History

1. The applicant submitted for a preapplication conference on May 25, 2017.
2. A preapplication conference was held on June 20, 2017. The summary letter and checklist was sent to the applicant on June 23, 2017 (Exhibit 1).
3. The applicant applied for two Reasonable Use Exceptions and two major zoning variances on November 14, 2017 (Exhibit 2).
4. The applications were deemed complete on December 12, 2017 (Exhibit 9).
5. City staff requested revisions to the application materials on December 15, 2017 (Exhibit 10).
6. The Notice of Application and SEPA Comment Period was published on December 22, 2017 (Exhibit 12).
7. Four public comments were received during the SEPA comment period (Exhibit 13).
8. A revised wetland report and mitigation plan was submitted on February 9, 2018, satisfying a portion of the information request (Exhibit 14).
9. The Development Review Committee (DRC) discussed the proposed wetland mitigation on May 9, 2018, and determined that the impact on Lot 6 needed to be reduced prior to issuing a SEPA determination.
10. On May 10, 2018, City staff met with the applicant to discuss options for reducing the impact on Lot 6. The applicant agreed to reflect a similar development pattern to that proposed on Lot 5, which contained an area of impact 806 sq. ft. less than that proposed on Lot 6.
11. On May 15, 2018, the City issued a SEPA Mitigated Determination of Nonsignificance (Exhibit 15).
12. Two public comments were received during the 14-day comment period (Exhibit 16).
13. On June 1, 2018, a Notice of Public Hearing was issued (Exhibit 17).
14. On June 14, 2018, the applicant submitted a final wetland report and mitigation plan, that includes a final site plan, satisfying the original information request and the outcomes of the more recent meetings with the DRC and the applicant.

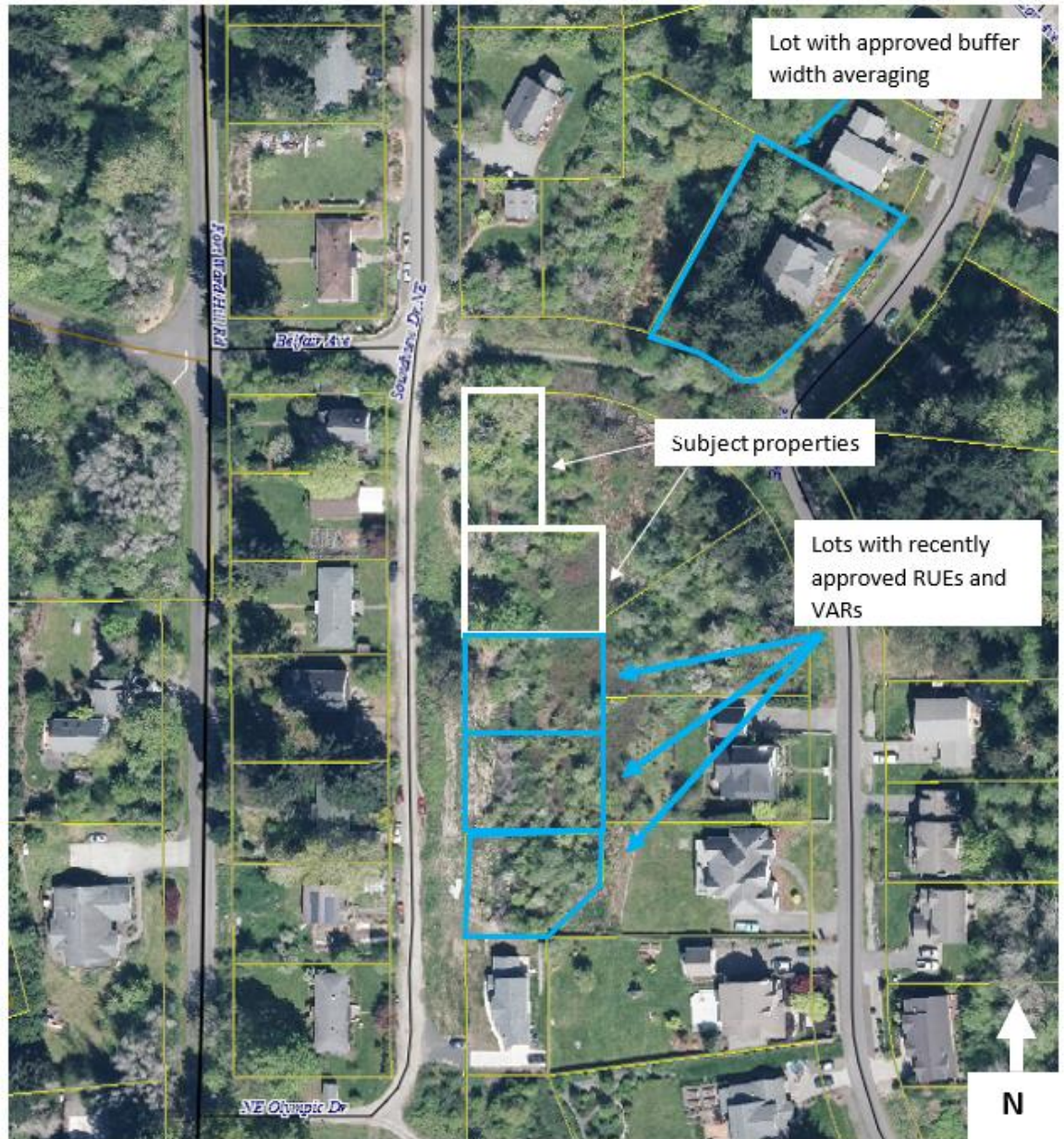
C. Public Comments (Exhibits 13 and 16)

1. **Cumulative Impact on Wetland:** Comments stated concern about the reduction or elimination of the wetland and buffer on the property and in the area. One commenter stated that the wetland has been chipped away at since the current sewer system made building on surrounding lots possible, and that replacing the culvert will only reduce the impact on the subject properties. One commenter stated that development should be limited to the smallest footprint possible.

**Staff finds that the proposed development will impact the wetland, but that the Code allows development to occur through a reasonable use exception with compensatory mitigation and lot coverage limited to 1,200 square feet. Staff finds that other permits for development in critical areas have been granted in the area**



(RUEs: Lots 2, 3, and 4 of Block 4, Fort Estates Division 1 to the south; buffer averaging: Lot 9 of Block 3, Fort Ward Estates Division 3 to the northeast), and that the proposal fits the surrounding pattern of development. Staff finds that replacing the culvert will restore hydrologic connection between the onsite wetland and the wetland to the north (subject to conditions, 6 - 9), which are part of one wetland system that has been interrupted by an improperly installed culvert.



2. **Neighborhood Character:** Comments stated that variances from the front yard setback should not be granted because it does not fit the neighborhood character.

Staff finds that the granting of a variance allows for greater protection of the critical area while also allowing for reasonable use of private property – a stated purpose of the Critical Areas Ordinance (BIMC 16.20.010.A). Three variances to

reduce the front yard setback along Soundview Dr. NE were recently approved on lots directly to the south of the subject properties; all but one of the single family residences located south of Belfair Ave. and along the east side of Soundview Drive NE will have 5 ft. front yard setbacks. The right-of-way for Soundview Dr. NE is 60 ft. wide, and the developed portion of the road is approximately 20 ft. wide and located on the western edge of the 60 ft. right-of-way, giving the illusion of large front yards along the eastern side of Soundview Dr. NE. Therefore, despite the reduced front yard setback, the future SFRs will be located approximately 40 ft. from the developed portion of Soundview Dr. NE. Even with the reduced setback, the proposal will provide a physical separation between the SFRs and the right-of-way that exceeds the 25 ft. setback requirement, despite the 20 ft. variance request.

3. **Siting of Soundview Drive NE:** One commenter stated that the southern block of Soundview Dr. NE does not align with the northern block, and that property owners on both the east and west sides of Soundview Dr. NE deserve equal setbacks from the center line of the right-of-way.

**The City does not have any immediate plans (within the 6 year Capital Improvement Plan) to widen or realign Soundview Dr. NE. Properties on both the east and west sides of Soundview Dr. NE have 25 ft. front yard setbacks, measured from the development to the right-of-way. Many of the SFRs along the west side of Soundview Dr. NE are considered legally existing nonconforming structures because they sit within the 25 ft. front yard setback, near the right-of-way. The 25 ft. front yard setback is a minimum, meaning an SFR can be sited farther away from the right-of-way to achieve a larger front yard.**

4. **Eminent Domain:** One commenter claimed eminent domain of the subject properties.

**Eminent domain is the right of a government or its agent to expropriate private property for public use, with payment of compensation. The City to date has not exercised eminent domain on property as an alternative to allowing its development through an RUE.**

D. Comprehensive Plan Analysis

1. **Environmental Element**

Goal EN-1: Preserve and enhance Bainbridge Island's natural systems, natural beauty and environmental quality.

Goal EN-4: Encourage sustainable development that maintains diversity of healthy, functioning ecosystems that are essential for maintaining our quality of life and economic viability into the future.

Goal EN-5: Protect and enhance wildlife, fish resources and ecosystems.

**In accordance with Guiding Principle #4 of the Comprehensive Plan, the property owner would be denied private property rights protected by the State and U.S. Constitutions without an RUE for each property. The granting of RUEs balances**



private property rights with necessary and reasonable regulation to protect the island's finite environmental resources.

The applicant is proposing, and the project is conditioned, to enhance a wetland buffer and restore the hydrology of a wetland that has been interrupted by an improperly installed culvert. The project is conditioned to identify the buffers in the field prior to any construction activities, and the project is conditioned to provide fencing, utilize non-leaching roofing, and restrict herbicide and pesticide use to ensure long term protection of the wetlands after the introduction of the residential use. The project is also conditioned to analyze the feasibility of the minimal excavation foundation systems per the 2012 Low Impact Development Guidance Manual for Puget Sound as a means of minimizing impacts to the site and adjacent wetlands.

E. Land Use Code Analysis

1. **BIMC Title 18 Zoning**

a. 18.06.020 Purpose

The purpose of the R-2 zone is to provide residential neighborhoods in an environment with special Island character consistent with other land uses such as agriculture and forestry, and the preservation of natural systems and open space, at a somewhat higher density than the R-1 district.

**The proposal is for the construction of two modest homes and the preservation of the wetland and buffer outside of the area impacted by the development and as conditioned by the project.**

b. 18.09.020 Permitted Uses

Single-family dwellings, and accessory uses and buildings to single family residences, are permitted uses in the R-2 zone.

**The request is for the construction of two single-family residences, a permitted use in this zone.**

c. 18.12.010 Dimensional Standards

i. Maximum Density and Minimum Lot Dimensions

The base density is 20,000 square feet, with a minimum lot depth and width of 80 feet.

**Lot 6 (to the north) exceeds the minimum lot width but does not meet the minimum lot depth. Conversely, Lot 5 (to the south) exceeds the minimum lot depth but does not meet the minimum lot width. The two lots do not meet the minimum lot area per dwelling unit for the R-2 zone. However, pursuant to 18.30.050, any nonconforming single lot, tract or parcel of land that was lawfully created and recorded with the county auditor's office may be used for the purposes permitted by this title notwithstanding the minimum lot area, lot width and lot depth required.**

ii. Maximum Lot Coverage

The maximum allowed lot coverage is 20% in R-2 zoning.

**The maximum lot coverage allowed for an RUE is 1,200 square feet, which is less than that allowed by the zoning designation (Lot 6 would be 1,394 square feet, and Lot 5 would be 1,742.4).**

iii. Setbacks

In R-2 zoning, the front yard setback is 25 feet. Side setbacks are 5 feet minimum, 15 feet total. The rear setback is 15 feet.

**The front yard setback is the subject of a variance, proposed to be reduced to 5 feet. The proposed SFRs meet the side yard and rear yard setbacks.**

d. BIMC 18.15.020 Parking and Loading

Residential dwelling units are required to provide two spaces for each primary dwelling.

**The applicant is proposing a driveway and garage for each residence that provides space for two vehicles on each lot.**

e. BIMC 18.18.030 Fort Ward Overlay District

**The lots are located in the Fort Ward Overlay District. The proposed single-family residences shall be subject to the Fort Ward Design Guidelines (Condition 20).**

2. **BIMC Title 16 Environment**

The wetland delineation report and buffer mitigation plan submitted with the application (Exhibit 19) identifies a wetland onsite and immediately adjacent the subject properties. The wetland was rated according to the Washington State Wetlands Rating System for Western Washington – 2014 Update (Rating System) (Hruby 2014). The wetland received 17 points on the rating form and is a Category III, Depressional system rated based on function.

Buffer widths are based on wetland category, scores for habitat functions on the rating form, and the intensity of the proposed land use. The wetland was rated 5 points for habitat function. At the time of submittal, high impact land use included residential development with more than one unit per acre. Accordingly, the wetland required a 150-foot buffer (80-foot water quality buffer and 70-foot habitat buffer). However, a new Critical Areas Ordinance (CAO) was adopted on April 23, 2018 (Ordinance 2018-09), which classifies all residential development in R-0.4, R-1, and R-2 zoning designations as moderate impact land use. Under the new CAO, the wetland requires a 110-foot buffer, with no separate water quality or habitat buffer.

The 110-foot buffer extends across both lots to the unimproved portion of Soundview Dr. NE. A 15-foot structure or hard surface setback is also required from the edge of any wetland buffer.

a. BIMC 16.20.080 Reasonable Use Exceptions

i. Applicability and Intent

An applicant may request an RUE pursuant to BIMC 16.20.080.A when a site assessment review pursuant to BIMC 15.20 or a pre-application conference demonstrates that: 1. The subject property is encumbered to such an extent by critical areas and/or critical area buffers that application of this chapter would deny all reasonable use of the subject property; 2. Reasonable use of the subject property cannot be achieved through Buffer Modification (BIMC 16.20.110 and 140) or a Habitat Management Plan (BIMC 16.20.110); and 3. Alternatives to development through an RUE are not available or acceptable.

**As shown in the wetland delineation report and buffer mitigation plan, the wetland and its buffer encompass the entirety of both properties. Buffer modification allows the buffer to be reduced up to 25 percent of its required width. A 25 percent reduction in buffer width still results in a buffer that encumbers the entire property and does not create a buildable area. A Habitat Management Plan is a report that evaluates measures necessary to maintain, enhance and improve terrestrial and/or aquatic habitat on a proposed development site, and is not applicable to the proposed development site or proposal. The only way for the applicant to develop the sites with SFRs is through a reasonable use exception.**

ii. Reasonable Use Review Criteria

The application of this chapter would deny all reasonable use of the property;

**The properties are constrained due to the following factors: nonconforming lot size (6,969.6 and 8,712 square feet in a 20,000 square foot zoning district), and a wetland with a 110-foot buffer. The lots do not have area outside of the wetland and buffer to construct 1,200 square foot homes.**

There is no reasonable alternative to the proposal with less impact to the critical area or its required buffer;

**The wetland and buffer completely encumber the lots, which are in a residential zoning district. The applicants would not be able to develop the lots with single family homes without the requested exception. With lot areas of 6,969.6 and 8,712 square feet, the zoning supports 1,393.9 and 1,742.4 square feet of lot coverage on the two lots. However, lot coverage of 1,200 square feet is considered reasonable on lots completely encumbered by critical areas and buffers. The applicant is proposing 1,179 square feet of lot coverage on each lot.**

The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BIMC 16.20.030);

**The wetland delineation report and buffer mitigation plan describes the use of mitigation sequencing. The project avoids impacts to the wetland by locating the development within the buffer and outside of the wetland itself, in areas dominated by grasses and non-native**

shrubs. The project minimizes impacts by locating the development as far away from the wetland as possible, in a portion of the buffer that has low function. Additionally, the front setback is proposed to be reduced to 5 feet, in order to move the development area away from the wetland. The project also proposes the use of pervious pavement to reduce stormwater impacts. The proposal does not include efforts to rectify or reduce the impact, and therefore includes compensatory mitigation in the form of buffer enhancement. The enhancement plan includes installation of native plants around the development to represent as natural a buffer setting as possible. In addition, a line of conifer trees will be installed along the buffer edge to improve the noise and light screening function of the buffer. Compensatory mitigation also includes replacement of the culvert under Belfair Avenue currently used as a pedestrian path, which will reconnect a historically connected wetland system on both sides of the right-of-way, that was disrupted due to improper installation.

The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property;

**The proposal includes building footprints of 1,179 square feet on each lot. The area of impact on each lot is 2,654 square feet, or 5,308 square feet total. The areas outside of the proposed fence and in between the development will be maintained as a buffer enhancement area. The applicant reduced the area of impact on Lot 6 after meeting with City Staff of May 10, 2018, to reflect a similar development pattern to Lot 5, which contained a smaller area of impact at the time of permit submittal. After reviewing these changes and the proposal overall, staff finds that the proposal is the minimum necessary to allow reasonable use of the property.**

The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992;

**The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992. The land was approved for division on June 23, 1960 as a part of the Fort Ward Estates Division 1 Plat.**

The proposed total lot coverage does not exceed 1,200 square feet for residential development;

**Pursuant to BIMC 18.12.050, Rules of Measurement, lot coverage means that portion of the total lot area covered by buildings, excluding up to 24 inches of eaves on each side of the building, any building or portion of building located below predevelopment and finished grade. The proposed total lot coverage for each lot does not exceed 1,200 square feet.**

The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;

**As conditioned, the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property (Conditions 1-23).**

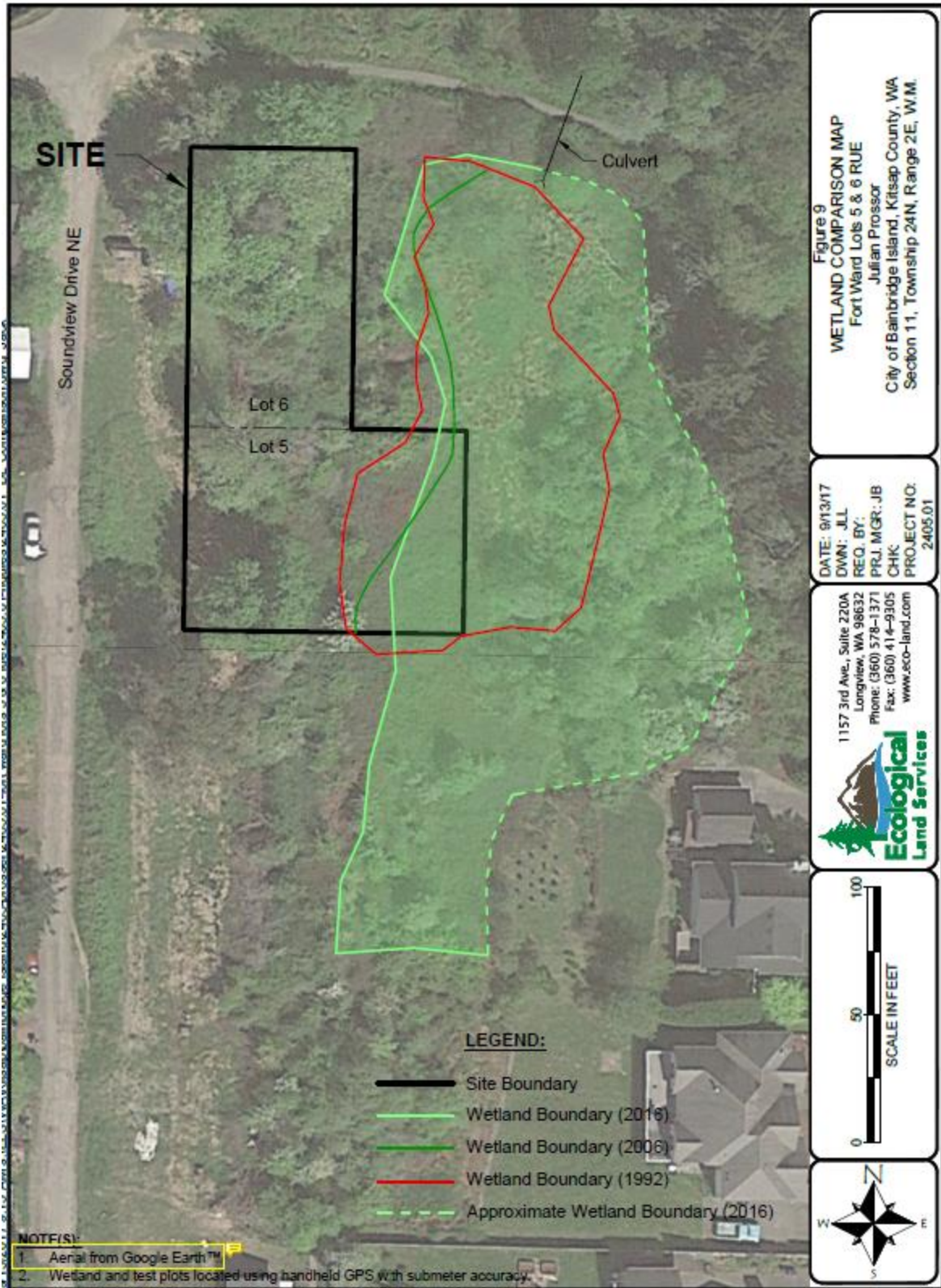
Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements applicable to the critical area altered;

**As stated in the wetland delineation report and mitigation plan, the inner 80 feet of the wetland buffer is densely vegetated with Nootka rose and English hawthorn trees that provide a protected buffer for the wetland. The mitigation plan therefore focuses on increasing species diversity in the outer buffer area by planting around the proposed SFRs and removing invasive species where feasible and necessary in the dense inner buffer area. The mitigation plan also includes the installation of low impact fencing along the edge of the inner buffer area, lined with shore pines, to provide a level of protection for the buffer from the SFRs and future residents.**

**Because of the small lot sizes and the condition of the existing buffer vegetation, mitigation options on site are limited. In order to adequately compensate for impacts to the buffer, the applicant proposes to replace a culvert under Belfair Ave. According the mitigation plan, the wetlands in Fort Ward Estates were historically part of one larger system that upon development of the area were divided into somewhat individual wetlands by roads. During construction, culverts were placed beneath the roads, but the one underneath Belfair Ave. was placed too high in elevation, preventing continued flow of water into the northern wetland areas. Due to the lack of hydrological continuity caused by the improperly installed culvert, the original area of wetland south of Belfair Ave. and adjacent the subject properties, has expanded significantly. It appears that a larger culvert was installed several years ago but it remains at an elevation that has not restored hydrologic continuity. The wetland does not appear to have expanded because of this newer culvert, nor has the wetland been restored to its original limits.**

**The wetland delineation report and mitigation plan provides the wetland boundaries as delineated in 1992, 2006, and 2016:**





The wetland delineation report and mitigation plan states that the proposed culvert replacement will improve hydrologic connectivity and wildlife passage, and will increase diversity within the northern wetlands. By allowing water to spread across both wetlands there will be an increase in the ability of each wetland to function as one system, with improved water quality and storage. The culvert should be installed either partially buried or bottomless, with at least a 24-inch diameter, to allow small animals to move across the historic range. The wetland south of Belfair Ave. and adjacent the subject properties has greater plant species diversity than the wetland to the north, and once the culvert is replaced the seeds from these plants will spread into the northern wetlands and thereby increase the vegetation diversity. The increase in plant species diversity will improve the water quality of the runoff that enters the wetlands. Although the culvert replacement may shrink the boundary of the wetland over time, it will not shrink beyond its original boundary as delineated in 1992. According to the wetland report, the water quality and habitat functional lifts outweigh the potential for shrinking.

Staff finds that because of the limited opportunities for onsite mitigation, the proposed offsite mitigation is adequate. The project is conditioned to require that the applicant obtain all required permits and approvals prior to culvert replacement, including a Right-of-Way (ROW) Permit from the Department of Public Works, a Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife, and a Critical Areas Permit from the Department of Planning and Community Development (Condition 7). Necessary technical analyses (Condition 6) for the culvert replacement will be required as a part of the Critical Areas Permit application. If the required analyses prove the culvert replacement infeasible or the applicant decides to retract the culvert replacement proposal, an amendment to the RUE with an alternative mitigation proposal shall be approved prior to building permit issuance, and Conditions 6-8 do not apply.

The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values;

The wetland delineation report and mitigation plan prepared by Ecological Land Services, Inc. is based on best available science and adequately compensates for impacts to the critical area, resulting in no net loss of critical area functions and values. The proposed culvert replacement may result in a net gain for the critical area, as the wetland will regain its historic hydrologic connectivity for improved water quality and habitat function.

The proposal addresses cumulative impacts of the action; and

The proposal addresses cumulative impacts in that the mitigation plan addresses impacts from both properties, and proposes mitigation according to those collective impacts. The City also considers the

**proposed development of the two lots as one cumulative proposal from a stormwater perspective, requiring the proposal meet minimum requirement's 1-9 in the *2014 Stormwater Management Manual for Western Washington* (Condition 21).**

The proposal is consistent with other applicable regulations and standards.

**The proposal is consistent with other applicable regulations and standards of the BIMC, with the exception of the variance request to the front yard setback, which is also recommended for approval. An analysis of these regulations and standards is provided below.**

b. BIMC 16.20.140 Wetlands

i. Wetland Buffers

Buffers shall remain as undisturbed or enhanced vegetation areas for the purpose of protecting the integrity, function, and value of wetland resources.

**The proposal impacts the buffer with the addition of two single family homes and associated driveways and walkways. In addition to minimizing the impact to the buffer by constructing the smallest footprint necessary to achieve reasonable use of the property, the proposal includes buffer enhancement by increasing species diversity in the outer buffer by planting native species around the proposed SFRs, and by removing invasive species where feasible and necessary in the dense inner buffer area immediately adjacent the wetland. The proposal also includes the installation of low impact fencing along the edge of the inner buffer area, lined with shore pines, to provide a level of protection for the buffer from the SFRs and future residents.**

Buffer widths are based on wetland category, scores for habitat functions on the rating form, and the intensity of the proposed land use. A 15-foot structure or hard surface setback is also required from the edge of any wetland buffer. Any other buffer modification resulting in a reduced buffer area, other than noncompensatory enhancement or buffer modification, requires a Reasonable Use Exception pursuant to BIMC 16.20.080.

**The wetland is a category III wetland with a moderate level of function for habitat and a moderate impact of land use. The required buffer is 110 ft. and extends across both lots to the unimproved portion of Soundview Dr. NE. The applicant is unable to achieve reasonable use of the property through buffer modification, either buffer width averaging or buffer width reduction, as buffers may not be reduced by more than 25 percent of the required width; a 25% reduction in buffer width still results in lots that are completely encumbered. The lots require an RUE in order to develop within the buffer.**

A wetland critical areas report and wetland mitigation plan is required to address impacts to the wetland and associated buffer. Compensatory

mitigation may occur at the site of the allowed impacts or at an off-site location.

**The applicant submitted a wetland critical areas report and mitigation plan to address impacts to the wetland and associated buffer. The proposal includes a combination of onsite and offsite mitigation. The off-site location was chosen because the proposed culvert replacement will have greater functional benefits to the watershed than can be achieved onsite.**

The city shall require monitoring reports on an annual basis for a minimum of five years and up to ten years, or until the director determines the mitigation project has met the performance standards specified in the wetland mitigation plan. The wetland mitigation plan shall provide specific performance standards for monitoring the mitigation project. Performance standards shall be project-specific and use best available science to aid the director in evaluating whether or not the project has achieved success.

**The monitoring plan proposes a seven-year monitoring period, with monitoring reports submitted to the City of Bainbridge Island by December 31 of each monitored year. The five performance standards are project-specific and are based on four objectives and use best available science. The four objectives include: control invasive species; improve native plant cover within the native shrub buffer community; increase native plant cover within the buffer and around the existing homes; and improve connectivity of wetland habitat in Fort Ward Estates. The five performance standards provide metrics by which these objectives will be measured for success over the seven years.**

ii. Fencing and Signs

Wetland buffers shall be temporarily fenced or otherwise suitably marked between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per city approval.

**The project is conditioned to provide temporary fencing prior to commencing construction and to maintain the fencing until the work is complete and site is fully stabilized (Condition 2).**

The director may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land. Such signs will identify the wetland buffer. The director may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer.

**Permanent fencing and signs are required (Condition 3).**

c. BIMC 16.20.100 Aquifer Recharge Protection Area

i. ARPA Development Standards

Any development or activity that is not exempt or excluded by subsection E.1 of BIMC 16.20.100 shall ensure sufficient groundwater recharge, defined as maintaining 100 percent of the annual average pre-construction groundwater recharge volume for the site. The primary means to ensure sufficient groundwater recharge shall be through the designation of an aquifer recharge protection area (ARPA) in accordance with subsection E of BIMC 16.20.100.

**The ARPA shall be documented on a site plan submitted with the building permits (Condition 18).**

d. BIMC 16.20.160 Performance and Maintenance Surety

The director shall decide when a performance surety is required of an applicant, and the acceptable form of such surety. The amount and the conditions of the surety shall be consistent with the purposes of this chapter; provided, that the minimum amount of the surety, when required, shall be 125% of the estimated cost of performance. A performance surety shall not be required when the actual cost of performance, as documented in a form acceptable to the director, is less than \$1,000.

**All plantings that are a part of the mitigation plan shall be installed prior to final building permit inspection, or an assurance device shall be provided in accordance BIMC 16.20.180 (Condition 5). The replacement culvert shall be installed prior to final building permit inspection for the first SFR, or an assurance device shall be provided in accordance with BIMC 16.20.180 (Condition 5).**

e. BIMC 16.20.070.G Notice on Title

The owner of any property with field-verified presence of critical area or buffer on which a development proposal is submitted shall file for record with the Kitsap County auditor a notice approved by the director in a form substantially as set forth in Subsection 2 of BIMC 16.20.070.G. Such notice shall provide notice in the public record of the presence of a critical area and buffer, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

**The applicant shall submit a recorded notice to title prior to the issuance of the building permits, documenting the presence of the wetland, mitigation plan, and ARPA (Condition 19).**

3. **BIMC Title 2 Land Use Procedures**

a. BIMC 2.16.120 Major Variances



Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled.

**The hardship is the presence of a wetland and buffer that encumber the subject properties. A variance from the required 25 ft. front yard setback is requested, in order to locate the proposed SFRs as far away from the wetland as possible.**

i. Applicability

The major variance process may be used for deviations from zoning standards in BIMC Title 18 that the director determines exceed the threshold for minor variances under BIMC 2.16.060. Minor variances should be limited to: (1) project that are exempt from review under SEPA, or (2) proposals for less than a 25% encroachment into required yards, or (3) proposals of less than a 25% increase in lot coverage.

**The proposal is not exempt from SEPA and will encroach greater than 25% into the required front yard (25 ft. required, 5 ft. requested).**

This procedure is not available to obtain variances from subdivision standards in BIMC Title 17 or to obtain variances from BIMC Title 18 zoning standards cross-referenced in BIMC Title 17 as part of a short subdivision, long subdivision, or large lot subdivision approval or amendment process.

**The setback was not imposed due to a subdivision standard. The subdivision of these lots occurred prior to the regulation of wetlands.**

This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.

**The request is for the development of a primary single family residence on each lot, and is unrelated to an accessory dwelling unit.**

A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.

**The request is not due to the presence of nonconformities in the vicinity of the subject site.**

Variances from the city's noise regulations in Chapter 16.16 BIMC are available through the noise variance process in Chapter 16.16 BIMC and are not available through the major variance process in this section.

**A noise variance is not included in the proposal.**

The provisions of this section supplement those of BIMC 2.16.020 and 2.16.100 when the application is for a major variance. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.100 and this section, the provisions of this section shall govern.

**BIMC 2.16.020 describes general land use provisions; BIMC 2.16.100 describes quasi-judicial decision by the hearing examiner. In the event of conflict between these provisions and the provisions of the major variance section (BIMC 16.20.120), the major variance section shall govern.**

ii. Decision Criteria

A major variance may be approved or approved with conditions if:

The variance is consistent with all other provisions of this code, except those provisions that are subject to the variance, and is in accord with the comprehensive plan;

**The variance is consistent with all other provisions of the BIMC, except those provisions (front setback) that are subject to the variance, and is in accord with the comprehensive plan.**

The need for a variance has not arisen from previous actions taken or proposed by the applicant;

**The lots were created in 1960, prior to enactment of the critical areas ordinance. The need for the variance has not arisen from previous actions taken or proposed by the applicant.**

The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but that is denied to the property in question because of special circumstances on the property in question, and will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity in which the property is located;

**Reasonable use of the property will be denied without an RUE because of the presence of the wetland. The granting of a variance will allow less intrusion into the wetland buffers by locating the proposed single family residences farther away from the wetland edge and within the front yard setback (25 ft.).**

The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is located; and

**Denying the variance will increase impacts to the wetland.**

**Additionally, the right-of-way for Soundview Dr. NE is 60 ft. wide, and the developed portion of the right-of-way is approximately 20 ft. wide and located on the western edge of the 60 ft. right-of-way. Despite the reduced front yard setback, the future single family residences will be located approximately 40 ft. from the developed portion of Soundview Dr. NE. Therefore even with the a front yard setback that has been reduced down to 5 ft., the existing conditions provide a physical separation that exceeds the 25 ft. setback requirement; the proposed**

homes will be setback approximately 40 ft. from the developed road area.



The variance is requested because of special circumstances related to the size, shape, topography, trees, groundcover, location or surroundings of the subject property, or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access.

**The variance is requested because of special circumstances related to the subject property – specifically, the presence of a category III wetland and 110 ft. buffer that extends onto the subject properties.**

If no reasonable conditions can be imposed that ensure the application meets the decision criteria of the BIMC, then the application shall be denied. (Ord. 2011-02 § 2 (Exh. A), 2011)

**The applications are properly conditioned to ensure that the project meets the decision criteria.**

### III. CONCLUSION

#### A. Site Characteristics

The properties are adjacent to a category III wetland with a 110 ft. buffer that encumbers the entirety of the lots. A portion of the wetland extends onto Lot 5.

**B. History**

Appropriate notice of the application and SEPA environmental review was published. The SEPA determination was noticed on May 15, 2018, with the appeal period ending on May 29, 2018. The application is properly before the Hearing Examiner.

**C. Comprehensive Plan Analysis**

The proposed Reasonable Use Exception request is consistent with the goals and policies of the Comprehensive Plan.

**D. Land Use Code Analysis**

With appropriate conditions, the propose Reasonable Use Exception and major variance requests conform to all applicable regulations in the Bainbridge Island Municipal Code.

**IV. APPEAL PROCEDURES**

Any decision of the Hearing Examiner may be appealed in accordance with BIMC Chapter 2.16.020.P.2.